

Her Majesty The Queen (respondent) v. Z. (A.A.) (young person/accused/appellant)
(AY 11-30-07655; 2013 MBCA 33)

Indexed As: R. v. A.A.Z.

Manitoba Court of Appeal
Scott, C.J.M., Hamilton and Beard, J.J.A.
April 26, 2013.

Summary:

The accused, a young person, pled guilty to first degree murder for killing his abusive father following an argument. He received the maximum sentence of 10 years (less some of the time that he spent in pre-sentence custody) and was subject to an intensive rehabilitative custody and supervision order under the Youth Criminal Justice Act. The accused appealed the sentence.

The Manitoba Court of Appeal dismissed the appeal.

Editor's Note: Certain names in the following case have been initialized or the case otherwise edited to prevent the disclosure of identities where required by law, publication ban, Maritime Law Book's editorial policy or otherwise.

Criminal Law - Topic 5881

Sentence - Murder (incl. attempts) - The accused, a young person, age 17, pled guilty to first degree murder for killing his abusive father following an argument - He received a 10-year intensive rehabilitative custody and supervision order under the Youth Criminal Justice Act, with the level of custody to be secure - He was also given eight months credit for time served in pre-sentence custody - The accused appealed - The Manitoba Court of Appeal dismissed the appeal - The youth court judge followed the correct process in determining the sentence - That being so, the court did not accept that the length of the sentence was demonstrably unfit because the young person received the maximum sentence - See paragraphs 154 to 165.

Criminal Law - Topic 5881

Sentence - Murder (incl. attempts) - [See sixth **Criminal Law - Topic 8817.3**].

Criminal Law - Topic 8801

Young offenders - Decisions (incl. punishments) - General - The Manitoba Court of Appeal reviewed the sentencing principles of the Youth Criminal Justice Act (YCJA) - See paragraphs 28 to 65 - The court, per Scott, C.J.M. stated that "although principles of rehabilitation and the restriction of custodial sentences are of great importance in sentencing under the YCJA, there will be circumstances where the seriousness of the offence will cause accountability and meaningful consequences to be the dominant principles. I conclude that the YCJA's fundamental requirement for accountability and meaningful consequences encompasses principles of proportionality and retribution, and therefore requires a youth justice court to take into account the seriousness of the offence, the role played by the young person in the offence, and the moral culpability of the young

person. This means that, where serious offences have been committed, the concepts of proportionality, meaningful consequences and retribution may take precedence over rehabilitation and can result in significant custodial sentences. However, the presumption of diminished moral blameworthiness or culpability of young persons, based upon their reduced maturity and reduced capacity for moral judgment, means that accountability under the YCJA must remain 'offender-centric' and, consequently, neither general or specific deterrence, nor denunciation, can play a role in sentencing young persons under the YCJA as it existed at the time of this offence [June 2009]. This will not mean that young persons will be less accountable; rather, they will be 'accountable in accordance with their personal circumstances and the seriousness of the offence' ..." - See paragraphs 64 and 65.

Criminal Law - Topic 8801

Young offenders - Decisions (incl. punishments) - General - [See third **Criminal Law - Topic 8817.3**].

Criminal Law - Topic 8802

Young offenders - Decisions (incl. punishments) - Credit for time served - The Manitoba Court of Appeal reviewed the applicable sentencing principles regarding credit for pre-sentence detention in Youth Criminal Justice Act (YCJA) matters - The court held that while a youth court judge had to take pre-sentence detention "into account" (s. 38(3)(d)), the judge had the discretion to give no credit or reduced credit for the time spent in pre-sentence detention - Reasons were required where no credit was given - The court stated that the correct procedure when considering pre-sentence detention was for the youth court judge to first decide what an appropriate sentence would be before taking into account the time spent in pre-sentence detention and then determine whether to give any credit for that time - The court articulated the considerations applicable in determining whether pre-sentence detention should be credited - See paragraphs 144 to 153.

