NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. T.M.D.*, 2003 NSCA 151

Date: 20031230
Docket: CAC 200288
Registry: Halifax

Between: Her Majesty the Queen

Appellant

v.

T.M.D.

Respondent

Restriction on publication: Pursuant to s. 110 (1) of the *Youth Criminal Justice Act*

Judges: Roscoe, Oland, Fichaud, JJ.A

Appeal Heard: December 5, 2003, in Halifax, Nova Scotia

Held: Leave to appeal is granted and the appeal is dismissed as per reasons of Fichaud, J.A.; Roscoe and Oland, JJ.A. concurring.

Counsel: Peter Rosinski, for the appellant
Cheryl Morrison, for the respondent

<u>PUBLISHERS OF THIS CASE PLEASE TAKE NOTE</u> THAT s. 110 (1) OF THE *YOUTH CRIMINAL JUSTICE ACT* APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION.

110. (1) Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

Reasons for judgment:

[1] The respondent T.M.D. is a "young person" under of the *Youth Criminal Justice Act* S.C. 2002, c. 1 ("*YCJA*"). He had no prior record. Beginning in June, 2002 T.M.D. became more active.

[2] On April 1, 2003, the same day the *YCJA* came into force, T.M.D. pleaded guilty to assault, possession of stolen property, theft (two counts), breach of undertaking (7 counts), uttering of threats and attempted break and enter, all under the *Criminal Code*. T.M.D. committed these offences between June 2002 and March 2003. The charges had been laid under the former *Young Offenders Act* RSC 1985, c. Y-1. By ss. 159 and 161 of the *YCJA* the offences were sentenced under the *YCJA*. Justice J. Vernon MacDonald of the Youth Justice Court (Supreme Court-Family Division) sentenced T.M.D. to one year's probation, confirmed the time spent on remand but declined to impose any further custody.

[3] The Crown appeals the sentence under ss. 37 (5) and (8) of the *YCJA* and s. 813 (b)(ii) of the *Criminal Code.* Section 39(1) of the *YCJA* states that a young person shall not be sentenced to custody unless one of four conditions exist. The only relevant condition here is in s. 39(1)(a), that the young person has committed a "violent offence". The Crown submits that T.M.D. committed "violent offences" and should be sentenced to custody.

[4] T.M.D. pleaded guilty. There was no trial and no evidence at the sentencing hearing. The three allegedly "violent" offences were related as follows by counsel for the Crown at the sentencing hearing:

(a) On August 23, 2002 T.M.D. and another man were attempting to break the lock into a baby barn on Cherry Street in Sydney. After being noticed, they ran away. Another young man who lived at the residence chased them and caught up with T.M.D. T.M.D. "stated to him that he had a knife and threatened to stab the young man if he tried to apprehend him." T.M.D. pleaded guilty to a charge of uttering threats under s. 264.1(1)(a) of the *Criminal Code*.

(b) On September 27, 2002, when T.M.D. was residing with his mother and his grandfather:

> There was some difficulty in getting him to go to school and there was an altercation with his mother and his grandfather at that time. She indicated that he tried to kick his mother, that he started to throw rocks at the restaurant ... he picked up a plant vase, threatened to kill [his] grandfather.

T.M.D. pleaded guilty to breach of undertaking to keep the peace under s. 145(3) of the *Criminal Code.*

(c) On December 14, 2002 T.M.D. was seen stealing a chocolate orange from a retail store. He was approached by a Mr. Arsenault, on the security staff of the store, and was asked to return to the security office.

> [T.M.D.] refused, started hollering and swearing. He was placed under arrest. They escorted him back screaming and pushing at them. Security had to grab him by the arms and escort him back. He began kicking and then punched Mr. Arsenault in the mouth.

T.M.D. pleaded guilty to a charge of assault under s. 266(b) of the *Criminal Code*.

