In the Court of Appeal of Alberta

Citation: R v TLC, 2026 ABCA 363

Date: 20261113
Docket: 2401-0296A
Registry: Calgary

Between:

His Majesty the King

Respondent

- and -

TLC

Appellant

Restriction on Publication

Identification Ban – See the *Youth Criminal Justice Act*, section 110(1).

No person shall publish the name of a young person or any other information that may identify a young person as having been dealt with under the *Youth Criminal Justice Act*.

NOTE: Identifying information has been removed from this judgment to comply with the ban so that it may be published.

Identification Ban – See the *Youth Criminal Justice Act*, section 111(1).

No person shall publish the name of or any other information that may identify a child or young person as having been a victim of an offence committed or alleged to have been committed by a young person.

NOTE: Identifying information has been removed from this judgment to comply with the ban so that it may be published.

The Court:

The Honourable Justice Bernette Ho
The Honourable Justice William T. de Wit
The Honourable Justice Tamara Friesen

Memorandum of Judgment

Appeal from the Sentence by
The Honourable Justice R.J. O'Gorman
Sentenced on the 8th day of October, 2024
(2024 ABCJ 23, Docket: 221037617Y1)

Memorandum of Judgment

The Court:

[1] On June 21, 2022, following a series of escalating aggressive interactions, the appellant, who was driving a truck, followed the victim, who was on foot, into an alley. The appellant struck the victim with her truck, flinging her into the air and causing her to strike her face on the pavement, and then drove away. The victim suffered lasting injuries including a torn ligament, severe road rash and loss of skin on her face, as well as other soft-tissue injuries and abrasions.

[2] The appellant, an Indigenous young person, was convicted of assault causing bodily harm and failing to stop at the scene of an accident. She received a global sentence of 120 days of custody and supervision pursuant to the *Youth Criminal Justice Act*, SC 2002, c 1. She argues this is not a fit and proportionate sentence and appeals her sentence on four grounds: 1) failure to exhaust non-custodial options prior to imposing a sentence of incarceration, 2) failure to address Indigenous sentencing factors; 3) failure to apply the principle of parity; and 4) misapprehension of the facts.

[3] The Crown concedes the appeal on the second ground: the trial judge committed an error in principle by failing to consider Indigenous sentencing factors in sentencing the appellant and that error impacted the sentence.

[4] We agree. The pre-sentence report established that the appellant is Indigenous. Trial counsel brought this to the sentencing judge's attention and expressly asked him to consider her Indigeneity when crafting an appropriate sentence. Despite being provided with this information, the sentencing judge did not refer to the appellant's Indigenous sentencing factors, or indeed to any of her personal circumstances in rendering his oral decision. His brief reasons for imposing the custodial sentence were as follows:

> THE COURT: I think [Crown counsel] summed it up very well; you could have killed the victim in this case. In fact, I have reason to believe from the evidence you gave me at trial that you had no regard for her personal welfare whatsoever, and I feel that a non-custodial sentence is not available in this case.
>
> There has to be a meaningful consequence, given the severity of the injuries suffered by the victim. The hospitalization, the loss of her job, the impact it had on her, there is, in my opinion, no alternative to the Court, and I appreciate the Court of Appeal has said that we should be careful as to having to necessarily always find exceptional circumstances but here I do not find sufficient reason not to impose a custodial sentence.

[5] It is well-established that in sentencing a young person, the court must consider all reasonable alternatives to imprisonment: *YCJA*, ss 38(2)(d), 39; ***R v IM***, 2025 SCC 23 at para 69; ***R v CD; R v CDK***, 2005 SCC 78 at paras 48-50. The need to consider alternatives to imprisonment where the young person is also Indigenous is particularly acute as specified in s 38(2)(d) of the *YCJA*. Alongside s 718.2(e), this is a remedial provision designed to ameliorate the crisis of disproportionate and excessive imprisonment of Indigenous people: ***R v Cope***, 2026 SCC 32 at paras 1, 43-44; ***R v Ipeelee***, 2012 SCC 13 at paras 58-59; ***R v AWB***, 2018 ABCA 159 at paras 31-33. The legislation places a "mandatory duty" on sentencing judges to consider Indigenous sentencing factors when sentencing an Indigenous young person: ***AWB*** at para 33, quoting ***R v Anderson***, 2018 MBCA 42 at para 59. The sentencing judge did not meaningfully engage with or apply this principle and this impacted the sentence. Therefore, it must be set aside and a new sentence imposed: ***Cope*** at para 132; ***R v Lacasse***, 2015 SCC 64 at paras 44 and 46.

[6] To assist us in crafting a fit sentence, we have before us the same material that was before the trial judge, as well as an Indigenous sentencing report, prepared for the purpose of resentencing.

[7] The appellant seeks a non-custodial sentence of 12 months' probation. The Crown seeks a 90-day custody and supervision order, apportioned as 60 days in closed custody and 30 days under community supervision. The Crown further submits an intermittent sentence may be imposed in relation to the custodial portion of the sentence in order to allow the appellant to continue attending school.

