

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

T.S.

(A YOUNG PERSON)

Transcript of the Reasons for Sentence delivered by The Honourable Judge G. E. Malakoe, sitting in Yellowknife, in the Northwest Territories, on the 17 day of October, A.D. 2013.

APPEARANCES:

Mr. B. Demone: Counsel for the Crown

Mr. S. Toner, agent
for Ms. C. Wawzonek: Counsel for the Accused

(Charges under s. 95 of the Criminal Code of Canada
and s. 4(1) of the Controlled Drugs and Substances Act)

1 THE COURT: Mr. Toner, Mr. Demone. Please
2 be seated.

3 MR. DEMONE: Good afternoon, Your Honour.

4 THE COURT: Mr. Toner, do you want your
5 client to be beside you?

6 MR. TONER: Yes, I would, Your Honour.
7 Thank you.

8 THE COURT: Any issues, Officer?

9 MR. DEMONE: No problems, Your Honour.

10 THE COURT: T.S., have a seat beside
11 Mr. Toner.

12 As I was preparing my reasons, I realized
13 that I had not given T.S. the opportunity to
14 address the Court if he wanted to. Mr. Toner,
15 does T.S. wish to address the Court?

16 MR. TONER: No, Your Honour, he doesn't
17 have anything prepared to say.

18 THE COURT: Thank you.

19 In the reasons that follow, I refer to a
20 number of cases and case names. For ease of
21 reading and listening, I will not give the cites
22 for these cases. If a transcript of these
23 reasons is produced, the cites will be included.

24 On September 9th, 2013, T.S. entered guilty
25 pleas to the following two charges: First, on or
26 about the 2nd day of March, 2013, in the City of
27 Yellowknife, in the Northwest Territories, he did

1 possess a loaded restricted firearm and was not
2 the holder of an authorization or licence under
3 which he may possess the said firearm in that
4 place contrary to section 95(2) of the Criminal
5 Code. Second, on or about the 10th day of March,
6 2013, in the City of Yellowknife, in the
7 Northwest Territories, he did possess a substance
8 included in Schedule I, to wit: cocaine,
9 contrary to section 4(1) of the Controlled Drugs
10 and Substances Act.

11 Both offences are before the youth justice
12 court for sentencing as indictable offences.

13 The Court has had the benefit of a
14 Pre-Sentence Report prepared by a youth probation
15 officer from Langley, British Columbia; a Victim
16 Impact Statement; two letters of support for
17 T.S.; and thorough submissions from counsel along
18 with legal authorities.

19 Let me first summarize the facts as they
20 were admitted by T.S.

21 On March 10th, 2013, T.S. was 17 years old.
22 His 18th birthday was 17 days later.

23 In the early morning hours of March 10th,
24 T.S. and an adult friend, Joshua Petten, took a
25 taxi from the Northlands Trailer Court in
26 Yellowknife to a bar called Harley's Hard Rock
27 Saloon on 50th Avenue in downtown Yellowknife.

1 Before getting into the taxi, Joshua Petten
2 took a loaded semi-automatic .45 pistol from
3 inside the waistband of his pants and handed it
4 to T.S., who put it in the waistband of his pants
5 inside his jacket.

6 T.S. and Mr. Petten arrived at Harley's at
7 around 1 a.m. They spent some time there and
8 then walked to the Raven Pub.

9 They arrived at the Raven Pub at 1:45 a.m.
10 and went to the bar to order drinks. At the
11 Raven Pub, Joshua Petten became involved in a
12 verbal altercation with the bar staff and the
13 manager. This altercation escalated and
14 Mr. Petten was asked to leave.

15 As Joshua Petten and T.S. were leaving,
16 Mr. Petten asked T.S., "You still got our friend
17 with you?" T.S. responded, "Yeah, I got it right
18 here," as he tapped his waistband at the belt
19 level, indicating the pistol.

20 Joshua Petten indicated to the manager that
21 he wanted to fight him outside. As Mr. Petten
22 and T.S. walked to the entrance of the Raven Pub,
23 T.S. passed the firearm to Joshua Petten.

24 After the accused and Mr. Petten got
25 outside, the manager closed the front door to the
26 Raven Pub and locked it.

27 Joshua Petten pounded on the front door and

1 yelled for the manager to come out. The manager
2 did not come out.

