
CANADA / JUDGMENT

R. v. A.S.D.

2020 BCSC 535

COURT

Supreme Court of British Columbia

DECIDED

6 April 2020

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2020 BCSC 535 R. v. A.S.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. A.S.D.,

2020 BCSC 535

Date: 20200406

Docket: 26829

Registry: Vancouver

Regina

v.

A.S.D.

Corrected Judgment: The text of the judgment was corrected at paragraphs 31 and 63 on April 20, 2020

Before: The Honourable Mr. Justice Schultes

Reasons for Judgment - Section 94(1) YCJA Review

Counsel for the Crown:

H. Reiner, Q.C.

Counsel for A.S.D:

D. Turko, Q.C.

Place and Date of Hearing:

Vancouver, B.C.

March 20, 2020

Place and Date of Judgment:

Vancouver, B.C.

April 6, 2020

Introduction

- [1] On January 11, 2019, I sentenced A.S.D. for the offence of manslaughter. He committed the offence when he was 17 years old and was sentenced as a youth. I imposed a three-year custody and supervision order pursuant to s. 42(2)(o) of the Youth Criminal Justice Act [YCJA], consisting of a continuous period of custody of 18 months and a period of conditional supervision of the same length (2019 BCSC 147).
- [2] A year has expired since the sentence was imposed and the provincial director is required by s. 94(1) of the YCJA to bring Mr. D. before the court for a review of his custody. Mr. D. now seeks his release on conditional supervision. The Crown argues that the custodial portion of the sentence should continue for the full 18 months that was originally imposed.

Background

Offence

- [3] I found Mr. D. guilty on October 10, 2017, following a trial (2017 BCSC 2487).
- [4] The circumstances of the offence were that he had participated in a group attack on the 19-year-old victim, Luka Gordic, in the walkway of a shopping plaza at Whistler in the early morning hours of May 17, 2015. During the attack, Mr. Gordic was stabbed to death by one of the co-accused, L.Z., who received an adult sentence.
- [5] The context of the offence was an annual event in which soon-to-graduate Burnaby high school students, as well as former students, gather in Whistler on the Victoria Day long weekend for partying. The excessive consumption of alcohol and other intoxicants played a prominent role in the celebrations generally, and in the attack on Mr. Gordic.
- [6] The motive for the offence was a gross overreaction by Arvin Golic, an adult co-accused, to a perceived slight by Mr. Gordic earlier in the day. This caused Mr. Golic to mobilize a group of friends and associates late in the evening on the 16th to look for Mr. Gordic and attack him.
- [7] Mr. D. and Mr. Z. had actually arranged to meet with some young women elsewhere in Whistler, to continue the romantic activity that they had begun with these women earlier in the evening, but they put that arrangement aside to join the group.
- [8] I found that Mr. D. had participated in the group's search for Mr. Gordic in the Whistler Village before the attack, by questioning three of Mr. Gordic's friends on his whereabouts.

- [9] The group eventually located Mr. Gordic. Security video in the area of the walkway showed a total of nine potential attackers approaching him and pursuing him until they were out of the view of the camera. This included Mr. Z., who appeared to display a knife at his waistband.
- [10] Witnesses described a circle of attackers around Mr. Gordic "punching" and "swarming" him, before running off.
- [11] Mr. D. could not be identified by the video or any of the witnesses at the scene as one of the attackers, but I found that the blood transfer stains on the boots that Mr. D. was wearing at the time, which matched Mr. Gordic's DNA to a high degree of probability, indicated that he brought his feet into contact with Mr. Gordic's body or clothing during the attack, most likely by kicking him. Given the direction in which he subsequently fled, he must have been part of the first group of attackers shown in the video. I also found that his participation in the search for Mr. Gordic attached him to the group's purposes and supported the inference of his participation in the subsequent attack. In addition, I gave some weight to his flight from the attack scene. He was arrested a short time after the attack in the company of Mr. Z. Another co-accused, G.C.A.R., was arrested a short distance away.

