

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Young*, 2025 NSCA 41

Date: 20250609

Docket: CAC 537010

Registry: Halifax

Between:

His Majesty The King

Appellant/
Respondent on Cross-Appeal

v.

Jackie Weldon Young

Respondent/
Appellant on Cross-Appeal

Restriction on Publication: s. 486.4 of the <i>Criminal Code</i>

Judges: Bryson, Bourgeois and Van den Eynden, JJ.A.

Appeal Heard: June 9, 2025, in Halifax, Nova Scotia

Facts: The respondent was convicted of sexual assault under section 271 of the Criminal Code. He received a conditional sentence of one year, with the first six months under strict house arrest, prohibiting him from leaving home for work purposes (para [1](#)).

Procedural History:

- Provincial Court: The respondent was convicted of sexual assault and sentenced to a conditional term of one year (para [1](#)).
- *R. v. Young*, 2024 NSSC 277: The Nova Scotia Supreme Court quashed the conviction and ordered a new trial, finding errors in the trial judge's application of

R. v. W.(D.) and credibility assessment. The sentence appeal was dismissed (paras [3-4](#)).

- Crown sought leave to appeal the quashing of conviction . Respondent sought leave to appeal dismissal of sentence appeal .

Parties' Submissions: • Crown: Argued that the Summary Conviction Appeal Court Justice (SCAJ) made errors in applying *R. v. W.(D.)* and improperly assessed the trial judge's credibility findings, substituting her view of the evidence (para [8](#)).

- Respondent: Requested less restrictive terms of the conditional sentence or a stay (para 5).

Legal Issues: • Did the SCAJ err in law in her application of *R. v. W.(D.)* and in her credibility assessment of the respondent?

- Should the respondent's sentence be reviewed to impose less restrictive terms or a stay?

Disposition: • The Crown's leave to appeal the conviction was granted, and the conviction was restored (para [9](#)).

- The respondent's leave to appeal the sentence was denied (para [11](#)).

Reasons: Per Bryson, Bourgeois, and Van den Eynden JJ.A.: The Court agreed with the Crown's submissions, finding that the SCAJ made clear errors of law in her interpretation of *R. v. W.(D.)* and in her credibility assessment. The SCAJ improperly substituted her view of the evidence for that of the trial judge. The Court did not share the SCAJ's criticisms of the trial judge's reasoning. The respondent's cross-appeal against the sentence was found to have no merit (paras [8-11](#)).

<p><i>This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 11 paragraphs.</i></p>

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Young*, 2025 NSCA 41

Date: 20250609

Docket: CAC 537010

Registry: Halifax

Between:

His Majesty The King

Appellant/
Respondent on Cross-Appeal

v.

Jackie Weldon Young

Respondent/
Appellant on Cross-Appeal

Restriction on Publication: s. 486.4 of the <i>Criminal Code</i>

Judges: Bryson, Bourgeois and Van den Eynden, JJ.A.

Appeal Heard: June 9, 2025, in Halifax, Nova Scotia

Held: Crown's leave to appeal conviction granted and appeal allowed; leave to appeal sentence dismissed, per reasons of the Court.

Counsel: Erica Koresawa, for the appellant, respondent on cross-appeal
Daniel MacIsaac, for the respondent, appellant on cross-appeal

Order restricting publication — sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

- (a) any of the following offences:
 - (i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or
 - (ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or
- (b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

Mandatory order on application

- (2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall
- (a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and
 - (b) on application made by the victim, the prosecutor or any such witness, make the order.

Reasons for judgment by the Court:

[1] The respondent (Mr. Young) was convicted of sexual assault pursuant to s. 271 of the *Criminal Code*. He was sentenced to a custodial term of one year, to be served conditionally (within the community). During the first six months of his conditional sentence, Mr. Young was subject to strict terms of house arrest, terms which did not permit him to leave his home for employment purposes.

[2] Judge Nicole Rovers (trial judge) of the Provincial Court of Nova Scotia presided over Mr. Young's trial and sentencing. Her respective decisions on conviction and sentence were delivered orally and remain unreported.

