



Publishers of this case please take note that s.38(1) of the Young Offenders Act applies and may require editing of this judgment or its heading before publication. Section 38(1) provides:

"38(1) No person shall publish by any means any report

(a) of an offence committed or alleged to have been committed by a young person, unless an order has been made under section 16 with respect thereto, or

(b) of a hearing, adjudication, disposition or appeal concerning a young person who committed or is alleged to have committed an offence

in which the name of the young person, a child or a young person aggrieved by the offence or a child or a young person who appeared as a witness in connection with the offence, or in which any information serving to identify such young person or child, is disclosed."

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

HALLETT, J.A.:

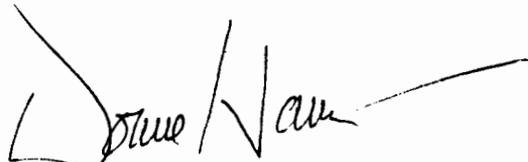
This is an appeal from a disposition by Judge Niedermayer under Section 20 of **The Young Offenders Act**. The appellant had pleaded guilty to one offence of break, enter and theft and to 4 offences of possession of property obtained by crime.

Judge Niedermayer imposed a period of 12 months secure custody on the break, enter and theft charge. He imposed four months open custody and 2 months open custody consecutive on the possession offences. The combined period of custody was 18 months, all to be followed by 12 months probation subject to specific conditions he imposed.

The appellant was just under 17 years of age at the time of the offences. He had an extensive record of property offences for which he had been generally placed on probation. He was on probation at the time of the offences in issue. The appellant asserts that considering the totality principle the disposition of 18 months custody is harsh and excessive in relation to dispositions imposed on young offenders in similar cases. The appeal before us is only on the sentence with respect to the break, enter and theft.

Respondent's counsel has brought to our attention that pursuant to the provisions of **The Young Offenders Act** the disposition on these offences as imposed could not exceed 24 months. We agree. The dispositions total 30 months.

We vary the disposition to 6 months secure custody on the break, enter and theft. The disposition of 4 months and the 2 months open custody on the possession offences stand. The duration of 12 months in the probation order is not varied. The probation order shall commence following the expiration of the continuous custody of 12 months and on the same terms as imposed by the trial judge.

  
J.A.

Concurred in:

Matthews, J.A.   
Freeman, J.A. 

CANADA  
PROVINCE OF NOVA SCOTIA

IN THE SUPREME COURT OF NOVA SCOTIA  
APPEAL DIVISION

on appeal from

THE YOUTH COURT

HER MAJESTY THE QUEEN

- versus -

E. H. H.  
~~E. N. H.~~

HEARD BEFORE: His Honour Judge P. S. Niedermayer

DATES HEARD: February 19, April 24 and June 11, 1991

PLACE HEARD: Dartmouth, Nova Scotia

COUNSEL: Blair MacKinnon, Esq., and A. Theuerkauf, Esq., for the Crown  
Chandra Gosine, Esq., for the Defence

A P P E A L O N S E N T E N C E