

**NOVA SCOTIA COURT OF APPEAL**

**Citation: *R. v. Young*, 2013 NSCA 87**

**Date: 20130719**

**Docket: CAC 413597**

**Registry: Halifax**

**Between:**

Francis Mark Young

Appellant (Applicant)

v.

Her Majesty the Queen

Respondent

**Judge:**

The Honourable Justice Fichaud

**Motion Heard:**

July 18, 2013, in Halifax, Nova Scotia, in Chambers

**Held:**

Motion for interim release pending determination of appeal is dismissed

**Counsel:**

Francis Mark Young, on his own behalf  
Mark Scott for the Respondent

**Decision:**

[1] Mr. Young moves, under s. 679(4) of the *Criminal Code*, for release pending the determination of his sentence appeal.

[2] The facts of the offences are these.

[3] Mr. Young was subject to a recognizance with a condition that he have no contact, directly or indirectly, with Ms. Florence Kirk. On October 25, 2012, while in custody, Mr. Young was in Court, as was Ms. Kirk. According to the sentencing decision of Justice Rosinski:

Mr. Young I found, and there was not much dispute actually, in custody and shackles and handcuffs turned towards the end of that proceeding and specifically looked directly at Ms. Florence Kirk and made comments to her, apart from his comments he had perhaps already made earlier about her potential credibility problems in an upcoming trial.

Justice Rosinski listened to the tape. According to Justice Rosinski's conviction decision, Mr. Young's comments to Ms, Kirk were: "I'll hang you" and "I'll make fucking ...", after which the language was unclear. Justice Rosinski continued:

Confirming that was the evidence of Deputy Sheriff Ryan who testified that, in turning deliberately around and talking to Ms. Kirk, her was looking directly over her, therefore directly at Ms. Kirk, and his face and tone was in her words, "very, very angry". And that Ms. Kirk exhibited symptoms of being, "terrified", that she was quite shaken, her eyes were welling up ...

So while Mr. Young had to be in Court, when he turned around and spoke to Florence Kirk specifically, he deliberately and flagrantly violated both the conditions in his Probation Order, that being the condition to have no contact. Once that offence has been established, and it is so inherently connected to the recognizance, then I also find proof beyond a reasonable doubt of the fail [*sic*] to keep the peace and be of good behaviour without lawful excuse.

[4] In the sentencing decision, Justice Rosinski characterized Mr. Young's behaviour as follows:

Having done so, he of course deliberately violated the no-contact order. It was in my view certainly a serious violation of that order because, although it was in open Court, one could say, well, Mr. Young was not trying to hide anything. But on the other hand, if you want to look at it differently, it's the level of disregard, if you will, for the Court's authority, that being under the recognizance or just the Court itself in open Court, is remarkable.

[5] Justice Rosinski convicted Mr. Young of two counts of failure to comply with a condition of a recognizance (the no-contact and keep the peace conditions) contrary to s. 145(3) of the *Criminal Code*. He sentenced Mr. Young to one year in custody less 60 days credit for remand time, followed by probation.

[6] Mr. Young appeals his sentence. The hearing is set for October 16, 2013. He applies for interim release.

[7] Section 679(4) of the *Code* says that a judge may release the appellant, pending determination of a sentence appeal, if:

(a) the appeal has sufficient merit that, in the circumstances, it would cause unnecessary hardship if he were detained in custody;

(b) he will surrender himself into custody in accordance with the terms of the order; and

(c) his detention is not in the public interest.

[8] It is unnecessary that I comment on paragraphs 679(4)(a) or (c). Mr. Young has not satisfied paragraph 679(4)(b).

[9] For me to be satisfied that Mr. Young would surrender into custody under paragraph 679(4)(b), I would need some confidence that Mr. Young would respect the conditions of an interim release order. I have no such confidence. Mr. Young's lengthy criminal record includes serious offences, and also includes many breaches of court orders. Mr. Young's conduct in the Courtroom on October 25, 2012 directly flaunted a court imposed condition, in the face of the court. At the hearing of this motion, when asked about the merit of his appeal, Mr. Young said that his appeal should succeed because he had been acquitted of other charges. It appears to me that Mr. Young takes little account of conditions in court orders

and, if finds it convenient, he would disregard a condition, related to surrender or anything else, in an interim release order.

[10] I dismiss the motion for interim release.

Fichaud, J.A.