W A R N I N G

The court hearing this matter directs that the following notice be attached to the file:

This is a case under the *Youth Criminal Justice Act* and is subject to subsections 110(1) and 111(1) and section 129 of the Act. These provisions read as follows:

> **110. IDENTITY OF OFFENDER NOT TO BE PUBLISHED —**(1) Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify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.
>
> . . .
>
> **111. IDENTITY OF VICTIM OR WITNESS NOT TO BE PUBLISHED —**(1) Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if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.
>
> . . .
>
> **129. NO SUBSEQUENT DISCLOSURE —** No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any person unless the disclosure is authorized under this Act.

Subsection 138(1) of the *Youth Criminal Justice Act,* which deals with the consequences of failure to comply with these provisions, states as follows:

> **138. OFFENCES —** Every person who contravenes subsection 110(1) (identity of offender not to be published), 111(1) (identity of victim or witness not to be published) . . . or section 129 (no subsequent disclosure) . . .
>
> (*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.

ONTARIO COURT OF JUSTICE

CITATION: *R. v. M.D.,* 2021 ONCJ 314
DATE: 2021 06 02
COURT FILE No.: Region of Niagara 998 20 YSR1827

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

M.D. and T.P.

Before Justice J. De Filippis
Heard on March 19 and May 21, 2021
Reasons for Sentence released on June 2, 2021

Mr. Limheng.....counsel for the Crown
Mr. Buchanan ..... counsel for M.D.
Mr. Agbakwa..... counsel for T.P.

De Filippis, J.:

INTRODUCTION

[1] This decision concerns the sentencing of two youths, who, among other offences, participated in a bank robbery. One of the youths, M.D., complains that his *Charter* rights were violated because his bail hearing was unduly delayed. He seeks a reduction in sentence.

[2] I accept the *Charter* argument and grant the remedy sought by M.D. Before explaining this result, it is necessary to set out the reasons for the sentence that is otherwise appropriate for M.D. and my conclusion with respect to T.P.

THE CRIMES

[3] On January 30, 2020, four young men – 15, 16, 17, and 18 years old – came from Toronto and Peel Regions to Niagara Region in a stolen car to commit crimes. They attempted to rob the Scotia Bank at the Fairview Mall in St. Catharines. This was captured on camera. The adult, 18-year-old Roel Lloyd, entered the vestibule, carrying an imitation

firearm, followed by three youths. All had their faces masked. They left immediately, after finding the main door locked.

[4] The next day, at 4:50 pm, the same four young men went to the Bank of Montreal in downtown St. Catharines. Again, this was captured on camera. Lloyd entered the bank, followed by two youths. A third youth occupied the driver's seat of the stolen car that was stopped just outside the bank entrance. Lloyd carried the imitation firearm and all had their faces masked. The bank was crowded with staff and customers. Lloyd pushed one of the customers and ordered everyone to "get down". He pointed the gun at several people as he shouted. The culprits obtained $1,500.00 and fled to the waiting car. A marked police cruiser happened to drive by the bank and was flagged down by a member of the public as the culprits sped away.

[5] The police officer followed the bandits as they drove the wrong way on a street for a about two blocks, before turning onto St Paul Street. This is one of the city's main streets with many restaurants and bars. The chase was abandoned by the police as a public safety measure. However, the fleeing car was soon seen in Thorold. It swerved into opposing traffic and ran a red light as a dozen police cruisers followed, with sirens and flashing lights.

[6] During the chase, a wheel on the stolen car was damaged. It was abandoned on the southbound ramp to Highway 406. The four culprits fled on foot up a hill and jumped over a fence. This area is near Brock University and part of what followed was captured on video by several civilians. One officer drove to the area to intercept the bandits. On arrival, he left his cruiser and tackled the defendant to the ground. As he did so, one of the fleeing youths jumped into the cruiser and began driving away. The officer left the defendant to try and prevent this. The defendant got up to run away but was again tackled by the same officer, with the assistance of a bystander. The imitation firearm was later seized by police in the stolen car.

[7] Lloyd pled guilty before me to several offences and was sentenced to 28 months in jail (less presentence custody) and two years' probation; see *R. v. Lloyd*, 2020 ONCJ 463. The present decision concerns two of the three youths who participated in the above noted events.

