WARNING

THIS IS AN APPEAL UNDER THE

a. YOUTH CRIMINAL JUSTICE ACT

AND IS SUBJECT TO:

110(1) Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

(2) Subsection (1) does not apply

(a) in a case where the information relates to a young person who has received an adult sentence;

(b) in a case where the information relates to a young person who has received a youth sentence for a violent offence and the youth justice court has ordered a lifting of the publication ban under subsection 75(2); and

(c) in a case where the publication of the information is made in the course of the administration of justice, if it is not the purpose of the publication to make the information known in the community.

(3) A young person referred to in subsection (1) may, after he or she attains the age of eighteen years, publish or cause to be published information that would identify him or her as having been dealt with under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, provided that he or she is not in custody pursuant to either Act at the time of the publication.

111(1) Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.

138(1) Every person who contravenes subsection 110(1) (identity of offender not to be published), 111(1) (identity of victim or witness not to be published), 118(1) (no access to records unless

authorized) or 128(3) (disposal of R.C.M.P. records) or section 129 (no subsequent disclosure) of this Act, or subsection 38(1) (identity not to be published), (1.12) (no subsequent disclosure), (1.14) (no subsequent disclosure by school) or (1.15) (information to be kept separate), 45(2) (destruction of records) or 46(1) (prohibition against disclosure) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. G.E., 2018 ONCA 740
DATE: 20180910
DOCKET: C65422

Lauwers, Pardu and Paciocco JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

G.E.

Appellant

G.E., acting in person

Breana Vandebeek, duty counsel

Nicole Rivers, for the respondent

Heard and released orally: September 5, 2018

On appeal from the finding of guilt entered on March 20, 2018 and the disposition imposed on April 27, 2018 by Justice Thomas P. Cleary of the Ontario Court of Justice.

REASONS FOR DECISION

[1] G.E., a youth, was discovered in possession of a loaded handgun and a bag containing many rounds of ammunition. He was in the company of approximately a dozen other youths.

[2] After G.E. was charged he was released on a recognizance prohibiting him from possessing firearms or ammunition. As the result of an unrelated wiretap less than 3 weeks later, G.E., while still a youth, was then found to be in possession of a loaded prohibited weapon, a sawed-off shotgun.

[3] After serving 401 days of related pre-sentence custody G.E. pled guilty to three charges from these two events, namely, unlawful possession of a loaded handgun contrary to *Criminal Code*, s.95(1); unlawful possession of the shotgun contrary to *Criminal Code*, s. 92(1) and breach of recognizance, contrary to *Criminal Code,* s.145(3).

[4] A joint position was presented to the youth court judge for time served. That joint position included the allocation of time for pre-sentence custody, with no time to be allocated to the breach of recognizance charge.

[5] The parties agreed that a probationary sentence should also be imposed but disagreed on its length. No joint position was offered on the ancillary orders that would be made.

[6] Counsel for G.E. alerted the youth court judge that G.E. intended to speak before sentencing, but G.E. was not given the opportunity to do so.

[7] The youth court judge accepted the joint position of time served, but not the allocation. Without inviting further submissions from the parties, the youth court judge allocated 3 months of presentence custody to the breach of recognizance charge. A 15 month probationary sentence was also imposed, as was a 7 years weapons prohibition pursuant to the *Youth Criminal Justice Act*, s. 51(1).

[8] G.E. appeals his sentence. He contends that the youth court judge erred in not respecting the joint position on the allocation of time served, and by failing to grant G.E. the right to speak before his sentencing. G.E. also contends that his probationary sentence of 15 months is too long, and that it is an illegal sentence for the s. 95 offence, in violation of *Youth Criminal Justice Act* s. 42(14). It should have been 12 months. Finally, G.E. also argues that the weapons prohibition should have been for 6 years or less from the termination of his custodial sentence. This latter submission is tied to G.E.'s contention that, as a matter of principle, ancillary orders made in youth cases should expire by the time the youth record is sealed.

[9] We agree that the youth court judge should not, in the face of a joint sentencing submission, have varied the allocation for time served without alerting the parties and giving them an opportunity to be heard. This variation did not, however, affect the length of the sentence and does not render the sentence imposed unfit.

[10] Nor would we interfere with the sentence because G.E. was not afforded the opportunity to speak at his sentencing hearing. We have reviewed the fresh evidence affidavit indicating what G.E. would have to say. While he has made impressive progress, the sentence imposed remains fit for the serious offences G.E. committed. He was not prejudiced by the way the sentencing hearing was conducted.

[11] We would set aside the concurrent 15 month probationary term attached to the s.95 offence and substitute a concurrent probationary term of 12 months. This is necessary to bring the sentence into compliance with s. 42(14). We would not, however, interfere with the 15 month probationary terms attached to the other two offences. The youth court judge determined appropriately that the principles of sentencing required a 15 month term of probation, and that is a legal sentence for those offences.

[12] Finally, we would not interfere with the seven year weapons prohibition. It is not an error in principle to have a weapons prohibition outlive the record retention period, and given the seriousness of the weapons offences in this case, the 7 year prohibition was manifestly appropriate.

[13] We would therefore grant leave to appeal, and set aside the 15 month concurrent term of probation imposed on the s.95 offence in Count 1 on information 17-Y996892. We would substitute a concurrent probationary sentence of 12

months from April 27, 2018, imposing the same terms and conditions as those imposed by the youth court judge on April 27, 2018. The other grounds of appeal are dismissed.

"P. Lauwers J.A."
"G. Pardu J.A."
"David M. Paciocco J.A."