NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. S.N.G.*, 2007 NSCA 83

Date: Decision Date 20070706
Docket: CAC 276940
Registry: Halifax

Between:

S.N.G.

Appellant

v.

Her Majesty The Queen

Respondent

Restriction on publication: **Pursuant to s. 110(1) and 111(1) of the *Youth Criminal Justice Act.***

Revised Decision: The text of the decision has been revised according to the erratum dated July 9, 2007.

Judge(s): Bateman, Oland and Fichaud, JJ.A.

Appeal Heard: June 8, 2007, in Halifax, Nova Scotia

Held: Leave to appeal against sentence granted but appeal dismissed as per reasons for judgment of Oland, J.A.; Bateman and Fichaud, JJ.A. concurring.

Counsel: Shawn A. Brown, for the appellant
Peter P. Rosinski, for the respondent

Reasons for judgment:

[1] On July 5, 2006 S.N.G., a young person pursuant to the *Youth Criminal Justice Act* ("*YCJA*") consented to the facts as provided by the Crown to the court, and pled guilty to charges of (a) break and enter of a dwelling and committing assault causing bodily harm, contrary to s. 348(1)(b) of the *Criminal Code*, and (b) possession of a weapon, a baseball bat, for the purpose of committing an indictable offence contrary to s. 88. Judge Carole A. Beaton found him guilty, and ordered a pre-sentence report and a psychological assessment.

[2] At the conclusion of the January 4, 2007 sentencing hearing, the judge sentenced the appellant to 18 months custody and supervision on the s. 348(1)(b) charge and three months custody and supervision on the s. 88 charge to run concurrently, for a total period of custody and supervision of 18 months. She ordered that he be subject to a firearms prohibition order (s. 51 of the *YCJA*) and that he submit a DNA sample (s. 487.051(1)(b) of the *Code*). The appellant applies for leave to appeal against sentence and, if granted, appeals the sentence.

[3] For the reasons that follow, I would grant leave but dismiss the appeal against sentence.

Facts

[4] The appellant, who lives in Sydney, alleged that one Sergio Fuentes had sold him a car for $6,000. The vehicle was worth over twice that amount, registered to Mr. Fuentes, and subject to a bank lien which Mr. Fuentes and his grandmother signed. Mr. Fuentes denies that he sold it to the appellant. Mr. Fuentes took the car when he moved from Sydney to Amherst to live with his grandmother.

[5] The appellant, his father and two adults drove from Sydney to Amherst in a van which his father had rented, to repossess the car. The appellant brought a baseball bat with the tip cut off flush. Beforehand, the appellant had someone call Mr. Fuentes' grandmother's house to confirm that Mr. Fuentes was there. On their arrival, the appellant, his father and a third individual entered the house. Mr. Fuentes, who was asleep on the couch, was shaken awake by one of the others. The appellant hit him in the head with the blunt end of the bat. He later told the

police that “I flipped right out.” One of the adults restrained him. Together with his father and the others, the appellant took the car and returned to Cape Breton. On the way, one of the adults threw the bat out of the car. The police found the car in the appellant’s driveway in Sydney.

[6] Mr. Fuentes received 11 stitches for a laceration to his forehead, deep enough to tear the skin and muscle as well as the covering on the bone. When arrested, the appellant said to the police “Buddy wasn’t beat that bad. He only got one shot. The guy is lucky he isn’t dead.”

Issues

[7] The appellant's grounds of appeal against sentence are as follows:

1. the judge erred in imposing a sentence that was demonstrably unfit in all of the surrounding circumstances;

2. she erred by placing too much emphasis on a concept equivalent to general and specific deterrence, and by imposing a sentence which was harsh and excessive in the circumstances; and

3. she improperly applied the purposes and principles of sentencing as set out in the *YCJA*.

