Date: 2009 03 17
Docket: S-1-YO-2007000003

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

D.D.P.
(A YOUNG PERSON)

- and -

HER MAJESTY THE QUEEN

Restriction on Publication: No one may publish any information that may identify a person as having been dealt with under the *Youth Criminal Justice Act*. See the *Youth Criminal Justice Act*, s. 110(1).

Appeal from sentence.

Heard at Yellowknife, NT on February 16, 2009.

Reasons filed: March 17, 2009

REASONS FOR JUDGMENT OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU

Counsel for D.D.P.: Kelly Payne
Counsel for H.M.T.Q.: Shelley Tkatch

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REASONS FOR JUDGMENT

A) INTRODUCTION

[1] D.P. was sentenced in the Youth Justice Court on October 29, 2007 on a charge of driving while the concentration of alcohol in his blood exceededthe legal limit. The sentence he received was a fine of $500.00, a surcharge of $75.00, and a driving prohibition for a period of 12 months. He appeals this sentence on a number of grounds.

[2] D.P. alleges some errors of law on the part of the presiding Judge, but his primary complaint is that he did not get a fair sentencing hearing. In his Factum, he alleges that certain things that happenedduring the proceedingsshow that the presiding Judge was biased against him, or at the very least, raise a reasonable apprehension of

bias. He also alleges that the presiding Judge's conduct prevented his counsel from making full and effective submissions on his behalf.

[3] While the Crown does not agree entirely with D.P.'s characterization of the presiding Judge's conduct, it does concede that what transpired prevented D.P.'s counsel from presenting complete submissions, and that this opens the door to appellate intervention. Still, the Crown's position is that the sentence imposed should not be disturbed because it was an appropriate sentence under the circumstances.

B) THE SENTENCING HEARING

[4] The sentencing hearing began, in the usual course, with the Crown reading the allegations in support of the charge. Those allegations were that in the early morning hours of August 11, 2007, R.C.M.P. officers who were on patrol stoppeda vehiclethat had made a turn without signalling. The officers also observedthat the licenceplate on the vehicle was expired. The officers spoke to D.P., the driver of the vehicle. They made observations that led them to place D.P. under arrest and demand that he submit to a breathalyser test. D.P. was cooperative throughout. The breathalyser tests were conducted, and resulted in readings of 120 and 110 milligrams of alcohol in 100 millilitres of blood.

[5] The Crown's allegations were not disputed by D.P. D.P.'s counsel told the Court about some additional facts, which were not disputed by the Crown. Those facts were that on the night of this incident, D.P. had been at a party where he had consumed four to five beer. While he was walking home, he was stopped by a person who was highly intoxicated and appeared to be in some distress. That person asked D.P. to drive his vehicle to a nearby parking lot. D.P. had stopped drinking some time earlier and was no longer feeling the effects of alcohol. He agreed to drive the vehicle for the purposes of parking it.

[6] Crown counsel requested a fine in the range of $400.00 to $500.00 and a driving prohibition in the range of 12 to 15 months. The presiding Judge asked whether a mandatory minimum driving prohibition appliedwhen dealingwith a young person. (By operation of section 259 of the *Criminal Code*, an adult convicted for the first time of this type of offence is subject to a driving prohibition of a minimum of 1 year). Crown counsel answered that he was not sure if the minimum driving prohibition applied, but maintained that irrespective of that, there should be a driving prohibition of 12 to 15 months.

[7] D.P.'s counsel began her submissionsby seekingan adjournmentto anotherdate to research the question of whether the minimum driving prohibition applied. The

presiding Judge said he would not adjourn to another date. Counsel sought an adjournment to the afternoon. The presiding Judge said he would not adjourn to the afternoon but was prepared to stand down until later in the morning. Counsel replied that she was not available later in the morning. The proceedings continued.

[8] Counsel made submissions about D.P,'s personal circumstances. The presiding Judge interrupted her a few times during her submissions. By that point considerable tension had built between the presiding Judge and counsel. Eventually counsel renewed her request for an adjournment to consider the question of the applicability of the mandatory minimum driving prohibition, reiterating that she was available at 1:30 but not later that morning. The presiding Judge maintained his decision not to adjourn to 1:30. He adjourned proceedings to 11:15.