[3] Mr. Young appealed his conviction and sentence to the Nova Scotia Supreme Court. The Crown cross-appealed the sentence imposed. Justice Denise Boudreau, sitting as a Summary Conviction Appeal Court Justice (SCAJ), heard the appeals. In her decision, reported at 2024 NSSC 277, the SCAJ quashed the conviction and ordered a new trial.

[4] The SCAJ determined the trial judge erred in her application of *R. v. W.(D.)*, [1991] 1 SCR 742, and in her credibility assessment of Mr. Young. The SCAJ found no error in the trial judge's sentencing of Mr. Young and dismissed the sentence appeals.

[5] Before this Court, the Crown seeks leave to appeal and if granted, requests we restore the conviction. Mr. Young seeks leave to appeal against sentence. If granted, he requests this Court "review" his sentence and impose less restrictive terms or "stay" the terms.

[6] The threshold issue of leave was set out by this Court in *R. v. Stanton*, 2021 NSCA 57:

[50] A threshold issue is whether leave should be granted to the Appellant to bring this appeal. As *Pottie*¹ explains, leave is to be granted sparingly:

[20] The rationale for selectively granting leave to appeal in order to limit access to provincial appellate courts is understandable. When a summary conviction matter is granted a second appeal to a provincial appellate court, it becomes the third court involved in the proceedings. If leave to the provincial appellate courts is not granted selectively, summary

¹ *R. v. Pottie*, 2013 NSCA 68.

matters would essentially have more appeal rights than some of the most serious criminal cases at the Supreme Court of Canada (*cites omitted*).

[51] This Court held in *R. v. R.E.M.*, 2011 NSCA 8 that leave is determined on an examination of whether “the questions of law raised transcend the borders of the specific case and are significant to the general administration of justice...” (para. 47).

[52] Leave may also be granted in appeals from the Summary Conviction Appeals Court if the SCAC judge is found to have committed a clear error of law [citations omitted].

[7] The standard of review that governs our assessment was also explained in *Stanton*. Referencing *Pottie*, this Court said:

[47] This Court in [*Pottie*] identified the two standards of review in play in summary conviction matters: the standard of review to be applied by the SCAC judge reviewing the trial decision, and the standard of review to be applied to the review by this Court of the SCAC judge’s decision. *Pottie* describes these standards of review:

[16] The standard of review for the SCAC judge when reviewing the trial judge’s decision, absent an error of law or miscarriage of justice, is whether the trial judge’s findings are reasonable or cannot be supported by the evidence. In undertaking this analysis the SCAC court is entitled to review the evidence at trial, re-examine it and re-weigh it, but only for the purposes of determining whether it is reasonably capable of supporting the trial judge’s conclusions. The SCAC is not entitled to substitute its view of the evidence for that of the trial judge.

[17] Our jurisdiction is grounded in the error alleged to have been committed by the SCAC judge. It is not a *de novo* appeal from the trial judge. This Court must determine whether the SCAC judge erred in law in the statement or application of the principles governing its review (*cites omitted*). This distinction is important when considering whether to grant leave; the error we must identify is in the SCAC judge’s decision.

[48] [...] In accordance with *Pottie*, the standard of review this Court must apply is correctness.

[8] The Crown asserts the SCAJ made two clear errors of law, in particular:

[26] [...] First, the SCAJ was simply mistaken in how *W.(D.)* operates. The SCAJ not only applied an erroneous interpretation of *W.(D.)*, she also conflated the credibility assessment with whether the *W.(D.)* instruction had been respected. Second, the SCAJ parsed the trial judge’s reasons in search of error in the credibility assessment. That parsing led the SCAJ to substitute her view of the

evidence for that of the trial judge, under the guise of determining whether the evidence was reasonably capable of supporting the trial judge's conclusions.

[9] We unanimously agree with the submissions of the Crown. Accordingly, leave to appeal is granted and the conviction [and sentence] are restored.

[10] As an aside, we note that the SCAJ expressed "concern" with the trial judge's reasoning path and said her oral decision was expressed in an "unstructured manner." We do not share those criticisms.

[11] We are also of the unanimous view that Mr. Young's cross-appeal against sentence has no merit. Leave to appeal is denied.

Bryson, J. A.

Bourgeois, J.A.

Van den Eynden, J.A.