Standard of Review

[8] In *R. v. J.R.L.*, 2007 NSCA 62 (C.A.), this court stated:

> ¶ 24 The standard of review of a sentence of the Youth Court is the same as that for an adult sentence. See: **R. v. T.M.D.**, [2003] N.S.J. No. 488, 2003 NSCA 151, para. 8 and R. v. C.N., [2006] O.J. No. 3825 (C.A.) para. 20. Our role is to examine the decision and consider whether the sentencing judge erred in principle, failed to consider or overemphasized a relevant factor, or imposed a demonstrably unfit sentence. Whether a youth sentence is unfit, must be measured in the context of the purposes and principles of sentencing as set out in detail in the **YCJA**.

The Decision of the Youth Justice Court Judge

[9] Early in her decision, Judge Beaton reminded herself that the *YCJA* provides that the emphasis of her deliberations must be upon the rehabilitation of the young person. She referred to the guiding principles as set out in the preamble and more particularly discussed in ss. 38 and 39. After recognizing that, under s. 39, a young person cannot be committed to custody except in the enumerated circumstances, the judge found that this was clearly a situation where the appellant had committed a violent offence pursuant to s. 39(1)(a). She then identified mitigating and aggravating features and went on to consider the balancing of those factors. In doing so, she was mindful of comments made in *R. v. J.S.*, 2006 O.J. No. 2654 (Ont. C.A.), which I will address later in this decision.

[10] The judge then continued:

> [14] I am well familiar with the principles set out in section 38 and section 39 as I've said a few minutes ago. The question is, in my view, properly emphasizing the rehabilitation of Mr. G. and taking into account the role he played in the offences, the nature of the offences and the harm suffered by the victim, is this a case where Mr. G.'s rehabilitation can best be achieved in the community or in some other type of setting, or is this a situation where Mr. G.'s rehabilitation can only be addressed within the context of the custodial setting? (Emphasis added)

She had reviewed the September 8, 2006 pre-sentence report and the December 4, 2006 Psychological Assessment Report prepared by the IWK Youth Forensic Services (the "IWK Report"). That material indicated that the appellant, 17 years old when charged, had grade nine education and no prior record of offences prior to his guilty plea. From a young age, he struggled in school and was diagnosed with Asperger's Syndrome, which the IWK Report assessed as mild.

[11] The IWK Report described a history of domestic violence, gambling addictions, on-going conflict and possible alcoholism by both parents. Since his parents' separation in early 2005, the appellant has lived with his father. He earns money by fixing up and reselling dirt bikes, motor bikes, ATVs and snowmobiles.

[12] The concluding paragraph of the pre-sentence report read:

> Should it be deemed appropriate by the Court to impose a period of supervision on the young person, it is felt he would be a suitable candidate for same. It is also felt the young person may benefit from attending anger management counselling as well as contact with the Mental Health Clinic for any counselling he may require.

[13] The clinical psychologist involved in the preparation of the IWK Report made several recommendations, including mental health counselling, consultation with addictions services, and exploration of the appellant's eligibility for adult based community support programs. The first recommendation read:

> 1. THAT S. receive a period of Probation with specific conditions related to attendance and compliance with counselling and related training programs, keeping the peace, non-contact with the identified victim, being prohibited from possessing weapons and non-association with people identified as having a criminal background.

[14] Having reviewed that material and the victim impact statement, and having heard submissions from counsel for the parties, the judge ordered a custodial sentence of 18 months, 12 months in the Waterville facility and six months under supervision in the community on certain conditions. She concluded:

> [25] All of the information that I referred to as contained in the assessment and the very helpful summary which I just quoted leads me to the conclusion that the only way to properly address Mr. G.'s rehabilitation is to impose a period of custody. Mr. G. needs guidance, he needs positive reinforcement, he needs a structured program of counseling, he needs a structured program of education and he needs some in-depth, serious one-on-one work and he hasn't been accessing that in the community. I was very disappointed to read that Mr. G. and his family did not attend for the counseling which was arranged for June of 2006 as referred to on page 13 of the report. One would have hoped that intensive community-based treatments could have avoided the result that has come about today in terms of the necessity for custody but it wasn't followed up and it doesn't leave the court with any warm feeling that follow-up can be relied upon to occur if Mr. G. and his family are left to their own devices. I do not see, when I consider the options open to the court, that there can be said to be any alternative to custody that might be available that is going to meet the very pointed needs that Mr. G. has as set out in the report and I think it does a disservice to Mr. G. to simply send him home. . . .