[9] When proceedingsresumed, counseladvised that they had determinedthat under the *Youth Criminal Justice Act*, S.C. 2002, c.1, no minimum driving prohibition applied. The presiding Judge then proceeded to deliver his Reasons for Sentence.

C) MOOTNESS

[10] Although the Notice of Appeal was filed in November 2007, the appeal was not heard until February 16, 2009. By then, the fine and surchargehad long been paid, and the driving prohibition had finished running its course. This raises the question of whether the appeal is moot.

[11] D.P. argues that the appeal is not moot, even though the sentence has been completed, because under the *Act*, the periods of time when records of proceedingscan be accessed vary depending on the type of sentence imposed. In other words, if this Court were to set aside the sentence imposed and replace it with another type of disposition, such as an absolute or conditional discharge, it could impact on the extent to which persons and agencies listed at s. 119 of the *Youth Criminal Justice Act* could access the records. D.P. also argues that in any event, this case raises important issues and that this Court should entertain it on its merits even if it is moot.

[12] The issues raised in this appeal are serious because they call into question the integrity of the administration of justice. Although not in agreement with everything that D.P. asserts within this appeal, the Crown concedes that the fairnessof the hearing was compromised by what transpired. That concession is a significant factor in deciding whether to consider the matter on its merits. Under the circumstances, I

conclude that it is appropriate for this Court to address the issues raised on this appeal irrespective of whether the matter is moot.

D) ANALYSIS OF GROUNDS OF APPEAL

[13] D.P. argues that the fairness of his sentencing hearing was compromised as a result of the animosity that developed between his counsel and the presiding Judge. He argues that the presiding Judge became so annoyed with his counsel that he lost his ability to impose a fair sentence. In the alternative, D.P. argues that the presiding Judge's conduct raises a reasonable apprehension of bias. In addition, D.P.'s counsel, who was his counsel at the sentencing, argues that what happened between her and the presiding Judge rendered her ineffective in the representation of D.P. She argues that this too compromised the fairness of the hearing, quite apart from the issue of bias.

[14] Given the nature of D.P.'s complaints, it is necessary to examine in some detail some of the exchanges that took place between his counsel and the presiding Judge before addressing the specific procedural fairness issues that are raised.

1. The exchanges between counsel and the presiding Judge

[15] As already mentioned, the presiding Judge refused counsel's request to adjourn the continuation of the hearing to another date, or to the afternoon. He became annoyed when, in response to his suggestion to adjourn the matter to later in the morning, counsel advised that she was not available then:

> THE COURT: Then we'll continue with the matter right now.
>
> MS. PAYNE: That's fine, sir. Your Honour - - I'm sorry. We're not able to continue, sir. There's a question - -
>
> THE COURT: No, we will continue. You should have been prepared for this question.
>
> MS. PAYNE: Well, sir - -
>
> THE COURT: I am not going to put this matter over for your convenience. If you're otherwise engaged this morning, that's too bad. We'll deal with this matter right now.

[16] Counsel then began making her sentencing submissions. She made submissions about the mitigating effect of D.P.'s guilty plea, the circumstances under which he got

behind the wheel of the vehicle, the support from his family, and informationabout his employment. She also advised the Court about D.P.'s involvement with sports and other extra-curricular activities, including his interest in music. The presiding Judge interrupted counsel and questioned the relevance of aspects of these submissions:

> MS. PAYNE: (...) In his spare time, he advises that he also plays guitar. He advises that he is left handed, but he has taught himself to play left-handed and has re-strung his guitar to assist him in that regard. He also writes music.
>
> THE COURT: Do you honestly think that that's relevant to sentence, the fact that he has re-strung his guitar so he can play left-handed?
>
> MS. PAYNE: I think, sir, that Mr. P.'s efforts - -
>
> THE COURT: You adjust your tone right now. Right now. Go on.
>
> MS. PAYNE: I'm suggesting, sir, that this is indeed relevant for your consideration of Mr. P.'s circumstances. He is an industrious young man.
>
> THE COURT: Oh, I know he's industrious, and I've certainly concluded that he's industrious based on what you've told me. How some of these submissions can be expected to many any difference on sentence is beyondme. Re-strung a guitar so he can play left-handed. Anyway, go on. Go on, Ms. Payne.

