

"Youth client spared jail after pleading guilty to home invasion with imitation gun" – [COMMENTS BY RICHARD NEARY]

File No: 4949-2-C  
Registry: Victoria

In the Provincial Court of British Columbia  
(YOUTH COURT)

REGINA

v.

ORAL REASONS FOR SENTENCE  
OF  
THE HONOURABLE JUDGE QUANTZ

COPY

Youth Matter-Restriction on  
Access,s.118 YCJA

Crown Counsel:	D. Scanlan
Counsel for the Accused G_:	R. Neary
Counsel for the Accused M_:	R. Farvolden
Place of Hearing:	Victoria, B.C.
Date of Judgment:	April 26, 2011

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[1] THE COURT: These young men are before me following guilty pleas to three serious offences that arose out of one incident on the 4th of February 2010. The offences are: assault with a weapon, using a pellet gun; break and enter of a dwelling house, which for an adult is punishable by up to life imprisonment; and assault with a weapon, using bear spray.

[2] The incident involved a home invasion with the goal of taking marihuana or money from a person believed to be a drug dealer. The fact the person was a drug dealer does not make it less serious, but I have to say I would view the incident as much more serious if it involved, for example, a family or an elderly couple.

[3] I am satisfied that both of these young men are remorseful. The reason I have come to that conclusion is not simply because they said it to the probation officer, which is easy, but they have also demonstrated remorse by pleading guilty, by cooperating with the police right from the outset, and by following what are very strict court orders for persons of their age.

[4] Another factor that is extremely important for me as a sentencing judge is the support and involvement of the parents. The law does provide that youths receive a harsher

sentence if they have effective parents, but the fact of the matter is that is what can happen as the court is required to primarily consider what sentence will meet the long-term good of the individuals and the long-term protection of the public. If youths have supportive parents to help them, for example, and I do not doubt this is the case here, follow court orders, help them go to their rehabilitative programs, provide them support in life, the reality is that the court, with a great deal of confidence, can place less reliance on custody than is the case when they do not have that support.

[5] I also take into consideration the positive pre-sentence reports and the mental health assessments. I am satisfied that with the support of their parents these two young fellows represent a low risk of re-offending. It is also important to note that neither of them have a prior history before the court.

[6] As counsel have identified, unlike the case of adults where the primary principles I would be considering are what sentence is required to deter other people like yourselves that may have the bright idea of committing a home invasion, or to deter you, those are not factors to be considered in a youth sentence. Here, my primary obligation is to impose a sentence that is most likely to meet the long-term protection

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of the public by supporting your rehabilitation.

[7] In all the circumstances, I am satisfied that that sentence is reflected in the joint submission of six months deferred custody followed by 10 months probation in the form of an ISSP order.

[8] In terms of the conditions, Madam Clerk, the conditions are as set out in the pre-sentence report with the following clarifications and modification, and the sentence is essentially the same for both young men, but follow the conditions in the pre-sentence report.

[9] With regard to that, just for clarity, in terms of the curfew, it will read, when you prepare the deferred custody and supervision order, that the curfew is from 9 p.m. to 7 a.m. Sunday to Thursday and 10 p.m. to 7 a.m. Friday and Saturday, and that in the ISSP order, the curfew will read from 10 p.m. to 7 a.m. seven days a week.

[10] I am not including condition 9 in either case. There will be no requirement to participate in the victim/offender reconciliation program.

[11] With regard to condition 8, which is a letter of apology, I am going to leave that to the discretion of the youth worker, and where that condition is followed, if so directed,

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you will write an apology letter to the satisfaction of your youth probation officer to the victims, , and the reason why I think that should be in your discretion is the other thing I am quite aware of is if you start helping yourselves to money or drugs, there is a very good likelihood you are going to receive a punishment far greater than the court would impose, which can include missing fingers, et cetera. So I do not know if it is wise just to leave things as they are, I am inclined to think so, rather than reminding these two persons of the incident and the fact they are on an order, but you are with a very experienced probation officer, so I will amend it as I said.

[12] With regard to the community work service order, for both persons it will be to complete 40 hours of community work service within the first six months or during the term of the deferred custody and supervision order.

[13] The last condition I am adding to both orders is any breaches are to be brought before me. The reason for that is I do not anticipate there will be any breaches, but these offences are so serious that you can very easily end up in-custody for breaches and I think it is important that the judge who imposed the sentence and heard all the circumstances is involved in dealing with those breaches.

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[14] So subject to any other comments, that is the sentencing I am imposing. Anything else?

[15] MR. NEARY: Nothing for me, Your Honour. Thank you.

[16] THE COURT: Mr. Langran? Mr. Langran, did you have something?

[17] MR. LANGRAN: Your Honour, just a couple of things. Would you --

[18] THE COURT: Yes.

[19] MR. LANGRAN: -- release the psychological assessments to our office?

[20] THE COURT: Yes, so ordered.

[21] MR. LANGRAN: And to confirm, the ISSP order, does that run consecutive to DCSO or concurrent?

[22] THE COURT: Consecutive.

[23] MR. LANGRAN: Thank you.

(REASONS CONCLUDED)