THE ROLE OF M.D.

[8] M.D. pled guilty to robbery and assault peace officer. He was one of the youths referred to above and one of the masked individuals who entered the Bank of Montreal with Lloyd on January 31, 2020. He was in the stolen vehicle as it sped away and fled on foot when that car was damaged. While in custody, awaiting a bail hearing for this matter, M.D. argued with a guard and punched him in the face.

THE ROLE OF T.P.

[9] T.P pled guilty to robbery, assault, theft of a police cruiser, and failure to comply with a youth sentence. He was one of the youths referred to above and one of the masked individuals who entered the Bank of Montreal with Lloyd on January 31, 2020. He was in the stolen vehicle as it sped away from the scene after the bank robbery and fled on foot

when that car was damaged. In the area of Brock University, he approached a man in his car. He assaulted that man in the face and tried to steal the car. When that failed, he entered the empty police cruiser, with its engine running and tried to drive away. He was soon stopped and arrested. T.P. was on probation at the time of these offences.

YCJA SENTENCING

[10] In imposing sentence on Roel Lloyd, the adult in these crimes, I noted the applicable sentencing provisions of *Criminal Code.* In imposing sentence against the two youths, I must follow the provisions of the *Youth Criminal Justice Act.* These statutory regimes are quite different and, although Mr. Lloyd is only a few months older than T.P., Parliament has drawn a line and I must respect that.

[11] The primary sentencing principles are outlined in section 38 of the *YCJA.*

> (1) The purpose of sentencing under section 42 (youth sentences) 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 or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.
>
> (2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:
>
> > (a) the sentence must not 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;
> >
> > (b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;
> >
> > (c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;
> >
> > (d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons;
> >
> > (e) subject to paragraph (c), the sentence must
> >
> > > (i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),
> > >
> > > (ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and
> > >
> > > (iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community;

(e.1)……..

(3) In determining a youth sentence, the youth justice court shall take into account

(a) the degree of participation by the young person in the commission of the offence;

(b) the harm done to victims and whether it was intentional or reasonably foreseeable;

(c) any reparation made by the young person to the victim or the community;

(d) the time spent in detention by the young person as a result of the offence;

(e) the previous findings of guilt of the young person; and

(f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.

VICTIM IMPACT STATEMENTS

[12] Two people present in the bank provided statements for me to consider in passing sentence. The Crown accepts that the robbery occurred with an imitation firearm. This, of course, was not known to the many people in the bank. To them it was real, and potentially lethal. This has had a great impact on the victims. Moreover, it is only by chance that the dangerous manner in which the stolen car was driven did not create more victims.

[13] Karlene Clarke has had recurring nightmares of the defendant yelling and waving a gun. She is now fearful around strangers. She added these comments: “That day you decided to make a terrifying crime a priority and a reality involving innocent people and two of my children. I am the only person my children have and you have taken a piece of their mother away from them”.

[14] Bryan Taylor wrote, “As I was looking up the barrel of the gun, any sudden movement in the bank could have jolted the assailant and he could have pulled the trigger, thus having a completely different outcome”. This man suffers from heart disease and had a difibulator/pacer implanted in his chest several months before this incident. He noted that this “device could have been triggered, also causing a different outcome”. He noted that he fears for his safety because “one day I might run into one of the assailants”.

THE SENTENCE FOR M.D.

[15] A presentence report, as well as a psychological assessment, pursuant to s. 34 of the *Youth Criminal Justice Act* (YCJA) was prepared for M.D.

[16] The psychological assessment prepared pursuant to s. 34 of the *YCJA* is troubling. The risk assessment findings reveal that M.D. is at a high risk for aggressive or violent

re-offending. The report recommends a period of secure custody followed by probation to provide structure, counselling, and support.

[17] Defence counsel points out that the report is based on two clinical interviews conducted with M.D. by way of videoconferencing due to COVID-19 restrictions and that the author notes there were limitations in the use of the standard psychological testing materials· Counsel suggests that greater deference be given to the pre-sentence report when considering a fit sentence due to the limitations noted in the section 34 report.