[17] Counsel then made submissions about the breathalyser readings. She argued they were in the minimal range. The Judge interjected that he did not consider them to be in the minimal range, that they were in the middle range.

[18] Counsel reiterated that D.P. had entered a very early guilty plea, and that he had been cooperative with the police throughout. She then alludeddirectly to the presiding Judge's annoyance with her:

> MS. PAYNE: (...) Whereas you may be annoyed with me, sir, --
>
> THE COURT: Oh, I'm quite annoyed with you at this particular point - -
>
> MS. PAYNE: Clearly.
>
> THE COURT: - - but I'm not going to take it out on your client.

[19] Counsel then referred again to the mitigating features of the case and submitted that under the circumstances, the minimum sentence would be appropriate. The presiding Judge questioned her on that submission:

> THE COURT: What would the minimum sentence be, Ms. Payne?
>
> MS. PAYNE: Well, sir, there's no minimum sentence with regard to a fine. So I submit a low fine - -
>
> THE COURT: Well, a minimum sentence would be a reprimand, Ms. Payne.
>
> MS. PAYNE: Well, sir - -
>
> THE COURT: This is Youth Justice Court.
>
> MS. PAYNE: That's correct.
>
> THE COURT: You're honestly suggesting that that's appropriate?
>
> MS. PAYNE: Well, sir, I would like to investigate the fact that if indeed the Court - - this Youth Court is not bound by the minimum driving prohibition, it may be appropriate in this particular case.
>
> THE COURT: Ms. Payne, I'm prepared to give you a reasonable adjournment under the circumstances, but I am not prepared to stand matters down to suit your schedule.
>
> MS. PAYNE: I didn't request this court to do so.

[20] The presiding Judge again alluded to the possibility of standingthe matterdown to later in the morning. The exchange that follows shows the continuing deterioration in the communication between counsel and the presiding Judge:

> THE COURT: All right. If I were to give you 15 minutes, would that be enough time?
>
> MS. PAYNE: No sir. I will be available at 1:30.
>
> THE COURT: I'm not going to give it to you. I already said I'm not going to set it over till 1:30.
>
> MS. PAYNE: That's fine.

THE COURT: I already said I'm not going to set it over until November 19th. Are you kidding me? I've already made that ruling.

MS. PAYNE: That's fine, sir.

THE COURT: Fifteen minutes. Not good enough for you?

MS. PAYNE: No, sir.

THE COURT: All right. Well, what I am going to do is I am going to stand down the imposition of my sentence until quarter after eleven.

MS. PAYNE: Sir, I will not be available at a quarter after eleven.

THE COURT: That's too bad. You've got a matter set for Youth Court. We'll proceed in your absence if that's the case. You are counsel of record.

MS. PAYNE: Sir, this is un - -

THE COURT: You should schedule - - you should schedule - -

MS. PAYNE: - - reasonable.

THE COURT: Ms. Payne. You should schedule your appearances.

MS. PAYNE: I did schedule - -

THE COURT: This can be dealt with - -

MS. PAYNE: - - my appearance this morning, sir.

THE COURT: - - later on a new day. This is a sentencing. The docket could have been - -

MS. PAYNE: Something went awry. The Crown was not prepared as well.

THE COURT: Interrupt me one more time, Ms. Payne, while I am speaking and we will finish this later.

MS. PAYNE: Outside?

THE COURT: Ms. Payne. We'll finish later. Do the math. Figure it out. Quarter after eleven.

[21] When Court resumed, the presiding Judge asked counsel if they had been able to determine whether the mandatorydriving prohibitionsapplied. Counseladvised that under the *Youth Criminal Justice Act*, no mandatory minimum applied.

