

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. B.A.P., 1994 NSCA 251
Clarke, C.J.N.S.; Hallett and Chipman, J.J.A.

BETWEEN:

P. (B.A.)

Appellant

) Ronald R. Chisholm
) for the Appellant

- and -

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

HER MAJESTY THE QUEEN

Respondent

) Appeal Heard:
) November 21, 1994

) Judgment Delivered:
) November 21, 1994

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

THE COURT:

Appeal against disposition granted for conviction under s. 334(a), theft over \$1,000,00, and disposition varied from twelve months secure custody followed by one year probation to five months secure custody followed by one year probation, per oral reasons for judgment of Clarke, C.J.N.S., Hallett and Chipman, JJ.A. concurring.

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

CLARKE, C.J.N.S.:

B.A.P. was seventeen years old when on July 4, 1994 a judge of the Youth Court imposed a disposition of twelve months secure custody to be followed by one year probation. B.A.P. was unrepresented when he pled guilty to theft over \$1,000.00 contrary to s. 334(a) of the **Criminal Code**.

The theft related to goods which were owned by his father. They were stored in a room at the home of B.A.P.'s paternal grandfather at [...]. B.A.P. resided with his grandfather with whom he had good relations and who has been caring for him in recent time. The goods which included such things as a leather jacket, ghetto blaster, stereo tapes, microwave and home stereo, were valued at \$1,550.00. All the goods were either recovered or discovered with the exception of the home stereo valued at \$600.00.

B.A.P. seeks leave to appeal against his disposition. In a brief and somewhat terse statement the judge of the Youth Court imposed twelve months secure custody followed by twelve months probation so that, as the judge put it, "you don't get into any trouble for a while".

The circumstances of B.A.P. are certainly not the best. He has a troubled background and comes from a broken home following the separation of his parents in May, 1986. He has a record of prior offences. In fact, he was on probation at the time this offence occurred. However, there are many positive aspects in his pre-disposition report, including a professed willingness of his employer to continue his employment. He is not regarded as a dangerous person. The PDR indicates that all is not lost for B.A.P. and that he is capable of being rehabilitated.

We are informed by counsel that the stay of B.A.P. at Waterville has been uneventful and he has shown progress. It does not appear from the reasons of the judge of the Youth Court that he considered the principles which apply under the **Young Offenders Act**. There is no indication that he considered the relevance of **R. v. T.C.M.** (1991), 107 N.S.R. (2d) 227, of this Court, or **R. v. M.(J.J.)**, [1993] 2 S.C.R., 421 of the Supreme Court of Canada. It does appear from his reasons that he substituted deterrence for rehabilitation.

By imposing twelve months secure custody, the judge of the Youth Court imposed a disposition that is at the higher range for this offence. The length of the disposition, for all these reasons, is excessive and therefore unfit.

We grant leave to appeal and vary the disposition to five months secure custody and thereafter one year of probation.

Clarke, C.J.N.S.

Concurred in:

Hallett, J. A.

Chipman, J. A.