[18] The presentence report reveals a difficult childhood. He was born to a man and woman who did not raise him. Due to their personal struggles, it was agreed that M.D. would be adopted by N.D. and she would assume guardianship. However, M.D.'s biological parents continued to intervene in and disrupt his life.

[19] M.D. began to accrue criminal charges at the age of 14. His mother was continuously called to the school or the police station. At this time, M.D. started smoking marijuana at home and would not listen to N.D. Notwithstanding his difficulties at school, M.D. was described by teachers as a bright student who could excel academically. However, recurring suspensions and attendance problems impeded his success.

[20] M.D. has been attending school at Roy McMurtry Youth Centre during pre-sentence detention.[1] Reports describe him as having a great attitude and participating positively with his teachers and his peers. These reports indicate he receives constructive criticism well and seeks out advice from teachers on personal development.

[21] M.D. continues to have the support of his mother. The author of the presentence report has identified several counselling programs that may assist M.D., including one focussed Black youth.

[22] The Crown suggests that an appropriate sentence is one of 12 months, followed by probation for one year with terms that include reporting to a probation officer and counselling. Counsel also recommends two ancillary orders; DNA and s. 51(1) for five years. The Defence concedes that custody is appropriate and argues for a six-month period (subject to any reduction due to the *Charter* motion). The ancillary orders are not disputed. It is understood that any sentence will account for the time already spent in custody.

[23] In support of the defence position that an appropriate sentence is six-months custody for the bank robbery, the Defence places special emphasis on the decision of my colleague, Justice Cole, in *R v J. (M.A.)* 2005 ONCJ 64. It is submitted that the present case is similar to that dealt with by Justice Cole. I agree – but for one important factor; I cannot ignore the assessment that M.D. is at a high risk for re-offending.

[24] The appropriate sentence for the robbery offence, less presentence custody, and apart from the merits of the *Charter* motion, is eight months. In coming to this conclusion, I consider that M.D. pled guilty, does not have a criminal record and has the continuing support of his mother. However, this was a seriousness premeditated offence that

[1] M.D. is in custody awaiting trial on other matters.

adversely affected members of the public. I appreciate that M.D. did not possess the imitation gun, but he was aware that Lloyd had it in following him into the bank.

[25] The sentence of custody will be followed by one year of probation, on the terms set out below. A concurrent probation order is imposed for the offence of assaulting a peace officer. I agree that the ancillary orders are appropriate.

THE SENTENCE FOR T.P.

[26] T.P waived his right to a presentence report. Defence counsel provided me with his background and suggests that, notwithstanding certain differences, the sentence for T.P. should not be more than six months than that imposed on M.D. The Crown seeks a sentence of two years. As with M.D., it understood that presentence custody is to be considered and that the same ancillary orders be imposed.

[27] T.P. is 17 years old. He has never had contact with biological father. He was raised by his mother and step-father and has an older sister. He enjoys a good relationship with them. He has a prior conviction for robbery and was sentenced to a two-year probation term, in addition to 308 days spent in presentence custody. T.P. has been in custody since his arrest on the present offences.

[28] T.P. was earning good grades in school prior to his first conviction. While in custody he has completed high school and has actively participated in programs at the Arrell Youth Centre. He has been well-behaved at the Centre.

[29] Defence counsel concedes that custody is appropriate and, in addition to linking the sentences for T.P. and M.D., suggests that the Crown position is unlawful. The Crown recommends that the two-year sentence be accounted for by the enhanced presentence custody in the amount of 730 days. The Defence claims this is an effective sentence of three years because one-third of youth custody sentences are served under community supervision. I disagree. There is nothing in the *YCJA* that limits my discretion in considering presentence custody. In any event, the Defence argument fails to account for the fact that the presentence custody the Crown urges upon me is grossed up by one-third.