3 Lydia Bardak, who filed a Victim Impact
4 Statement, observed Mr. Petten with the gun
5 outside of the Raven Pub yelling for the manager
6 and bar staff to come out.

7 Joshua Petten and T.S. approached a taxi to
8 leave the area. Once in the taxi, Joshua Petten
9 held up the pistol and asked the taxi driver if
10 he shot himself, would the taxi driver miss him.

11 The taxi driver calmed Joshua Petten down
12 and took the handgun from him and passed it to
13 the accused. The accused placed the handgun
14 under the back seat.

15 As a result of the incident, the RCMP was
16 dispatched at 3:12 a.m. in response to a report
17 of two males brandishing firearms. The taxi
18 containing Joshua Petten and T.S. was located at
19 the Winks Convenience Store on 50th Avenue and
20 the two males were arrested without incident in
21 what the police describe as a high-risk takedown.

22 The handgun was located in the back seat of
23 the taxicab within easy reach of the passenger.
24 It was loaded with six rounds of .45-calibre
25 ammunition. Five rounds were in the magazine,
26 one round was chambered. The handgun was
27 functional during test firing by the RCMP.

1 T.S. was searched and found to possess two
2 small baggies of cocaine with a total weight of
3 one gram. Later, he was searched again while in
4 detention and five further small baggies were
5 found weighing, in total, 2.7 grams.

6 In determining a just and appropriate
7 sentence, this youth justice court is guided by
8 sections 3, 38, and 39 of the Youth Criminal
9 Justice Act. Relevant portions of these sections
10 state as follows:

11 3(1) The following principles apply to this Act:

12 (a) the youth criminal justice system is
13 intended to protect the public by:

14 (i) holding young persons
15 accountable through measures
16 that are proportionate to the
17 seriousness of the offence and
18 degree of responsibility of the
19 young person,

20 (ii) promoting the rehabilitation
21 and reintegration of young persons
22 who have committed offences, and

23 (iii) supporting the prevention of
24 crime by referring young persons
25 to programs or agencies in the
26 community to address the
27 circumstances underlying their

1 offending behaviour;
2 in order to promote the long-term protection
3 of the public.
4 (b) the criminal justice system for young
5 persons must be separate from that of
6 adults, must be based on the principle
7 of diminished moral blameworthiness or
8 culpability and must emphasize the
9 following:
10 (i) rehabilitation and reintegration,
11 (ii) fair and proportionate
12 accountability that is consistent
13 with the greater dependency of
14 young persons and their reduced
15 level of maturity,
16 (iii) enhanced procedural protection
17 to ensure that young persons are
18 treated fairly and that their
19 rights, including their right to
20 privacy, are protected,
21 (iv) timely intervention that
22 reinforces the link between the
23 offending behaviour and its
24 consequences, and
25 (v) the promptness and speed with
26 which persons responsible for
27 enforcing this Act must act,

1 given young persons' perception
2 of time.

3 38(1) The purpose of sentencing under section 42
4 is to hold a young person accountable for
5 an offence through the imposition of just
6 sanctions that have meaningful consequences
7 for the young person and that promote his
8 or her rehabilitation and reintegration
9 into society, thereby contributing to the
10 long-term protection of the public.

11 (2) A youth justice court that imposes a
12 youth sentence on a young person shall
13 determine the sentence in accordance with
14 the principles set out in section 3 and the
15 following principles:

16 (a) the sentence must not result in a
17 punishment that is greater than the
18 punishment that would be appropriate
19 for an adult who has been convicted
20 of the same offence committed in
21 similar circumstances;

22 (b) the sentence must be similar to the
23 sentences imposed in the region on
24 similar young persons found guilty
25 of the same offence committed in
26 similar circumstances;

27 (c) the sentence must be proportionate

1 to the seriousness of the offence
2 and the degree of responsibility of
3 the young person for that offence;
4 (d) all available sanctions other than
5 custody that are reasonable in the
6 circumstances should be considered
7 for all young persons, with particular
8 attention to the circumstances of
9 aboriginal young persons;
10 (e) subject to paragraph (c), the sentence
11 must
12 (i) be the least restrictive
13 sentence that is capable of
14 achieving the purpose set out in
15 subsection (1),
16 (ii) be the one that is most likely
17 to rehabilitate the young person
18 and reintegrate him or her into
19 society, and
20 (iii) promote a sense of
21 responsibility in the young person
22 and an acknowledgment of the harm
23 done to victims and the community;
24 and
25 (f) subject to paragraph (c), the sentence
26 may have the following objectives:
27 (i) to denounce unlawful conduct,