Offender

- [12] Mr. D. committed this offence two and a half months before his 18th birthday. He was 21 years old when he was sentenced and is now 22. He had no previous criminal record.
- [13] The extensive reports prepared for his sentencing revealed that he came from a close-knit family, and that his conflicts with them before the offence related to their efforts to rein in his misbehaviour. There was no suggestion that he had rejected their authority or was functioning independently from them.
- [14] Although there was a concerning comment from a school official that Mr. D. wanted to be "known and feared" in the school setting, he was not identified as associating with a negative peer group at school and the decline in his academic performance before the offence was due to non-attendance. He explained to one of the report-writers that he skipped classes that he was not interested in and preferred to hang out with friends, which I found was suggestive of immaturity.
- [15] I was satisfied that he had become friends with Mr. Golic, whom I described as an "unsavoury character", but not that he was operating in any generally antisocial manner before the offence, as Mr. Golic and Mr. Z. were.
- [16] On the positive side, Mr. D. was greatly appreciated for his volunteer work coaching and refereeing youth soccer in Burnaby.

- [17] Despite some variation in his intellectual functioning in different areas, he has no diagnosable learning disabilities or psychological impairments. His level of social maturity was assessed as being "average to above average", but he also presented himself in a grandiose manner in some of the interviews for the reports, with unrealistic future plans. His youth probation officer described him as having "quite the ego".
- [18] He complied fully with his bail supervision, which was in place for three and a half years and included extensive curfew checks.
- [19] The psychiatrists who assessed him found him to be a low risk to reoffend. One of them concluded that his participation in the offence was "likely less related to characterological traits and more to situational and developmental factors present at the time, such as [his] association with relatively more antisocial and violent peers and his failure to fully appreciate the consequences of his choices". His intoxication at the time also played a meaningful role. Counselling was recommended, to address Mr. D.'s "grandiose sense of self and vulnerability to substance abuse".
- [20] Risk factors if he received a custodial sentence were poor readjustment to the community upon his release, and a return to substance use and association with antisocial or violent peers. One of the psychiatrists sounded the warning that "...an adult custodial sentence would place him at risk for association with and exploitation by antisocial adults, a primary risk factor for recidivism..."
- [21] For his part, Mr. D. maintained the same exculpatory version of events in his interviews with the report-writers that he had testified to in that trial, which is that the attack was carried out by members of the group who were ahead of him and that he had not participated in it. He also confirmed his trial evidence that he had been intoxicated at the time. He added the additional detail that a member of the group ahead referred to having "spotted" Mr. Gordic, whereas in his trial evidence he said he had not recognized Mr. Gordic, whom he knew, until Mr. Gordic was being attacked. He also explained that if he had kicked Mr. Gordic, as I inferred from the blood on his boots, the boots would have gone flying, because they were not laced at this point.
- [22] Nevertheless, he expressed sadness over the outcome of the incident and empathy for Mr. Gordic's family. As part of his sentencing, he read what I described as "quite a thoughtful and seemingly sincere" letter, expressing his regrets to the family. A noteworthy comment was that if he had been sober "this tragedy may not have occurred."

Sentence

- [23] After considering all of these matters, I was unable to be satisfied that the presumption of moral blameworthiness that applies to youthful offenders under s. 72(1)(a) of the YCJA had been rebutted, or that the length of a youth sentence would not be sufficient to hold him accountable for the offence, under ss.(b). As a result a youth sentence was imposed.

[24] Despite the numerous mitigating factors that I have summarized, and my further finding that Mr. D. did not require significant specific deterrence, I concluded, both with respect to Mr. D. and Mr. R., whom I found had also participated in the attack, that:

601 Given the seriousness of the offence and their degree of responsibility no sentence short of a committal to custody will be proportionate to those factors. In my opinion nothing less would constitute a just sanction, with meaningful consequences to hold them accountable. In particular, I have concluded that custody is necessary to (1) promote a sense of responsibility in them and an acknowledgment of the harm they have done and (2) denounce the dangerous tendency of some members of society, often intoxicated groups of young males, to assault outnumbered and defenceless victims.

[25] I also concluded that:

604 The length of the custody periods will be moderated to be the least restrictive ones needed to provide meaningful consequences and the most likely ones, in the context of my conclusion that custody must be imposed, to achieve rehabilitation and reintegration. A period of community supervision is then essential to support the strong rehabilitation prospects described in the reports.