[30] As I noted with respect to M.D., this robbery was a seriousness premeditated offence that adversely affected members of the public. T.P. was also aware Lloyd possessed an imitation gun as he followed him into the bank. I reject the submission that the sentence for T.P. should not be more than six months greater than that imposed on M.D. Although, he also pled guilty, there are too many differences between the youths to justify that link. T.P. is two years older than M.D. – and in teenage life, two years is significant. Moreover, T.P. not only participated in the robbery, he assaulted a person in an attempt to steal his car, following which he successfully stole a police cruiser. Finally, T.P. has a related criminal record and was on probation for that offence when he committed the present ones. In these circumstances, the appropriate sentence for T.P. is 20 months in custody to be followed by probation for one year.

M.D. CHARTER MOTION

[31] M.D. seeks an order under section 24(1) of the *Canadian Charter of Rights and Freedoms* for a reduction in sentence as a result of unreasonable delay in receiving a bail hearing in a timely manner upon his arrest. It is not in dispute that unreasonably prolonged periods of custody awaiting a bail hearing may ground a claim for *Charter* relief or that a reduction in sentence is an available remedy for a "delay in bail" breach.

[32] As noted, M.D. was arrested on January 31, 2020 and held in custody pending judicial interim release. His first appearance in court was on February 1, 2020. Mr. Singh appeared on behalf of the defendant, but was not retained. The Crown was granted a three-day remand to investigate other similar unsolved robberies in Toronto, York, and Halton regions.

[33] On February 4, the Crown stated that a special bail hearing was needed due to the nature of the present charges and outstanding charges in other jurisdictions. At this time, M.D. was on three prior release orders for numerous charges, including, robbery with a firearm, wearing a disguise while committing an indictable offence, assault cause bodily harm and aggravated assault. In opposing a special bail hearing, Mr. Singh stated that M.D. was only 15 years old and a consent release order was appropriate. In making these remarks, Defence counsel was not aware of the outstanding charges and prior release orders. The matter was adjourned for two days. At that time, the Defence remanded it for five days. However, Defence counsel did not appear and the case was adjourned for another two days.

[34] On February 13, the case was adjourned until February 18 so that M.D. could apply for legal aid. On the return date, M.D. told the court he had applied for legal aid that morning. The matter was put over for one day for an update. At this time, an agent for Mr. Singh advised the court that he was retained and asked that the case be adjourned for two days so that a special bail hearing could be arranged. It was adjourned again, to February 28, for this purpose, at the Defence request.

[35] On February 28, Mr. Singh appeared in the afternoon to address this matter. He suggested that a special bail hearing was not required and asked that the matter proceed as a regular bail hearing that day. In taking this position, Mr. Singh pointed to delay inherent in setting special bail hearings. The Crown opposed this request and, after hearing submissions, the Court ruled that a special bail hearing was needed.

[36] This case was adjourned to March 2, 3, and 4 so that the parties could arrange for a special bail hearing in accordance with the Court's Practice Direction and local procedures. On March 5, the parties were in a position to set the date. A special bail hearing was fixed for March 12. That hearing lasted all day. M.D. was released on a recognizance with two sureties (one being his mother who was his previous surety and the other was his Godmother). He was ordered to be on house arrest conditions.[2]

[37] Mr. Buchanan[3] concedes that the initial three-day investigative hold, at the request of the Crown, was appropriate because of the nature of these charges and his client's outstanding charges. The Defence position on this *Charter* motion is that the process

[2] M.D. is now in custody because he was detained on subsequent charges.
[3] Mr. Buchanan is counsel in Mr. Singh's firm.

for special bail hearings inherently causes delay and such a hearing was not required. As such, M.D.'s right to life, liberty, and security in addition to his right to not be denied reasonable bail without just cause were violated.

[38] With respect to the first claim, the Defence argued "that the conduct by the Crown, and at times the Court, from February 4th onward contravened the principles of the *YCJA*, the principles of bail, and M.D.'s *Charter* rights. The Defence position is grounded in the assertion that:

> …not only does the "*Direction for Scheduling Special Bail Hearing Courts*" place the burden of scheduling special bail hearings on defence, it is wrought with procedures that will inherently cause further delays in an overburdened bail system and inconvenience all accused, including youths. Heavy scrutiny should be utilized by the Crown in requesting adjournments for special bail hearings and by the Court in granting the Crown's adjournment requests for that purpose especially as it relates to youths.

