

Date: 19970603]

Docket: C.A.C. 136987

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. D.J.C., 1997 NSCA 140

Clarke, C.J.N.S.; Hart and Matthews, JJ.A.

BETWEEN:

C.(D.J.)

- and -

HER MAJESTY THE QUEEN

Appellant

Respondent

) Allan F. Nicholson
) for the Appellant

) Robert E. Lutes, Q.C.
) for the Respondent

) Appeal Heard:
) June 3, 1997

) Judgment Delivered:
) June 3, 1997

THE COURT: Leave to appeal is granted and the appeal is allowed by varying dispositions imposed on a young offender, per oral reasons for judgment of Clarke, C.J.N.S.; Hart and Matthews, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

CLARKE, C.J.N.S.:

Subject to leave, this is an appeal from dispositions imposed on the appellant by Judge Campbell of the Youth Court after DJC, then seventeen years old, pled guilty to four offences contrary to the **Criminal Code**. They can be summarized as follows:

1. October 7, 1996 - cursing, swearing and shouting at Sydney Academy contrary to s. 175(a)(i) of the **Code**.
2. December 17, 1996 - theft of a Santa Claus ornament of a value not exceeding \$5,000.00, contrary to s. 334(b) of the **Code**.
3. Between January 20, 1997 and January 21, 1997 - break and enter of First United Church of Sydney and committing therein an indictable offence, contrary to s. 348(1) of the **Code**.
4. Between January 25, 1997 and January 26, 1997- break and enter of First United Church at Sydney and committing therein an indictable offence, contrary to s. 348(1) of the **Code**.

For these offences, Judge Campbell imposed six months consecutive on each of the two charges under s. 348(1), one month consecutive on the charge of theft (s. 334(b)) and one month consecutive on the charge contrary to s. 175(a)(i) for a total of fourteen months open custody to be followed by two years probation.

The principal issue in the appeal is against the totality of the disposition. The appellant also contends it is excessive, that the judge applied inappropriate principles and stressed general deterrence rather than the rehabilitation of the offender.

The incident at Sydney Academy involved the instigation of a series of fights and creating a volatile situation among the students and teachers which included cursing, swearing and shouting by the offender. The first break and enter at the church involved the theft of \$150.00 and a number of gift certificates. The second break, a few days later, involved entry through a window and destruction of church property having an estimated value of \$15,000.00.

DJC had two prior offences in 1994. One involved the possession of volatile substances and the other, property damage. Probation and community service were imposed in each. DJC completed the requirements of both dispositions. The predisposition report indicates DJC is a troubled youth who admits to having a problem with drugs. He lives with his mother who reported that he is disobedient at home and in the community.

A review of the record of the proceedings persuades us that Judge Campbell did not commit error in his reasons for disposition. He considered the circumstances. He recognized that at the "outset" he was required to consider rehabilitation and "explore all avenues short of incarceration prior to imposing custody". He also considered general deterrence by referring to the need to protect the public from these kinds of offences.

Judge Campbell dealt with totality first and then imposed several dispositions to reach the total disposition. He was not in error in imposing consecutive dispositions considering that the offences were not related in time. Judge Campbell concluded that incarceration at the Waterville Youth Facility would bring DJC "the stability, structured environment, counselling and the treatment facilities" he needed together with an opportunity to continue his education in a different school setting.

It has been brought to the attention of the Court that the total disposition of thirty-eight months exceeds that prescribed by s. 20(4) of the **Young Offenders Act**, R.S.C. 1985, c. Y-1, as amended.

(4) Subject to subsection (4.1), where more than one disposition is made under this section in respect of a young person with respect to different offences, the continuous combined duration of those dispositions shall not exceed three years, except where one of those offences is first degree murder or second degree murder within the meaning of section 231 of the **Criminal Code**, in which case the continuous combined duration of those dispositions shall not exceed ten years in the case of first degree murder, or seven years in the case of second degree murder.

To comply with s. 20(4), we order that the disposition be varied by reducing the custodial disposition from six months to five months on each of the two break and enter (s. 348(1)) offences, thus reducing the total disposition from thirty-eight months to thirty-six months.

Leave to appeal is granted, the appeal is allowed and the dispositions are varied as ordered. The remaining dispositions will continue.

C.J.N.S.

Concurred in:

Hart, J.A.

Matthews, J.A.