

CANADA / JUDGMENT

R. v. L.Z.

2020 BCCA 208

COURT

British Columbia Court of Appeal

DECIDED

19 June 2020

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2020 BCCA 208 R. v. L.Z. COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. L.Z., 2020 BCCA 208 Date: 20200619 Docket: CA45877 Between: Regina Respondent And L.Z. Appellant Restriction on publication: No person shall publish the name of the appellant, or any other information related to him that would identify him as having been prosecuted as a young person under the Youth Criminal Justice Act. Subject to any further order of this Court, this publication ban will expire 60 days after the date of this judgment. Before: The Honourable Madam Justice Fenlon The Honourable Madam Justice DeWitt-Van Oosten The Honourable Mr. Justice Grauer On appeal from: An order of the Supreme Court of British Columbia, dated January 11, 2019 (R. v. A.S.D., 2019 BCSC 147, Vancouver Docket 26829). Oral Reasons for Judgment Counsel for the Appellant, appearing via videoconference: F. Arbabi J. Oppal Counsel for the Respondent, appearing via videoconference: D.M. Layton, Q.C. Place and Date of Hearing: Vancouver, British Columbia June 19, 2020 Place and Date of Judgment: Vancouver, British Columbia June 19, 2020 Summary: The appellant appeals against sentence, alleging the trial judge erred in sentencing him as an adult. The appellant was found guilty of second degree murder committed when he was under the age of 18. He was prosecuted under the Youth Criminal Justice Act, but sentenced as an adult. Held: Appeal dismissed. The judge properly instructed himself on the legal framework he was bound to apply in deciding the Crown's application for an adult sentence. The judge did not overemphasize particular factors to the exclusion of others. There is no basis on which to find that the judge erred in principle or that the sentence was demonstrably unfit.

Reasons of the Court:

- [1] FENLON J.A.: On October 10, 2017, the appellant was found guilty of second degree murder in the stabbing death of 19-year-old Luka Gordic. The offence occurred in Whistler on May 17, 2015. Reasons for conviction are indexed as R. v. A.S.D., 2017 BCSC 2487. The appellant was the person who inflicted the stab wounds. The trial judge found that the stabbing occurred during a "targeted swarming" of the victim.
- [2] The appellant was under the age of 18 when he committed the offence (although only by two or three weeks), and therefore prosecuted under the Youth Criminal Justice Act, S.C. 2002, c. 1 [YCJA]. After the finding of guilt, the Crown applied to have the appellant sentenced as an adult. The application was granted. On January 11, 2019, the trial judge sentenced the appellant to life imprisonment without parole eligibility for seven years pursuant to s.

745.1(c), Criminal Code, R.S.C. 1985, c. C-46. Written reasons for sentence are indexed as *R. v. A.S.D.*, 2019 BCSC 147.

- [3] The appellant has not appealed the finding of guilt. He appeals against sentence, alleging that the trial judge erred in sentencing him as an adult.
- [4] He advances two errors in principle. First, the appellant says the judge placed too much emphasis on the seriousness of the offence, the appellant's conduct in the offence, and his criminal antecedents. Second, he contends the sentencing hearing was unfair because during submissions, the judge did not inform the appellant of reservations he had with parts of the expert reports tendered at the hearing and did not give the appellant an opportunity to respond.
- [5] We have reviewed the trial judge's comprehensive reasons for sentence. In our view, it is readily apparent that the judge properly instructed himself on the legal framework he was bound to apply in deciding the Crown's application for an adult sentence, as set out in *R. v. Chol*, 2018 BCCA 179. He carefully reviewed the evidence tendered on the application, as well as the appellant's submissions in support of a youth sentence. The judge understood that the Crown bore the onus of satisfying the test for an adult sentence, and he appreciated that the decision to impose an adult sentence is one that requires significant care given its impact.
- [6] We see no merit to the argument that in his analysis, the judge overemphasized particular factors to the exclusion of others. Rather, he took a measured and balanced approach, considering all relevant factors. We also see no basis on which to find that the sentencing proceeding was unfair. Expert reports were admitted by consent and without cross-examination; however, the appellant and the Crown agreed that they were each free to take different positions on the interpretation of those reports, their probative value in light of the applicable legal test, and the weight the judge should assign to them. This was a contested hearing where counsel advanced competing perspectives with specific reference to the reports, and both sides had full opportunity to address the evidence in support of their positions. Counsel would have known that as a matter of fundamental principle, the judge was entitled to accept all, none or only part of the opinions expressed by the experts.
- [7] Appeals from sentence attract a deferential standard of review, including an appeal from a decision to sentence a young person as an adult. Appellate intervention is only available where it has been shown that the judge committed a material error that affected the sentence (such that the sentence would have been different but for the error) or that the sentence is demonstrably unfit: *Chol* at para. 6; *R. v. Agin*, 2018 BCCA 133 at paras. 56-57; *R. v. Lacasse*, 2015 SCC 64 at paras. 41 and 44; *R. v. Friesen*, 2020 SCC 9 at para. 26.
- [8] The appellant has not established an error in principle, let alone an error that affected the decision to sentence him as an adult. Nor has he established that the sentence is demonstrably unfit. Accordingly, we would grant leave to appeal, but dismiss the appeal.

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- [9] As a result, the publication ban on the appellant's name, or any other information relating to him that would identify him as a young person under the YCJA will expire 60 days after the date of this judgment: s. 110(2)(a), YCJA.
- [10] Leave to appeal is granted. The appeal is dismissed. The publication ban remains in place for 60 days. "The Honourable Madam Justice Fenlon" "The Honourable Madam Justice DeWitt-Van Oosten" "The Honourable Mr. Justice Grauer"
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