

Case Name:

R. v. A.S.

**IN THE MATTER OF the Youth Criminal Justice Act,
S.C. 2002, c. 1**

Between

Her Majesty the Queen, and

A.S.

[2009] O.J. No. 960

Ontario Court of Justice

Youth Justice Court - Toronto, Ontario

P. French J.

Heard: February 3, 2009.

Oral judgment: March 9, 2009.

(114 paras.)

Criminal law -- Sentencing -- Criminal Code offences -- Offences against rights of property -- Robbery and extortion -- Robbery -- Other Criminal Code offences -- Breach of probation -- Particular sanctions -- Young persons -- Adult sentences -- Imprisonment -- Probation -- Sentencing considerations -- Age of accused -- Rehabilitation -- Seriousness of offence -- Offence committed while accused on interim judicial release or probation -- Criminal record -- Lengthy -- Related -- Offender, age 17, sentenced as adult to three years' imprisonment plus three years' probation for two counts of robbery, use of an imitation firearm in a robbery, and breach of probation -- The offences occurred three weeks after the offender's release from an adult custodial sentence for similar offences -- The court found that a youth sentence would not represent meaningful consequences for the offences, and would not realistically promote the offender's rehabilitation and reintegration into the community -- Factors in determining the length of term included the age of offender, his rehabilitation and the principle of totality -- Youth Criminal Justice Act, ss. 38, 72.

Sentencing of the offender, AS, a young person, following conviction for two counts of robbery, use of an imitation firearm in a robbery, and breach of probation. The Crown sought to sentence the offender as an adult. The offender and a friend placed an order for food to be delivered to a residence. When the delivery person arrived, the offender and two others approached him and demanded his money. An apparent handgun was pointed at the delivery person. He was robbed of some money, his cell phone and the food order. The second robbery occurred two days later at a bus shelter. The

offender and an accomplice followed the victim from a bank machine and accosted him in the shelter, demanding his wallet. When the victim handed over an empty wallet, the offender punched him in the face repeatedly, fracturing his cheekbone. The offender fled the scene upon noticing a police car. The breach of probation offence arose from associating with an accomplice that had a criminal record. The offender, age 17, had a troubled youth with 25 prior convictions, including three prior convictions for robbery. For the most previous robbery, the offender was sentenced as an adult. He received 28 months' credit for time already served, and was sentenced to an additional 12-month term. The predicate offences occurred three weeks after his release. The pre-sentence report recommended against community supervision. A mental health assessment found no symptoms indicative of a psychotic or mood disorder. He was assessed as a moderate risk to re-offend and it was suggested he would benefit from rehabilitative services.

HELD: AS was sentenced to three years' imprisonment plus three years' probation. It was fair and appropriate that the offender be sentenced as an adult. A youth sentence would not represent meaningful consequences for the offences, and would not realistically promote the offender's rehabilitation and reintegration into the community. The offences occurred immediately after the offender's release from serving an adult sentence. The offences exhibited a degree of violence and demonstrated a degree of planning and sophistication. Factors in determining the length of term included the age of offender, his rehabilitation and the principle of totality. The offender received 24 months' credit for time already served.

Statutes, Regulations and Rules Cited:

Youth Criminal Justice Act, S.C. 2002, c. 1, s. 3(b), s. 38, s. 64, s. 72, s. 72(1)(b), s. 74(1), s. 76

Counsel:

Counsel for the Crown: S. Leece.

Counsel for the Young Person: S. Pieters, Esq.

SENTENCING

1 P. FRENCH J. (orally):-- On September 5th, 2008, Mr. A.S. entered a plea of guilty before me to four serious offences. The Crown served notice under s. 64 of the Youth Criminal Justice Act that it wished to have Mr. A.S. sentenced as an adult.

(1) Introduction;

2 Various issues arose in the course of the proceedings on sentence, including a dispute as to the facts that should serve as the basis for the sanctions to be imposed.