[22] The presiding Judge did not ask if D.P.'s counsel had any further submissions, or if Crown counsel had any reply submissions. He did not ask D.P. if there was anything he wished to say. He did not inquire if D.P.'s parents, who were present in the courtroom, had any representations that they wished to make. He simplyproceeded to deliver his Reasons for Sentence.

2. Reasonable apprehension of bias

[23] The Ontario Court of Appeal had occasionto summarizethe legal principlesthat apply in cases where a claim if judicial bias is made. I agree with that summary, and find it provides a useful framework for the analysis that must be undertaken in this case:

> (...) we will briefly review the principles that apply to a claim of judicial bias. These principles, now well established, have recently been summarized by the Supreme Court of Canada in R. v. S. (R.D.), [1997] 3 S.C.R. 484, 118 CCC (3d) 353. They are as follows:
>
> > 1. All adjudicative tribunals owe a duty of fairness to the parties who appear before them. The scope of the duty and the rigour with which the duty is applied vary with the nature of the tribunal. Courts, however, should be held to the highest standards of impartiality.
> >
> > 2. Impartiality reflects a state of mind in which the judge is disinterested in the outcome and is open to persuasion by the evidence and the submissions. In contrast, bias reflects a state of mind that is closed or predisposed to a particular result on material issues.
> >
> > 3. Fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer. If the words or actions of the presiding judge give rise to a reasonable apprehension of bias to the informed and reasonable observer, this will rendered the trial unfair.
> >
> > 4. The test for bias contains a twofold objective standard: the person considering the alleged bias must be reasonable and informed; and the apprehension of bias must itself be reasonable. In the words of de Granpré J. In Committee for Justice and Liberty v. Canada (National Energy Board)

> [1978] 1 S.C.R. 369, at p.394, approved of by the Supreme Court of Canada in S. R.(D.), supra:
>
> > "[T]he apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the requiredinformation ... [The] test is "what would an informed person, viewing the matter realistically and practically - and having thought the matter through - would conclude ..."
>
> 5. The party alleging the bias has the onus of proving it on the balance of probabilities.
>
> 6. Prejudgment of the merits, prejudgment of credibility, excessive and one-sided interventions with counsel or in the examination of witnesses and the reasons themselves may show bias. The court must decide whether the relevant considerations taken together give rise to a reasonable apprehension of bias.
>
> 7. The threshold for finding actual or apprehended bias is high. Courts presume that judges will carry out their oath of office. Thus, to make out an allegation of judicial bias requires cogent evidence. Suspicion is not enough. The threshold is high because a finding of bias calls into question not just the personal integrity of the judge but the integrity of the entire administration of justice.
>
> 8. Nonetheless, if the judge's words or conduct give rise to a reasonable apprehension of bias, it colours the entire trial and cannot be cured by the correctness of the subsequent decision. Therefore, on appeal, a finding of actual or apprehended bias will ordinarily result in a new trial.
>
> *Marchand* v. *Public General Hospital Society of Chatham* (2000), 51 O.R. (3d) 97 (Ont.C.A.), at para. 131.

[24] I would add to this that when it is alleged that a decision-maker has not acted in an impartial manner, actual bias need not be established. The issue is whether the particular conduct gives rise to a reasonable apprehension of bias. *R.* v. *S. (R.D.)*, [1997] 3 S.C.R. 484, at para.109.

[25] The allegation of bias in this case does not stem from any interaction between the presiding Judge and D.P. himself. This is different from cases where judges have engaged in active cross-examination of the accused, made negative comments about the accused's credibility in the midst of the trial, or made sarcastic remarks to the

accused, such as was found to have happened in cases like *Brouillard Also Known As Chatel* v. *R.,* [1985] 1 S.C.R. 39 and *R.* v. *Wells* [2003] O.J. No.2025 (Q.L.)