1 T.S. spent 45 days in remand prior to being
2 released on bail on April 23rd, 2013. The Crown
3 seeks a global sentence consisting of custody and
4 supervision order of eight to ten months less
5 credit for the time spent in remand, followed by
6 a year of probation, along with a firearms
7 prohibition and a DNA order. The Crown also
8 requests an order for the disposition of the
9 handgun, the magazine and ammunition, and the
10 cocaine.

11 The defence submits that a probation order
12 should be imposed which would be transferred to
13 British Columbia and which would allow T.S. to
14 participate in programming not currently
15 available in the Northwest Territories.

16 A threshold question is whether or not the
17 Court can impose a period of custody with respect
18 to these offences.

19 The answer to this question is contained
20 within section 39(1) of the Youth Criminal
21 Justice Act which specifies four gateways through
22 which the Court can impose custody, the first
23 three of which are not applicable because the
24 offences before the Court are not "violent
25 offences" as the term is defined in the YCJA and
26 because T.S. has no criminal record.

27 The fourth gateway is stated in section

1 39(1) (d) as follows:

2 A youth justice court shall not commit
3 a young person to custody under section
4 42 (that being the youth sentence
5 section) unless
6 (d) in exceptional cases where the young
7 person has committed an indictable
8 offence, the aggravating circumstances
9 of the offence are such that the
10 imposition of a non-custodial sentence
11 would be inconsistent with the purpose
12 and principles set out in section 38.

13 To apply section 39(1) (d) to the
14 circumstances of an offence, it is necessary,
15 first, to look at the aggravating circumstances
16 of the offence. Then, it is necessary to ask
17 whether in light of these aggravating
18 circumstances, a non-custodial sentence would be
19 inconsistent with the section 38 purpose and
20 principles.

21 In my view, the aggravating circumstances of
22 the section 95 firearms offence are as follows:

23 (a) The transporting of the loaded handgun in
24 a taxicab from the Northland Trailer Park
25 to Harley's Hard Rock Saloon and from the
26 Raven Pub to Winks;

27 (b) The carrying of the loaded firearm on the

street between Harley's Hard Rock Saloon
and the Raven Pub;

(c) The carrying of the loaded firearm into
two public bars in the hours after midnight
on a Saturday night; and

(d) The production of the loaded handgun in the
context of an altercation between Mr. Petten
and the staff at the Raven Pub.

The starting point for determining whether
these aggravating circumstances are sufficient to
make this an exceptional case is the Ontario
Court of Appeal case of R. v. R.E.W., [2006] O.J.
No. 265, in which Justice Rosenberg sets out the
following conclusions with respect to the
interpretation of section 39(1)(d) at paragraph
44:

(a) The object and scheme of the YCJA and
Parliament's intention indicate that the
Act was designed to reduce the
over-reliance on custodial sentences that
was the experience under the Young
Offenders Act. R. v. C.D.; R. v. C.D.K.,
[2005] S.C.J. No. 79, 2005 SCC 78 at
para. 50.

(b) An expansive definition of "exceptional
cases" would frustrate Parliament's
intention to reduce the over-reliance

1 on custodial sentences.

2 (c) Section 39(1) (d) can be invoked only

3 because of the circumstances of the offence,

4 not the circumstances of the offender

5 or the offender's history.

6 (d) Exceptional cases are those where any

7 order other than custody would undermine

8 the purposes and principles of sentencing

9 set out in section 38. Put another way,

10 section 39(1) (d) is intended to describe

11 the rare non-violent cases where applying

12 the general rule against a custodial

13 disposition would undermine the purpose of

14 the YCJA.

15 (e) Exceptional cases are limited to the

16 clearest of cases where a custodial

17 disposition is obviously the only

18 disposition that can be justified.

19 (f) One example of an exceptional case is a

20 case where the circumstances are so

21 shocking as to threaten widely-shared

22 community values.

