

CANADA / JUDGMENT

R. v. F.(H.J.)

2002 BCCA 626

COURT

British Columbia Court of Appeal

DECIDED

7 November 2002

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Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR JUDGMENT Before: The Honourable Chief Justice Finch November 7, 2002 The Honourable Madam Justice Ryan The Honourable Mr. Justice Hall Vancouver, B.C. BETWEEN: REGINA RESPONDENT AND: H.J.F. (Y.O.A.) APPELLANT J. Malik appearing for the Appellant B. Johnstone appearing for the (Crown) Respondent

- [1] FINCH, C.J.B.C.: The young offender appeals from a sentence imposed in Youth Court on April 19, 2002, on one count of robbery to which he pleaded guilty. He had been in custody for nine months at the time of sentencing. The sentence imposed was to time served plus 13 months secure custody in a youth correction facility and, in addition, 24 months probation.
- [2] The circumstances of the offence are that the appellant and two other youths together with an adult planned the night time robbery of the victim, a Mr. Daley, who was the night caretaker of Exodus House, a voluntary residential program for drug and alcohol abusers. The plan included hitting the victim on the head with a tire iron in order to ensure his silence. The appellant was a resident in the facility at the time of the offence.
- [3] The robbery was executed and, in the course of doing so, the adult offender inflicted a severe beating on the victim who was badly injured and has suffered permanent consequences as a result. The four left the victim in an unconscious condition and clearly in need of assistance.
- [4] The learned Youth Court judge held that the appellant and the other youths must bear some responsibility for the beating because they had pleaded guilty to the offence of robbery and on the facts before the judge, and had participated in its planning.
- [5] The Youth Court judge instructed himself on the correct sentencing principles set out in the Young Offenders Act. He reviewed the appellant's personal circumstances in some detail. The appellant was 15 years and eight months old at the time of the offence, and he was about 16 and a half years of age at the time of sentence.

- [6] On this appeal, counsel for the appellant says the sentence is harsh and excessive. He says that the judge overemphasized deterrence and did not give adequate consideration to court supervised probation as an appropriate alternative. Counsel says the appropriate sentence for this offence and for this offender is time served or at most nine months in custody and further court supervised probation.
- [7] Counsel for the Crown concedes that the sentence appears to be illegal in that 13 months custody followed by probation for 24 months exceeds by one month the combined maximum of three years permitted by the Young Offenders Act. The Crown says that the sentence was otherwise fit.
- [8] This was a very serious offence. Although the appellant did not personally administer the beating to the victim, his participation in the planning and execution of the robbery was admitted. Deterrence was, in my view, an appropriate consideration for the trial judge, and it does not appear to me that he gave that consideration undue importance. The sentence crafted by the trial judge appears to me to be entirely fit save for the period of one month by which the total sentence exceeds the maximum permissible under the Young Offenders Act which, as I have said, the Crown concedes.
- [9] I would reduce the term of secure custody by one month. I would grant leave to appeal and vary the sentence as indicated and allow the appeal only to that extent.
- [10] RYAN, J.A.: I agree.
- [11] HALL, J.A.: I agree.
- [12] FINCH, C.J.B.C.: So ordered. "The Honourable Chief Justice Finch"

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