[26] Nevertheless, excessive or one-sided interventions with counsel can form the basis of a claim of bias, and that is the foundation of D.P.'s claim in this case. As the party raising the issue, D.P. bears the onus of establishing, on a balance of probabilities, that what transpired raises a reasonable apprehension of bias. The threshold for establishing this is high; cogent evidence is required to make out an allegation of bias.

[27] All that this Court has to assess D.P.'s claim is the transcript of the proceedings. It goes without saying that transcripts are an essential tool for any reviewing court. However, even the most accurate of transcripts never tells the full story, in particular where the subject-matter of the inquiry is the interaction between individuals. Transcripts do not show the many nuances that may come from voice inflexions or non-verbal cues such as body language.

[28] There is a good example of this in this case. In the exchange quoted at Paragraph 16, *supra*, the presiding Judge tells counsel to "adjust her tone". The appropriateness of that intervention is entirely dependent on the tone that counsel was in fact using, something that cannot be determined from the transcript. So this Court has no basis upon which to determine whether this was a case of a judge admonishing counsel who was out of line, or a case of a judge overreacting or interrupting counsel for no good reason.

[29] The transcript does establish conclusively that the exchanges between D.P.'s counsel and the presiding Judge were tensed, and this tension escalated during the hearing. It is readily apparent from the transcript that the presiding Judge became increasingly annoyed with D.P.'s counsel. But there is no indication of this irritation or negative disposition being transferred to, or directed at, D.P. On the contrary, the presiding Judge, while acknowledging that he was very annoyed with counsel, specifically said that he would not take his annoyance out on her client. This demonstrates that, irritated as he may have been by what was transpiring,the presiding Judge remained aware of the importance of not losing his objectivity, and of not punishing D.P. for the conduct of his counsel.

[30] D.P. argues that the sentence imposed by the presiding Judge belies his words. He argues that the sentence was so harsh that it demonstrates that the presiding Judge did in fact punish him for the conduct of his counsel. I have great difficulty accepting

that the sentence imposed, on its face, is so harsh that it provides an indication of bias on the part of the presiding Judge.

[31] D.P.'s submission might be persuasive if the sentence was outside the range of sentences ordinarily imposed for these types of offenses; or if it was significantly more harsh than what the Crown was seeking. But that is not the case. There is nothing before this Court to suggest that the sentence imposed is out of line with sentences ordinarily imposed on young persons for drinking and driving offenses. The driving prohibition imposed was at the low end of what the Crown was seeking, and the fine was in the range submitted by the Crown.

[32] The fact that a judge is annoyed with counsel, even very annoyed, cannot be taken to necessarily translate, in every case, as an inability on the part of that judge to abide by his oath of office and to be fair to that counsel's client. Sometimes, it might. But one does not automatically flow from the other. It is all a matter of degree, and the overall circumstances of each case must be examined carefully.

[33] It is always regrettable when the interaction between counsel and the court deteriorates in the manner that it did in this case. The stressesassociated with litigation in busy courtrooms, and the very nature of the adversarial process are such that it is not surprising that tension sometimes builds between those who work in this environment. Human nature is such that judges and counsel may well become annoyed at one another from time to time. But lack of civility in the courtroom underminesrespect for the administration of justice. It can diminish the public'srespect for the processand its outcomes. So everyone should strive to maintain civility in the courtroom; it is the responsibility of counsel and judges alike. *R.* v. *Felderhof* [2003] O.J. No.4819 (Ont.C.A.), at paras. 83 and 94.

[34] But that is not to say that a decline in civility necessarily give rise to a reasonable apprehension of bias. Having carefully reviewed the transcript, and in the absence of any other evidence, and also bearing in mind the applicable standard of proof and the other legal principles I have already referred to, I conclude that notwithstanding the unfortunate tone that prevailed in the exchanges between counsel and the presiding Judge, the record fails to establish that what transpired in this case gives rise to a reasonable apprehension of bias.