Criminal Law - Topic 8802

Young offenders - Decisions (incl. punishments) - Credit for time served - The accused, a young person, pled guilty to first degree murder - He received a 10-year intensive rehabilitative custody and supervision order under the Youth Criminal Justice Act, with eight months credit for time served - The accused appealed, arguing that the judge should have given more credit - An issue arose as to whether a youth court judge could take into account the fact that the Crown considered pre-sentence detention when determining that it would not apply for an adult sentence - The Manitoba Court of Appeal dismissed the appeal - By giving some credit for pre-sentence custody, the judge implicitly rejected the Crown's argument - Here, the decision was well within the youth court judge's discretion - Her clearly articulated reasons did not reflect any error in principle - See paragraphs 151 to 153.

Criminal Law - Topic 8806

Young offenders - Decisions (incl. punishments) - Sentencing considerations - [See first **Criminal Law - Topic 8801** and second, third and sixth **Criminal Law - Topic 8817.3**].

Criminal Law - Topic 8814

Young offenders - Decisions (incl. punishments) - Secure custody - The Manitoba Court of Appeal explained that in Manitoba, pursuant to Order in Council 164/2003, when a youth justice court initially imposed a custodial sentence under the Youth Criminal Justice Act (YCJA), including an intensive rehabilitative custody and supervision order, the judge had to determine not only the length of custody, but also the level of custody (i.e., whether the custody was to be open or secure) - The court held that in determining the level of custody, the youth justice court had to take into account the factors indicated in s. 24.1(4) of the Young Offenders Act (as incorporated into the YCJA) - After taking into account the appropriate factors, the youth justice court had the discretion to impose secure custody, open custody or a blended level of custody - See paragraphs 96 to 110.

Criminal Law - Topic 8814

Young offenders - Decisions (incl. punishments) - Secure custody - The accused, a young person, age 17, pled guilty to first degree murder for killing his abusive father following an argument - He received a 10-year intensive rehabilitative custody and supervision (IRCS) order under the Youth Criminal Justice Act, with the level of custody to be secure - The accused appealed, arguing that the youth court judge was obliged to divide the level of custody between secure or open when imposing an IRCS - The Manitoba Court of Appeal dismissed the appeal - The court, per Scott, C.J.M., stated that "keeping in mind that an IRCS order is designed to be flexible and respond to the individualized and ever-changing needs and circumstances of a mentally, psychologically or emotionally disturbed young person, and given the flexible, long-term plan proposed for this young person, it is my view that the imposition of a blended IRCS order would have been inconsistent with the purpose of the carefully crafted plan for this young person and the sentence that followed from it. Given the above, not only was the youth court judge in this case not required to divide the level of custody between secure and open custody, but, in my view, it would have been unwise for her to do so" - See paragraphs 113 to 118.

Criminal Law - Topic 8814

Young offenders - Decisions (incl. punishments) - Secure custody - The accused, a young person, age 17, pled guilty to first degree murder for killing his abusive father following an argument - He received a 10-year intensive rehabilitative custody and supervision (IRCS) order under the Youth Criminal Justice Act (YCJA), with the level of custody to be secure - The accused appealed, arguing that the youth court judge erred in law in relying on the existence of regular progress reviews under s. 94 of the YCJA to justify the maximum period of secure custody - The Manitoba Court of Appeal dismissed the appeal - The court stated that "To the specific question of whether a youth court judge can impose the maximum secure IRCS order because there is a discretion to reduce the level and amount of custody through a s. 94 review, the answer, in light of s. 39(8) of the YCJA and the purpose and principles of the YCJA sentencing regime, is 'No' when determining the length of the youth sentence. However, there is no similar restriction on the youth court judge with respect to the determination of the level of custody ... In the present case, the youth court judge made no mention of s. 94 when determining the length of the young person's sentence; in fact, she limited her discussion to the youth justice court's ability to review the level of custody in the future. As just discussed, that is not prohibited

by s. 39(8) of the YCJA. Therefore, it cannot be contended that she erred in law in this regard" - See paragraphs 136 to 143.

Criminal Law - Topic 8814

Young offenders - Decisions (incl. punishments) - Secure custody - The Manitoba Court of Appeal stated that "Whatever decision the youth justice court makes under s. 94 or s. 96 [of the Youth Criminal Justice Act (YCJA)] is a final decision, at least until the next review. Section 37(11) of the YCJA indicates that no appeal lies from a 'youth sentence' under ss. 94 to 96. A 'youth sentence' is 'a sentence imposed under section 42, 51 or 59 or any of sections 94 to 96 and includes a confirmation or a variation of that sentence' (s. 2(1) of the YCJA). Thus, no appeal lies from a s. 94 sentence review. As the level of custody is also a matter dealt with pursuant to a s. 94 review, it appears that a decision under s. 94 regarding the level of custody would also not be appealable ..." - See paragraph 126.

