

Offenders Act. The appellant, aged seventeen years, was convicted of break and enter and mischief contrary to s. 348(1)(a) of the **Criminal Code** and sentenced to sixteen month's secure custody, concurrent to time being served for other convictions, plus three year's probation with conditions.

The issue presented in relation to the conviction appeal is whether the trial judge erred in law by finding that an area enclosed by a six to ten foot chain link fence on three sides and a concrete wall on the fourth side was a "place" as defined in s. 348(3). The entrance to the compound, owned by Ace Towing, was through a gate in the fence which was chained and locked. Three signs attached to each side of the fence indicated that the area was private property and that anyone entering would be prosecuted. The compound was used to store vehicles that had been towed there after being seized by police or damaged.

Entrance to the compound by the appellant and the co-accused was gained by climbing over the top of the fence. The trial judge relied on this court's decision in **R. v. Thibault** (1982), 66 C.C.C. (2d) 422 in coming to the conclusion that the compound was a "place". As indicated by Macdonald, J.A. in that case, whether something is a "place" or not is a question of fact. See also **R. v. Fajti** (1986), 53 C.R. (3d) 396 (B.C.C.A.). The trial judge committed no error in this respect.

The appellant was, at the time of the conviction, serving a one year custodial sentence for offences that occurred subsequent to the occurrence in this case. In accordance with decisions of this court that in this situation any disposition must be concurrent rather than consecutive, the youth court judge imposed a concurrent sentence and in that respect he did not err. See **R. v. W.J.C.** (1988), 83 N.S.R. (2d) 352, **R. v. J.M.C.** (1990), 96 N.S.R. (2d) 179 and **R. v. M.A.S.** (1991), 102 N.S.R. (2d) 177.

The appellant and respondent agree that the trial judge erred in imposing a disposition, the combined length of which exceeded two years. Section 20(3) of the **Young Offenders Act** is as follows:

"(3) No disposition made under this section, other than an order made

under paragraph (1)(h), (k) or (k.1), **shall continue in force for more than two** years and, where the youth court makes more than one disposition at the same time in respect of the same offence, the combined duration of the dispositions, except in respect of an order made under paragraph (1)(h), (k), or (k.1), shall not exceed **two** years."

(emphasis added)

The maximum custodial sentence permitted by s. 20(1)(k) is two years unless the sentence provided by the **Criminal Code** for adults is life imprisonment. Section 20(1)(j) provides for a maximum period of probation of two years.

The appellant also submits that the length of custody imposed is excessive and should be reduced to seven or eight months. Considering that the appellant has a record of twenty-two convictions, the sixteen month custody order is not excessive. However, given that the total disposition is contrary to the **Act**, that, in the youth court, the Crown recommended twelve month's custody and that in order for the probationary period to have sufficient length to accomplish its goals, it must be of a significant length, it is appropriate to vary the disposition to twelve month's secure custody, to be served concurrently, followed by twelve month's probation with the same terms as ordered by the youth court judge.

The appeal against conviction is dismissed. Leave to appeal against disposition is granted and the disposition is varied accordingly.

Roscoe, J.A.

Concurred in:

Clarke, C.J.N.S.

Hart, J.A.