Current Situation

Performance in custody

[26] Because of Mr. D.'s age at the time the sentence was imposed, he has been required to serve it in an adult facility, the Fraser Regional Correctional Centre.

[27] A progress report has been prepared for Mr. D. by probation officer Christine Lacis. She wrote that his attitude and behaviour while in custody have "overall been positive".

[28] The institutional records show his consistently positive interactions with fellow inmates, she noted, as well as his "respect and a good attitude" towards correctional staff. In one incident, Mr. D. defused an argument between two inmates before the staff could arrive to deal with it. He has volunteered to do meal distribution and was described as doing "an exceptional job" of cleaning his unit when the assigned cleaners were unavailable.

[29] In Ms. Lacis' view, Mr. D. has "used his time wisely" while he has been in custody, by attending meditation and Buddhist programs (earning positive comments from the instructor) and working as a unit cleaner. He is taking two grade 12 academic subjects and will be adding a third one shortly. If he is released before he finishes these courses, he can finish them in the community.

[30] He has also completed three "core programs": Respectful Relationships, Living With Violence and Substance Abuse Management. Each program consists of 10-12 sessions. Mr. D. has chosen to do each program twice because, as Ms. Lacis explains, "his belief was that more [i]nformation can be retained through repetition and he enjoyed sharing his personal

experience and perspective with others." The correctional officers who administer the programs noted that he actively participated in positive discussions during them. In addition to these core programs, he has completed ten modules of a program called Essential Skills to Success. It covers a variety of topics, including communication, healthy relationships and employability.

- [31] On the negative side, Mr. D. has been convicted of two institutional disciplinary offences, one early in his custodial period and one more recently. In February of 2019, he attempted to block the view of a security camera while another inmate was making a weapon. According to Ms. Lacis, he cooperated with the investigation, took ownership of his actions, and entered a guilty plea to the resulting offence, which carried with it a penalty of three days in segregation and loss of some earned remission time. In November he admitted, before an inspection of his cell was carried out, that contraband would be found in it, and then produced three razor blades and some suboxone pills to the inspecting officers. After being convicted of that offence he served 6.4 hours of "intermittent confinement", which I took to be a less onerous form of segregation.

Family and community support

- [32] Mr. D.'s release plans are to live with his family. His father told Ms. Lacis that they are all supportive of his re-integration into the community. His father's perception is that Mr. D. is "more focused on the future and has matured" since being in custody. The only potentially discordant note is that his father also said that he has not had any past concerns about Mr. D.'s substance use, whereas the reports for sentencing identified it as a meaningful concern.
- [33] Mr. D. also expressed to her that his parents and siblings are his primary supports. He has childhood friends and former work colleagues who have visited him in custody and remain supportive. He wants nothing further to do with the group with whom he participated in the offence.
- [34] He would like to return to his pre-incarceration work in the restaurant industry on a part-time basis (obviously after the current COVID-19-based economic disruption), and continue upgrading his education, with the goal of entering university.
- [35] As he did at the sentencing, Mr. D. provided numerous letters of support - from family members, family friends, and one of his own personal friends. The common themes of the letters were his essential good character despite his involvement in this offence, the difficult experience he has had in custody, the extent to which he has learned and matured as a result, and the very positive life and career prospects that await him upon release.

Positions

- [36] The submissions of counsel were focused and concise.

