

NOVA SCOTIA COURT OF APPEAL

Clarke, C.J.N.S., Hart and Matthews, J.J.A.

Cite as: R. v. T.M., 1994 NSCA 165

BETWEEN:

T.M.)	Mona Lynch
)	for the Appellant
)	
Appellant)	
)	
- and -)	
)	Robert E. Lutes, Q.C.
)	for the Respondent
)	
HER MAJESTY THE QUEEN)	
)	
Respondent)	Appeal Heard:
)	October 4, 1994
)	
)	
)	Judgment Delivered:
)	October 4, 1994
)	

THE COURT: Leave to appeal permitted and the appeals allowed per oral reasons for judgment of Matthews, J.A.; Clarke, C.J.N.S. and Hart, J.A. concurring.

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

MATTHEWS, J.A.:

The issue on these appeals is the legality of two consecutive dispositions imposed upon the appellant.

There are three Warrants of Committal concerning the appellant which bear consideration:

1. A Warrant of Committal dated March 22, 1994, from Amherst, Nova Scotia, for offences committed on February 13, 1994, placing T.M. in open custody for six months from March 22, 1994, making his date of completion pursuant to that committal September 21, 1994.
2. A Warrant of Committal dated April 6, 1994, from Shubenacadie, Nova Scotia, for an offence which the date is not shown on the Warrant but the finding of guilt was March 16, 1994, placing T.M. in open custody for two months consecutive to the time being served. The date of the offence is set out in the Information as October 29, 1993. The date of the disposition is April 6, 1994.
3. A Warrant of Committal dated June 13, 1994, from Truro, Nova Scotia, for an offence dated January 26, 1994, placing T.M. in open custody for three months consecutive to time being served. The appellant pled guilty to this offence on March 28, 1994 and was found guilty of the offence on June 13, 1994. The date of the disposition is June 13, 1994.

The relevant section of the **Young Offenders Act** under consideration is:

20 (4.1) Where a disposition is made under this section in respect of an offence committed by a young person after the commencement of, but before the completion of, any dispositions made in respect of previous offences committed by the young person

...

(b) the disposition may be served consecutively to the dispositions made in respect of the previous offences;
and

This section has been interpreted by this court in **R. v. W.J.C.** (1988), 83 N.S.R.

(2d) 352 at p. 355 in this fashion:

[17] If, however, regard is had to the offence to disposition relationship then what the section can be said to provide is that a disposition may be made consecutive to an existing one provided the offence for which the consecutive sentence is imposed had been committed during the term of the earlier disposition.

That condition is not met here in the latter two dispositions. Each of those offences occurred prior to the disposition in number one.

The reasoning in **R. v. W.J.C.** has been applied by this Court in **R. v. J.M.C.** (1990), 96 N.S.R. (2d) 179; **R. v. M.A.S.** (1991), 102 N.S.R. (2d) 177 at p. 179 and **R. v. R.J.F.** (N.S.C.A. No. 103538, unreported, May 31, 1994.)

Thus the dispositions in respect to dispositions no. 2 and 3 must be varied to run concurrently to time being served.

We permit leave to appeal and allow the appeals accordingly.

J.A.

Concurred in:

Clarke, C.J.N.S.

Hart, J.A.