

Citation: *R. v. M.L.H.*, 2003 YKYC 7

Date: 20031121
Docket No.: T.C.03-03516,
03-03526A
Registry: Whitehorse

IN THE YOUTH JUSTICE COURT OF YUKON

Before: His Honour Judge Faulkner

IN THE MATTER OF THE *YOUTH CRIMINAL JUSTICE ACT*,
S.C. 2002, C. 1

Regina

v.

M.L.H.

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

Appearances:

John Phelps
Samantha Wellman

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): M.H. stands convicted in the Youth Justice Court on one count of breaking and entering a dwelling house and committing therein the indictable offence of theft. In addition, there are five counts of theft and one count of mischief. All of these matters involve smashing in the windows of motor vehicles, and, in the case of the theft charges, stealing from those vehicles.

[2] With respect to the circumstances of the breaking and entering, it should be noted that, as is too often the case, the perpetrators, who included Mr. M.H., made a mess of the house they broke into, in addition to stealing from it; and, as is too often the case, the items stolen included items of sentimental value that were, in the result, irreplaceable.

[3] Mr. M.H.'s youth record is very troubling because it is at once related, repetitive and recent. It is abundantly clear from the record, and from the extensive pre-sentence reports and the psychological reports filed with the court, that there is no possibility whatever of Mr. M.H. conforming to a community-based disposition.

[4] Ms. Wellman quite properly conceded that the pre-conditions for custody set out in s. 39 of the *Youth Criminal Justice Act*, S.C. 2002, c. 1, have been met.

[5] Mr. M.H. has been in secure custody since September 22, 2003. I am presented with a joint submission that he receive an additional six months open custody to be followed by a six months intensive support and supervision order.

[6] Having adjourned to consider the matter, I have concluded that the disposition sought is within the permissible range and is appropriate for this youth. The material before me also establishes that the requirements of s. 42(3) have been met so as to permit the court to make an intensive support and supervision order.

[7] There is an outstanding s. 42(2)(l) support and supervision order which has not yet been served. The present dispositions will be additional to that disposition but will be served first.

[8] With respect, then, to the offences of which you stand convicted, M.H., and with respect to each of them, you are ordered to serve four months to be served in open custody, to be followed by two months to be served under supervision in the community subject to conditions. If you breach any of the conditions while you are under supervision in community, you may be brought back into custody and be required to serve the rest of the second period in custody as well. You should also be aware that under other provisions of the *Youth Criminal Justice Act* the court could require you to serve the second period in custody.

[9] The periods in custody and under supervision in the community may be changed if you are or become subject to another sentence.

[10] While serving the portion of the sentence in the community, you will be subject to the following conditions:

- a) That you will keep the peace and be of good behavior.
- b) That you will report to the Territorial Director or designate and then be under the supervision of that person.
- c) That you will inform the Territorial Director immediately on being arrested or questioned by the police.
- d) That you will report to the police, or any named individual, as instructed by the Territorial Director.
- e) That you will advise the Territorial Director of your address of residence and report immediately to the Territorial Director any change in that address, in your normal occupation, including employment, vocational or educational training and volunteer work, in your family or financial situation and that may reasonably be expected to affect your ability to comply with the conditions of the sentence.

- f) That you will not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized in writing by the territorial director for the purpose of your participating in a program specified in the authorization.

[11] You should also be aware that the Territorial Director can, and no doubt will, set additional conditions to be in effect during the term of you serving the community portion of your sentence.

[12] I strongly recommend that those conditions include:

- a) conditions for assessment, counselling and treatment;
- b) conditions for assessment and treatment;
- c) conditions for abstinence from drugs and alcohol, together with testing where failure to abstain is suspected; and
- d) conditions requiring that you have no contact with D.J.M., D.T. or J.L.

[13] Following the completion of the custody and supervision order, you will be subject to an order requiring your participation in an intensive support and supervision program. This order will be in effect for a period of six months beginning after the open custody sentence has been served.

[14] The terms of the intensive support and supervision order will be:

- a) That you will keep the peace and be of good behavior.
- b) That you will report to the Youth Justice Court when required so to do.
- c) That you will report to a youth worker forthwith after the order comes into effect and thereafter when and in the manner that the youth worker

directs.

- d) That you will remain within the jurisdiction of the court.
- e) That you will reside where the youth worker directs and obey all rules of that residence.
- f) That you will be subject to a curfew and be in your place of residence between the hours of 9:00 p.m. and 7:00 a.m., seven days a week, except with the prior permission of the youth worker.
- g) That you will present yourself at the door of your residence or answer the telephone during the hours of curfew, whenever there is a curfew check by the appropriate authorities.
- h) That you will abstain absolutely from the possession or consumption of alcohol or controlled drugs or substances.
- i) That you will submit to breath or bodily fluid testing on demand by your youth worker. Further, that you will submit to breath or bodily fluid testing on demand by any peace officer who has reasonable grounds to believe that you have such substances in your body contrary to this order.
- j) That you will attend for assessment, counselling and programming as directed by the youth worker.
- k) That you will attend educational programming or day-programming as directed or, in the alternative, maintain employment satisfactory to your youth worker.
- l) That you will have no contact, directly or indirectly, with D.J.M., D.T. or J.L.
- m) That you will attend a community reconciliation conference as directed by your youth worker.

[15] With respect to the reports that were filed with the court, the original copies to which I have referred to, the psychological reports should be placed in the file in a sealed envelope not to be opened without further order of the court. The other copies that were provided by counsel will remain on the open file.

FAULKNER T.C.J.