3. Interference with right to make full submissions

[35] The second aspect of D.P.'s complaint about how these proceedings were conducted is that he did not get the benefit of full submissions at this hearing. His counsel alleges that the presiding Judge's conduct, quite apart from the issue of bias, rendered her unable to offer D.P. the effective legal representation that he was entitled to. She said, for example, that she failed to ask the Court to consider granting a conditional discharge.

[36] I find it problematic to have counsel, on appeal, argue their own ineffectiveness or inability to adequately represent their client in the proceedings forming the subject-matter of that appeal. A preferable course of action might be to have other counsel argue the appeal, and possibly apply to adduce fresh evidence, in the form of an affidavit from the first counsel, to provide more evidence and context about what transpired and explain how it might have impacted on the hearing.

[37] But this problem is of less consequence in this case becausethe Crown concedes that D.P. was deprived of his right to be fully heard. This concession is not binding on this Court, but it carries considerable weight, as the Crown was present at the hearing and is aware of the full context, including matters not apparent from the transcript.

[38] Apart from the impact that the tension between the presiding Judge and counsel may have had on counsel's effectiveness, the record shows that D.P.'s counsel had not finished her submissions when the presiding Judge stood the matter down. Counsel had made the point, earlier, that if no minimum sentence applied, it may be appropriate for the presiding Judge to consider a disposition other than a fine, including possibly a reprimand. When court reconvened and it was determined that no minimum prohibition applied, D.P.'s counsel was not given an opportunity to make further submissions as to how this should impact on the sentence to be imposed.

[39] Another area of concern, which no one raised during the hearing of this appeal, is that neither D.P. nor his parents, who were present in the courtroom, had an opportunity to address the Court before the sentence was imposed. Section 42 of the *Act* provides that before imposing sentence, the Youth Justice Court shall consider, among other things, "the representations made by the partiesto the proceedingsor their counsel or agents and by the parents of the young person". In my view, this implies a requirement to give the parents an opportunity to be heard when they are present.

[40] The standard of review on sentence appeals is a very high one. Appellatecourts must defer to findings made by a sentencing judge, and to his or her assessment of the various factors that must be balanced to arrive at a fit sentence. But sentencing courts must, like any court or tribunal, abide by principles of procedural fairness. Failure to do so gives rise to appellate intervention. *R.* v. *Zinck* [2003] S.C.J. No. 5 (Q.L.), at para.41.

[41] The presiding Judge's decision to stand matters down until 11:15 occurred during D.P.'s counsel's submissions. Counsel had not finishedthose submissions.She was not given an opportunity to make any further submissions when proceedings resumed. In particular, she was not given an opportunity to make submissions about how the absence of a minimum penalty should impact on the type of disposition that the Court could consider. D.P.'s parents were not given an opportunity to make representations to the Court. All of this, combined with the position taken by the Crown on this appeal, leads me to conclude that D.P. did not have an opportunity to present full submissions at his sentencing hearing. Additional submissions may not have altered the presiding Judge's conclusion as to what a fit sentence was, but that, of course, is not the point. If the rules of procedural fairness are breached, that, in and of itself, taints the proceedings and gives rise to appellate intervention.

[42] In the Notice of Appeal filed on D.P.'s behalf in November 2007, the relief sought is that this Court send the matter back to the Youth Justice Court for a fresh sentencing hearing. This may have been an appropriate and meaningful remedy had the appeal proceeded in a timely fashion, but it is not an appropriate remedy at this point. The offence dates back to August 2007, some 18 months ago. D.P. is weeks away from turning 18. A re-hearing in the Youth Justice Court, at this point, would make very little sense. Unfortunately, the delay in this case has had a real impact on this Court's options as far as the relief that can be granted to D.P.

[43] A delay of almost a year and a half between the filing of a Notice of Appeal and the hearing of an appeal, on a summary conviction matter, is problematic at the best of times, but it is particularly regrettable in proceedings involving youths. Timely intervention is one of the principles that Parliament has seen fit to emphasize in setting out the policy principles that underlie that *Youth Criminal Justice Act*:

> 3. (1) The following principles apply in this Act:
>
> (...)