- [37] Crown counsel described the progress report as "very sparse" in terms of its useful information for the review process.
- [38] On the issue of Mr. D.'s letters of support, he pointed out the absence of any references to Mr. Gordic or his family in them, and submitted that overall "a certain egocentrism" emerges from them, in their focus on how difficult Mr. D. has found being in custody. I should also take into account that, aside from these references to the difficulties in custody, his references at the sentencing said "pretty much what they are saying now".
- [39] When considering the seriousness of the offence and Mr. D.'s role in it, the Crown reminded me of his leadership role in searching for Mr. Gordic, his presence in the first group of attackers, and my rejection of his untruthful evidence at trial. The offence is fairly characterized as a cowardly venture, in which Mr. D. and his companions planned to swarm Mr. Gordic, whose only offence was having stood up to Mr. Golic, a bully.
- [40] Despite these troubling factors, the Crown argues, there has been no acceptance by Mr. D. of responsibility for the role in the attack that he actually played. His expression of regret was only for the outcome.
- [41] Crown counsel reviewed my findings about that role in the reasons for judgment and sentence, which I have summarized previously, to highlight the contrast between those findings and Mr. D.'s limited acknowledgment. In my reasons for sentence I found "some self-serving and inconsistent aspects of his descriptions of his involvement in the reports" (para.533). And Mr. D. went beyond simply denying his involvement, also suggesting if he had been sober he would have stopped it (para.72).
- [42] Mr. D.'s counsel emphasized the extent to which he has taken advantage of the opportunities for rehabilitation while in custody, including completing the core courses twice rather than "sitting around idle". The courses have addressed problematic areas of his thinking and given him more positive coping strategies.
- [43] His counsel also provided a context to understand his institutional offences. She emphasized the harsh code of behaviour among inmates, which subjects them to different rules than those that apply in the outside world. As a person of smaller stature, without any gang connections to protect him, and as somewhat of a lone wolf by nature, Mr. D. was just trying to "get by" in the prison environment. The first incident, near the beginning of his sentence, is a reflection of the widespread use of improvised weapons for self-protection in prisons. The second incident involved items that were actually left by his previous cellmate, who was a drug user, and which Mr. D. immediately disclosed when correctional officers inquired about the presence of contraband. In both cases, Mr. D. recognized that what he did was wrong and took responsibility for his actions, which is the important point for current purposes.

- [44] She submitted that on the whole he has performed extremely well in prison, both educationally and in his institutional job, and his family members and friends have seen a marked increase in his maturity through this difficult experience. Continuing his incarceration at this point would amount to warehousing, she argued.
- [45] His counsel did not minimize the seriousness of the offence, but reminded me of the combination of factors - alcohol and drugs, youthful male aggression, and immaturity - that had led to it. On the question of remorse, she pointed out that I accepted the apparent sincerity of Mr. D.'s expressions of regret and empathy in my reasons for sentence. His letters of support do not refer to explicit expressions of remorse by him because he has been instructed by his counsel on the conviction appeal not to discuss the incident.
- [46] If Mr. D. is released into the community, his counsel says that it is open to me to fashion a restrictive sentence in that setting. Given that his primary focus upon his release will be spending time with his family, particularly in the current restricted social conditions, Mr. D. would be content to accept a 24-hour curfew, as well as conditions requiring him to continue living in the family home, report to probation, take counselling as directed, and have no contact with his former co-accused, the trial witnesses, or members of Mr. Gordic's family.

Discussion

Governing principles

- [47] Section 94(6) provides that a sentence can be reviewed:
- (a) on the ground that the young person has made sufficient progress to justify a change in the youth sentence;
 - (b) on the ground that the circumstances that led to the youth sentence have changed materially;
 - (c) on the ground that new services or programs are available that were not available at the time of the youth sentence;
 - (d) on the ground that the opportunities for rehabilitation are now greater in the community; or
 - (e) on any other ground that the youth justice court considers appropriate.
- [48] Although Mr. D.'s counsel did not specify the grounds she was relying on, it seems clear that the ones that are potentially relevant to his situation are (a) and (d).
- [49] Section 94(19) provides that after giving the various relevant justice system participants the opportunity to be heard and "having regard to the needs of the young person and the interests of society" the court "may" (1) confirm the sentence; or (2) release the offender from custody, to serve the remainder of their total sentence on conditional supervision (a third option, dealing with the conversion of intensive rehabilitative custody and supervision orders into other kinds of sentences, does not apply here).

