D.V. v. H.M.T.Q., 2004 NWTSC 4 S-0001-CR-2004000001

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

D.V.

Appellant

- vs. -

HER MAJESTY THE QUEEN

Respondent

Transcript of the Reasons for Judgment on Appeal by The Honourable Justice J.E. Richard, at Yellowknife, in the Northwest Territories, on February 9th, A.D. 2004.

APPEARANCES:

Mr. J.U. Bayly, Q.C.: Counsel for the Appellant

Ms. B. Schmaltz: Counsel for the Respondent

Charges under s. 271 Criminal Code of Canada

THE COURT: The appeal before the Court is in reference to a decision of the Youth Justice Court on December 3rd last. On that date, the Youth Justice Court imposed a sentence on the 17-year-old Appellant following a sentencing hearing where the Appellant pleaded guilty to sexually assaulting three young children.

The Youth Justice Court, after hearing submissions from experienced counsel for the Crown and defence, imposed a sentence of four months secure custody followed by a probationary period of 18 months.

I have reviewed carefully the transcript of the sentencing hearing, the pre-sentence report that was before the Youth Court and the reasons for sentencing of the Youth Justice Judge. In all of the circumstances, I cannot say in conscience that the sentence imposed was demonstrably unfit. In my view, for the reasons stated by the sentencing Judge, the sentence imposed was reasonable and fit and proper. In my view, it cannot be said that the sentence imposed was either harsh or excessive.

Given the role of this Court as an appeal court in this instance and given the standard of review on sentence appeals, it remains, then, for me to determine whether in arriving at the resulting sentence the sentencing Judge made any error in principle or failed to consider a relevant factor or overemphasized any

factor.

It is argued on the Appellant's behalf that the sentencing Judge erred in rejecting the joint submission of counsel for a non-custodial sentence. Upon careful review of the record, I find that there was not a joint submission put before the sentencing Judge in this case; that is, not in the sense of the use of that term as referred to in case law dealing with joint submissions on sentencing. The sentencing Judge here was not alerted to a situation where as part of a plea bargain or on account of some other valid reason counsel were together putting forward a joint submission or proposal on sentence.

I note from page 10 of the transcript that the sentencing Judge, after hearing the submissions of Crown counsel, very fairly indicated to defence counsel that he was still considering a custodial sentence, notwithstanding the Crown's stated position. In any event, on this ground of appeal I find that the sentencing Judge committed no error in principle.

It is further argued in support of the appeal that the sentencing Judge erred in his application of the principles of the new Youth Criminal Justice Act in placing excessive emphasis on the principles of denunciation and general deterrence. I find there is no merit in these submissions. The learned sentencing Judge in his reasons referred extensively to the

statutory provisions regarding the purpose and principles of sentencing young persons. It cannot be said that the sentencing Judge did not adhere to the direction given by Parliament in the new Act. As directed by subsection 39(2), before imposing the custodial sentence he considered the non-custodial disposition that was being proposed and he rejected it.

It is argued that the sentencing Judge overemphasized the notion of general deterrence in imposing sentence in this case. Although I take the view that we should not go overboard in dissecting in detail the words used by a Judge when imposing sentence, in my view the sentencing Judge was, on the whole, equally saying that a short custodial term followed by probation was necessary, (a), in order to hold this young man accountable for what he did; (b), to aid in this young man's self-rehabilitation; (c), to protect young children in our community; and (d), to reflect the gravity of the crimes committed. On a careful reading of the whole of the decision, I am not satisfied that there was an overemphasis of any factor.

I grant the request for an extension of time to file the appeal. However, for the reasons I have stated, the appeal is dismissed. Anything further, counsel?

MR. BAYLY: No, sir.

MS. SCHMALTZ: No, sir.

THE COURT: Thank you. Close court.

(AT WHICH TIME THE ORAL REASONS FOR JUDGMENT CONCLUDED)

Certified to be a true and accurate transcript pursuant to Rules 723 and 724 of the Supreme Court Rules.

Jill MacDonald, CSR(A), RPR
Court Reporter