3 For the assistance of Mr. A.S. and counsel, my reasons for sentence are organized under the following headings:(1) introduction; (2) The circumstances of the offences; (3) The circumstances of Mr. A.S.; (4) Sentencing as an adult offender; and (5) Sentence, application of the principles; (6) Sentence; (7) Placement.

(2) The circumstances of the offences;

4 There were three offences that occurred on January 30th, 2008. The first was the robbery of Mr. Nooraudeen Noorada. The general circumstances of this offence were that on January 30th, 2008, shortly after 6:00 p.m., a call was made to the Swiss Chalet telephone order delivery line from a cell telephone belonging to an adult accused involved in this matter with Mr. A.S. An order was placed for approximately \$150.00 worth of food, with the request that it be delivered to 6462 Finch Avenue West, in the City of Toronto. Mr. Noorada received this order and went to the address.

5 When he arrived the accused males, including Mr. A.S., approached him and demanded that he hand over his money.

6 A handgun was produced and pointed at Mr. Noorada. He was robbed of some money. His cell phone and the Swiss Chalet food order were taken. The robbers fled the scene on foot. Mr. Noorada called the police and reported the crime. Members of 23 Division of the Toronto Police Service attended the scene and commenced an investigation.

7 The cell phone from which the food order was placed belonged to the accomplice, Najeeb Amin (ph). Mr. A.S. was located in the area of his residence, and placed under arrest for the robbery.

8 Mr. Noorada gave evidence during a hearing convened to determine the degree of Mr. A.S.'s participation in the robbery. While it is clear from his evidence that a gun was pointed in his face, he was unable to identify the person who had the gun. Mr. Noorada described the other two of his three assailants as going through his pockets and taking between \$160.00 to \$200.00 of his money. He was not hit in the robbery. He was, quite understandably, very scared.

9 Based on his plea., and the evidence of Mr. Noorada, I find that Mr. A.S. was a party to the robbery of Mr. Noorada.

10 The second offence of January 30th, for which Mr. A.S. has entered a plea of guilty is that of using an imitation firearm while committing a robbery. Mr. Noorada did not identify Mr. A.S. as the person who actually held what appeared to be a firearm. I think it is clear from the evidence that Mr. A.S. knew that an imitation firearm was being used while committing the robbery, and I so find.

11 The third of the January 30th offences is a failure to comply with a disposition, that being a Probation order made by Justice Bigelow, on May 11th, 2007. The specific failure was a breach of the term that Mr. A.S. not communicate or associate with anyone known to have a criminal or a youth record. The co-accused, Najib Amin, had a criminal record, and based on his plea, Mr. A.S. accepts responsibility for that offence.

12 The transcript of the proceedings before Justice Bigelow on May the 11th, 2007 was filed in these proceedings before me. More is said of that record further below in these reasons.

13 The second set of offences involves the robbery of February 1st, 2008. The general facts surrounding the commission of this offence are that on Friday, February 1st, 2008, at approximately 7:40 p.m., Mr. Saumendra (ph) Poddar attended at an Instabank teller machine in a mall at 1530 Albion Road, in Toronto. He withdrew \$700.00 to pay for his rent. It appears from security cameras in the mall where the Instabank machine was located that Mr. A.S., and a female accomplice, were watching Mr. Poddar at the bank machine. They subsequently followed him through the mall where he did some grocery shopping.

14 When Mr. Poddar completed his shopping, he left the mall and waited for a bus and waited at a nearby shelter. While there, he was approached by Mr. A.S. and his female accomplice. For all practical purposes, he was trapped in the bus shelter. Mr. A.S. and his accomplice demanded his money. He was punched in the face. Mr. Poddar was frightened. He took out his wallet and gave it to the robbers, but it did not have his rent money. The robbers realized this, and more demands were made of Mr. Poddar and more punches were delivered to his face. Fortunately for Mr. Poddar, the robbers noticed a police cruiser and fled.

15 Unfortunately, Mr. Poddar suffered a fractured cheek bone and nerve damage to the left side of his face. He continues to suffer from numbness in the area of his left cheekbone 12 months after the robbery. Mr. Poddar cannot say which blow delivered by his two assailants fractured his cheekbone, however it is clear from his evidence that both Mr. A.S. and his female accomplice struck Mr. Poddar in the face, and I so find. I find that Mr. A.S. was a party to the offence during which Mr. Poddar suffered the fracture.

