

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. J.D.V.T., 1996 NSCA 160

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

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

T.(J.D.V.), a young offender,
within the meaning of the **Young Offenders Act**

Respondent

) Robert E. Lutes, Q.C.
) Catherine A. Cogswell
) for the Appellant

) Stephen M. Robertson
) for the Respondent

) Appeal Heard:
) June 18, 1996

) Judgment Delivered:
) June 18, 1996

THE COURT: Appeal dismissed from disposition imposed on a young offender,
per oral reasons for judgment delivered by Clarke, C.J.N.S., Jones
and Matthews, JJ.A. concurring.

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

CLARKE, C.J.N.S.:

The Crown seeks leave to appeal and if granted appeals from a disposition imposed January 4, 1996 on J.D.V.T., a young offender, by Judge James Wilson of the Youth Court.

J.D.V.T. was fifteen years old, a first time offender, living at home with his supporting family, regularly attending school in the 9th grade and considered by the Probation Service as a youth not out of control.

He pled guilty to sixteen offences committed within a period of six months. They included a rash of breaks, enters and thefts involving garages, sheds, variety stores, dwelling homes, a barn, a service station and a charge of mischief.

One other male, E.T.M., who was one year older, was involved with J.D.V.T. in the commission of these offences and some others of his own. E.T.M. entered guilty pleas when he appeared before Judge Stroud who accepted a joint recommendation of the Crown and defence which included custodial time.

In this case, Judge Wilson imposed a disposition order that included:

1. one hundred and seventy-five hours of community service;
2. restitution of \$1,850.00;
3. two years probation, generally structured in the following manner:
 - (a) In the first year a curfew from 7:00 o'clock in the evening until 6:00 o'clock in the morning which Judge Wilson equated to house arrest, and

- (b) in the second year, a curfew beginning at 10:00 o'clock in the evening, Sunday through Thursday, and 12:30 o'clock in the morning on the weekends, and in each instance continuing until 6:00 o'clock in the morning.

Judge Wilson imposed other conditions including a non-association clause and a requirement that J.D.V.T. attend school regularly and reside with his parents. The Youth Court Judge considered that by placing J.D.V.T. under these conditions he would effectively serve at home that which he would be expected to serve under a custodial disposition.

The Crown contends Judge Wilson erred by inadequately reflecting the element of deterrence, by inadequately considering the nature of the offences, and failing to impose a custodial disposition as was done by another judge in the case of E.T.M.

There are several significant factors which bear upon a comparison of the two dispositions. E.T.M. was older and pled guilty to more offences; E.T.M. appeared before and received a disposition from a judge other than Judge Wilson; E.T.M. appears to have had a less positive PDR; unlike this offender, Crown and defence made a joint recommendation for custodial time in the case of E.T.M., and of significant importance s. 24(1.1) of the **Young Offenders Act** was not in force when E.T.M. was before the Youth Court.

Section 24(1.1) which was in force when J.D.V.T. came before the Youth Court provides:

(1.1) In making a determination under subsection (1), the youth court shall take the following into account:

- (a) that an order of custody shall not be used as a substitute for appropriate child protection, health and other social measures;
- (b) that a young person who commits an offence that does not involve serious personal injury should be held accountable to the victim and to society through non-custodial dispositions whenever appropriate; and
- (c) that custody shall only be imposed when all available alternatives to custody that are reasonable in the circumstances have been considered.

Judge Wilson delivered carefully considered reasons for the disposition he imposed. They reflect his understanding of the gravity of the offences, the circumstances of the offender, the principles described in s. 3 of the **Act** and the factors to be considered by s. 24(1.1). He concluded that were it not for subparagraphs (b) and (c), he would have imposed a custodial disposition. He was concerned about his obligation to craft a disposition which would offer positive prospects for the rehabilitation of this first time offender and at the same time balance the need to protect Society through deterrence.

The Court received a post disposition report dated June 13, 1996 from Correctional Services. It confirms the young offender has been abiding by the conditions imposed by Judge Wilson and is making progress in his efforts at rehabilitation.

We find the reasoning of Judge Wilson thoughtful, persuasive, in keeping with the principles of the **Young Offenders Act** and consistent with the directions of the Supreme Court of Canada in **R. v. M.(J.J.)** (1993), 81 C.C.C. (3d) 487 - see Cory, J. at 493, 495 and 497, upon which the judge of the Youth Court relied.

While we grant leave to appeal, we dismiss the appeal.

C.J.N.S.

Concurred in:

Jones, J.A.

Matthews, J.A.