Criminal Law - Topic 8815

Young offenders - Decisions (incl. punishments) - Open custody - [See first, second and fourth **Criminal Law - Topic 8814**].

Criminal Law - Topic 8817.3

Young offenders - Decisions (incl. punishments) - Custody and supervision order (incl. breach and review) - The Manitoba Court of Appeal noted that the Youth Criminal Justice Act, for very serious offences, permitted the imposition of an intensive rehabilitative custody and supervision (IRCS) order as part of a youth sentence (s. 42(2)(r)) - The court stated that an IRCS order could only be imposed, however, if the following four conditions were satisfied: "(1) the young person has been found guilty of murder, attempted murder, manslaughter, aggravated sexual assault or a third serious violent crime; (2) the young person is suffering from a mental illness or disorder, a psychological disorder or an emotional disturbance; (3) a plan of treatment has been developed for the young person, and there are reasonable grounds to believe the plan might reduce the young person's risk of recidivism; and (4) the provincial director has determined that an IRCS program is available and the young person's participation in it is appropriate" - See paragraph 66.

Criminal Law - Topic 8817.3

Young offenders - Decisions (incl. punishments) - Custody and supervision order (incl. breach and review) - The Manitoba Court of Appeal noted that the Youth Criminal Justice Act (YCJA), for very serious offences, permitted the imposition of an intensive rehabilitative custody and supervision (IRCS) order as part of a youth sentence (s. 42(2)(r)) - The court discussed generally the imposition of IRCS orders in the youth sentencing regime under the YCJA - See paragraphs 66 to 94 - The court stated that "In summary ... the IRCS order option reflects the YCJA's goal of holding young persons accountable and attaining the long-term protection of society through the imposition of just sanctions: (1) that have meaningful consequences; and (2) that promote rehabilitation and reintegration. The IRCS order option gives effect to the presumption of diminished moral blameworthiness or culpability of young persons, the young person's needs and special

requirements, and the 'offender-centric' nature of the YCJA, by focussing on the individual young person and implementing individualized IRCS plans that respond flexibly to the changing requirements of the young person in question. The case law, however, demonstrates that, although the IRCS order clearly promotes rehabilitation, it must also fulfill the other aspect of accountability - meaningful consequences that are proportionate to the offence and the individual young person's degree of responsibility. Furthermore, the case law suggests that the length of the sentence necessary to impose meaningful consequences on the young person does not have to be reduced to reflect the rehabilitative prospects of the IRCS plan ..." - See paragraph 94.

Criminal Law - Topic 8817.3

Young offenders - Decisions (incl. punishments) - Custody and supervision order (incl. breach and review) - The Manitoba Court of Appeal discussed the relationship between the unique intensive rehabilitative custody and supervision (IRCS) regime under the Youth Criminal Justice Act (YCJA) and the ordinary sentencing principles under the YCJA or at common law - See paragraphs 28 to 94.

Criminal Law - Topic 8817.3

Young offenders - Decisions (incl. punishments) - Custody and supervision order (incl. breach and review) - Section 94 of the Youth Criminal Justice Act (YCJA) provided that almost all custodial sentences, including intensive rehabilitative custody and supervision (IRCS) orders, could be reviewed by the youth justice court - The Manitoba Court of Appeal discussed generally how the s. 94 review provisions worked with respect to an intensive IRCS order - See paragraphs 119 to 135 - The court concluded, inter alia, that "There is nothing in the YCJA that permits a youth court judge to increase the length of custody on a s. 94 or s. 96 review. However, in narrow circumstances, the youth justice court has the power to order the young person to remain in custody rather than beginning the conditional supervision portion of the original sentence and, in even more narrow circumstances, has the power to order a young person to return to custody after being released on conditional supervision. In neither case, however, can the young person be held in custody any longer than the length of his or her original custody and supervision order" - See paragraph 135.