[5] In considering whether T.M.D. had committed a "violent offence" under s. 39 (1) (a) of the *YCJA*, Justice MacDonald stated:

> So I am not satisfied that the threshold is established on the basis of the circumstances of these offences which comport a component of violence, I recognize, but not such that I find here they are in themselves violent offences.

[6] After reviewing various factors which will be discussed below, Justice MacDonald prescribed the sentence:

> I am going to, on each of these charges, looking at them individually as well as collectively deal with you by finding that you should be dealt with by in each instances directing that: (1) time served on remand be considered in each instance and (2) that you be placed on a period of probation for one year. The time served component is to recognize that in other circumstances you perhaps would have been committed to a period of custody. As I indicated though, you have done substantial time on remand.

The actual time on remand was 78 days.

[7] From this sentence the Crown appeals, requesting that this Court substitute a custodial term of three months plus eighteen months probation.

Standard of Review

[8] In *R. v. M (C.A.)*, [1996] 1 S.C.R. 500 at ¶ 90-92 Chief Justice Lamer described the standard of review on a sentence appeal:

> 90 Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit. Parliament explicitly vested sentencing judges with a discretion to determine the appropriate degree and kind of punishment under the *Criminal Code*. [S.C.C.'s emphasis] ...
>
> 91 This deferential standard of review has profound functional justifications. As Iacobucci J. explained in *Shropshire*, at para. 46, where the sentencing judge has had the benefit of presiding over the trial of the offender, he or she will have had the comparative advantage of having seen and heard the witnesses to the crime. But in the absence of a full trial, where the offender has pleaded guilty to an offence and the sentencing judge has only enjoyed the benefit of oral and written sentencing submissions (as was the case in both *Shropshire* and this instance), the argument in favour of deference remains compelling. A sentencing judge still enjoys a position of advantage over an appellate judge in being able to directly assess the sentencing submissions of both the Crown and the offender. A sentencing judge also possesses the unique qualifications of experience and judgment from having served on the front lines of our criminal justice system. Perhaps most importantly, the sentencing judge will normally preside near or within the community which has suffered the consequences of the offender's crime. As such, the sentencing judge will have a strong sense of the particular blend of sentencing goals that will be "just and appropriate" for the protection of that community. The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community. The discretion of a sentencing judge should thus not be interfered with lightly.

> 92 Appellate courts, of course, serve an important function in reviewing and minimizing the disparity of sentences imposed by sentencing judges for similar offenders and similar offences committed throughout Canada. [citations omitted] But in exercising this role, courts of appeal must still exercise a margin of deference before intervening in the specialized discretion that Parliament has explicitly vested in sentencing judges.

[9] Applying Chief Justice Lamer's standard I will consider whether the Youth Justice Court erred in principle, failed to consider or overemphasized a relevant factor or imposed a demonstrably unfit sentence.

Issues

[10] There are two issues:

1. Were these "violent offences" under s. 39(1)(a)?
2. Did the Youth Justice Court commit reversible error in the sentence?

First Issue - Were these "violent offences"?

[11] Section 39 (1) (a) of the *YCJA* states:

> 39. (1) A youth justice court shall not commit a young person to custody under section 42 (youth sentences) unless
>
> (a) the young person has committed a violent offence;

[12] The Crown's factum states "stakeholders in the administration of justice require clear guidance as to what is, and what is not, a 'violent offence'" and continues:

> It is submitted that this Court is in a position to set guidelines on what ought or ought not to be a 'violent offence'. Such guidelines will limit needless litigation without unduly fettering the discretion of sentencing judges.

[13] Interpretations outside a factual context risk oversimplification. I will discuss the meaning of "violent offence" as necessary to decide this appeal. Further elaboration will have to await other cases.