> [26] The period of custody has to be of a length that is meaningful enough to ensure that Mr. G. receives the programs of rehabilitation that I know can be made available to him at the Youth Centre in Waterville. The IWK team is on-site in Waterville, educators are on-site and a whole host of individuals are on-site to provide one-on-one and group assistance to Mr. G. that he is not going to get in the community and - to be perfectly blunt about it - that he's not going to get inside his father's home. (Emphasis added)

Analysis

1. Improper application of the purposes and principles of sentencing

[15] Counsel for the appellant in her oral submissions having described the fourth ground of appeal as the primary one, I will consider it first. In brief, the appellant acknowledges that having found that he had committed a violent offence pursuant to s. 39(1)(a), it was open to the judge to consider custody. However, he argues that the judge failed to consider alternatives to custody as required by s. 39(2) and (3) of the *YCJA* which read:

> Alternatives to custody
>
> 39 (2) If any of paragraphs (1)(a) to (c) apply, a youth justice court shall not impose a custodial sentence under section 42 (youth sentences) unless the court has considered all alternatives to custody raised at the sentencing hearing that are reasonable in the circumstances, and determined that there is not a reasonable alternative, or combination of alternatives, that is in accordance with the purpose and principles set out in section 38.
>
> Factors to be considered
>
> (3) In determining whether there is a reasonable alternative to custody, a youth justice court shall consider submissions relating to
>
> (a) the alternatives to custody that are available;
>
> (b) the likelihood that the young person will comply with a non-custodial sentence, taking into account his or her compliance with previous non-custodial sentences; and

> (c) the alternatives to custody that have been used in respect of young persons for similar offences committed in similar circumstances.

[16] The appellant's submissions are largely founded on the conclusory paragraph of the pre-sentence report and the first recommendation in the IWK Report, combined with his counsel's arguments at the sentencing hearing for a non-custodial sentence. He argues that the judge's decision did not review in any detail alternatives to custody available in the community, nor refer to the option of going west to work, which his parents supported. In his view, rather than considering these alternatives, the judge took the approach that once custody was available, a custodial sentence would follow and that, in doing so, she erred.

[17] With respect, the appellant's argument is without merit. The judge described the presentence report and the IWK Report as follows:

> [17] The pre-sentence report was helpful to the court although it's somewhat dated now. It was prepared very early in September and not unlike most young people Mr. G.'s life has carried on since then and there have been some changes in his circumstances.
>
> [18] The report prepared pursuant to the provisions of section 34, conducted by the IWK Youth Forensic Services, is very detailed and was of great assistance to the court and no doubt to counsel in coming to an understanding of how it is that Mr. G., through his life and through his upbringing, has evolved to the point that he finds himself here today facing disposition. . . .

She then proceeded to recount and consider the positives and negatives as set out in those reports. On the positive side, she spoke of family support and the appellant's self-taught mechanical aptitude and abilities. On the negative side, among other things, she addressed the family dynamic which had been particularly difficult in the past, the appellant's lack of ability or motivation, or both, with regard to education or counselling, and the vagueness in many aspects of his life.

[18] In regard to that sense of vagueness, the judge stated:

> [19] . . . As another example he couldn't articulate any future employment plans other than to say that he has an uncle in Alberta who can get him a job, and Mr. G. has further expanded upon that this afternoon. It is clear to anyone who would have occasion to read the report that Mr. G. has a tremendous amount of

> unstructured time on his hands. Further there are no rules for Mr. G. within the setting where he resides. . . .

[19] What had been presented to the judge regarding the option of working out west was essentially what had been summarized in the IWK Report as follows:

> S. Jr. reports that he is hoping to go "out west" in January 2007 to work on a job which he claims his uncle has promised him. Other than to say that he will be doing "labour", S. was unable to elaborate further on the nature of the work that he expects to be doing if he is to pursue this plan. Mrs. G., however, notes that her brother R.N. is a business agent for a labourers union in western Canada and that he has offered to help S. Jr. secure work there. Mrs. G. also notes that her brother has offered to "look out for" S. Jr. as may be needed. Mr. G. advised this writer that if his son does go out west, S. J. will likely be working in construction, and that he is planning to accompany his son.

