

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. A.M.*, 2016 NSCA 9

**Date:** 20160211

**Docket:** CAC 444169

**Registry:** Halifax

**Between:**

A.M.

Appellant

v.

HER MAJESTY THE QUEEN

Respondent

**Restriction on Publication: ss. 110 (1) and 111 (1) Youth Criminal Justice Act**

**Judges:** MacDonald, C.J.N.S.; Hamilton and Scanlan, JJ.A.

**Appeal Heard:** February 10, 2016, in Halifax, Nova Scotia

**Held:** Appeal allowed with reasons by the Court

**Counsel:** Roger A. Burrill, for the appellant  
Marian Fortune-Stone, Q.C., for the respondent

**PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT s. 110 (1) and s. 111(1) OF THE *YOUTH CRIMINAL JUSTICE ACT*, S.C. 2002, c. 1 APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION.**

**110. (1) – Identity of offender not to be published** – Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the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. (1) – Identity of victim or witness not to be published** – Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it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.

**Reasons for judgment:**

By the Court

[1] In April of 2012, Youth Court Judge Jamie Campbell (as he then was) sentenced the appellant young person for assault and breach of probation. He directed a 90 day deferred custody and supervision order, pursuant to s. 42(2)(p) of the *Youth Criminal Justice Act (YCJA)*. Ancillary to the assault conviction, the judge issued a five-year weapons prohibition.

[2] Before us, the appellant asserts and the Crown concedes that the prohibition order was invalid because, in the appellant's circumstances, it could not exceed two years. We agree.

[3] The Court's authority is derived from the *Criminal Code*, which, for this category of offence, directs the Court to consider a prohibition order:

110 (1) Where a person is convicted...of

(a) an offence, other than an offence referred to in any of paragraphs 109(1)(a) to (c), in the commission of which violence against a person was used, threatened or attempted...

the court that sentences the person... shall, in addition to any other punishment that may be imposed for that offence... consider whether it is desirable, in the interests of the safety of the person or of any other person, to make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, and where the court decides that it is so desirable, the court shall so order.

[4] However, for young people, the *YCJA* prescribes a two year limit for such orders:

51.

...

Discretionary prohibition order

(3) Despite section 42 (youth sentences), where a young person is found guilty of an offence referred to in paragraph 110(1)(a) or (b) of the *Criminal Code*, the

youth justice court shall, in addition to imposing a sentence under section 42 (youth sentences), consider whether it is desirable, in the interests of the safety of the young person or of any other person, to make an order prohibiting the young person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, and where the court decides that it is so desirable, the court shall so order.

Duration of prohibition order

(4) An order made under subsection (3) against a young person begins on the day on which the order is made and ends not later than two years after the young person has completed the custodial portion of the sentence or, if the young person is not subject to custody, after the time the young person is found guilty of the offence.

[5] This renders the existing prohibition order invalid. It is, therefore, set aside. Because the appellant has been subject to a weapons prohibition for more than two years now, a replacement order is unnecessary.

MacDonald, C.J.N.S.

Hamilton, J.A.

Scanlan, J.A.