[14] **Youth Justice Court's Ruling:** Justice MacDonald stated:

> Now one of the restrictions or thresholds that the Crown would have to satisfy me on is that you would be a young person who has committed a violent offence to warrant me sending you to custody. Reference in that regard was made to the fact that here you have plead guilty to an assault on Mr. Arsenault, common assault, that you threatened your grandfather, Mr. Cook and as well you threatened another young man, Chad Sullivan. In themselves it could be argued that these are serious offences. The question is whether or not they, in themselves are violent offences in relation to what you did.
>
> I am not prepared at this juncture to read into these offences that you have committed a threshold component which would enable me to conclude they are for you and your participation in them, violent offences, which would enable me to on that basis [Justice MacDonald's emphasis] find that you should be committed to custody or considered that a committal to custody should be considered. I say this because I have to consider that you are a first offender; you have a legion of offences here outstanding, most of which relate to breaches of Undertakings and to circumstances, some of which were beyond your control, insofar as your own conduct is concerned, your own needs. If matters had been dealt with a lot sooner, and they weren't, not your fault, you perhaps would not be here today. So I am not satisfied that the threshold is established on the basis of the circumstances of these offences which comport a component of violence, I recognize, but not such that I find here they are in themselves violent offences.

[15] It is not entirely clear whether Justice MacDonald (1) determined that T.M.D.'s offences were not "violent offences" within ss. 39(1) or (2) decided that, even if they were "violent offences", in the exercise of the court's sentencing discretion the offences did not justify a further term of imprisonment. I say this because being a first offender and the propriety of T.M.D.'s circumstances being dealt with sooner, factors cited by Justice MacDonald, are not relevant to whether this is a "violent offence" within s. 39(1). Further, the sentence imposed by Justice MacDonald, quoted earlier in these reasons, included "time served on remand." This would be a custodial sentence, albeit historical. Given the inapplicability of the other conditions in s. 39(1), custody was permissible only if the offence was "violent" within s. 39(1)(a).

[16] Nonetheless Justice MacDonald twice stated that, in his view, the offences did not satisfy the "threshold" of a "violent offence". I take that to be a ruling that these were not "violent offences". I agree with the Crown's interpretation that the

real sentence was one year's probation, and the reference to "time served on remand" just acknowledged the past reality.

[17] **Words, Context and Purpose of *YCJA*:** The *YCJA* does not define "violent offence". Neither does the *Criminal Code.*

[18] In *R. v. Sharpe*, [2001] 1 SCR 45, Chief Justice McLachlin stated:

> 33. . . . However, E. A. Driedger in *Construction of Statutes* (2nd ed. 1983) best captures the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87, Driedger states: "Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." Recent cases which have cited the above passage with approval include: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213, at para. 144; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411, at para. 30; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550, at para. 22; *Friesen v. Canada*, [1995] 3 S.C.R. 103, at para. 10.

More recently in *Parry Sound (District) Social Services Administration Board v. Ontario Public Service Employees' Union, Local 324*, 2003 S.C.J. 42 at ¶ 41-46 the Supreme Court applied this approach, considering first the "plain and ordinary meaning" of the words followed by the "scheme of the act" and policy factors.

[19] The word "violence" draws meaning from its context. For instance, in *R. v. Keegstra*, [1990] 3 S.C.R. 697, the Supreme Court considered whether hate literature was "violent" expression which is excepted from the protection of s. 2(b) of the *Charter*. Chief Justice Dickson (pp. 731-2) defined "violence" as "physical violence" and stated that expressive threats were not violent. Madam Justice McLachlin (as she then was) dissenting (p. 830) referred to the definition from the *Shorter Oxford Dictionary* that "violence" was "the exercise of physical force so as to inflict injury on or damage to person or property". Chief Justice Dickson and Justice McLachlin related their definitions of "violence" to the purpose of freedom of expression in s. 2(b) of the *Charter*, ie. whether certain types of objectionable expression lose their claim to constitutional protection.

[20] The inquiry as to the meaning of “violent offence” in the *YCJA* focuses on its context in that statute. If the offence is not “violent” then, unless the other conditions of s. 39(1) exist, custody is not an option and under s. 29(2) there is a presumption that pre-trial detention is unnecessary. If the offence is “violent”, bail is more difficult and the sentencing judge has a range of custodial options under s. 42(2) paragraphs (n) through (r). A “serious violent offence” engages the more intensive custodial options under s.42(7)(a)(ii). Parliament tied the severity of the custodial options to the seriousness of the violence.