Criminal Law - Topic 8817.3

Young offenders - Decisions (incl. punishments) - Custody and supervision order (incl. breach and review) - The Manitoba Court of Appeal noted that the Youth Criminal Justice Act (YCJA), for very serious offences, permitted the imposition of an intensive rehabilitative custody and supervision (IRCS) order as part of a youth sentence (s. 42(2)(r)) - Section 94 legislated annual and optional reviews of custodial sentences and permitted the reviewing court to order the early release of the young person from custody and to place the young person on a conditional supervision order to be served in the community for a period not exceeding the remainder of the time left on the original sentence - The Manitoba Court of Appeal discussed how the s. 94 review provisions worked with respect to an IRCS order - See paragraphs 95 to 143.

Criminal Law - Topic 8817.3

Young offenders - Decisions (incl. punishments) - Custody and supervision order (incl. breach and review) - The Manitoba Court of Appeal discussed the issue of sentencing for murder under the Youth Criminal Justice Act - See paragraphs 154 to 165 - The court stated that "In conclusion, the 'range' for first degree murder sentences under the YCJA is very narrow and will usually require the imposition of the maximum sentence, sometimes with pre-sentence detention being given some credit, but not always. In determining the appropriate sentence, the case law does not support the notion of starting at the maximum and then reducing that sentence in response to mitigating factors ... Rather, an individualized process must occur, with the youth court judge considering, on a case-by-case basis, all the relevant principles provided for in the YCJA, including the principles of accountability, meaningful consequences, proportionality, rehabilitation and reintegration. If the circumstances warrant the imposition of the maximum sentence, the youth court judge, in so doing, should avoid drawing comparisons with 'worst case' scenarios" - See paragraph 164.

Criminal Law - Topic 8817.3

Young offenders - Decisions (incl. punishments) - Custody and supervision order (incl. breach and review) - [See second and third **Criminal Law - Topic 8814**].

Criminal Law - Topic 8818

Young offenders - Decisions (incl. punishments) - Review of disposition - [See third and fourth **Criminal Law - Topic 8814** and fourth and fifth **Criminal Law - Topic 8817.3**].

Criminal Law - Topic 8881

Young offenders - Appeals - General - [See fourth **Criminal Law - Topic 8814**].

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- R. v. C.A.M., [1996] 1 S.C.R. 500; 194 N.R. 321; 73 B.C.A.C. 81; 120 W.A.C. 81, refd to. [para. 18].
- R. v. Rezaie (M.) (1996), 96 O.A.C. 268; 31 O.R.(3d) 713 (C.A.), refd to. [para. 18].
- R. v. D.B., [2008] 2 S.C.R. 3; 374 N.R. 221; 237 O.A.C. 110; 2008 SCC 25, refd to. [para. 18].
- R. v. V.J.T. (2007), 214 Man.R.(2d) 94; 395 W.A.C. 94; 2007 MBCA 45, refd to. [para. 18].
- R. v. L.R.P. (2004), 290 N.B.R.(2d) 345; 755 A.P.R. 345; 2004 NBCA 76, refd to. [para. 28].
- R. v. J.J.M., [1993] 2 S.C.R. 421; 152 N.R. 274; 85 Man.R.(2d) 161; 41 W.A.C. 161, refd to. [para. 32].
- R. v. M.D.D. (2004), 253 Sask.R. 109; 2004 SKPC 106, refd to. [para. 36].
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- R. v. S.J.L.-G. et al., [2009] 1 S.C.R. 426; 386 N.R. 1; 2009 SCC 14, refd to. [para. 48].
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- R. v. Z.T.S. (2012), 284 Man.R.(2d) 55; 555 W.A.C. 55; 2012 MBCA 90, refd to. [para. 50].

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R. v. J.C.N. (2005), 269 Sask.R. 183; 357 W.A.C. 183; 2005 SKCA 64, reld to. [para. 50].

R. v. J.S.M. (2005), 216 B.C.A.C. 85; 356 W.A.C. 85; 2005 BCCA 417, reld to. [para. 52].

R. v. M.A.H. (2006), 285 Sask.R. 284; 378 W.A.C. 284; 2006 SKCA 114, reld to. [para. 53].

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R. v. T.P.D. (2009), 284 N.S.R.(2d) 19; 901 A.P.R. 19; 2009 NSSC 332, reld to. [para. 86].

