

NOVA SCOTIA COURT OF APPEAL

Hallett, Chipman and Roscoe, JJ.A.

Cite as: R. v. R.R.A.W., 1994 NSCA 206

BETWEEN:

R.R.A.W.

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

)
) Alison P. Brown
) for the appellant

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

)
) Appeal Heard:
) September 20, 1994

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) Judgment Delivered:
) September 20, 1994
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THE COURT:

Appeal against sentence dismissed, per oral reasons for judgment of Roscoe, J.A.; Hallett and Chipman, JJ.A. concurring.

ROSCOE, J.A.:

The appellant pled guilty in Youth Court to a break enter and theft into a business and was sentenced to twelve months secure custody to be followed by twelve months probation, to run concurrently to time being served. The issue on appeal is whether the sentence is excessive.

The appellant was sixteen at the time of the offence and had one prior conviction for a robbery for which he was sentenced to two months custody. The pre-disposition report indicated that the appellant had a turbulent upbringing, had been a hyperactive child and a victim of both physical and sexual abuse. He had done fairly well in school despite having moved and changed schools on numerous occasions. His mother and father separated when he was an infant and his mother had several other partners through the years. He lived at times with his father in Ontario and at other times with his mother in various locations. Since moving to Colchester County a few months before this offence he had acquired a negative influence peer group, dropped out of high school and had developed an alcohol dependency.

The Youth Court judge in his remarks said:

"I'm familiar with the principles of sentencing as set out in the **Young Offenders Act** and the **Grady** case and other law. The most important aspect, of course, is the protection of the public. I think Mr. W. has to be specifically deterred for a while. Hopefully, he'll get his life in order as he indicates he wants to do and I wish him well in that regard. I hope that he does get rehabilitated and does get out of the rut that he's certainly in now. The bottom line of the Pre-Disposition Report indicates that there's a need in this case that he be placed in a structured controlled setting for a period of time, clearly that is, an institution such as Waterville or another Young Offender institution. This is a serious offence, carries 14 years. There's a previous record for serious crime."

The appellant submits that the Youth Court judge overemphasized deterrence, failed to consider the principles contained in ss. 3 and 24 of the **Young Offenders Act**, and that the disposition is so excessive that it constitutes an error in law.

Since the disposition imposed was to run concurrent to the time left remaining on the robbery sentence, the effect was an additional sentence of ten and

one-half months. While a custodial disposition of this length for a second offence is on the high end of the range, the Youth Court judge was obviously concerned about the closeness in time between the robbery charge and the present charge, the offender's alcohol problem, and the fact that although previously a good student, he had dropped out of school and needed a period of time in a controlled setting.

We have carefully reviewed the pre-disposition report, considered the arguments of counsel and we are satisfied that the disposition is fit considering the needs of this young offender and the review provisions of the **Young Offenders Act**. The appeal is dismissed.

Counsel for the respondent has advised that the Youth Court judge failed to make a finding of guilt as required by the **Young Offenders Act**. We are satisfied that the facts support a finding of guilt and therefore make that finding.

Roscoe, J.A.

Concurred in:

Hallett, J.A.

Chipman, J.A.