(3) The Circumstances of Mr. A.S.;

16 Mr. A.S. was born July 9th, 1991. He was 17 at the time of his commission of these offences. He will be 18 in five or six months. He has had a troubled youth, with a remarkable criminal history.

17 I was provided with a copy of Mr. A.S.'s criminal record, and a transcript of the proceedings when he was sentenced in May 2007 by Justice Bigelow.

18 I was also provided with a comprehensive Pre-Sentence Report and an assessment prepared by the Centre for Addiction and Mental Health (CAMH), in Toronto. It will be helpful to summarize some of that information.

(a) The criminal history;

19 In April 2004, Mr. A.S. was found guilty in youth court of the offence of robbery and was sentenced to probation for 12 months.

20 On June 27th, 2006, he was found guilty of failing to comply with a recognizance. He had served two days of pre-trial custody, and was sentenced to six months of probation.

21 On September 28th, 2005, Mr. A.S. was found guilty of the unauthorized possession of a prohibited weapon. He had served 10 days of pre-sentence custody, and was sentenced to a fine of \$1.00.

22 On October 14th, 2005, Mr. A.S. was again found guilty of a robbery. He had served 45 days of pre-trial custody, and was sentenced to 18 months of probation, plus a mandatory weapons prohibition pursuant to the Youth Criminal Justice Act.

23 On February 28th, 2006, Mr. A.S. was found guilty of having been the occupant of a motor vehicle taken without consent, of failing to comply with a recognizance and, of public mischief. The sentence was time served, that having been 17 days.

24 Then, on May the 11th, 2007, being the proceedings before Justice Bigelow referred to above, Mr. A.S. was found guilty of his third robbery. He was also found guilty of the offences of: using an imitation firearm while committing an offence; careless storage of a firearm; and, the use

of a firearm while prohibited from having any firearms in his possession. He was sentenced to one year in custody on the robbery, and one year in custody concurrent on the other three charges.

25 The plea and sentence of May 11, 2007, before Justice Bigelow merits further comment. The offences involved in the pleas before Justice Bigelow occurred on March 11th, 2006. Mr. A.S. was only 15 years old at the time of those offences. Nevertheless, they were extremely serious matters. The police had executed a search warrant at his home and found a sawed-off shotgun stored in his bedroom. As a result, he was charged with the storage in a careless manner offence, and also with having in his possession a weapon while prohibited by reason of a previous weapons prohibition order. Mr. A.S. also pleaded guilty to the robbery of one Rapinder Singh on March the 8th, 2006, and to the charge of using an imitation firearm while committing that robbery. There was a strong inference that the imitation firearm used in the commission of that robbery was the sawed-off shotgun that was found under his bed in his home.

26 There had been about 25 charges on the Information before Justice Bigelow. As a result of the plea negotiations, a plea of guilty was entered to four of those charges.

27 In the sentencing before Justice Bigelow on May 11, 2007, Mr. A.S. had served 14 months of pre-trial custody. The Crown asked that Mr. A.S. be sentenced as an adult. That request was not opposed and he was sentenced as an adult. In those sentencing proceedings, the Crown conceded the time served by A.S. on a two-for-one basis, or 28 months. The Crown argued that, in addition to pre-trial custody credited as 2 years plus 4 months, an additional 12 months in custody should be imposed. That was the disposition imposed by Justice Bigelow. In effect, a total sentence of 3 years and 4 months. In addition, a serious violence offence designation was made.

28 It is remarkable that the offences for which Mr. A.S. entered a plea before me occurred only three weeks following his release from custody on the sentence imposed by Justice Bigelow, described above.

(b) The pre-sentence report of November 1, 2008;

29 In the Pre-Sentence Report, Mr. A.S. is described as having been born into a troubled family. He was born in the Toronto area, and has resided in Toronto throughout his life.