[21] Although the *YCJA* does not define “violent offence”, s. 2(1) defines “serious violent offence” as “an offence in the commission of which a young person causes or attempts to cause serious bodily harm”. One may deduce that a “violent offence” is an offence in the commission of which a young person causes or attempts to cause bodily harm.

[22] Contextual integrity requires that “violent offence” and “serious violent offence” have connected meanings. Assume that a young person has committed an offence which caused very serious property damage, without causing or attempting to cause bodily harm. This would not be a “serious violent offence” as defined in the *YCJA*. If the meaning of “violent offence” cleaves from the definition of “serious violent offence” and includes pure property damage, this would be a serious “violent offence”. The contextual approach to statutory interpretation shuns such an incongruity.

[23] In *R. v. J.J.C.*, [2003] P.E.I.J. 99, (P.E.I. A.D.) Madam Justice Webber, at ¶ 21 stated:

> While "violent offence" is not defined in the *Youth Criminal Justice Act*, "serious violent offence" is defined as "an offence in the commission of which a young person causes or attempts to cause serious bodily harm." A reasonable analogy can therefore be made that "violent offence" refers to one in which bodily harm has been caused to the victim albeit not serious bodily harm.

I agree with Justice Webber’s deductive approach, subject to the following. The *YCJA* defines “serious violent offence” to include an attempt to cause serious bodily harm. It follows that a “violent offence” should include an attempt to cause bodily harm, even if bodily harm has not resulted.

[24] "Bodily harm" is not defined by the *YCJA*. Section 2(2) of the *YCJA* states:

> Unless otherwise provided, words and expressions used in this Act have the same meaning as in the *Criminal Code*.

Section 2 of the *Criminal Code* defines "bodily harm" as:

> Any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.

[25] So a "violent offence" under s. 39(1)(a) would be an offence in the commission of which a young person causes or attempts to cause bodily harm, meaning a hurt or injury to a person that interferes with the person's health or comfort and that is more than merely transient or trifling.

[26] **Is the Definition too Narrow?** This interpretation of "violent offence" is narrower than the interpretation suggested by the Crown, which is based on the *Criminal Code* case law respecting robbery and intimidation.

[27] Robbery in s. 343(a) of the *Code* expressly includes violence to "property" and "threats of violence". Intimidation in s. 423(a) expressly includes "threats of violence" and injury to "property." The *YCJA* does not expressly associate "violent offence" with threats or property damage.

[28] The more restricted interpretation under the *YCJA* is consistent with the context and purposes of the *YCJA*. Section 3(2) of the *YCJA* states:

> (2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

Section 3(1) lists the principles of interpretation. Section 38 states the "purpose and principles of sentencing." These provisions emphasize prevention and rehabilitation, and meaningful accountability for misconduct.

[29] Section 38(2) gives sentencing directions including ¶ (d) and (e):

> (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:

. . .

> (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; and
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> (e) subject to paragraph (c), the sentence must
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> (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
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> (iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community.

[30] Subsections (2), (3)(a), (5) and (8) of s. 39 contain further sentencing directions which limit the availability of custody.

[31] These principles and sentencing directions signal that the *YCJA* priorizes prevention, rehabilitation and accountable reparation over custodial deterrence. This differs from the approach of the *Criminal Code*. The principles of "denunciation" and "deterrence" in paragraphs 718(a) and (b) of the *Criminal Code* are not expressed with any priority in the *YCJA*. No doubt Parliament intended that the *YCJA* denounce and deter offences. But custodial deterrence clearly has a lower priority than in the *Criminal Code*. It is understandable that the violence which triggers custodial options is narrower in the *YCJA* than with the *Criminal Code* offences of robbery and intimidation.

