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Legal brief *

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MY YOUNGSTER IS GUILTY OF ROBBERY

An offender is convicted of robbery. What is the best judicial decision for this youngster?

THE FACTS

In November 2005, the accused robbed C. On the evening of the incident, the accused had consumed alcohol and marijuana. While walking on the street, he noticed the victim and decided to trip him. The victim collapsed and the accused kicked him. At the end of the assault, he searched the victim and took his knapsack.

The victim was taken to the hospital and the medical report confirmed he had suffered head trauma. The victim's family experienced some very difficult times following the assault. The victim was left with psychological aftereffects.

The accused had had a painful past had difficulty managing his anger. He had experienced violence in his family life. At the time of sentencing, the accused had already been held in custody since his appearance before the judge of the youth court.

THE ISSUE

What is the best decision for the offender? What sentencing principles should be applied?

THE DECISION

The Court ordered a period of custody and supervision of 150 days, taking into account the month of preventive detention. Furthermore, it ordered the accused to be under monitored probation, with several other conditions, for a period of eight months.

THE GROUNDS

The primary objective of a judicial decision involving young persons is to protect society while providing the young offender with the necessary advice and assistance which he does not receive at home. These two principles are not necessarily irreconcilable. Indeed, in the long run, society is better protected when a young offender is rehabilitated.

Paragraph 3*(b)* of the *Youth Criminal Justice Act* (YCJA) clearly states that the YCJA must be separate from legislation applicable to adults, among other things, as regards the dependency of young persons and their reduced level of maturity. Paragraph 38(2)*(a)* sets out the rule that under no circumstances must the sentence imposed on a young person 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. The specific purpose of the YCJA is to reduce over-reliance on incarceration for non-violent young persons, which was a widespread phenomenon in Québec. In 2006, in the ruling in *B.W.P.*, the Supreme Court clearly stated that general deterrence—and even individual deterrence—is no longer a factor to be considered in determining the sentence of an accused minor.

In making a decision, the court must take aggravating and mitigating factors into account.

In the case at hand, the aggravating factors taken into consideration were the physical and psychological impact on the victim and the difficult times experienced by the family.

The mitigating factors were the absence of a past criminal record, the young offender's difficult family life and his remorse with respect to the crime. The court also considered his involvement at school and at work.

Through its decision, the court held the offender accountable. The court took his maturity into account and, by issuing a custody and probation order, it allowed the young offender's rehabilitation and reintegration into society.

References

La Reine v. X, (LSJPA-059), Court of Québec, Youth Division (C.Q.) Montreal 525-03-033727-058, December 22, 2005, Judge Carole Brosseau (www.jugements.qc.ca)

R. v. B.W.P., (2006) 7 S.C.R. 941

Youth Criminal Justice Act, (S.C. 2002, c. 1), s. 3, 39 and 42.

The jugement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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