

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and -

H.T.

Applicant

MEMORANDUM OF JUDGMENT

[1] Counsel for the young offender H.T. applies for an order in the nature of *habeas corpus* releasing the young offender from custody. The young offender is in custody at the Young Offender Facility at Fort Smith pursuant to a Form 19 remand warrant issued by the Youth Court judge in Hay River on December 10, 2002.

[2] On that date the young offender appeared in Youth Court for a disposition hearing pursuant to the *Young Offenders Act*, R.S.N.W.T. 1988, ch.Y-1. The young offender was charged with an offence contrary to s.93(1) of the *Liquor Act*, R.S.N.W.T. 1988, ch.L-9 (minor consuming):

s.93(1) No person under the age of 19 years shall consume liquor.

[3] Section 115 of the *Liquor Act* provides for the possible sanctions to be imposed on a young person found guilty of minor consuming:

115. Every person who contravenes subsection 93(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$100 or to a community work order that the justice considers appropriate, and in default of payment of the fine or completing the work order, to imprisonment for a term not exceeding seven days.

[4] It will be noted that a jail term is not an available sentence for this offence.

[5] On December 10 the young offender appeared with counsel in Youth Court and pleaded guilty to the charge of minor consuming.

[6] A transcript of the December 10 proceeding in Youth Court has been filed with this Court. The transcript does not indicate that the Youth Court made a formal "finding" of guilty; however, in any event the matter proceeded to a disposition hearing.

[7] After reciting the facts surrounding the commission of the offence, the Crown prosecutor made the following submission regarding disposition:

With regard to disposition, Mr. T. does not have a previous record, and as a result the Crown is recommending probation and community service work.

[8] Defence counsel then made submissions and requested a disposition similar to that imposed in other cases earlier that day (though the transcript does not indicate what that disposition was). Then the following exchange took place between the Youth Court judge and this young offender:

THE COURT: Well, it is a first offence and I take that into consideration, Mr. T., but I do not see you should be treated much differently than anybody else. What were you drinking that night?

THE YOUNG PERSON: Bacardi.

THE COURT: Bacardi. Where did you get it?

THE YOUNG PERSON: I can't say.

THE COURT: You can't say.

MR. HANSEN: I believe, Sir, what he is, in his unsophisticated way, he is saying he wishes to remain silent and not answer the question.

THE COURT: You know where you got it but you do not want to say. Is that right?

THE YOUNG PERSON: (NO VERBAL RESPONSE).

THE COURT: Well, I will explain to you then, Mr. T., how this works. I will see you the 7th of January, and you will be remanded in custody until then. So you sit in jail between now and the 7th of January, and that will give you some time to think about it. Then I will ask you the same question again. If you choose to give the same answer you will be remanded in custody again, and I do not care if we keep doing it for the next two years, you can sit in jail. Do you understand me?

THE YOUNG PERSON: (NO VERBAL RESPONSE).

THE COURT: Do you want to reconsider your position?

THE YOUNG PERSON: (NO VERBAL RESPONSE).

THE COURT: Are you sure of that?

MR. HANSEN: I've spoken with him, Sir. I indicated what the Court's reaction might be, and he's indicated, he is adamant he will not answer that question.

THE COURT: You will be remanded in custody until the 7th January 2003. We will see you then for sentencing. I will in the meantime consider, Mr. T., what the sentence will be.

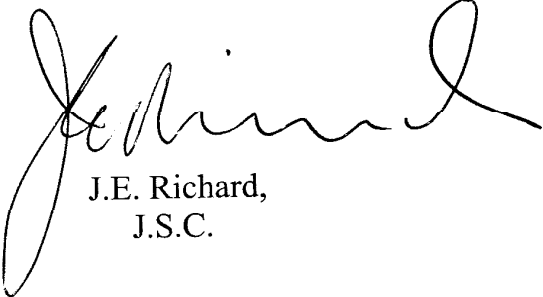
[9] In effect, the Youth Court adjourned the disposition hearing to January 7, and remanded the young offender in custody in the intervening four weeks.

[10] There is no explicit authority in the *Young Offenders Act* for a Youth Court judge to remand a young person in custody while proceedings are in adjournment. Both counsel appearing on this application agree on this point.

[11] Indeed, the provisions of the *Young Offenders Act* discourage the physical detention of young persons. One of the principles recognized and declared in the Act is that "the rights and freedoms of young persons include a right to the least possible interference with freedom that is consistent with the protection of society, having regard to the needs of young persons and the interests of their families". Section 9(1) of the Act states "No young person who is under arrest shall be detained before the making of a disposition in respect of that young person under section 20 other than by a peace officer for the purposes of arrest or temporary restraint". A list of the types of dispositions available to a Youth Court judge is provided in section 20. Committing a young person to custody is only available in specific enumerated circumstances, none of which apply to this young offender.

[12] The Form 19 remand warrant issued on December 10 is invalid.

[13] For these reasons, I confirm the order in the nature of *habeas corpus* made by me on December 12.



J.E. Richard,
J.S.C.

Dated at Yellowknife, NT, this
13th day of December 2002

Counsel for the Applicant: M.E. Hansen
Counsel for the Respondent: J. Burke