During the sentencing hearing, counsel for the appellant stated that the appellant would work as a construction labourer and live with his uncle in a camp setting, and indicated that officials in Alberta had been contacted regarding probation and mental health and addictions counselling. The uncle, who lives in Fort McMurray, did not testify at the hearing, nor did he provide any affidavit or other material setting out his familiarity with the appellant's situation or how he could support his rehabilitation. Nor was there any information before the court about whether the rehabilitative services needed by the appellant would be available in Fort McMurray.

[20] The passage from her decision quoted in ¶ 18 above clearly demonstrates that the judge was cognizant of the possibility of heading west. However, it is apparent that she was not satisfied that it had been sufficiently established as well-founded or appropriate for the appellant.

[21] The appellant did not present any alternative to going out west to work, other than continuing to reside with his father, were he to be sentenced to a non-custodial sentence. As to the latter, the IWK Report raised concerns that were echoed in the judge's decision:

> S. Jr. reports that there are no house rules in his fathers (sic) household that he is expected to follow. He comments that he is 18 years of age, is an adult, and therefore any house rules that do exist are not applicable to him. S. Sr. notes that

> his son has been abiding by his recent Conditional Sentence conditions, but that otherwise S. Jr. is accurate that because of his age, he is not required to abide by his father's rules. . . . It is notable that the mental health record cites that discipline in the G. household has been a significant concern of past service providers.

[22] In the course of her decision, the judge observed that following his guilty plea, and while on release and living with his father, the appellant had been involved in the commission of a drug offence. The IWK Report set out the circumstances surrounding that conviction as follows:

> A collateral notes that S. Sr. was charged along with his son in regards to the aforementioned "drug bust" that reportedly took place in his home in late September 2006. A collateral reports that over $17,000 in cash, 6 grams of marijuana, and a number of vehicles considered possible proceeds of crime were seized during that raid. Two collaterals note that these details were noted in local newspapers at the time. One collateral reports that since being charged in regards to this drug-related offence, S. Jr. has reportedly accepted all responsibility for the crime, and he has been sentenced. His father on the other hand, has had his charges withdrawn or dismissed.

As indicated earlier, the appellant's father was involved in his son's dispute with Sergio Fuentes. Not only did he rent the van, which took them from Sydney to Amherst, but he accompanied the appellant in entering the grandmother's home and confronting the victim.

[23] It is noteworthy that while the IWK Report recommended that the appellant be sentenced to probation, it did not suggest that he should return to living with his father. Rather, its recommendations included the following:

> 5. THAT S. reside in a place that offers responsible adult supervision by someone able to hold S. accountable. That those responsible for S.'s supervision be on hand for immediate supervision and demonstrate themselves to be cooperative with the probation officer responsible for S.'s community based supervision.

[24] With this information before her, the judge's position that leaving the appellant with his father would be detrimental to the appellant's rehabilitation was a reasonable one. There was little likelihood of progress or success were he to remain in the community in these circumstances.

[25] In ¶ 25 of her decision which is quoted in ¶ 14 above, the judge succinctly set out what the appellant needs. In doing so, she expressed disappointment in his not attending for counseling arranged for June 2006. This date was what was contained in the IWK Report before her, but has now been confirmed by primary sources as erroneous. The counselling that the appellant and his family missed was back in June 2004, before the offence for which he was sentenced. I am not satisfied, however, that in deciding to order a custodial sentence, the judge overemphasized and relied upon this factor to such an extent that appellate intervention is warranted.

[26] In summary, the judge was aware of her obligation to consider alternatives to custody. She carefully reviewed the material presented to her and, after consideration of the available options, determined that the appellant's rehabilitation called for a custodial sentence. As a front line judge, knowledgeable of her community and the services available to those who appear before her, her sentencing decision is entitled to deference from this court. I see no reviewable error on this ground of appeal.