30 The early circumstances of his family home were marked by many challenges, including verbal and physical abuse, and substance abuse issues, in particular by his mother.

31 Eventually, Mr. A.S.'s mother was able to overcome her substance abuse issues through admission into an in-residence program, but while that happened, the children were placed into the care of the Children's Aid Society.

32 Eventually, the family was re-integrated, and Mr. A.S.'s parents continued to reside together for the purpose of raising their children. Unfortunately, in their community, most of Mr. A.S.'s peers have been in trouble with the law. Many were in detention or custody at the time of the writing of the report.

33 Mr. A.S. is described as having been in custody for the majority of the last four years. He has never really had the opportunity to grow up as a teenager in the community. Mr. A.S. was described as following a pattern of being released from custody, residing in the community for a few weeks, and then returning again to detention or custody.

34 In the Pre-Sentence Report, Mr. A.S. was described as taking little responsibility for the offence before the courts. He apparently indicated to the Probation Officer that he did nothing wrong and that he played a minor role in the incidents. He confirmed that his peer group has been in trouble with the law, and explained to the Probation Officer that some of his peers have been killed through gun violence over the last few years. Mr. A.S.'s biggest fear was in getting involved again with that peer group once released.

35 He reported to the Probation Officer that he has not attended any high schools in the community, and has only completed high school credits while in detention. He would like to change that and complete his education when he is released.

36 Mr. A.S. expressed to the Probation Officer the importance of getting out of his current neighbourhood, which would allow him an opportunity at a new start. He stated that he really wants to change his life, and that he is tired of being in jail, He wants to move to Peterborough and reside with his grandmother.

37 In his assessment, the Probation Officer describes Mr. A.S. as a repeat offender who has several areas of concern. The first concern is his regular contact with the criminal justice system. He has been called a Dangerous Offender by the police. In the last four years, he has spent sporadic time in the community, and most of his time has been spent in detention or custody.

38 Although Mr. A.S.'s family is loving and caring, they do not appear to have any control over Mr. A.S. at this time.

39 His education has seen most of its successes while in detention during the last few years, with him not attending any community educational facility. When Mr. A.S. attended a community educational facility, his attendance was poor, and homework was incomplete. While in detention, he lacked concentration during class time.

40 His peer group was described as primarily negative, with most of them in detention at this time, and some even having been killed in gun violence.

41 Ministry records reported that Mr. A.S. externalized his problems and wishes that people would leave him alone. He reported that he smoked marijuana on a daily basis while he was in the community, and he used this as an escape from the negatives in the community.

42 In light of these factors, the Probation Officer wrote that community supervision was not recommended. The Probation Officer opined that Mr. A.S. had some serious challenges before him.

(c) The assessment of the Centre for Addiction and Mental Health, dated October 30th, 2008;

43 This assessment was co-authored by Dr. Stephanie Penney and Dr. Tracey Skilling, both psychologists at the Centre.

44 The clinical staff at the Centre for Addiction and Mental Health, sometimes referred to as CAMH, were made aware that an adult sentence was being considered for Mr. A.S. They were asked to assess whether Mr. A.S. had any significant mental health or cognitive functioning issues that might be relevant to decision-making concerning sentence.

45 The CAMH assessment is comprehensive, helpful, and offers some hope that Mr. A.S. will yet find the right path to a happy, productive, and socially acceptable life in the community.

46 Under the heading "Developmental and Family History," Dr.'s Penney and Skilling report that when Mr. A.S. was in grades 5 and 6, his physician suggested that he be put on a stimulant medication for attention-related difficulties, however despite his increasing problems with attention, fighting, and bullying, his parents also related that most of his teachers loved him and wanted to help him succeed academically.

47 When he was 13 years old, he began getting brought home by the police for smoking and possessing marijuana. Shortly after, he was enrolled at the Hincks-Dellcrest Treatment Centre, an out-patient and residential treatment centre for youth with significant behavioural and emotional difficulties.