23 The purpose of sentencing is to hold a young

24 person accountable through the imposition of

25 meaningful consequences. Would a non-custodial

26 disposition hold T.S. accountable for the section

27 95 firearms offence?

1 The concept of accountability in the YCJA
2 was considered in R. v. D.S., [2009] O.J. No.
3 666, which endorsed the Ontario Court of Appeal
4 interpretation in R. v. A.O., [2007] O.J. No.
5 800. The Court described "accountability" in the
6 YCJA as the equivalent of the adult sentencing
7 principle of retribution, reflecting "the moral
8 culpability of the offender, having regard to the
9 intentional risk-taking of the offender, the
10 consequential harm caused by the offender, and
11 the normative character of the offender's
12 conduct."

13 In assessing the "moral culpability" of T.S.
14 and hence his accountability, it is necessary to
15 embark on the type of analysis of the normative
16 character of his conduct, his intentional
17 risk-taking, and the harm and potential harm
18 flowing from his actions, as was undertaken by
19 Justice Murray at paragraph 13 of R. v. C.L.,
20 [2011] O.J. No. 794.

21 First of all, the normative character of the
22 offence. Possession of a loaded restricted
23 handgun is a very serious offence. An adult
24 convicted of the offence is subject to a minimum
25 three years' incarceration. This indicates how
26 seriously Parliament views the offence. Many
27 courts have observed that citizens of our

1 community are very concerned with the
2 proliferation of handguns. This proliferation
3 not only creates heightened risk for everyone but
4 contributes significantly to a climate of fear
5 and suspicion of others in the community. As
6 stated in the Victim Impact Statement filed in
7 this case:

8 Seeing the gun was a huge shock to
9 me, having never seen such a thing
10 before, let alone in my own
11 'backyard' where I have always
12 felt safe ... It was several
13 months before I had the confidence
14 to go back out in my 'backyard' at
15 night. The image of the gun in
16 the hands of strangers still comes
17 to me sometimes.

18 With respect to intentional risk-taking. No
19 explanation was offered for why T.S. carried the
20 pistol from the moment prior to getting into the
21 taxi at Northlands Trailer Park for the two hours
22 until he handed it to Joshua Petten as Mr. Petten
23 was anticipating fighting the bar staff or
24 manager at the Raven Pub. That T.S. would pat
25 the handgun when asked by Mr. Petten about "our
26 friend" and then hand Mr. Petten the handgun in
27 the midst of an escalating volatile situation is

1 an indication that T.S. recognized that the
2 firearm could be used as a threat at least, if
3 not to cause harm.

4 Although I accept the defence submission
5 that T.S. may have been under the influence of
6 alcohol and somewhat vulnerable away from home
7 and in the presence of the older Joshua Petten, I
8 find his actions of carrying the handgun for
9 approximately two hours and handing it to
10 Mr. Petten made it clear that T.S. possessed it
11 willingly and was fully aware as to why the
12 handgun was there.

13 Further, the minimum drinking age in the
14 Northwest Territories is 19. T.S. was underage;
15 he was carrying 3.7 grams of cocaine and a loaded
16 handgun when he walked in Harley's Hard Rock
17 Saloon and the Raven Pub. The potential for
18 being challenged by management or staff as to why
19 he was there was high.

20 With respect to harm flowing from the
21 offence. As stated by the Court in C.L., T.S.'s
22 offence did not involve the use of the firearm in
23 the sense that it was fired. It was, however,
24 made visible to at least two members of the
25 public, i.e., the author of the Victim Impact
26 Statement and the taxicab driver. There was no
27 reason to carry the loaded .45 calibre handgun

1 other than to cause harm or to threaten to cause
2 harm.

3 Defence cautions the Court to look at the
4 aggravating circumstances of the offence and not
5 the elements of the offence itself in making a
6 determination under section 39(1)(d). This point
7 was made by the Alberta Court of Appeal in R. v.
8 C.D.J., 2005 ABCA 293, with respect to the
9 offence of cocaine trafficking where the Court
10 stated at paragraph 17:

11 What constitutes an "exceptional"
12 case in this sense is not an
13 abstract principle. It depends on
14 the circumstances and aggravating
15 factors of each individual case.
16 Accordingly, not every offence of
17 trafficking in cocaine will merit
18 a custodial disposition. In each
19 case, the circumstances of the
20 offence and the responsibility of
21 the young person must be
22 considered.