- [50] Mr. D. has an appeal of his conviction outstanding. While s-s (7) prohibits a review of "a youth sentence in respect of which an appeal has been taken" until the appeal proceedings have been completed, it has been held in relation to the predecessor sub-section under the Young Offenders Act that this prohibition does not apply to an appeal against conviction only: *R. v. B. (L.C.)* (1991), 65 C.C.C. (3d) 574 (Ont. Ct. (Prov. Div.)). That is because, as the court in *B.(L.C.)* explained, it is only on the question of sentence that there could be a conflict between the s.94 review by the trial court and the appeal decision.
- [51] On February 25, I ordered Mr. R. released following his s.94 application (the oral reasons for that decision have not been transcribed yet). The most relevant cases dealing with the review process were addressed in detail in that application, and to avoid needless repetition, Mr. D.'s counsel and Crown counsel adopted them as the framework for considering Mr. D.'s situation as well.
- [52] When reviewing those decisions I ultimately found that the most comprehensive, helpful, yet concise statement of the applicable principles was in *R. v. D.A.P.*, 2018 NSPC 31. Its relevant paragraphs are:

5 As observed in *J.C. (Re)*, 2017 NSPC 14 at para. 26:

The judicial exercise of discretion under section 94(19), that is, a judge's determination of which option -- confirmation of the sentence or release into the community -- must be structured by the considerations, found in section 94(6), that ground the sentence review. [T]hese considerations have the unifying theme of a material change in circumstances since the sentence was imposed. The language of the provisions contemplate that the court will have evidence of something having occurred to justify the review

6 The burden of proving that there has been a material change in circumstances justifying a review is borne by the young person on a balance of probabilities: *R. v. T.P.*, 2017 ABPC 253 at para. 36; *R. v. A.A.Z.*, 2013 MBCA 33 at para. 121; *R. v. D.H.*, 2008 ONCJ 78 at para. 17.

7 Sub-ss. 94(6) and (19) appear to describe a two-staged process: first, the court screens the case to determine whether there has been a change in circumstances sufficient to warrant a review; second, if the court is satisfied that the criteria for convening a review have been met, the court must determine, having regard to the needs of the young person and the interests of society, whether the young person ought to be released or the sentence left alone. This is consistent with judicial interpretation of sub-ss. 28(1) and (3) of the Young Offenders Act in *R. v. [J.J.M.]* [that]

17 Reviews, intended to be salutary, underline the objectives of the Young Offenders Act to explore and develop all reasonable prospects for guiding and assisting young people toward the positive potential life offers.

10 Cases that have dealt with sub-s. 94(16) [sic - clearly referring to the criteria for review in ss.(6)] YCJA reviews have required, typically, evidence of "significant changes . . . made during the course of the young person serving his sentence" or "exceptional evidence of change", the more serious the offence, the greater the need for exceptional evidence: *R. v. A.A.Z.*, 2013 MBCA 33 at

paras. 124-125; R v. A.C., 2005 BCPC 450 at para. 21; R. v. D.H., 2008 ONCJ 78 at paras. 20-21; R. v. T.P., supra; R. v. D.F., 2017 ONCJ 495 at para. 7. While exceptional evidence might be required to be presented to the court, the principles of sentencing as set out in s. 38 of the YCJA [the purpose and principles of sentencing] lay out the criteria to which that exceptional evidence ought to apply

11 In R. v. S.M., 2014 ONSCJ 5510 at para. 15, the Court stated:

15 The YCJA is very much focused on rehabilitation. Indeed, s. 38 outlines the purpose and principles of sentencing under that Act. It notes that the purpose of sentencing a youth is to:

... promote his or her rehabilitation and reintegration into society thereby contributing to the long-term protection of the public.

16 If we are truly committed to that principle of rehabilitation then when a young person does all that can be reasonably expected of them, and more, to demonstrate that they are committed to improving themselves as a person, we, as the society to which that young person will eventually return, ought to both reward that change and encourage its continuation. That is in our own self-interest as much as it is in the young person's interest. It is that basic concept that s. 94(6) encapsulates. If we simply hold rigidly to the notion that more time in custody equates to increased safety, we will never achieve the desired objective of rehabilitation

12 It is clear from these authorities that the purpose of a review is not to affirm the correctness of the original sentence of the court, but to determine, should grounds exist warranting a review, whether the young person ought to be released, given the needs of the young person, not as they were at the time of sentencing, but as they are at the time of the review hearing, and given the interests of society as the court might determine them to be, again, at the time of the hearing.

