

YOUNG OFFENDERS - Fitness to Stand Trial - Fetal Alcohol Syndrome.

*R. v. D.B.; [2003] S.J. No. 688, BYOU/2004-007; Saskatchewan Provincial Youth Court, Turpel-Lafond Prov. Ct. J., October 28, 2003.*

The 16-year-old young person was charged with sexual assault. He had been diagnosed with fetal alcohol syndrome ("FAS") at six months of age. A motion was brought before the court to determine his fitness to stand trial. He was found to be unfit. The youth court judge heard testimony from a medical doctor, a neuropsychologist and a child psychiatrist because she felt it was necessary to take a multi-dimensional approach to the assessment of fitness where a young person suffered from FAS. She adopted the reasoning in *R. v. J.A.P.*, [2000] S.J. No. 260, *R. v. W.A.L.D.(1)*, [2002] S.J. No. 221, *R. v. W.A.L.D.(2)*, [2002] S.J. No. 222, as well as *R. v. T.J.*, [1999] Y.J. No. 57, to conclude that FAS falls within the definition of mental disorder. One of the experts testified that the young person was one of the most profoundly impaired, from a neurological standpoint, of all the youth she had dealt with. It was her opinion that the young person had no appreciation of the severity of the offence with which he was charged or the consequences that could accrue.

Although the child psychiatrist testified that the young person was able to understand the court proceedings and the roles of the various players, upon closer examination, it was clear that the psychiatrist did not fully understand the degree to which the young person was required to appreciate the court process. The youth court judge concluded that she was not satisfied that the young person understood the charge he faced, nor did he understand the legal process or the roles of the various players. It was not clear that he would be able to communicate with counsel relating to the events or on matters pertaining to the conduct of his defence as his memory was severely impaired. His memory deficits along with his attention deficit and his very low IQ placed the young person below the level of limited cognitive capacity required for a finding of fitness.