[32] **Is the Definition too Broad?** In *R. v. C. (D.L.)* N.L.P.C. 1301 Y-0048, a decision dated April 9, 2003 of the Provincial Court of Newfoundland and Labrador, Gorman, P.C.J. (¶ 53) rejected the deductive interpretation of "violent offence" from the definition of "serious violent offence":

> However, such a technocratic application of the law would be inconsistent with the primary purposes and intent of the legislation; the use of custody as the exception rather than the rule. Such an interpretation would be inconsistent with

> the *Act* because it is overly broad and would result in the threshold for custody, as an option under subsection 39(1)(a) of the *Act* being reduced to a level inconsistent with the aims of the legislation. Let me explain.
>
> Bodily harm is defined in s. 2 of the *Criminal Code* as meaning "any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature." This definition applies to young persons as a result of s. 142(1) of the *Act*. Therefore, a young person involved in a minor altercation with another young person that results in the victim receiving some slight bruising or a black eye for instance, could, if the above definition was adopted, be convicted of a "violent offence". Accordingly, he or she could therefore, be sentenced to a period of custody based solely on such an offence. The entire scheme of the *Act* causes me to conclude that the threshold for custody under this subsection was not intended to be reduced to such a low level by the words a "violent offence" being interpreted to mean the commission of an offence in which a young person causes or attempts to cause bodily harm.

[33] With respect, this overlooks the remainder of the sentencing process under the *YCJA*. Even if the young person commits a "violent offence", custody is not mandatory. Section 38(2)(d) and (e), quoted above, directs the Youth Justice Court to impose custody as a last resort. Sections 39(2), (3)(a), (5), (6) and (9) state:

> (2) If any of paragraphs (1)(a) to (c) apply, a youth justice court shall not impose a custodial sentence under section 42 (youth sentences) unless the court has considered all alternatives to custody raised at the sentencing hearing that are reasonable in the circumstances, and determined that there is not a reasonable alternative, or combination of alternatives, that is in accordance with the purpose and principles set out in section 38.
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> (3) In determining whether there is a reasonable alternative to custody, a youth justice court shall consider submissions relating to
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> (a) the alternatives to custody that are available;
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> . . .
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> (5) A youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures.

> (6) Before imposing a custodial sentence under section 42 (youth sentences), a youth justice court shall consider a pre-sentence report and any sentencing proposal made by the young person or his or her counsel.
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> . . .
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> (9) If a youth justice court imposes a youth sentence that includes a custodial portion, the court shall state the reasons why it has determined that a non-custodial sentence is not adequate to achieve the purpose set out in subsection 38(1), including, if applicable, the reasons why the case is an exceptional case under paragraph (1)(d).

[34] A finding that there has been a "violent offence" under s. 39(1)(a) broadens the sentencing options to include the forms of custody set out in one or more of paragraphs (n) through (r) of s. 42(2). The sentencing judge must still govern his discretion with the principles and sentencing directions in s. 38 and the rest of s. 39, which reiterate the *YCJA's* object to de-emphasize custody unless there is no reasonable alternative.

[35] **Are "Violent Offences" Labelled?** The Crown submits that offences may be labelled as "violent offences"- eg. any assault would automatically qualify, whatever the circumstances. After conviction, the Youth Justice Court could impose a custodial sentence without considering whether the evidence establishes "violence".

[36] I disagree. If Parliament wished to label certain offences as triggering the custodial option, Parliament easily could have listed these offences in s. 39(1)(a), just as s. 2(1) lists "presumptive offences". The *YCJA's* definition of "serious violent offence" which I have used to interpret "violent offence", refers to an offence "in the commission of which" a young person causes or attempts to cause bodily harm. The focus is on the facts respecting the "commission" of the offence. The offence is not labelled in advance.