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R. v. I.R.N. (2011), 262 Man.R.(2d) 267; 507 W.A.C. 267; 2011 MBCA 31, reld to. [para. 99].

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103].

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R. v. J.S. (2006), 213 O.A.C. 274; 81 O.R.(3d) 511 (C.A.), reld to. [para. 104].

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R. v. M.B., [2011] Man.R.(2d) Uned. 45; 2011 MBCA 53, reld to. [para. 108].

R. v. J.P.G. (2000), 130 O.A.C. 343 (C.A.), reld to. [para. 114].

R. v. D.H., 2008 ONCJ 78, reld to. [para. 121].

R. v. R.K.M. (2009), 340 Sask.R. 21; 2009 SKQB 51, reld to. [para. 123].

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R. v. J.S., 2005 BCPC 10, reld to. [para. 124].

R. v. C.K. (2008), 233 C.C.C.(3d) 194; 2008 ONCJ 236, reld to. [para. 125].

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R. v. C.K. (2006), 211 C.C.C.(3d) 426; 2006 ONCJ 283, reld to. [para. 151].

R. v. P.K. et al., [2005] A.R. Uned. 143; 2005 ABPC 10, reld to. [para. 155].

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Counsel:

S.B. Simmonds and L.C. Robinson, for the appellant;
A.Y. Kotler, for the respondent.

This appeal was heard on June 11, 2012, before Scott, C.J.M., Hamilton and Beard, J.J.A., of the Manitoba Court of Appeal. The following decision was delivered for the court by Scott, C.J.M., on April 26, 2013.

Appeal dismissed.

Editor: Elizabeth M.A. Turgeon

Criminal Law - Topic 5881

Sentence - Murder (incl. attempts) - The Manitoba Court of Appeal discussed the issue of sentencing for murder under the Youth Criminal Justice Act - See paragraphs 154 to 165 - The court stated that "In conclusion, the 'range' for first degree murder sentences under the YCJA is very narrow and will usually require the imposition of the maximum

sentence, sometimes with pre-sentence detention being given some credit, but not always. In determining the appropriate sentence, the case law does not support the notion of starting at the maximum and then reducing that sentence in response to mitigating factors ... Rather, an individualized process must occur, with the youth court judge considering, on a case-by-case basis, all the relevant principles provided for in the YCJA, including the principles of accountability, meaningful consequences, proportionality, rehabilitation and reintegration. If the circumstances warrant the imposition of the maximum sentence, the youth court judge, in so doing, should avoid drawing comparisons with 'worst case' scenarios" - See paragraph 164.

Criminal Law - Topic 8801

Young offenders - Decisions (incl. punishments) - General - The Manitoba Court of Appeal discussed the relationship between the unique intensive rehabilitative custody and supervision (IRCS) regime under the Youth Criminal Justice Act (YCJA) and the ordinary sentencing principles under the YCJA or at common law - See paragraphs 28 to 94.

Criminal Law - Topic 8806

Young offenders - Decisions (incl. punishments) - Sentencing considerations - The Manitoba Court of Appeal reviewed the sentencing principles of the Youth Criminal Justice Act (YCJA) - See paragraphs 28 to 65 - The court, per Scott, C.J.M. stated that "although principles of rehabilitation and the restriction of custodial sentences are of great importance in sentencing under the YCJA, there will be circumstances where the seriousness of the offence will cause accountability and meaningful consequences to be the dominant principles. I conclude that the YCJA's fundamental requirement for accountability and meaningful consequences encompasses principles of proportionality and retribution, and therefore requires a youth justice court to take into account the seriousness of the offence, the role played by the young person in the offence, and the moral culpability of the young person. This means that, where serious offences have been committed, the concepts of proportionality, meaningful consequences and retribution may take precedence over rehabilitation and can result in significant custodial sentences. However, the presumption of diminished moral blameworthiness or culpability of young persons, based upon their reduced maturity and reduced capacity for moral judgment, means that accountability under the YCJA must remain 'offender-centric' and, consequently, neither general or specific deterrence, nor denunciation, can play a role in sentencing young persons under the YCJA as it existed at the time of this offence [June 2009]. This will not mean that young persons will be less accountable; rather, they will be 'accountable in accordance with their personal circumstances and the seriousness of the offence' ..." - See paragraphs 64 and 65.