23 I accept that the aggravating circumstances
24 must be present and must be sufficient to make
25 the case exceptional; otherwise, any youth
26 charged with section 95(2) of the Criminal Code
27 would be open to a custodial sentence under

1 section 39(1)(d). Not every offence of
2 possession of a loaded handgun without a licence
3 should be open to a custodial sentence under
4 section 39(1)(d). Certainly, for example, a
5 young person who took his father's licensed
6 restricted handgun out of the house to show his
7 friends and then was caught returning it would
8 likely not be such an exceptional case.

9 With respect to the interpretation of
10 section 39(1)(d), I have also reviewed the
11 authorities provided by Crown and defence. They
12 include the following:

13 In R. v. C.L., [2011] O.J. No. 794, the
14 17-year-old was found guilty of the unlawful
15 possession of a loaded handgun, which the youth
16 had stored in a shoebox in his bedroom closet and
17 which he was being paid to hold for someone else.
18 Justice Murray of the Ontario Court of Justice
19 came to the conclusion that "A well-informed
20 community member would be shocked if a
21 17-year-old committing such an offence in these
22 circumstances was not subject to a custodial
23 sentence."

24 In R. v. J.H., [2010] O.J. No. 276, Justice
25 Barnes of the Ontario Youth Court dealt with a
26 15-year-old who was found in the stairwell of an
27 apartment with a handgun concealed in his winter

1 jacket. He also possessed a small bottle of hash
2 oil. Justice Barnes found it aggravating that
3 the youth was in a residential apartment building
4 with a concealed loaded firearm, that it was a
5 public place, and that he was transporting the
6 loaded handgun on foot. In finding that the
7 doorway to custody was open, Justice Barnes made
8 the following observations in reference to
9 firearms consisting of prohibited weapons such as
10 handguns. I have substituted the word "handgun"
11 for emphasis in the quotation.

12 There is nothing normal about an
13 unauthorized citizen, either an
14 adult or young person, possessing
15 a loaded handgun in any segment of
16 Canadian society. Handguns are
17 agents for violence and are used
18 to commit crimes and instill fear.
19 Handguns have created havoc in
20 Canadian society, with their
21 extensive utilization in criminal
22 activities. They have been used
23 to intimidate, to wound, to kill.
24 They have been used in gratuitous
25 violence and to enact revenge,
26 etc., etc. The unauthorized
27 possession of handguns has had a

1 chilling effect on the ability of
2 law enforcement to investigate
3 crimes, as their indiscriminate
4 use by some have instilled fear in
5 many witnesses, resulting in the
6 reluctance of witnesses to assist
7 in the investigation of crimes.
8 Handguns do not only spawn and
9 nurture criminal behaviour of all
10 forms, they have a chilling effect
11 on the ability of law enforcement
12 to effectively investigate crime
13 and hamper efforts to identify the
14 perpetrators of such crime. In
15 effect, the fear that permeates
16 through the public from handgun
17 crimes has a chilling effect on
18 the administration of justice.

19 In R. v. G.S.M.P., [2007] O.J. No. 2385,
20 Justice Weinper of the Ontario Court of Justice
21 Youth Court was dealing with a 17-year-old who
22 had, when he was 15 and on an undertaking,
23 possessed a loaded .22-calibre semi-automatic
24 pistol wrapped in a bandana under the seat of a
25 car. Justice Weinper, in finding the gateway to
26 custody was open, stated at paragraph 21:

27 In my respectful view, anything

1 less than custody for these
2 firearms offences would not
3 address the community's abhorrence
4 over carrying a loaded gun in a
5 motor vehicle. It would shock our
6 society if an individual who
7 carried such a loaded gun in the
8 community could not be considered
9 for a custodial sentence. I
10 therefore conclude that the
11 firearms offences constitute an
12 exceptional case within section
13 39(1)(d) requiring a custodial
14 disposition.