2. The sentence was demonstrably unfit

[27] In my view, the sentence was not demonstrably unfit as being outside the range of sentence when the circumstances of the offence and of the appellant are considered. Nor was the judge unduly influenced by the sentence ordered by the Ontario Court of Appeal's decision in *J.S.*, supra.

[28] The sentencing regime set out in the *YCJA* emphasizes an individualized approach when a young person is sentenced. Section 38 provides:

> Purpose
>
> 38. (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.
>
> Sentencing principles

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

> (a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;
>
> (b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;
>
> (c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;
>
> (d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons; and
>
> (e) subject to paragraph (c), the sentence must
>
> > (i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),
> >
> > (ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and
> >
> > (iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community.

Factors to be considered

(3) In determining a youth sentence, the youth justice court shall take into account

> (a) the degree of participation by the young person in the commission of the offence;
>
> (b) the harm done to victims and whether it was intentional or reasonably foreseeable;
>
> (c) any reparation made by the young person to the victim or the community;
>
> (d) the time spent in detention by the young person as a result of the offence;
>
> (e) the previous findings of guilt of the young person; and
>
> (f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.

[29] The portions of s. 3 relevant to sentencing here provide:

> Policy for Canada with respect to young persons
>
> 3. (1) The following principles apply in this Act:
>
> (a) the youth criminal justice system is intended to
>
> > (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour,
> >
> > (ii) rehabilitate young persons who commit offences and reintegrate them into society, and
> >
> > (iii) ensure that a young person is subject to meaningful consequences for his or her offence
>
> in order to promote the long-term protection of the public;
>
> . . .
>
> (c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should

> (i) reinforce respect for societal values,
>
> (ii) encourage the repair of harm done to victims and the community,
>
> (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and
>
> . . .
>
> (2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

[30] The *YCJA* approach to sentencing is offender-centric: see *R. v. B.W.P.*; *R. v. B.V.N.*, [2006] S.C.J. No. 27 (S.C.C.). Each case involving the sentencing of a young person is to be decided on an individual basis: see *J.S.*, supra at ¶ 57. Such an approach means that multiple factors pertaining to the particular offence and the particular offender are to be considered in determining sentence. It follows that although parity is one of the many factors to be considered (s. 38(2)(b)), determining whether a sentence is within the range of sentences becomes a particularly difficult and delicate exercise.

[31] The offence to which the appellant pled guilty was a home invasion. At ¶ 13 of her decision, the judge quoted the following extract from *J.S.*, supra:

> ¶ 38 . . . Affixing the label "home invasion" to a particular set of circumstances does not necessarily lead to any particular sentencing disposition. In my opinion, however, it does open the gateway to consideration of a custodial sentence because the type of crime that invokes the tag "home invasion" will have embedded in it a "violent offence" within the meaning of s. 39(1)(a) of the Act.

[32] As one would expect, the facts of such cases and the circumstances of the young person involved vary widely. However, the sentences in the home invasion cases from other provinces cited by the appellant do not persuade me that his sentence is so outside the range as to be "demonstrably unfit." See *R. v. M.W.G.*, [2005] S.J. No. 4 (Sask. Prov. Youth Ct.)*; R. v. J.S.*, supra*; R. v. Z.Q.P.*, [2006]

B.C.J. No. 3021 (B.C. Prov. Ct.); *R. v. Y.N.; R. v. F.C.C.*, [2004] M.J. No. 393 (Man. C.A.).

[33] Nor do the cases from this province support the appellant's submission. Since this court in *R. v. J.R.L.,* supra described that sentence was exceptional and even extraordinary, that decision is not helpful with regard to the range of sentence. In *R. v. C.C.* (13 February 2006), Truro 1594178, 1594180, 1594182 and 1594184 (Truro Prov. Ct.) Judge John G. MacDougall sentenced a 16 year old who, with other young persons and adults, had committed a home invasion, which involved physical assaults on two people by others in the group, some of whom had brought shotguns. The young person had been in possession of a bat but had not struck anyone. Both the Crown and defence counsel agreed that a period of custody was appropriate, but differed as to its duration. The young person was sentenced *inter alia* to 18 months custody, being 12 months in custody and six months under supervision, followed by 12 months probation. Such a sentence does not support the appellant, who had received the same custodial sentence, in his submissions that his sentence was outside the range.