[39] The Direction that counsel complains is in reference to a Practice Direction issued in January 2020, by the Chief Justice of the Ontario Court of Justice with respect to scheduling Special Bail Hearing Courts for matters of such length that they cannot be accommodated in regularly scheduled bail courts.[4]

[40] The second claim that the special bail hearing was not needed is result based: At the time of this offence, M.D. was on two officer-in-charge undertakings in addition to his most recent bail recognizance dated December 5, 2019 that required, among other terms, that he reside with his mother/surety. The Defence argues that the next step on the ladder would have been to implement more restrictive conditions such as house arrest and increased supervision which was ultimately proposed to the Court and accepted.

[41] The Defence submits that as a result of the violations to the M.D.'s *Charter* rights, the appropriate remedy, under section 24(1) of the *Charter* is a reduction in sentence. Counsel relies on *R v S.B* 2014 ONCA 527. The Court of Appeal dismissed the applicant's appeal that the trial judge erred in refusing a stay of proceedings due to delay in obtaining a bail hearing. However, the Court of Appeal stated the trial judge granted an appropriate remedy by reducing the sentence.

[42] The Crown submits that this motion be dismissed for three reasons: Three reasons to reject motion; (1) The Defence consented to much of the delay; (2) The reversal of the Defence position with respect to the need for a special bail hearing added to the delay; and (3) A special bail hearing was warranted.

[43] The Crown points out that as early as February 4, the Crown suggested that a special bail hearing was needed. Nothing was done by the Defence to address this issue until February 28. Be that as it may, the record is clear that the Defence was not available to conduct a bail hearing – of any kind – until this date. Counsel had not been retained and agreed to, or requested, adjournments. On February 28, Defence counsel stated, for the first time, that he did not believe a special hearing was required. In

[4] See: https://www.ontariocourts.ca/ocj/legal-professionals/practice-directions/bail-hearing-courts/

rejecting this position, the Court noted that such hearings promote a fair and expeditious process. The Court noted that when matters are lengthy and cannot be completed it one day, it disrupts the normal functioning of bail court. Moreover, in the past, there were issues with special bails being scheduled and parties not being ready. In this regard, the Court has made efforts to make Justices available, to expedite the conducting of a pretrial, so special bails can be set as expeditiously as possible.

[44] The Crown makes the following additional submissions:

- The Defence had ample opportunity to arrange a special bail within a reasonable time period after the first being notified by the Crown. The failure to do so and attempt to have the matter heard in a regular bail court only exacerbated the time it took to eventually arrange a special bail hearing. The procedure to set a special bail was in effect from January 2020. While a relatively new process at the time, the process consists of having a pre-trial with a scheduling Justice of the Peace; and submitting the form with agreed upon dates to the trial coordinator.

- The Justice of Peace on February 28 explained that a pre-trial with a scheduling Justice of the Peace could be arranged within 24 hours.

- While bureaucratic and administrative rules do add some delay, and at times, annoyance, they serve to promote fairness and equality among all parties.

- Ultimately, the bail hearing in this matter took a full day to be heard. M.D. faced numerous serious charges, co-accused with both youths and adults. The evidence required explanation as there were dozens of witnesses, and surveillance footage, and chain of investigation to make out identification.

- In conclusion, the conduct of the bail hearing was entirely appropriate and warranted. The time it took to run the bail hearing was in line with the Crown estimates and indeed took a full day. This matter would not have completed on a normal bail list without displacing other matters.

[45] I agree with the Crown that this motion is not about a five-week delay in obtaining a bail hearing. Delay that is attributable to the defence cannot be seen as unreasonable delay. M.D. consented to a number of adjournments from February 1 to 28, for the purposes of applying for legal aid and to arrange a special bail hearing. I also agree with the Crown that a special bail hearing was warranted in this case. The fact that the Court ultimately disagreed with the Crown request for a detention order is not relevant. In the circumstances of this case, the result based argument is without merit.

[46] I reject the Defence suggestion that the protocol for special bail hearings is inherently a problem. In *R v Allen* [1996] O.J. No. 3175, the Court of Appeal for Ontario noted that,

> No case is an island to be treated as if it were the only case with a legitimate demand on court resources. The system cannot revolve around any one case, but must try to accommodate the needs of all cases. When a case requires additional

court resources the system cannot be expected to push other cases to the side and instantaneously provide those additional resources."