15 R. v. C.D.J., 2005 ABCA 293, is an Alberta
16 Court of Appeal which dealt with the appeal of a
17 sentence of a young person who had been found
18 guilty of one count of obstructing a police
19 officer and one count of trafficking in cocaine.
20 The Court of Appeal found that the sentencing
21 judge was incorrect when he found that there were
22 sufficient aggravating circumstances to make the
23 trafficking case "exceptional" and that the
24 sentencing judge also failed to consider whether
25 the circumstances of the offence were such as to
26 render a non-custodial disposition inconsistent
27 with the purpose and principles of sentencing

1 under the YCJA, a necessary step in the analysis.

2 In R. v. D.W., 2009 SKPC 49, the
3 16-year-old, a former student, went into the
4 gymnasium of a school armed with a pellet handgun
5 with .22-calibre bullets attached and a six-inch
6 hunting knife. He held the assembly of 300 to
7 400 students at gunpoint for 45 minutes. Judge
8 Hinds of the Saskatchewan Provincial Court held
9 the offence was a "violent offence" and custody
10 was available under section 39(1)(a). He made
11 the determination that custody was not available
12 under section 39(1)(d). This determination was
13 done in obiter and the reasoning is not set out
14 in that decision.

15 R. v. C.W., 2007 ONCJ 587, involves a young
16 person possessing a loaded 9 millimetre
17 semi-automatic handgun with 9 millimetre
18 ammunition in a motor vehicle in which he was the
19 sole occupant. Justice Bloomenfield of the
20 Ontario Court of Youth Justice reviewed a number
21 of cases from Ontario regarding whether or not
22 loaded firearms cases fell within the exceptional
23 case category and decided that the case before
24 her was an exceptional case. She found the
25 aggravating circumstances to include: the
26 objective gravity of the offence; the potential
27 lethal danger resulting from possession of the

1 gun; the transportation of the handgun in a motor
2 vehicle and the accessibility of the handgun.

3 Justice Bloomenfield stated at paragraph 16:

4 In my view, these circumstances
5 are so shocking as to threaten
6 widely-shared community values. A
7 non-custodial sentence would be
8 inconsistent with the purpose and
9 principles of section 38 of the
10 YCJA.

11 In summary, I am of the view that the
12 aggravating circumstances of the offence
13 committed by T.S. are such that this is an
14 exceptional case where the imposition of a
15 custodial sentence is the only sentence which is
16 consistent with the purpose and principles set
17 out in section 38.

18 In making this determination, I have
19 considered the defence submission that T.S. was
20 not a single or even the primary perpetrator.
21 The defence submits that the handgun was
22 originally produced by Joshua Petten who took
23 advantage of the vulnerability of T.S., who was
24 in Yellowknife on his own and who was under the
25 influence of alcohol; handed him the handgun;
26 became belligerent and aggressive and then took
27 it back. In my view, the facts of the offence do

1 not support this submission. T.S. accepted the
2 handgun and had possession of it for
3 approximately two hours. His remark and gesture
4 regarding "our friend", being the handgun that he
5 had tucked in his waistband, indicate that the
6 decisions with respect to the handgun were his
7 own. I accept that T.S.'s involvement with
8 another person is a factor to be considered in
9 sentencing, but does not take the circumstances
10 out of the category of "aggravating".

11 With respect to personal circumstances, the
12 Pre-Sentence Report prepared by Probation
13 Services in British Columbia and filed in this
14 court on October 9th, 2013, can be summarized in
15 part by the following:

- 16 (a) T.S. was in custody from March 11th to
17 April 24th, 2013, in the NWT, a period
18 of 45 days;
- 19 (b) After being released on bail, T.S. went
20 to stay with Mary-Lynn Duggin, his father's
21 friend;
- 22 (c) Ms. Duggin does not feel that the home
23 of T.S.'s father, Charles, is a good
24 place for T because his father's
25 lifestyle is not healthy and he has
26 dangerous friends;
- 27 (d) The author of the PSR says that there are

1 concerns regarding the father's lifestyle
2 and activities in the home, but with
3 supervision some of these concerns can be
4 monitored and addressed, as home visits will
5 be conducted;

6 (e) T.S. has had a dysfunctional childhood,
7 having witnessed drug abuse, domestic
8 violence, criminal activity, and parental
9 separation;

10 (f) T.S.'s schooling stopped at Grade 9; he
11 has a short-term memory and processing
12 problem and ADHD; his attendance at school
13 has been sporadic. The author states:
14 "It appeared that T's life outside
15 school prevented him to be a full-time
16 student."