Sentencing reasons

[8] Through the *YCJA*, Parliament has established a separate criminal justice system for young people based on the foundational principle of their diminished moral blameworthiness: *YCJA,* s 3(1)(b). Recognizing their higher level of dependency and reduced level of maturity, the goal of the *YCJA* is to protect the public by "holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person" while at the same time promoting their rehabilitation and reintegration into society: *YCJA,* s 3(1)(a). The process is individualized and involves a careful balancing of proportionality, accountability and rehabilitation.

[9] Section 38 provides further guidance to the Court when sentencing young persons, including the need to consider "all available sanctions other than custody that are reasonable in the circumstances," particularly in the case of Indigenous young people (s 38(1)(d)). Similar to adult sentencing, the Court must consider, among other factors, whether the sentence imposed is similar to other sentences imposed in the region; is proportionate to the seriousness of the offence and the

degree of responsibility of the young person; promotes acknowledgment of harm; and is the sentence most likely to promote rehabilitation and reintegration: *YCJA*, s 38(2).

[10] Custody is an exceptional measure and may only be imposed on a young person if one of the four factors set out in section 39(1) of the *YCJA* are met. Section 39(1)(a), which allows for a custodial sentence to be imposed where the young person has committed a violent offence, clearly applies in this case. The appellant intentionally assaulted the victim with a motor vehicle, causing her bodily harm. This constitutes a violent offence for the purposes of s 39(1)(a), as defined by the Supreme Court in ***CD; CDK*** at para 70: a violent offence is "an offence in the commission of which a young person causes, attempts to cause or threatens to cause bodily harm".

[11] Even so, s 39(1)(a) simply sets out a pathway for imposition of a custodial sentence, it does not require a custodial sentence to be imposed. Consistent with the overall scheme of the *YCJA*, s 39(9) requires the Court to explain why a non-custodial sentence would not achieve the sentencing objectives set out in s 38(1), even in the case of violent offences. Here, the only non-custodial option this Court might logically consider is a probation order. A deferred custody and supervision order, which allows a young person to serve their custodial disposition in the community, is not available for offences like this one, where the young person caused or attempted to cause serious bodily harm: *YCJA*, s 42(5)(a). The trial judge found the appellant caused bodily harm to the victim including a torn ligament that took about a year and half to heal, among other injuries: ***R v TLC***, 2024 ABCJ 23 at paras 65-66. These injuries constituted serious bodily harm such that a deferred custody and supervision order was unavailable.

[12] This Court has grappled with the "apparent incongruity" of the *YCJA* permitting the imposition of a probation order for an offence causing serious bodily harm, given that probation is "a more lenient sentence than [a deferred custody and supervision order] which is statutorily precluded": ***R v IG***, 2024 ABCA 264 at para 29. Probation remains an available sanction when a young person causes or attempts to cause serious bodily harm, and no special test such as a requirement for "exceptional circumstances" applies as a general precondition to a probation order for such offences: ***IG*** at paras 27-28. However, "the inherent gravity of an offence involving serious bodily harm and its consequences, the unavailability of a [deferred custody and supervision order], and the intention of Parliament reflected in section 42(5)(a), combined with sentencing guidance from appellate courts, will generally lead to a conclusion that custody is required to achieve a proportional, meaningful consequence in the circumstances": ***IG*** at para 28. As summarized by this Court in ***IG***:

> [30] [I]n cases involving serious bodily harm, when determining whether a non-custodial sentence would accord with the purpose and principles of section 38, a youth sentencing judge must meaningfully grapple with the serious bodily harm, the effect and intent of section 42(5)(a) as interpreted by the jurisprudence, and whether a non-custodial sentence is consistent with the purpose and principles of section 38, including serving as a meaningful consequence, in all the circumstances.

[13] The appellant's Indigenous sentencing report, as well as her presentence report, provide some insight into her personal circumstances at the time of the offence. Most significantly, she was dealing with the recent and unexpected death of her father, from whom she was somewhat estranged. Her paternal great-grandparents, and possibly her paternal grandmother and great aunts, were residential school survivors. The intergenerational trauma caused by the residential school system was evident in her father's substance abuse and related problems with the criminal justice system and housing instability. These things impacted on his parenting abilities and therefore on the appellant. The appellant also reported experiencing racist bullying at school and sexual violence as a teenager.

[14] We agree with the appellant that her individual circumstances at the time of the offence, including her youth, her family life, her personal experiences with racism, and especially her recent personal traumas and losses, likely impacted on her decision-making abilities on the day in question, and therefore on her moral culpability: ***Cope*** at paras 46-48; ***Ipeelee*** at para 73.

[15] We also agree with the Crown that using a vehicle as a weapon is extremely dangerous, and carries a high level of moral blameworthiness, even for a 17-year-old youth with the appellant's particular characteristics and background. The victim in this case sustained a torn leg ligament, soft-tissue injuries, and extensive abrasions on her face and other parts of her body. She also suffered offence-related anxiety, setbacks in her career and educational pursuits, and disruptions to her personal relationships. We note that the victim could have been much more severely injured, or even killed, because of the appellant's intentional actions.