48 There are several locations within the residential treatment program at Hincks-Dellcrest, one of which is a 100-acre working farm in Heathcote, Ontario. The farm placement typically serves those youth who have proved most difficult to treat. Mr. A.S. Sr. reported to the clinicians that his son participated in the farm program for six months on a voluntary basis, however following this program he continued to be in trouble with the law and began receiving custodial sentences.

49 When he was around 14, his parents reported that he spent more time inside detention than out. In fact, his parents stated that they feel as though they have not yet gotten to know their son because he has spent such a large amount of time in detention.

50 The authors of the assessment noted that Mr. A.S. had been released from the Syl Apps Youth and Secure Treatment Centre three weeks prior to his current detention on the charges before me.

51 His parents reported that during that release, he lived with various friends, and also in other houses, as they apparently refused to have Mr. A.S., and his girlfriend at the time, stay in their home.

52 Under the heading, "Mental Health Evaluation," the clinicians note that Mr. A.S. received individual therapy at the Etobicoke Children's Centre when he was 11 years old, and they mentioned, again, the residence at the treatment program at Hincks-Dellcrest for 6 months when he was 13 years old.

53 Insofar as the "Current Mental Health Assessment" is concerned, the clinicians note that Mr. A.S. did not endorse symptoms indicative of any psychotic or mood disorder. His affect during the assessment was appropriate and calm, and he did not indicate any major problems with emotion, regulation, or bi-polarity of mood. When he was directly asked about his mood, he stated, "A bit depressed," and attributed this largely to his current situation. Mr. A.S. denied experiencing past or current suicidal ideation.

54 In fact, during the interview, he was found to be future-oriented and discussed his future career goals.

55 In addition to the interview, Mr. A.S. and his mother completed a number of mental health screening measures concerning his emotions and behaviour. In general, these parent and self-report measures were congruent with the information he provided in the interview, as well as with clinical observations.

56 As for the "Current Cognitive and Academic Assessment," the clinicians described Mr. A.S. as a pleasure to assess, although his low mood was of note at both testing sessions. Based on his

good effort during the testing sessions, it was believed that the results from the assessment are a valid indication of his functioning at this point in time.

57 Doctors Penney and Skilling offer an important caveat. That is, psycho-educational testing measures intelligence based on exposure to a standardized curriculum which Mr. A.S. has not had the benefit of with any consistency since grade six.

58 With respect to his "General Intellectual Functioning," the results of the testing were scored, and placed Mr. A.S.'s overall cognitive abilities in the borderline range.

59 His academic abilities, based on the testing, demonstrated that his academic skills were generally below age expectations.

60 In summary, they found that his greatest strength insofar as his academic abilities is concerned was in reading comprehension. They found that he struggled profoundly in mathematics. Doctors Penney and Skilling commented that the fact that Mr. A.S. has not attended school on a consistent basis since middle school is expected to contribute to his current performance.

"Should A.S. re-enter the school system, receive math support, and after sustained effort continue to struggle in the academic areas outlined in this report, further assessment is warranted to determine the presence of a learning disorder."

61 With respect to "Risk Assessment," Doctors Penney and Skilling reported the test measures used as a summary of Mr. A.S.'s risk to re-offend across all types of offences. The results placed him in the moderate risk category for general re-offending at the time of the assessment.

62 Insofar as Mr. A.S.'s strengths, the clinicians suggest that he could benefit from rehabilitative services. They wrote,

"First, it is evident that he has strong attachments to both of his parents, as well as members of his family who, in turn, appear supportive and emotionally available to him. Both of his parents shared their opinion that A.S. won't do anything more to put the family at risk, and described him as very protective of his younger siblings.

Second, A.S. did not endorse or support anti-social or pro-criminal attitudes, and expressed appropriate remorse for his previous behaviours.

Last, A.S. has several pro-social interests, for example, basketball, volunteering with children, and several reasonable vocational goals."

63 Doctors Penney and Skilling offered several recommendations. They acknowledged that Mr. A.S. does present with some areas of criminogenic risk, that put him at risk for continued problematic behaviour.

