

CANADA / JUDGMENT

Teal Cedar Products Ltd. v. Rainforest Flying Squad

2022 BCSC 1211

COURT

Supreme Court of British Columbia

DECIDED

27 April 2022

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2022 BCSC 1211 Teal Cedar Products Ltd. v. Rainforest Flying Squad IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2022 BCSC 1211 Date: 20220427 Docket: S211602 Registry: Vancouver Between: Teal Cedar Products Ltd. Plaintiff And Unknown Persons Operating as the "Rainforest Flying Squad", Robert Arbess (also known as Reuben Garbanzo), John Doe, Jane Doe, and Persons Unnamed Defendants And British Columbia (Ministry of Forests, Lands, Natural Resource Operations and Rural Development) Third Party Before: The Honourable Justice Thompson Oral Reasons for Sentence re N.L. Counsel for the Crown: R. Robinson Counsel for the Contemnor: N. Ross Place and Date of Hearing: Nanaimo, B.C. April 27, 2022 Place and Date of Judgment: Nanaimo, B.C. April 27, 2022

- [1] THE COURT: N.L. has admitted criminal contempt of this Court's April 2021 injunction order that prohibits certain obstructive activity in a defined area of southern Vancouver Island. The plaintiff logging company holds a forest tenure in this area.
- [2] The offence was committed when N.L. was 17 years old. On 24 August 2021, he was blocking a road in the injunction area. His left arm was secured in a sleeping dragon embedded into the ground with a metal rod at the foot of the PVC pipe. The device was encased in cement and buried within a metal box. He gave a false name to the RCMP and refused to release himself from the sleeping dragon initially. The police decided it was unsafe to undertake an extraction and N.L. released himself 12 hours later.
- [3] N.L. is a young offender and a first offender. I accept counsel's submissions that I should be guided by the provisions in s. 38 of the Youth Criminal Justice Act, S.C. 2002, c. 1: Purpose 38 (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public. Sentencing principles

- (2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:
- (a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;
 - (b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;
 - (c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;
 - (d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons;
 - (e) subject to paragraph (c), the sentence must
 - (i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1), (ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and (iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community; (e.1) if this Act provides that a youth justice court may impose conditions as part of the sentence, a condition may be imposed only if
 - (i) the imposition of the condition is necessary to achieve the purpose set out in subsection 38(1), (ii) the young person will reasonably be able to comply with the condition, and (iii) the condition is not used as a substitute for appropriate child protection, mental health or other social measures; and
 - (f) subject to paragraph (c), the sentence may have the following objectives:
 - (i) to denounce unlawful conduct, and (ii) to deter the young person from committing offences.
- (3) In determining a youth sentence, the youth justice court shall take into account
- (a) the degree of participation by the young person in the commission of the offence;
 - (b) the harm done to victims and whether it was intentional or reasonably foreseeable;
 - (c) any reparation made by the young person to the victim or the community;
 - (d) the time spent in detention by the young person as a result of the offence;
 - (e) the previous findings of guilt of the young person; and