Criminal Law - Topic 8806

Young offenders - Decisions (incl. punishments) - Sentencing considerations - The Manitoba Court of Appeal noted that the Youth Criminal Justice Act (YCJA), for very serious offences, permitted the imposition of an intensive rehabilitative custody and supervision (IRCS) order as part of a youth sentence (s. 42(2)(r)) - The court discussed generally the imposition of IRCS orders in the youth sentencing regime under the YCJA -

See paragraphs 66 to 94 - The court stated that "In summary ... the IRCS order option reflects the YCJA's goal of holding young persons accountable and attaining the long-term protection of society through the imposition of just sanctions: (1) that have meaningful consequences; and (2) that promote rehabilitation and reintegration. The IRCS order option gives effect to the presumption of diminished moral blameworthiness or culpability of young persons, the young person's needs and special requirements, and the 'offender-centric' nature of the YCJA, by focussing on the individual young person and implementing individualized IRCS plans that respond flexibly to the changing requirements of the young person in question. The case law, however, demonstrates that, although the IRCS order clearly promotes rehabilitation, it must also fulfill the other aspect of accountability - meaningful consequences that are proportionate to the offence and the individual young person's degree of responsibility. Furthermore, the case law suggests that the length of the sentence necessary to impose meaningful consequences on the young person does not have to be reduced to reflect the rehabilitative prospects of the IRCS plan ..." - See paragraph 94.

Criminal Law - Topic 8806

Young offenders - Decisions (incl. punishments) - Sentencing considerations - The Manitoba Court of Appeal discussed the relationship between the unique intensive rehabilitative custody and supervision (IRCS) regime under the Youth Criminal Justice Act (YCJA) and the ordinary sentencing principles under the YCJA or at common law - See paragraphs 28 to 94.

Criminal Law - Topic 8806

Young offenders - Decisions (incl. punishments) - Sentencing considerations - The Manitoba Court of Appeal discussed the issue of sentencing for murder under the Youth Criminal Justice Act - See paragraphs 154 to 165 - The court stated that "In conclusion, the 'range' for first degree murder sentences under the YCJA is very narrow and will usually require the imposition of the maximum sentence, sometimes with pre-sentence detention being given some credit, but not always. In determining the appropriate sentence, the case law does not support the notion of starting at the maximum and then reducing that sentence in response to mitigating factors ... Rather, an individualized process must occur, with the youth court judge considering, on a case-by-case basis, all the relevant principles provided for in the YCJA, including the principles of accountability, meaningful consequences, proportionality, rehabilitation and reintegration. If the circumstances warrant the imposition of the maximum sentence, the youth court judge, in so doing, should avoid drawing comparisons with 'worst case' scenarios" - See paragraph 164.

Criminal Law - Topic 8815

Young offenders - Decisions (incl. punishments) - Open custody - The Manitoba Court of Appeal explained that in Manitoba, pursuant to Order in Council 164/2003, when a youth justice court initially imposed a custodial sentence under the Youth Criminal Justice Act (YCJA), including an intensive rehabilitative custody and supervision order, the judge had to determine not only the length of custody, but also the level of custody (i.e., whether the custody was to be open or secure) - The court held that in determining the

level of custody, the youth justice court had to take into account the factors indicated in s. 24.1(4) of the Young Offenders Act (as incorporated into the YCJA) - After taking into account the appropriate factors, the youth justice court had the discretion to impose secure custody, open custody or a blended level of custody - See paragraphs 96 to 110.

