

Date: 19990412
Docket: CR03716

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

P.M.G. (A YOUNG PERSON)

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

Appeal from Sentence imposed in the Youth Court on a conviction under s. 27(2)(a)
City of Yellowknife By-law No. 3722.

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V.A. SCHULER

Heard at Yellowknife, Northwest Territories
on March 11, 1999

Counsel for the Appellant: Tracey Foster

Counsel for the Respondent: Paul Smith

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REASONS FOR JUDGMENT

[1] The Appellant, who was 17 years old at the time of the offence, entered a plea of guilty in the Youth Court to a charge of speeding while operating a snowmobile, contrary to s. 27(2)(a) of City of Yellowknife By-Law No. 3722 as amended by By-Law No. 3729.

[2] The facts before the Youth Court Judge were that the Appellant was driving the snowmobile on Frame Lake South in the City of Yellowknife at a speed of 109 kilometres per hour. The limit imposed by s. 27(2)(a) is 30 kilometres per hour.

[3] The Youth Court Judge ordered the Appellant to pay a fine of \$500.00 and further placed him on probation for nine months on the following conditions: that he keep the peace and be of good behaviour, that he be prohibited from operating any motor vehicle, including any snowmobile, on any street or highway in Canada for a period of three months and that he be prohibited specifically from operating any snowmobile or snow vehicle of any description for the full nine months of the probation.

[4] The Appellant appealed the disposition. When the appeal came before me in Criminal Chambers, it was restricted to a challenge to the probation order and its conditions. Counsel in effect made a joint submission that the probation order should be set aside in its entirety, but did not specify the reason why that should be done. If a

sentence (or disposition) is clearly illegal, then it will, of course, be set aside by the court on appeal. If, however, the sentence is not illegal, then in the absence of an error in principle, failure to consider a relevant factor or overemphasis of the appropriate factors, an appeal court ought only intervene to vary the sentence if it is demonstrably unfit: *R.v. M.(C.A.)*, [1996] 1 S.C.R. 500, 105 C.C.C. (3d) 327.

[5] Counsel filed written submissions on the Youth Court Judge's jurisdiction to impose a term of probation for the by-law offence. In those submissions, both came to the conclusion that the Youth Court Judge did have jurisdiction to order probation but for a maximum of six months only. I agree with that conclusion, for the reasons outlined below. The only remaining issue is how long the term of probation should be in this case.

[6] Pursuant to s. 48 of By-Law No. 3722, a person who violates s. 27(2)(a) is liable upon summary conviction to a fine not exceeding \$5000.00.

[7] Because of the Appellant's age, regard must be had to the provisions of the young offenders legislation. The dispositions provided in the *Young Offenders Act (Canada)* apply to offences as defined in that *Act*. Section 2(1) defines offence as "an offence created by an Act of Parliament or by any regulation, rule, order, by-law or ordinance made thereunder other than an ordinance of the Yukon Territory or the Northwest Territories".

[8] In the *Young Offenders Act*, R.S.N.W.T. 1988, c. Y-1 as amended [hereinafter "YOA (NWT)"], s. 1(1) defines offence as "an offence created by an enactment or a municipal by-law".

[9] Accordingly, the YOA (NWT) applies to the offence of which the Appellant was found guilty, that being an offence created by a municipal by-law.

[10] Section 20 of the YOA (NWT) provides for the dispositions which are available, from which I have extracted only those which counsel argued may be relevant in this case:

Where a Youth Court finds a young person guilty of an offence, ... , notwithstanding any punishment in an enactment or a municipal by-law, the Youth Court shall then make any one of the following dispositions, or any number of them that are not inconsistent with each other:

...

(b) impose on the young person a fine not exceeding \$1000.00 to be paid at the time and on the terms that the Youth Court may fix;

...

(h) make any order of prohibition, seizure or forfeiture that may be imposed under any enactment or municipal by-law where a young person is found guilty or convicted of that offence;

(i) place the young person on probation in accordance with sections 25, 26 and 27 for a specified period not exceeding six months;

...

(k) impose on the young person such other reasonable and ancillary conditions as it considers advisable and in the best interest of the young person and the public.

[11] Section 25(1) prescribes the mandatory conditions to be included in a probation order made under section 20(i). Section 25(2) sets out conditions that the Youth Court may include in a probation order as it considers appropriate in the circumstances of the case. Subsection (g) of 25(2) states that there may be included a condition:

that the young person comply with such other reasonable conditions set out in the order as the Youth Court considers desirable, including conditions for securing the good conduct of the young person and for preventing the commission by the young person of other offences.

[12] In my view, s. 20(h), providing for orders of prohibition, seizure or forfeiture, is not applicable to this case. As I read s. 20(h), it provides that the Youth Court may make an order of prohibition that is otherwise available under the enactment or by-law which contains the offence of which the young person has been found guilty. A driving prohibition is not, however, otherwise available under the provisions of By-law No. 3722: see *Groenewegen v. The Queen* (February 10, 1998), Yellowknife, CR03530 (N.W.T.S.C.).

[13] Subsection (k) of section 20 appears to contemplate the imposition of conditions where there is no probation order. In this case, however, the driving prohibition was imposed as a condition of probation, which could be done pursuant to sections 20(i) and

25(2)(g) of the *YOA* (NWT) . It follows that the term of the probation and the prohibition which is a condition of the probation cannot exceed six months.

[14] Accordingly, the nine months probation imposed by the Youth Court Judge must be reduced to six months or less.

[15] Counsel for both the Appellant and the Respondent submitted that by virtue of s. 2(1) of the *Summary Convictions Procedures Act*, R.S.N.W.T. 1988, c. S-15, the provisions of the *Criminal Code of Canada* also apply so as to make probation available. I have some doubts on this point, but find it unnecessary to decide because the *YOA* (NWT) clearly does make probation available for a young person.

[16] I must now consider the length of the probation period. The Appellant was driving a snowmobile far in excess of the speed limit at a quarter to three on a Friday afternoon in December on a frozen lake in the middle of the city. It is clear from the record of the proceedings before the Youth Court Judge that the Appellant was aware, at the time of the offence, that a pedestrian had some years earlier been killed by a snowmobiler on that same lake. There is, however, no evidence of any prior record. In the circumstances, I would reduce the probation to five months.

[17] In the result, the appeal is allowed. The term of the probation order is reduced to five months. As to the conditions of the probation order, the three month prohibition against operation of any motor vehicle, including snowmobiles, on any street or highway in Canada, is confirmed; the prohibition specifically against operating snowmobiles and snow vehicles of any description is reduced to five months to coincide with the full term of the probation. The mandatory conditions and the fine ordered by the Youth Court Judge are also confirmed.

[18] I thank counsel for their helpful written submissions.

V.A. Schuler
J.S.C.

Dated at Yellowknife, Northwest Territories
this 12th day of April, 1999

Counsel for the Appellant: Tracey Foster

Counsel for the Respondent: Paul Smith

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