[16] While the sentence imposed by the sentencing judge did not account for the appellant's diminished moral blameworthiness in imposing a 120-day custodial sentence, these offences were serious and intentional and some amount of custody is required if we are to impose a meaningful sentence that appropriately protects the public by balancing the principles of proportionality, rehabilitation and accountability. A non-custodial sentence of probation would not be sufficient to meet the sentencing objectives of s 38 of the *YCJA* primarily because it would not be proportionate to the seriousness of the offence and the appellant's degree of responsibility for committing it. In our view, a probation order for an offence of this moral magnitude would not promote a sense of responsibility in the young person, nor would it provide appropriate acknowledgment of the harm done to the victim in this case. Applying the principles in ***IG***, given all the circumstances of the appellant and of the offence, including the seriousness of the harm caused to the victim, a custodial sentence is necessary.

[17] The only factually similar case the parties were able to provide us with was ***R v SR***, 2018 ABPC 108. In that case, a 17-year-old youth, while driving a stolen SUV, accelerated toward the victim who was standing in front of the vehicle demanding that the driver slow down. The vehicle struck the victim, who was then stuck on the hood and bumper for a period of time before eventually falling to the ground. The victim landed on his head and dislocated his shoulder and

suffered pain and stiffness for several weeks afterwards. The young person then fled the scene in the SUV.

[18] The sentencing judge in ***SR*** struggled to find similar fact scenarios under the *YCJA*, and therefore looked to adult sentencing cases to assist in determining an appropriate sentencing range, including ***R v Jamal-Al-Deen***, 2011 ABPC 187; ***R v Abu Gosh***, 2006 ABPC 153; ***R v Bradford***, 2010 ABQB 317; ***R v Cloutier***, 2017 ABPC 3. He drew from these cases the common thread that assaulting another person with a motor vehicle and then leaving the scene without offering assistance or providing information as required by law is a "high moral culpability" offence which generally calls out for a serious sentence that meets the objectives of denunciation and deterrence. He then considered the cases in the context of the sentencing principles described in the *YCJA* and determined that an appropriate sentence was a six-month closed custody and supervision order.

[19] While the facts underlying the assault charges in both ***SR*** and the present case are similar, the young person in ***SR*** was driving a stolen car and had an extensive prior youth record of 29 convictions which resulted in sanctions including a prior 30-day closed custody order plus 15 days of supervision. She also entered guilty pleas for other charges, including breaches of a previous youth sentence. The appellant in this case has a very limited criminal history consisting of two offences for which she received probation, a mitigating factor we must weigh in the balance, in addition to considering her reduced moral blameworthiness as described above.

[20] We therefore find that the appropriate youth sentence under the *YCJA* for this offence and this young person is a 90-day custody and supervision order: to be served as 60 days in custody and 30 days under supervision in the community.

[21] But that does not end our analysis. Because of the error made by the sentencing judge and the delay in bringing both trial and appeal matters before the Court, the appellant is being sentenced at the age of 22 for something she did when she was 17. In the ordinary course, it is important to have "timely intervention that reinforces the link between the offending behaviour and its consequences": *YCJA*, s 3(1)(b)(iv). In ***SR***, the sentencing occurred within seven months of the date of the offence, before the young person turned 18. That kind of timely intervention has not occurred in this case.

[22] As a result of delay, the appellant would be required to serve her youth sentence in an adult correctional facility, where she will be unable to access any of the other services and supports designed specifically to assist young people serving custodial sentences in their efforts to rehabilitate and reintegrate into society. To take one example, school must be made available to young people serving custodial sentences, and various aspects of the *YCJA* are designed to support this and minimize disruptions to education: see e.g. ss 85(5)(a)(ii), 91(1)(b)(i); Brock Jones, Emma Rhoes & Mary Birdsell, *Prosecuting and Defending Youth Criminal Justice Cases: A Practitioner's Handbook* (Toronto: Emond, 2016) at 309.

[23] The appellant is currently upgrading her high school diploma. She is also working for her mother's cleaning company. Her Indigenous sentencing report illustrates many ways in which she is now reconnecting with her Indigenous culture, and her extended family members. She has been on release conditions since the date she was charged and she has not accrued any other charges since that time (in the following four and a half years). She has been subject to a driving prohibition which she has not breached. Simply put: the record before us indicates the appellant is not the person today that she was when she committed this offence.

[24] We find that placing the appellant in custody would not be in the interests of justice considering the appellant would have to serve her sentence in an adult facility, she is a young Indigenous woman and Indigenous women are overrepresented in our prison system, the passage of time, and the appellant's significant efforts at rehabilitation and reintegration since the date of the offence: ***IG*** at paras 42-43; ***R v KE***, 2025 ABCA 111 at para 15. Accordingly, we stay the imposition of the custodial sentence.

Appeal heard on October 20, 2026

Memorandum filed at Calgary, Alberta
this 13th day of November, 2026

Ho J.A.

de Wit J.A.

Friesen J.A.

Appearances:

T. Spark
for the Respondent

S.Niaz
for the Appellant