Application of principles

[53] Although Mr. D.'s application must be considered on its own merits, his situation is similar enough to Mr. R.'s that a consideration of the latter's circumstances will be helpful.

[54] Like Mr. D., Mr. R. had no previous criminal record, came from a close, supportive family and, despite academic difficulties caused by non-attendance, had not yet begun to engage in the kind of the hard-core anti-social behaviour that Mr. Z. and Mr. Golic were involved in before this offence.

[55] While he was not identified as searching for Mr. Gordic before the attack, my finding that he carried and opened a knife at the scene of the attack (although he did not use it to stab Mr. Gordic) was an equivalent aggravating factor to Mr. D.'s efforts to find Mr. Gordic. Also like Mr. D., the report-writers concluded that Mr. R.'s involvement in the offence was due primarily to situational factors, in particular his intoxication and the influence of more anti-social and violent peers.

- [56] Mr. R.'s progress report was extremely positive. He also had three disciplinary offences, in his case all early in his incarceration. In addition to completing two core programs, he focused on trades training, including obtaining his welding tickets, and had begun a post-secondary business course. He had exhausted all of the programs available to him, according to the probation officer who wrote the report. As a result, his application was based on the ground that "the opportunities for rehabilitation are now greater in the community".
- [57] I concluded that he had made exceptional efforts towards rehabilitation by pursuing these various programs, and that this constituted a material change since his original sentence. Balancing his individual concerns with the overall public interest, which ultimately benefits from supporting the rehabilitation of offenders in appropriate cases, I concluded that his conditional release was justified.
- [58] Turning to Mr. D.'s circumstance, I will deal first with the question of remorse. It is true that his current materials do not address that issue, but I found that at his sentencing he expressed appropriate sentiments about the harm that Mr. Gordic and his family had suffered, within the restrictions imposed by his position that he is not guilty of the offence and intends to appeal his conviction. He was entitled to take that position then and to maintain it now, but in the same way I was entitled to treat him as having committed the offence for the purposes of imposing his sentence, and to assess his rehabilitation and the public interest on the same basis now when he seeks his release.
- [59] More importantly however, it is not the mere presence or absence of a statement of remorse by the offender and an assessment of its apparent sincerity, that assists in sentencing. Instead, the essential question to be asked is whether the offender has demonstrated, through their actions "that [they have], since the commission of the crime, come to realize the gravity of the conduct, and as a result [have] achieved a change in attitude or imposed some self-discipline which significantly reduces the likelihood of further offending": *R. v. Anderson*, (1992), 74 C.C.C. (3d) 523 (B.C.C.A.), at pp. 535 and 536. Mr. D.'s significant rehabilitative efforts while in custody appear to reveal that type of attitude towards his future conduct, regardless of the fact that he maintains his innocence, and I would not devalue them for that reason.
- [60] I also would not fault his family and other supporters for focusing on the difficulties that he has experienced in custody, and I certainly cannot attribute their approach to any egocentrism on his part. What is relevant for our purposes are their recurring observations that the offence has led to an increase in his maturity.
- [61] Because their progress reports were written by different probation officers, it is not possible to directly compare Mr. R. and Mr. D.'s efforts towards rehabilitation while in custody. While Mr. R.'s focus seems to have been more on vocational training, there is no basis on which to find Mr. D.'s overall efforts any less impressive, taking into account actions such as repeating the core programs for maximum benefit, participating positively in them and interacting

positively with staff, and performing his institutional work duties to a high level. His report-writer did not specifically say that he had exhausted all of the resources available to him, as Mr. R.'s had, but I can infer from his repetition of the core programs that there is nothing else of a similar nature available.