64 The most salient of those risks was his current neighbourhood and group of peers. The clinicians noted that both his parents identified this as a significant area of concern and recognized the high likelihood of continued criminal activities should A.S. continue to keep the same friends and spend time in the same areas. The authors wrote that A.S. is also in need of additional structured activities in order to minimize the amount of unstructured free time. Fortunately, he appears to have

various interests that could effectively structure his time if he can get involved with the appropriate organizations.

65 Doctors Penney and Skilling also remarked that the amount of consistent parental supervision Mr. A.S. receives while residing in the community is also an area of concern. Perhaps due to the number of people currently residing in the household, his parents do not always appear able to adequately monitor A.S.'s whereabouts when he is residing in the community. This becomes especially problematic, given the neighbourhood in which they reside.

66 The clinicians also commented that Mr. A.S. will need assistance in reducing his current level of substance abuse, and recognizing the adverse effects of continued heavy use. Although Mr. A.S. was truthful in reporting his frequency of use, he appeared to minimize the impact it has had on his life, as well as the perceived difficulty of abstaining completely. Active participation in a youth substance use program could prove beneficial in this respect.

67 With respect to A.S.'s cognitive and academic needs, the clinicians remarked that Mr. A.S.'s achievement in these academic areas has been exacerbated by the frequent disruptions in his education, and they require immediate and sustained remediation if he is to achieve his goal of finishing high school. One-on-one tutoring and environmental supports, such as small classrooms, are recommended. As A.S. re-gains a sense of mastery and interest in certain academic areas, he may feel less inclined to gravitate towards anti-social peers and activities. The clinicians went on to offer numerous specific programs that would be of assistance.

68 In conclusion, Doctors Penney and Skilling commented that,

"It is our current understanding that the court is considering an adult custodial sentence in this case. A.S. has significant substance use needs, cognitive, academic, and vocational needs, as well as criminogenic needs related to peer, relationships, and leisure time activities that can likely be best met within the juvenile justice system. A youth facility appears to be most appropriate for A.S., in light of the substantial resources available at youth facilities, such as Sprucedale or Brookside Youth Centres, paired with A.S.'s potential for rehabilitation and moderate risk for re-offending. Brookside might be a particularly good fit, given their expertise in substance abuse treatment programming. Regardless of whether A.S. is given an adult sentence, it will be of utmost importance to support him in completing his high school credits, receiving vocational counselling, and participating in a substance use program."

69 Shortly following receipt of the CAMH assessment, Mr. A.S. was transferred to a less secure youth facility.

(4) Sentencing as an adult offender;

70 The answer to the question whether Mr. A.S. should be sentenced as an adult is to be formulated in accordance with s. 72 of the Youth Criminal Justice Act.

71 S. 72(1)(b) prescribes the criteria that a youth justice court must consider, and the test to be applied, in deciding whether an adult sentence is required.

72 S. 72(1) reads,

"In making its decision on an application heard in accordance with s. 71, the youth justice court judge shall consider the seriousness and circumstances of the offence, and the age, maturity, character, background, and previous record of the young person, and any other factors that the court considers relevant.

73 And sub-paragraph (b) reads,

"If it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in sub-paragraph 3(1)(b)(ii) and s. 38 would not have sufficient length to hold the young person accountable for his/her offending behaviour, it shall order that an adult sentence be imposed."

74 The principles involved in sentencing a young person as an adult under the Youth Criminal Justice Act were considered by the Ontario Court of Appeal in *R. v. A.O.*, [2007] O.J. No. 800. In that decision, the court held that it is wrong for a judge applying s. 72(1)(b) to place a very heavy burden on the Crown to satisfy the judge that an adult sentence is required. It does not require proof beyond a reasonable doubt in the way that aggravating features are treated at a sentencing hearing.

75 Section 72 requires that the general principles of the Youth Criminal Justice Act in s. 3(b) be considered. They direct that the criminal justice system for young persons must be separate from that of adults and emphasize fair and proportionate accountability that is consistent with the greater dependency of young persons with reduced level of maturity.