Criminal Law - Topic 8815

Young offenders - Decisions (incl. punishments) - Open custody - The accused, a young person, age 17, pled guilty to first degree murder for killing his abusive father following an argument - He received a 10-year intensive rehabilitative custody and supervision (IRCS) order under the Youth Criminal Justice Act, with the level of custody to be secure - The accused appealed, arguing that the youth court judge was obliged to divide the level of custody between secure or open when imposing an IRCS - The Manitoba Court of Appeal dismissed the appeal - The court, per Scott, C.J.M., stated that "keeping in mind that an IRCS order is designed to be flexible and respond to the individualized and ever-changing needs and circumstances of a mentally, psychologically or emotionally disturbed young person, and given the flexible, long-term plan proposed for this young person, it is my view that the imposition of a blended IRCS order would have been inconsistent with the purpose of the carefully crafted plan for this young person and the sentence that followed from it. Given the above, not only was the youth court judge in this case not required to divide the level of custody between secure and open custody, but, in my view, it would have been unwise for her to do so" - See paragraphs 113 to 118.

Criminal Law - Topic 8815

Young offenders - Decisions (incl. punishments) - Open custody - The Manitoba Court of Appeal stated that "Whatever decision the youth justice court makes under s. 94 or s. 96 [of the Youth Criminal Justice Act (YCJA)] is a final decision, at least until the next review. Section 37(11) of the YCJA indicates that no appeal lies from a 'youth sentence' under ss. 94 to 96. A 'youth sentence' is 'a sentence imposed under section 42, 51 or 59 or any of sections 94 to 96 and includes a confirmation or a variation of that sentence' (s. 2(1) of the YCJA). Thus, no appeal lies from a s. 94 sentence review. As the level of custody is also a matter dealt with pursuant to a s. 94 review, it appears that a decision under s. 94 regarding the level of custody would also not be appealable ..." - See paragraph 126.

Criminal Law - Topic 8817.3

Young offenders - Decisions (incl. punishments) - Custody and supervision order (incl. breach and review) - The accused, a young person, age 17, pled guilty to first degree murder for killing his abusive father following an argument - He received a 10-year intensive rehabilitative custody and supervision (IRCS) order under the Youth Criminal Justice Act, with the level of custody to be secure - The accused appealed, arguing that the youth court judge was obliged to divide the level of custody between secure or open when imposing an IRCS - The Manitoba Court of Appeal dismissed the appeal - The court, per Scott, C.J.M., stated that "keeping in mind that an IRCS order is designed to be flexible and respond to the individualized and ever-changing needs and circumstances of a mentally, psychologically or emotionally disturbed young person, and given the flexible, long-term plan proposed for this young person, it is my view that the imposition

of a blended IRCS order would have been inconsistent with the purpose of the carefully crafted plan for this young person and the sentence that followed from it. Given the above, not only was the youth court judge in this case not required to divide the level of custody between secure and open custody, but, in my view, it would have been unwise for her to do so" - See paragraphs 113 to 118.

Criminal Law - Topic 8817.3

Young offenders - Decisions (incl. punishments) - Custody and supervision order (incl. breach and review) - The accused, a young person, age 17, pled guilty to first degree murder for killing his abusive father following an argument - He received a 10-year intensive rehabilitative custody and supervision (IRCS) order under the Youth Criminal Justice Act (YCJA), with the level of custody to be secure - The accused appealed, arguing that the youth court judge erred in law in relying on the existence of regular progress reviews under s. 94 of the YCJA to justify the maximum period of secure custody - The Manitoba Court of Appeal dismissed the appeal - The court stated that "To the specific question of whether a youth court judge can impose the maximum secure IRCS order because there is a discretion to reduce the level and amount of custody through a s. 94 review, the answer, in light of s. 39(8) of the YCJA and the purpose and principles of the YCJA sentencing regime, is 'No' when determining the length of the youth sentence. However, there is no similar restriction on the youth court judge with respect to the determination of the level of custody ... In the present case, the youth court judge made no mention of s. 94 when determining the length of the young person's sentence; in fact, she limited her discussion to the youth justice court's ability to review the level of custody in the future. As just discussed, that is not prohibited by s. 39(8) of the YCJA. Therefore, it cannot be contended that she erred in law in this regard" - See paragraphs 136 to 143.