- [62] I would not make light of his institutional convictions in this analysis, limited though they are. While his counsel is likely correct that weapons are ubiquitous in prisons, helping another inmate to conceal the creation of one from security cameras still raises the concern that Mr. D. has adopted to some extent the values of the violent subculture in the prison environment, and may be susceptible to continuing such affiliations on the outside. That concern is moderated by the facts that this behaviour occurred early in his sentence, and the vast majority of the reports describe his positive attitude and behaviour within the institution. His second offence seems less ominous, since it consisted of not proactively reporting the presence of the contraband items that had been possessed by someone else, which he readily admitted when asked.
- [63] Even after exercising due caution in light of these offences however, I still think that Mr. D.'s overall efforts qualify as exceptional - representing an acceptance of and enthusiastic engagement with the rehabilitative resources that have been offered to him, in marked contrast to simply waiting out his sentence in a passive manner. I am also satisfied that this represents a material change from the time that the sentence was imposed, and that the ground that "the young person has made sufficient progress to justify a change in the youth sentence" has been satisfied.
- [64] Balancing of the public interest with Mr. D.'s interests, this was obviously an extremely serious offence. Even those participants who were convicted of manslaughter bear a high degree of responsibility, because of how integral the group attack was to the fatal stabbing that was carried out. Mr. D.'s custodial sentence was required to promote his sense of responsibility and acknowledgment of the harm done, and to deter other similarly inclined young men who found themselves in that situation. A sentence that is truncated before it can properly reflect the seriousness of the offence and these important sentencing objectives would not be in keeping with the public interest.
- [65] But when, within the portion of the sentence served thus far, an offender has done "all that can be expected of them" (as it was expressed in S.M.) to address their rehabilitation, one can conclude that allowing that progress to continue out of custody will advance, rather than undermine, the original purposes of the sentence, and thereby the public interest. I have reached that conclusion in this case.
- [66] I therefore order, pursuant to s. 94(19), that Mr. D. be released from custody and placed on conditional supervision for the remainder of his total sentence.
- [67] The mandatory conditions provided by section 105(2) of the YCJA, which governs conditional supervision, are that he will:

- (a) keep the peace and be of good behaviour;
- (b) appear before the youth justice court when required by the court to do so;
- (c) report to the provincial director immediately on release, and then be under the supervision of the provincial director or a person designated by the youth justice court;
- (d) inform the provincial director immediately on being arrested or questioned by the police;
- (e) report to the police, or any named individual, as instructed by the provincial director;
- (f) advise the provincial director of the young person's address of residence on release and after release report immediately to the clerk of the youth justice court or the provincial director any change
 - (i) in that address,
 - (ii) in the young person's normal occupation, including employment, vocational or educational training and volunteer work,
 - (iii) in the young person's family or financial situation, and
 - (iv) that may reasonably be expected to affect the young person's ability to comply with the conditions of the order;
- (g) not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized by the order

[68] I consider all of the conditions proposed by Ms. Lacis to be beneficial and to fall within the scope of the additional optional conditions provided for in s.105(3). I will also impose them, with some slight modifications. While I took seriously the suggestion of Mr. D.'s counsel that conditions amounting to house arrest would be acceptable, I consider that his rehabilitation and public safety will both be more directly advanced by permitting him the opportunity to pursue education and employment during so-called regular hours, but restricting his ability to be outside the home during the time of night in which this offence arose.

[69] Therefore, in addition to the mandatory conditions, Mr. D. will:

- Report to a probation officer at Burnaby Community Corrections, 4425 Ledger Avenue, Burnaby, B.C., forthwith upon release and thereafter as directed;
- Reside where directed by the probation officer and not change that address without the prior written permission of the probation officer;
- Obey a curfew by being within his designated place of residence between 11 pm and 6 am seven days per week, and presenting himself at the front door of his residence on demand to show his compliance with this condition. His probation officer may grant him advance written permission to be outside his residence on specific dates and times if the probation officer considers that it will further his employment, education or personal development. In that case he must carry the

permission with him during the times to which it applies and present it to a police officer if requested.

- Seek and maintain employment and/or attend an educational program and provide his probation officer with whatever information they may require to confirm his employment or educational status;
- Abstain completely from using any intoxicating substance, and any medication requiring a prescription, except that he may use medication as prescribed by a licenced physician;
- Attend, participate in and complete to the satisfaction of his probation officer any counselling that may be directed by the probation officer;
- Have no contact with G.C.A.R., L.Z. or Arvin Golic, or with any of the witnesses at his trial or other persons associated with the offence, whose names are contained in a list that will be provided to the clerk of the court by Crown counsel at the conclusion of this proceeding; and
- Not attend within the Resort Municipality of Whistler.

"Schultes J."

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