17 (g) There has been no employment history except
18 in the last few months. T has done odd
19 jobs for his father and a friend's dad's
20 carpentry company. The support letters from
21 Mary-Lynn Duggin and Simon Whitlock indicate
22 that T has some motivation to pursue a
23 career in a good trade;

24 (h) T.S. drinks alcohol once per weekend and
25 is a daily- to twice-per-week marijuana
26 user; and

27 (i) Constable Northrup, a Langley Youth at Risk

1 officer, reports that T.S. has been in
2 violation of his house arrest on at
3 least four to five occasions.

4 Having decided that a custodial sentence is
5 required, I must impose the least restrictive
6 sentence that is capable of achieving the purpose
7 contained in section 38(1).

8 In imposing the sentence that follows, I am
9 taking into account the principle of
10 proportionality and that the sentence is to hold
11 T.S. accountable for the offences and to promote
12 his rehabilitation and reintegration into
13 society. The sentence which I consider to be the
14 least restrictive sentence to achieve that
15 purpose also takes in account the sentencing
16 principles in section 38(2), including the
17 sentencing objective of denunciation of unlawful
18 conduct.

19 Section 38(2) (f) provides that the Court may
20 impose a sentence that has the objective to
21 denounce unlawful conduct and to deter the young
22 person from committing offences. The concept of
23 denunciation was explained in the 2005 decision
24 of the Manitoba Court of Appeal in R. v. C.T.,
25 [2005] M.J. No. 515, which states at paragraph 24
26 to 25:

27 Denunciation of unlawful conduct

1 is a discrete principle of
2 sentencing. It is one of the
3 objectives of sentencing set out
4 in section 718 of the Criminal
5 Code. Denunciation is the
6 'communication of society's
7 condemnation of offender's
8 conduct' ... It is 'a symbolic,
9 collective statement that the
10 offender's conduct should be
11 punished for encroaching on our
12 society's basic code of values.'

13 In my view, a deferred custody and
14 supervision would not be adequate or responsive
15 in light of the objective gravity of the offence
16 and the deliberate risk-taking of T.S. It would
17 not be sufficient to promote a sense of
18 responsibility in T.S., nor an acknowledgment of
19 the harm done to the community.

20 In imposing the following sentence, I have
21 taken into account T.S.'s guilty plea with
22 respect to both of these offences. I find this
23 guilty plea to be a significant mitigating
24 factor.

25 I also take into account his lack of a
26 criminal record.

27 In the absence of remand time, I would

1 impose a global custody and supervision order of
2 240 days consisting of 160 days of open custody
3 followed by 80 days of community supervision. I
4 take into account the remand time of 45 days for
5 which I will give him credit for 70 days.

6 Using the approach adopted by the Alberta
7 Court of Appeal in R. v. D.M.T., 2012 ABCA 142,
8 522 A.R. 180, the 70 days will be taken off the
9 custody portion of the custody and supervision
10 order and T.S. will be subject to an additional
11 90 days of open custody and 80 days of community
12 supervision. This is a global sentence for both
13 offences.

14 Following the expiration of the custody and
15 supervision order, T.S. will be subject to a
16 12-month probation order with the following
17 terms: To keep the peace and be of good
18 behaviour; to appear before the youth justice
19 court when required by the Court to do so.

20 In addition, the following optional terms
21 will apply. Madam Clerk will hand out a page
22 with those options.

23 (c) Report to a youth worker within two days of
24 the expiration of your custody and
25 supervision order and thereafter as directed
26 by the youth worker;

27 (d) Be under the supervision of the youth worker

1 for the full term; that is, 12 months of
2 this probation order;

3 (e) Actively participate in and successfully
4 complete all counselling directed by the
5 youth worker including but not limited to
6 counselling for substance abuse;

7 (f) Reside at a residence directed by your youth
8 worker and not change that residence without
9 prior written permission of the youth worker
10 or the Court; obey all the rules and
11 regulations of the said residence;

12 (g) Abstain completely from consumption and
13 possession of alcohol and non-prescribed
14 illegal drugs;