Criminal Law - Topic 8818

Young offenders - Decisions (incl. punishments) - Review of disposition - The accused, a young person, age 17, pled guilty to first degree murder for killing his abusive father following an argument - He received a 10-year intensive rehabilitative custody and supervision (IRCS) order under the Youth Criminal Justice Act (YCJA), with the level of custody to be secure - The accused appealed, arguing that the youth court judge erred in law on relying in the existence of regular progress reviews under s. 94 of the YCJA to justify the maximum period of secure custody - The Manitoba Court of Appeal dismissed the appeal - The court stated that "To the specific question of whether a youth court judge can impose the maximum secure IRCS order because there is a discretion to reduce the level and amount of custody through a s. 94 review, the answer, in light of s. 39(8) of the YCJA and the purpose and principles of the YCJA sentencing regime, is 'No' when determining the length of the youth sentence. However, there is no similar restriction on the youth court judge with respect to the determination of the level of custody ... In the present case, the youth court judge made no mention of s. 94 when determining the length of the young person's sentence; in fact, she limited her discussion to the youth justice court's ability to review the level of custody in the future. As just discussed, that is not prohibited by s. 39(8) of the YCJA. Therefore, it cannot be contended that she erred in law in this regard" - See paragraphs 136 to 143.

Criminal Law - Topic 8818

Young offenders - Decisions (incl. punishments) - Review of disposition - The Manitoba Court of Appeal stated that "Whatever decision the youth justice court makes under s. 94 or s. 96 [of the Youth Criminal Justice Act (YCJA)] is a final decision, at least until the next review. Section 37(11) of the YCJA indicates that no appeal lies from a 'youth sentence' under ss. 94 to 96. A 'youth sentence' is 'a sentence imposed under section 42, 51 or 59 or any of sections 94 to 96 and includes a confirmation or a variation of that sentence' (s. 2(1) of the YCJA). Thus, no appeal lies from a s. 94 sentence review. As the level of custody is also a matter dealt with pursuant to a s. 94 review, it appears that a decision under s. 94 regarding the level of custody would also not be appealable ..." - See paragraph 126.

Criminal Law - Topic 8818

Young offenders - Decisions (incl. punishments) - Review of disposition - Section 94 of the Youth Criminal Justice Act (YCJA) provided that almost all custodial sentences, including intensive rehabilitative custody and supervision (IRCS) orders, could be reviewed by the youth justice court - The Manitoba Court of Appeal discussed generally how the s. 94 review provisions worked with respect to an intensive IRCS order - See paragraphs 119 to 135 - The court concluded, inter alia, that "There is nothing in the YCJA that permits a youth court judge to increase the length of custody on a s. 94 or s. 96 review. However, in narrow circumstances, the youth justice court has the power to order the young person to remain in custody rather than beginning the conditional supervision portion of the original sentence and, in even more narrow circumstances, has the power to order a young person to return to custody after being released on conditional supervision. In neither case, however, can the young person be held in custody any longer than the length of his or her original custody and supervision order" - See paragraph 135.

Criminal Law - Topic 8818

Young offenders - Decisions (incl. punishments) - Review of disposition - The Manitoba Court of Appeal noted that the Youth Criminal Justice Act (YCJA), for very serious offences, permitted the imposition of an intensive rehabilitative custody and supervision (IRCS) order as part of a youth sentence (s. 42(2)(r)) - Section 94 legislated annual and optional reviews of custodial sentences and permitted the reviewing court to order the early release of the young person from custody and to place the young person on a conditional supervision order to be served in the community for a period not exceeding the remainder of the time left on the original sentence - The Manitoba Court of Appeal discussed how the s. 94 review provisions worked with respect to an IRCS order - See paragraphs 95 to 143.

Criminal Law - Topic 8881

Young offenders - Appeals - General - The Manitoba Court of Appeal stated that "Whatever decision the youth justice court makes under s. 94 or s. 96 [of the Youth Criminal Justice Act (YCJA)] is a final decision, at least until the next review. Section 37(11) of the YCJA indicates that no appeal lies from a 'youth sentence' under ss. 94 to 96. A 'youth sentence' is 'a sentence imposed under section 42, 51 or 59 or any of sections

94 to 96 and includes a confirmation or a variation of that sentence' (s. 2(1) of the YCJA). Thus, no appeal lies from a s. 94 sentence review. As the level of custody is also a matter dealt with pursuant to a s. 94 review, it appears that a decision under s. 94 regarding the level of custody would also not be appealable ..." - See paragraph 126.