[47] The Practice Direction recognizes the practical realities of scheduling as described by the Court of Appeal in *Allen.* The justice system has limited resources. Some matters are more complex than others and take more time to address. The procedures and protocols that flow from the Practice direction exist to ensure the orderly conduct of matters and ensure fairness to all parties.

[48] Rules, procedures and protocols are only effective if the resources they are intended to manage meet the basic needs; that is, those resources must respect minimum constitutional standards. In this case, those standards were not met.

[49] After the Court ruled on February 28 that a special bail hearing was warranted, a date was not obtained until March 5 and fixed for March 12. It is not clear to me why it took five days to schedule the special bail hearing. The evidence does not permit me to conclude if it this was caused by the Crown, Defence or the Court. However, it has not been suggested to me that the delay after March 5 was due to anything other than the inability of the Court to accommodate the bail hearing. In other words, the lack of resources caused a delay of at least seven days, and perhaps up to 10 days.

[50] The administration of justice may be one of the most important concerns of government, but it is not the only one. A Court should be cautious when called upon to judge how government allocates fixed resources. Adopting this restrained approach, I conclude that the difficulty faced by M.D. in obtaining a timely bail hearing is unacceptable. Moreover, this is not an isolated event in the province.

[51] In *R v Simonelli* 2021 ONSC 354 the Court noted that, "[e]xpeditious hearings of bails is a first order of priority … The pertinent jurisprudence and the directives in the *Criminal Code* are unequivocal on the subject". In *Simonelli,* Justice Harris considered this matter at length. He quoted from a reputable study that found systemic delays in holding prompt bail hearings in Ontario. He also cited prior Court decisions that had also come to this conclusion. One of those decisions is that of mine, in *R v Jevons* 2008 ONCJ 559. That was 13 years ago.

[52] I find that M.D.'s rights pursuant to section 11(e) of the *Charter* were violated.

[53] The Crown advocates for the reduction in sentence by a factor of 0.5 for each day of delay. The Defence suggests a reduction of between two and six months.

[54] The remedy must be proportionate to the breach but also serve to dissociate the Court from the state conduct. In my opinion a two-month reduction in sentence is justified.

RESULT

[55] As I have explained the sentence otherwise appropriate for M.D. is eight months in custody and reduced because of the *Charter* violation to six months. M.D. has served more than this in presentence custody for the present offences and outstanding charges. At the request of the defence, I have taken this into account. Accordingly, 120 days of

presentence custody is noted at 1.5 - 1, for an effective sentence of 180 days (i.e. six months).

[56] What remains is the concurrent probation orders with respect to the robbery and assault peace officer offences. In addition to the statutory terms, M.D. will report to a probation officer, take counselling as directed, including the culturally centered programs for Black youth identified in the presentence report. He will be in full time attendance at school or seek and obtain full time employment. He is not to associate or communicate, directly or indirectly, with Karlene Clarke and Bryan Taylor or any member of their immediate families.

[57] With respect to the robbery charge, M.D. will provide a sample of his DNA and is subject to a weapons prohibition, pursuant to section 51(1) for a period of five years.

[58] As I have explained, the appropriate sentence for T.P. is 20 months in custody. As of the date of these reasons, he has served 490 days of presentence custody. I allocate 400 days to this sentence, enhanced at 1.5 – 1, for an effective sentence of 600 days (i.e. 20 months). T.P. is placed on probation for one year. In addition to the statutory terms, T.P. will report to a probation officer, and take counselling as directed, including culturally centered programs for Black youth. He will be in full time attendance at school or seek and obtain full time employment. He is not to associate or communicate, directly or indirectly, with Karlene Clarke and Bryan Taylor or any member of their immediate families. This sentence applies to all counts concurrently.

[59] With respect to the robbery charge, T.P. will provide a sample of his DNA and is subject to a weapons prohibition, pursuant to section 51(1) for a period of five years.

Released: June 2, 2021

Signed: Justice J. De Filippis