15 (h) For the first six months of the probation
16 order, you shall be inside your residence
17 between the hours of 10 p.m. and 7 a.m.
18 unless for a medical emergency or within
19 the company of your father or any other
20 adult so authorized by your youth worker or
21 with the written permission of your youth
22 worker which you shall carry with you; you
23 shall present yourself at the door or the
24 telephone of your residence to any RCMP
25 officer or youth worker who attends in order
26 to verify compliance with this term;

27 (i) If you are so directed by your youth worker,

- 1 you are to attend and complete a
2 psychological assessment at Youth Forensics
3 and/or a Fetal Alcohol Spectrum Effect
4 Disorder assessment at the Astante Centre;
5 (j) You are to attend and complete such
6 educational/vocational/life skills
7 programming as directed by your youth
8 worker;
9 (k) If you are so directed by your youth worker,
10 you are to participate in and complete the
11 Intensive Support and Supervision Program;
12 (l) If you are so directed by your youth worker,
13 you are to attend and complete a full-time
14 residential attendance program and abide by
15 the rules and regulations of the program;
16 and
17 (m) Sign releases in favour of your youth worker
18 to enable the youth worker to confirm
19 attendance at employment, school, or
20 counselling

21 In addition, pursuant to section 51(3) of
22 the Youth Criminal Justice Act, T.S. will be
23 prohibited from possessing any firearms,
24 ammunition, explosive devices, restricted
25 weapons, prohibited weapons, prohibited
26 ammunition, prohibited devices, or crossbows for
27 a period of two years.

1 There will also be an order pursuant to
2 section 487.051 of the Criminal Code for T.S. to
3 provide a sample of his DNA, section 95 being a
4 secondary offence. I am of the view that the
5 seriousness and circumstances of these offences
6 justify an intrusion on T.S.'s privacy interests.

7 Finally, there will an order for the
8 forfeiture and destruction of the firearm,
9 magazine, ammunition, and cocaine in the form
10 provided by the Crown.

11 I invite the Crown to withdraw counts 2, 3,
12 and 4.

13 MR. DEMONE: Yes. Please. Thank you, Your
14 Honour.

15 THE COURT: Counsel, do you have any
16 comments or suggestions with respect to the terms
17 of the probation order? First, from you,
18 Mr. Demone.

19 MR. DEMONE: No thank you, Your Honour. I
20 would just have one clarification with respect to
21 the reasoning. I just wasn't clear on something.

22 THE COURT: All right. Mr. Toner,
23 anything with respect to the probation order?

24 MR. TONER: No, Your Honour. Thank you.

25 THE COURT: Mr. Demone.

26 MR. DEMONE: I just -- perhaps I didn't
27 hear it properly, Your Honour. I just wanted to

1 clarify your reasoning as to -- that Mr. Petten
2 said, You have our friend? and that T.S. said, I
3 have it right here. Words to that effect.

4 THE COURT: So the reasoning or --

5 MR. DEMONE: Just that that's what you'd
6 intended to say and perhaps I just didn't hear
7 it. Just that -- in terms of the Agreed
8 Statement of Facts, Mr. Petten had said, Do you
9 have our friend? T.S. responded to -- words to
10 the effect, I have it right here. I thought I
11 heard it backwards.

12 THE COURT: Oh. If you did -- I'll just
13 check what I said.

14 MR. DEMONE: I just wanted to check that.

15 THE COURT: Did I say it correctly when I
16 said the Agreed Statement of Facts, or the facts
17 at the beginning?

18 MR. DEMONE: I thought when you were
19 speaking through your reasoning it may have been
20 backwards, but --

21 THE COURT: It could have been. I have,
22 as far as my facts, that Mr. Petten asked T.S.,
23 "You still got our friend with you?" T.S.
24 responded, "Yeah, I got it right here." If I
25 said it differently during the reasons, we'll
26 change the reasons accordingly.

27 MR. DEMONE: Thank you for clarifying.

1 THE COURT: Thank you. Mr. Toner,
2 anything from you?
3 MR. TONER: No. Thank you, sir.
4 THE COURT: Anything further from the
5 Crown?
6 MR. DEMONE: No thank you, Your Honour.
7 THE COURT: T.S., please go with the
8 officer now. You're in custody. Good luck. We
9 will close court.

10

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13 Certified Pursuant to Rule 723
14 of the Rules of Court

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17 Jane Romanowich, CSR(A)
18 Court Reporter

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