



Handout: Case Study: D.P. v. R.

The Facts

Fifteen-year-old D.P. pled guilty to a drinking and driving charge. He was stopped by the police at 2 a.m. after they observed him speeding and swerving. In addition to D.P. there were three other teenaged passengers in the car. D.P. was a new driver and as such was not allowed to drive after midnight. The police found open, partly empty, liquor bottles, marijuana, and paraphernalia for using marijuana in the car. A Breathalyzer test showed D.P.'s blood alcohol content to be .1 which was over the limit of .08 but not a particularly high reading.

The pre-sentence report indicated that D.P. had never been involved with the criminal justice system before, that he was a high school student with plans to take engineering at university, that he participated in sports, and that he held down a part-time job. The report also explained that D.P.'s parents were divorced and that his mother had moved to another country. As a result D.P. had little contact with his mother. His father struggled with depression and alcohol abuse. D.P. had begun drinking alcohol and using marijuana as well as exhibiting some anger issues.

The trial Judge sentenced D.P., to probation. D.P.'s lawyer had argued for a conditional discharge. The prosecutor asked for probation but did not submit any arguments against a conditional discharge. Probation is a harsher sentence than a conditional discharge mainly because with probation a youth's record can be accessed for a longer period of time.

In deciding on probation the sentencing Judge referred to another case where she sentenced an adult to jail for causing someone's death while driving under the influence of alcohol, as well as referring to the need to impress on youthful offenders that drinking and driving is a serious criminal matter and her concern that D.P.'s alcohol and marijuana use could lead D.P. to drink and drive again.

D.P. appealed the probation sentence arguing that it did not conform to the sentencing principles of the YCJA. A Court of Appeal heard the case.

The Law

The YCJA has a number of sentencing principles. Below is a summary of some of the ones considered in this case.

The YCJA states that youth sentences *must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence*. Keeping this rule in mind youth sentences must also:

- *be the least restrictive sentence that is capable of achieving the purpose set out in the Act*
- *be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and*

- *promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community*

and may also have the following objectives:

- *to denounce unlawful conduct*
- *to deter the young person from committing offences*



Questions to Consider

1. Which of the above principles do you think the trial Judge relied on in choosing the harsher sentence of probation?
2. Did the Judge consider any sentencing principles not included above?
3. When a sentence is appealed the court hearing the appeal cannot change the sentence just because they would have given a different sentence. They can only change the sentence if the trial Judge did not apply the principles in the YCJA properly. Do you think the above principles were applied properly in this case?

The Decision

The Court determined that the trial Judge failed to consider some relevant factors under the YCJA, overturned the decision of the trial Judge, and sentenced D.P. to a conditional discharge.

The Reasons

The Court of Appeal found that the trial Judge had not considered the requirement to impose the least restrictive sanction capable of achieving the guiding principles of sentencing under the YCJA or the need to emphasize rehabilitation and reintegration. The Court also found that the trial Judge had overemphasized the need to deter D.P. from drinking and driving again and the need to deter other young people. The Court came to this conclusion based on the Judge's comments about the impaired driver she had sentenced to jail as well as other comments she made before and after this comment about the need to deter D.P. and others from drinking and driving.