

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. K.M.M. 1996 NSCA 259
Clarke, C.J.N.S.; Matthews and Chipman, JJ.A.

BETWEEN:

M. (K.M.), a young offender within the
meaning of the **Young Offenders Act**

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

) Jamie MacGillivray
) for the Appellant

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

) Appeal Heard:
) November 18, 1996

) Judgment Delivered:
) November 18, 1996

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

THE COURT: Appeal allowed and disposition of ten months open custody imposed March 28, 1996 is varied to time served, per oral reasons for judgment of Clarke, C.J.N.S.; Matthews and Chipman, JJ.A. concurring.

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

CLARKE, C.J.N.S.:

KMM, a young offender, was born January *, 1981. He pled guilty to five offences. Two were breaches of probation contrary to s. 26 of the **Young Offenders Act**, each occurring on separate occasions. Three offences were contrary to the **Criminal Code** being a breach of undertaking (s. 145(3)), theft (s. 334(b)(ii)) and break and enter with intent (s. 348(1)(a)).

The net result of the various dispositions imposed by the Judge of the Youth Court was ten months open custody to be served at the Shelburne Youth Facility followed by probation of 14 months. Custody began March 28, 1996.

While the initial disposition imposed by the Judge was longer than the joint recommendation made by Crown and defence counsel, the record reveals that KMM was in fact a troubled youth who was "out of control". The Judge of the Youth Court had cause to dispose as he did.

Counsel for the youth appeals against the disposition.

Today we have a joint recommendation from counsel of the Crown and of the youth that the disposition be reduced to time served. This would permit KMM to return to his father's home and enter school in the 8th grade, all of which is recommended by officials at the Youth Centre and supported by both counsel.

We are satisfied these representations and recommendations now appear to be in the best interests of the youth, although that was not the case in the beginning. Accordingly the appeal is allowed, the disposition is reduced to time served and the probation order of 14 months, with conditions, as imposed by the Judge of the Youth Court will continue.

The warrant of committal is ordered amended accordingly.

C.J.N.S.

Concurred in:

Matthews, J.A.

Chipman, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

M. (K. M.), a young offender within the meaning of the Young Offenders Act)	}
)	
Appellant)	
- and -)	
HER MAJESTY THE QUEEN)	
)	
Respondent)	
)	
)	
)	
)	

REASONS FOR
JUDGMENT BY:

CLARKE, C.J.N.S.