[34] I am not persuaded, as argued by the appellant, that the judge was heavily influenced by the custodial sentence imposed in *J.S.*, supra and that she failed to distinguish the fact situation from that before her. In her decision, the judge stated that she was "mindful" of the comments of Justice Blair and quoted the extract from that decision set out in ¶ 31 above, which stated that a home invasion does not necessarily lead to any particular sentencing disposition. She also summarized the sentence as varied by the Ontario Court of Appeal after finding the trial judge had erred in principle in imposing a two year custodial sentence, to 15 months custody and community supervision

[35] The home invasion in *J.S.*, supra indeed had more aggravating features - the 16 year old in that case was hooded and carried a machete in forcing his way, along with two others, one unarmed and the other armed with a shotgun, into a townhouse; on the second floor, he had confronted a grandmother and sent her downstairs; and, while searching a bedroom for items to steal, he briefly confined a mother and infant there with him. However, there is absolutely nothing in her decision which would indicate that the judge took the position that, because of the sentence in *J.S.*, supra she had to impose a custodial sentence. Indeed, the passage she quoted from that decision was contrary to such a view. Moreover,

immediately after that portion of her decision, she reiterated the principles set out in ss. 38 and 39 of the *YCJA* and continued with an individualized approach mandated by that legislation and the case law in sentencing the appellant.

3. Too much emphasis on a concept equivalent to general and specific deterrence, and a harsh and excessive sentence

[36] I respectfully reject the appellant's argument that although the judge acknowledged that in sentencing under the *YCJA*, the rehabilitation of the young person is to be emphasized, she strayed into focussing upon denunciation and deterrence and imposed a sentence which was harsh and excessive in all the circumstances.

[37] The passage of the judge's decision upon which the appellant's submission relies reads:

> [15] The crown has emphasized the message to the public and concerns about the safety of the public. The safety is always a paramount concern of the court as that principle was embodied in the 1971 decision in *R. v. Grady* and many others that have followed since that time.
>
> [16] Turning again to the *R. v. J.S.* decision I found a passage at paragraph 50 of that decision to be helpful in considering this tension between the concept of deterrence as it relates to protection of the public versus the need to rehabilitate young people and at paragraph 50 Justice Blair wrote as follows:
>
> > I note that deterrence (general or specific) is not a factor in considering the appropriate sentence for the appellant. While a sentence may have the effect of deterring a young person and others from committing crimes, "Parliament has not included deterrence as a basis for imposing a sanction under the *YCJA*": R. v. B.W.P.; R. v. B.V.N., supra, per Charron J. at paragraph 4. As Charron J. also noted, however, at paragraph 38:
> >
> > > Of course, this does not mean that sentencing under the *YCJA* cannot have a deterrent effect. The detection, arrest, conviction and consequences to the young person may well have a deterrent effect on others inclined to commit crime. It also does not mean that the court must ignore the impact that the

> crime may have had on the community, as was suggested in argument. A consideration of all relevant factors about the offence and the offender forms part of the sentencing process. What the *YCJA* does not permit, however, is the use of general deterrence to justify a harsher sanction than that necessary to rehabilitate, reintegrate and hold accountable the *specific young person before the court*. [emphasis in original]

> And obviously, dare I have the temerity to try to paraphrase Justice Charron, what the court was saying there was that the appropriate emphasis on rehabilitation and reintegration will ultimately, depending upon the nature of the offence, serve as a model to send the appropriate message of deterrence to the community.

[38] As shown throughout her decision, the judge repeatedly emphasized the rehabilitation of the young person. By noting that Charron, J. had observed that sentencing under the *YCJA* may have a consequential deterrent effect on others, the judge did not take deterrence and denunciation into account in imposing sentence on the appellant. I am not persuaded that she committed any error in principle.

Disposition

[39] I would grant leave to appeal against sentence, but dismiss the appeal.

Oland, J.A.

Concurred in:

Bateman, J.A.

Fichaud, J.A.