76 In addition, the general sentencing provision in s. 38 of the Act must be considered. That section reads in part as follows;

"The purpose of sentencing under s. 42 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/her rehabilitation, and re-integration into society, and thereby contributing to the long-term protection of the public."

77 The principle of accountability in the Youth Criminal Justice Act mandates an approach to sentencing, that is, offender-centric, and which excludes the adult sentencing norms of deterrence and denunciation.

78 The Court of Appeal in *R. v. A.O.*, supra, held that accountability under the Youth Criminal Justice Act is equivalent to the adult sentencing principle of retribution.

79 In *R. v. A.O.*, the Court of Appeal wrote,

"In our view, for a sentence to hold a young offender accountable, in the sense of being meaningful, it must reflect, as does a retributive sentence, the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. We see no other rational way for measuring accountability."

80 Following his review of the youth and the adult sentencing regimes in *R. v. Lights*, [2007] O.J. No. 1516, Justice Trotter nicely summarized the bottom line as follows,

"In short, an adult sentence should be imposed when a youth sentence would not be long enough to meaningfully address the seriousness of the offences, the offender's role in them, and then his/her rehabilitation and ultimate re-integration into society."

(5) Application of the principles;

81 After considering the evidence in this matter, and after reviewing, again, the reports and exhibits filed, and after considering the very thoughtful and helpful submissions of counsel, I have concluded that the requirements of s. 72 of the Youth Criminal Justice Act have been satisfied. In my view, it is both fair and appropriate that Mr. A.S. be sentenced as an adult. Reduced to the simplest, a youth sentence would not represent meaningful consequences for Mr. A.S.'s offences, nor would it realistically promote his rehabilitation and re-integration into the community.

82 In order to assist Mr. A.S. and his family understand the reasons for my decision, I offer six very brief reasons. First and while certainly not determinative, nor the most important, it is relevant to note that Mr. A.S.'s last sentence was an adult sentence.

83 Second, it is shocking that Mr. A.S. committed these offences a mere three weeks following his release from the previous custodial sentence back into the community.

84 Third, both robbery offences demonstrate a degree of planning and sophistication that take them far away from the realm of spontaneous acts and mistakes of judgment.

85 Fourth, the robbery offences display a degree of violence that is alarming to everyone in this community. The use of an imitation weapon, to rob someone who, in order to make a living, must drive into unsafe areas at night, and the beating of an innocent victim struggling to save his rent money, display a predatory characteristic that cannot be ignored.

86 Fifth, previous custody and probation, without sophisticated pre-discharge planning and without advance programming arrangements, have failed to help Mr. A.S. find the path to living in the community that I believe, in his heart, he seems to desire and know is right.

87 Sixth, the length of time required to promote Mr. A.S.'s rehabilitation and re-integration into the community is greater than is available under the Youth Criminal, Justice Act regime.

(6) Sentence;

88 With respect to the quantum of sentence, s. 74(1) of the Youth Criminal Justice Act provides that once it is determined that a young person must be sentenced as an adult, the principles of sentencing customarily applied to adult offenders become available. These include the principles of general and specific deterrence, as well as denunciation.

89 Given Mr. A.S.'s age, and his personal needs as identified in the CAMH report, the principle of rehabilitation is extremely important. Given that there are two sets of offences, both of which are very serious, the principle of totality must also be observed. It is important that the ultimate sentence that is imposed is not overwhelming or crushing on Mr. A.S.

90 The position of the Crown on sentence has, quite fairly and quite understandably, evolved over various appearances before me. In the result, having considered all of the evidence, the Crown submits that it would be appropriate that Mr. A.S. receive a custodial sentence of two years, in addition to the time Mr. A.S. has already served in custody. Most importantly, the Crown submits that Mr. A.S. should receive the maximum term of probation, a term that would not be available to the court if Mr. A.S. were to have received a youth sentence. The Crown submits that three years of probation should be imposed.

91 The defence position on sentence has similarly evolved as the evidence has unfolded. It was submitted with great vigour on Mr. A.S.'s behalf that he has been in custody for almost 12 months. If that is credited on a two-for-one basis, it represents a sentence already served of approximately two years. If credited on a one and a half to one basis, it represents a sentence of 18 months. In the result, counsel for Mr. A.S. submits that a sentence of approximately three months in custody would, at the highest, be appropriate.

