

Citation: *R. v. J.R.J.*, 2007 YKYC 2

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Docket: T.C. 05-03555I
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

J.R.J.

T.C. 05-03526J
Registry: Whitehorse

REGINA

v.

L.C.

Publication of identifying information is prohibited by s. 110(1) of the *Youth Criminal Justice Act*.

Appearances:
Melissa Atkinson
Emily Hill
David Christie

Counsel for Crown
Counsel for L.R.J.
Counsel for L.C.

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): J.R.J. and L.C. are both before me in relation to guilty pleas they have entered to the offence of escape lawful custody. Both young women were on open custody sentences when they made a very poor decision of deciding to walk away from their open custody worker.

[2] I do think you should both to take to heart the comments Ms. Atkinson made about the impact your actions might have had on that individual, and maybe you want to consider picking up the phone and extending an apology to them. In any event, they both chose to run away from their open custody worker and were not found again until about a month and a half later.

[3] They are both young women. Ms. J. is 16 years of age. She is a member of the Kluane First Nation and has support from her First Nation. A representative of the First Nation, a counsellor, has taken the time to drive down to be here today. Ms. J. appears to have had a difficult and unstable background, which involved early exposure to both violence and the abuse of substances. At the age of 13 she herself began getting into trouble with the law and began abusing substances. Not surprisingly, she appears to have a difficulty, as a result of her abuse of substances, with being compliant with conditions that have been placed on her.

[4] She has, to her credit, and it must be considered, made some attempts to seek out treatment and to pursue a goal of furthering her education. With a view to doing that, there has been some work done by the Kluane First Nation and her father to look at having her reside with him and ultimately sent out to Williams Lake for treatment. I understand that that would involve the family; that is the plan. It is obvious to me it would be of great benefit to all of them, and it is my sincere hope that that is something that the family is able to pursue.

[5] Ms. C. is 17 years of age. She is a member of the Selkirk First Nation. She has a similar unstable background and has struggled herself with the abuse of substances,

as she has observed members of her family struggle as well. Work has been done for her, as well, in discussions with her father, to look at having her reside with him in Alberta. She has started some counselling that she wants to continue. Of particular importance to me is she appears to have recognized that the choice that they made was one that was ultimately not worth it when you consider it in light of the consequences that flow from it.

[6] This, quite frankly, would have been a very quick and straightforward sentencing but for the fact that the legislation that we are dealing with involves some fairly complex and confusing calculations when there is a pre-existing sentence, as there is in both of these cases.

[7] There is a joint submission before me that a 30-day disposition is appropriate for both of these young women. I take no issue whatsoever that that is an appropriate resolution. I think it is a length of time that will bring home to them the seriousness of their actions and the view that the Court takes of individuals who have failed to comply with conditions that are placed on them by the Court.

[8] The difficulty comes in working through the calculations to merge that 30-day sentence with the pre-existing sentences. Most particularly, once the calculations are done, as both counsel and youth probation have very patiently walked me through, we end up with a situation where, quite ironically, Ms. C., who had completed the custodial portion of her prior sentence, would end up doing a longer period in custody than Ms. J., who had not completed hers, which is something that, on the face of it, appears to make very little sense. Logically, one would think that because Ms. C. had already finished

the custodial portion of her sentence, that her remaining time in custody would be shorter as opposed to longer, or at the very least, that they would be in the same position.

[9] For that reason, even though it is going to result in there being a disparity on their records, I am more concerned about the effect on the two of them. I would hate to think that somebody in Ms. C.'s position would look at that and how could she not shake her head as to whether that makes sense or is fair, in her circumstances. So for that reason and that reason alone, I am more concerned about the end result than how it is going to reflect on the record. I can say clearly, in this decision, the intention is that they be treated the same, but in order to do that, I actually, oddly, need to sentence Ms. C. differently than I do Ms. J. I have no doubt this is very confusing for both of you, but the bottom line is you are both getting the same sentence, but on paper it is going to look differently because if I give you the same sentence on paper, you are not going to end up with the same sentence, in fact.

[10] I know that does not make a lot of sense because it does not make a lot of sense to me either. The intention is that you both end up with the same thing, but for me to make sure that you do, I have to give you different sentences. It is not logical, but I want you both to understand that, in effect, you are getting the same sentence, it will just look like the ones I will be giving will be different, but they will have the same end result. I do not know that I am making it any more clear.

[11] Suffice it to say, for me to be satisfied that they will be treated the same once they are in there serving their sentences, I need to sentence them as follows. Ms. J. will

receive a sentence of 30 days consecutive to any other sentence that is being served. It is my understanding that after the merger of this sentence with her previous sentence, when the merger calculation is complete, she will do an additional eight days in closed custody.

[12] To ensure the same end result, the sentence for Ms. C. is going to be 25 days. When the calculation then is done for Ms. C., on a 25-day sentence, the end result is that she will do an additional eight days in closed custody. So you will both end up at the end, even though one sentence is 25 days and one is 30, you both end up doing another eight days. It is confusing but that is --

[13] THE ACCUSED J.R.J.: Is it closed custody --

[14] THE COURT: Yes, but --

[15] THE ACCUSED J.R.J.: Is it because I got 20 days out in community supervision and she only has 15?

[16] THE COURT: No, the reason it works out oddly is because of the calculation that is set out about how sentences get merged. Where it becomes a problem is because she had finished the custodial portion of her sentence. So that is what skews it. If she had not finished hers either, it probably would have ended up roughly the same at 30 days, but because her custodial portion was already done and yours was not, we end up in this odd situation of having -- so the calculation would have her doing more than you instead of you doing the same.

[17] THE ACCUSED J.R.J.: I think that's not fair.

[18] THE COURT: It is not.

[19] THE ACCUSED J.R.J.: Is it because I got 60 and she got 45?

[20] THE COURT: It is not fair, so the way I am going to try and make it fair is give you different sentences, but which will have you both out at the same time. So it is confusing as all get out, but what you both need to understand is that you will both get a sentence that will have you do eight more days in custody and then a little bit on time of community supervision.

[21] THE ACCUSED L.C.: Am I going to do my community supervision in Haines Junction or in Whitehorse?

[22] THE COURT: I do not know. The youth workers will make those determinations. From what I am hearing, that is the intention, whether they will take some time to work that out I do not know, but they will be able to give you the specifics about where you will be for which portion of the sentence, okay? Okay. So I suppose that is clear as mud for everybody. Does it make sense? Okay, hopefully we have the calculations right.

[23] What I will say very clearly for the record, the intention is to have them both do the same amount of time so that the effect of both sentences is the same. So you will both do an additional eight days plus some community supervision, okay?

[24] Anything further?

[25] MS. HILL: Victim fine surcharge?

[26] THE COURT: I will waive them.

[27] MR. CHRISTIE: Thank you.

[28] THE COURT: If only for the fact that they had to sit through all of these discussions on sentence calculations, okay? So I wish you both, Ms. C. and Ms. J., good luck. I think now is the time you want to seriously think about where you are going and what you are doing. I want to again thank everyone very much for their patience in us walking through this. My apologies it if remains confusing for anybody, but I think we have gotten to the point where at least they will be treated the same in the end result. Thank you all for your patience.

RUDDY T.C.J.