> (b) the criminal justice system for young persons must be separate from that of adults and emphasize the following:
>
> (iv) timely intervention that reinforces the link betweenthe offending behaviour and its consequences; and
>
> (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young person's perception of time.
>
> (...)

[44] D.P. himself acknowledges that a re-hearingwould not be appropriateunder the circumstances. He asks, instead, that this Court consider the matter of sentencing afresh. That is what I propose to do, because it is the only realistic option available to the Court.

[45] D.P. argues that he should be granted a conditional discharge, with a nominal period of Probation, given his personal circumstances, his early guilty plea and remorse, his cooperation with the police throughout, the fact he only drove the vehicle for a short distance, and the fact that he did so to help someone else.

[46] In deciding what a fit sentence is for this offence, the sentencing principles set out in Part 4 of the *Act* must be considered. While the *Youth Criminal Justice Act* sets out a framework and sentencingphilosophy wherebyyoung persons are dealt with very differently than adults, some of its governing sentencing principles mirror those that apply in adult court. For example, a sentence must be proportionate to the seriousness of the offence and to the degree of responsibility of the offender. It must be similar to sentenced imposed to offenders whose circumstances are similar and have committed similar offenses. *Youth Criminal Justice Act*, *supra*, s. 38.

[47] In addition, sanctions imposed to young persons must have meaningful consequences to them, and promote their rehabilitation so that the public is, in the long-term, protected. *Youth Criminal Justice Act*, *supra,* s. 38.

[48] Having considered those factorsand the other sentencingprinciples set out in the *Act,* I do not think that a conditional discharge would be an appropriate disposition in the circumstances. It is one of the dispositions available under the *Act,* but it can only be granted if it is in the best interest of the offender and not contrary to the public interest. *Youth Criminal Justice Act, supra,* s. 42. I conclude that neither one of those criteria is met.

[49] Drinking and driving offenses are serious matters. The potential for harm to the public is great any time a person drives a motor vehicle while under the influence of alcohol, no matter what the person's motivation might be. Even accepting that D.P. only intended to drive the vehicle for a short distance to assist the other person, the fact remains that the concentration of alcohol in his blood was well over the legal limit; he was at an age where it was not even legal for him to consume alcohol in the first place. For those reasons, in my view, it would be contrary to the public interest to grant a discharge in this case.

[50] I am also not persuaded that it would be in D.P.'s interest to be granted a discharge. I am not convinced that such a disposition would constitute a meaningful enough consequence to him for his actions. Holding him accountable, in a meaningful way, for the serious errors in judgment he made that day is, in my view, more likely to avoid similar conduct in the future. It is very much consistent with fostering D.P.'s rehabilitation and the long-term protection of the public.

[51] Finally, as counsel did not refer me to any other case involving a young person where a discharge was granted for this type of offence, I am not satisfied that a conditional discharge would be consistent with the principle of parity.

[52] Before imposing a fine, the presiding Judge ought to have inquired more specifically about D.P.'s ability to pay. *Youth Criminal Justice Act, supra*, s. 54(1). He had been told that D.P. had worked throughout the summer and continued to work part-time, but did not have any information about his wage, expenses,and his abilityto pay a fine. The presiding Judge was also mistaken when he said that the surcharge could not be worked off as part of the fine options program. *Youth Criminal Justice Act, supra*, s. 54(2). But examining the matter afresh now, this Court has the information about D.P.'s ability to pay the fine and surcharge, as demonstrated by the fact that he did in fact pay both.

[53] Under the circumstances, I conclude that the $500.00 fine and $75.00 surcharge, together with the 12 months driving prohibition, are a fit and appropriate disposition having regard to the circumstances of the offence, the circumstances of D.P., and the applicable sentencing principles.

[54] For those reasons, even though the circumstances of this case give rise to appellate intervention, I am not satisfied that the sentenceimposed should be interfered with.

[55] The appeal is dismissed.

L.A. Charbonneau
J.S.C.

Dated this 17th day of March, 2009.

Counsel for D.D.P.: Kelly Payne
Counsel for H.M.T.Q.: Shelley Tkatch

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