[37] This means that the sentencing judge must consider whether the circumstances of the commission of the offence are "violent" under s. 39(1)(a). There must be evidence or admitted facts of "violence" before a sentencing judge may consider custody under s. 39(1)(a). When, as occurred here, there is a guilty plea without trial, then the established facts are those accepted by the guilty plea or by any admissions or agreement of counsel as set out in s. 724 of the *Criminal*

Code. Victim impact statements have quasi evidentiary status under s. 722(1) of the *Criminal Code*. Otherwise, after a guilty plea without trial, the Crown must consider whether to call evidence to establish that the offence was "violent" under s. 39(1)(a).

[38] **Application to This Case:** Here there was no evidence. T.M.D. pleaded guilty, which admits the facts in the charge.

[39] The facts set out above in ¶ 4 were essential to the charges and accepted by the guilty pleas or were accepted by counsel on behalf of T.M.D. in the submissions on sentencing. Applying the standard of review stated by Chief Justice Lamer in *R. v. M. (C.A.)*, did the Youth Justice Court commit a reviewable error by determining that the offences did not meet the "threshold" of "violence" in s. 39(1)(a)?

[40] T.M.D. pleaded guilty to uttering threats under s. 264.1(1)(a) for stating that he had a knife and threatening to stab the man who was chasing him. There does not appear to be any infliction of bodily harm or attempt to inflict bodily harm.

[41] T.M.D. pleaded guilty to the breach of undertaking under s. 145(3). He tried to kick his mother, started to throw rocks at the restaurant, picked up a plant vase, and threatened to kill his grandfather. T.M.D. pleaded guilty to assault under s. 266(b) for punching a security employee in the mouth. The Youth Justice Court stated:

> So I am not satisfied that the threshold is established on the basis of the circumstances of these offences which comport a component of violence, I recognize, but not such that I find here they are in themselves violent offences.

Apparently Justice MacDonald felt that the "component of violence" reflected in these offences was insufficient. Justice MacDonald did not refer to any definition of "violent offence". Nonetheless, I take Justice MacDonald's ruling as equivalent to a finding that the degree of bodily harm or attempted infliction of bodily harm was either transient of trifling, and therefore the offences were not "violent".

[42] Applying the deferential standard required by the Supreme Court in *R. v. M.(C.A.)*, I cannot find that this conclusion involves a reviewable error.

Second Issue - the Sentence

[43] Even if offences are “violent” under s. 39(1)(a), the sentencing judge retains discretion to select from the various sentencing options set out primarily in s. 42. Custody is a permitted option under paragraphs (n) through (r) of s. 42(2) but, except for first or second degree murder, not mandatory. Sections 38(2)(d) and (e) and ss. 39(2), (3)(a) and (5) directs the sentencing judge to consider all reasonable and available sanctions other than custody.

[44] Justice MacDonald considered the purposes expressed in the *YCJA* and noted that those purposes included an emphasis on rehabilitation and de-emphasis of custodial sentencing except in special circumstances. Justice MacDonald stated that there were “child protection concerns” with T.M.D. which underscored the priority of rehabilitation over custody as directed by s. 39(5). Justice MacDonald noted that T.M.D. had no prior record.

[45] Justice MacDonald stated:

> So the thrust of the new principles of sentencing in the *Act* is that I should bring home to you that this conduct is not appropriate, it cannot be tolerated, stealing, threatening people, attempting to commit a break and entry or assaulting people and breaching court orders. They surely will continue to bring hardship and probably, as I pointed out to you before, custody down the road.

[46] The conditions of probation targeted rehabilitation. These included that T.M.D. maintain the peace and be of good behaviour, report to a Youth Court worker, abstain from consuming alcohol and prohibited drugs, attend counselling for alcohol and drug abuse, complete an anger management program, reside with his mother and obey her household rules, avoid contact with anyone who has a criminal record and participate in the Intensive Support and Supervision Program as directed by the Youth Court worker.

[47] Justice MacDonald applied the appropriate principles of sentencing as directed by the *YCJA*. He did not ignore or overemphasize factors. The sentence was not demonstrably unfit.

[48] I would grant leave to appeal and dismiss the appeal.

Fichaud, J.A.

Concurring:

Roscoe, J.A.

Oland, J.A.