92 Counsel for Mr. A.S. points out that the Brookside Services, and the services recommended by CAMH are available on an out-patient basis. Counsel submits that Mr. A.S. already has probation supervision available, following the last sentence imposed by Justice Bigelow.

93 I believe that I have already identified in these reasons the aggravating and mitigating facts involved in the commission of these offences. I have already identified, at some length, the rehabilitative needs of Mr. A.S. so ably set forth in the CAMH report.

94 Considering the whole of the circumstances, I believe that a 3 year custodial sentence would have been appropriate. I am prepared to credit Mr. A.S. with his 12 months of pre-trial custody on a two-for-one basis, resulting in a further sentence of imprisonment of 12 months. I very much believe that Mr. A.S. requires very significant discharge planning and, while in the community, comprehensive support organized and supervised by probation services.

95 I, therefore, sentence him to a term of three years probation, with the terms being that he report to a probation officer within two days of his release from custody. He is required to keep the peace and be of good behaviour. He is required to reside at an address approved by his probation officer. He is not to change that address without the approval in advance of his probation officer.

96 Mr. A.S. is not to have any contact or communication with Mr. Noorada, nor is he to have any contact or communication with Mr. Poddar. He is not to be within 300 meters of any place where they may live, work, or be known by Mr. A.S. to be.

97 He is not to have in his possession any weapons as defined by the Criminal Code. Mr. A.S. is not to consume nor to have on his possession any non-medically prescribed drugs.

98 Mr. A.S. is to take such counselling, and participate in such treatment programs as may be recommended by his probation officer. He is to execute all such releases as may be required by his probation officer in order that he or she may be satisfied of his participation in any counselling and treatment programs so recommended.

99 Mr. A.S. is to be in full-time attendance at school while in the community, or in a program of employment training on a full-time basis, or otherwise engaged in employment on a full-time basis.

100 With respect to the request of the Crown that there be a Serious Violent Designation for these offences, there was no strenuous objection made to that request, and it is so ordered.

101 With respect to the request for a DNA Order, it is ordered that Mr. A.S. provide a sample of his bodily substance suitable for forensic analysis with the results being added to the DNA data-bank.

102 The Crown asked for a weapons prohibition for Mr. A.S.'s lifetime. That seems to me to be a rejection of the possibility of his rehabilitation. A weapons prohibition is ordered for a period of 10 years.

(7) Placement;

103 There remains then the issue of a placement hearing. Subject to further advice of counsel, I believe that that hearing has, for all practical purposes, been held.

104 Subject to the contrary advice of counsel, and pursuant to S. 76 of the Youth Criminal justice Act, I direct that Mr. A.S. be held in custody in a youth facility. I believe that disposition has already been agreed to by the Crown.

105 I do not believe that I have jurisdiction to direct the facility where Mr. A.S. may be held. Nevertheless, my previous recommendation seemed to enjoy some support. I therefore reiterate that recommendation, namely that if possible, Mr. A.S. be detained in the Brookside facility.

106 Finally, and if it be necessary, I further direct that a copy of the CAMH assessment be provided to the Administrator of the youth detention facility where Mr. A.S. is held and to Probation Services.

107 Counsel, have I omitted anything?

108 MR. PIETERS: No, Your Honour.

109 MS. LEECE: No, thank you, Your Honour.

110 THE COURT: Mr. A.S., do you have any questions with respect to any of those matters?

111 THE ACCUSED: No.

112 THE COURT: No? All right, sir. Mr. Pieters will review my reasons and my sentence with you, and respond to any questions that you may eventually have. So good luck to you, sir, and I hope you take advantage of the programs that are available to you, and I hope they help you. Mr. Pieters, thank you very much for your help. I know you pushed this to the very best of your ability and I appreciate your help.

113 MR. PIETERS: Thank you very much, Your Honour.

114 THE COURT: Thank you.

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