- (f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.
- [4] The Crown submits that s. 38 sentencing considerations are best fulfilled by an allotment of community work service hours. N.L. agrees. The only issue on this sentencing is the appropriate number of hours. The Crown urges 75 hours; N.L. submits that 25 hours is sufficient.
- [5] The Crown submits that while rehabilitation must be the focus of the disposition in the case of a young offender, it would be wrong to ignore denunciation and deterrence in a criminal contempt of court context. I accept this submission. Mr. Robinson told me that a youth, S.B., was sentenced in the *Trans Mountain Pipeline ULC v. Mivasair* injunction proceeding. He received 25 hours of community work service, but unlike N.L. he was not making use of any device. On the other hand, unlike N.L., who has admitted his contempt, S.B. was found guilty following a trial. The trial judgment is indexed at 2018 BCSC 1909; the sentencing reasons are not reported. I know very little about S.B., and so I must be cautious in drawing too much from this precedent.
- [6] One of the s. 38 principles is that a young person is not to be sentenced more punitively than an adult who committed the offence in similar circumstances. In this context, I was referred to an unreported sentencing decision in this proceeding. On 7 February 2022, I sentenced Michael Champagne, an adult, to 75 hours of community work service. Mr. Champagne's actions occurred on 7 June 2021, and he also made use of a sleeping dragon device encased in concrete.
- [7] The Crown acknowledges that N.L. is a young person of good character who has admitted his guilt at the earliest opportunity, and that he was held overnight in police custody before being released on an undertaking. Nevertheless, having regard to his use of a fortified sleeping dragon, the fact that the conduct occurred nearly five months after the injunction order was made and over a month after the Crown took over the prosecution of these cases, and the fact that he gave a false name to the police, the Crown submits that 75 hours of community work service is necessary to acknowledge the harm done to the community and promote a sense of responsibility in N.L.
- [8] N.L. is an impressive young man. He was in the International Baccalaureate program through grade 10, and has since attended a public high school so that he can focus to some extent on film studies. He achieves very high grades. He has won film festival awards and plans to attend Concordia University in Montreal to study Fine Arts.
- [9] His actions in TFL 46 were civil disobedience prompted by what he has learned about climate change and the importance of old-growth forests. N.L. prepared a written statement that explains his actions, and I take account of what he says when assessing his moral culpability: My journey with environmentalism has been shaped by my upbringing in today's world. After dealing with depression in my middle school years as a result of technology addiction, I began to find connection to myself through nature. In recent years

I've become an avid backpacker and summiting mountains all over BC has shown me how beautiful this place is and how fortunate I am to grow up here. All the while I've been learning in school about the threats of climate change we are facing. It's caused a huge mental block for me and others my age. As we grow up and learn to appreciate the world we are told the future is doomed if we don't take action now. Being in high school, I knew I had lots to learn about the issue and so in Grade 11 I took Environmental Science as one of my courses. One of our biggest projects was our "Current Events" presentations. After our teacher discussed the Fairy Creek blockades and its implications one class, I chose to research the importance of old growth trees on Vancouver Island to better understand this issue. I learnt about the tree's role in regulating river water levels and aside from recreation and marine life, how companies such as the Catalyst Crofton Pulp and Paper Mill were relying on these water sources, which are depleting severely over recent years. I learnt how the logging industry controlled the majority of the Koksilah and Cowichan River watershed, and there was little willingness to address concerns and make change. Their actions were having dire impacts, and it was clear it was going to worsen more, these rivers being dried up in a matter of years. The Fairy Creek Blockades were where urgent action was being taken, when nothing else seemed to work. I ultimately felt I could only learn so much through the media, so I headed to Fairy Creek on my own. My action of blocking the road was an act of civil disobedience, telling the government what's going on is not okay and needs to change. It was a result of my education in school and understanding of the challenges our world faces, with economic interests prevailing over Indigenous voices and the state of the climate. I've continued sharing this issue with others around me, keeping an open mind but also understanding the urgency, thinking of the struggles of the next generation. I'm known now in my graduating class as "Most Likely to Save the Planet" and this is something I hold with value, hoping that maybe one day I'll feel confident about bringing kids into this world, and I hope others my age can feel the same.

[10] I have no doubt that when he decided to block the logging road, N.L. knew that some punishment was in the offing. His failure to own up to his identity to the police is a mark against him, but he admits his contempt and, consistent with his decision to undertake civil disobedience, he now steps forward to accept his sentence. In all the circumstances, I am satisfied that 35 hours of community work service is sufficient to fulfil the sentencing principles that apply to young persons who have committed criminal contempt. The night N.L. spent in jail is one of these circumstances. [DISCUSSION RE PROBATION ORDER DETAILS]

[11] THE COURT: Good luck to you, N.L. I look forward to seeing your films one day.

[12] N.L.: Thank you. "Thompson J."

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