

YOUTH JUSTICE COURT OF NOVA SCOTIA

Citation: R. v. J.J.C. , 2012 NSPC 110

Date: 20121205

Docket: 2526398, 2526401, 2500908, 2500909, 2491530

Registry: Pictou

Between:

Her Majesty the Queen

v.

C. (J.J.), a “young person” within the definition of the
Youth Criminal Justice Act

***DECISION ON APPLICATION FOR LEAVE TO REVIEW NON-
CUSTODIAL SENTENCE***

**Restrictions on
publication:**

No person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

Judge: The Honourable Judge Del W. Atwood, in Chambers

Decision: 7 December 2012, in Chambers

Charges: Sections 90, 91(3), 264.1(1)(a), and 733.1 of the *Criminal Code*; s. 137 of the *YCJA*

Counsel: Patrick Young, for the Nova Scotia Public Prosecution Service
Stephen Robertson, Nova Scotia Legal Aid, for C. (J.J.)
Peter C. McVey, for the Minister of Community Services

By the Court:

[1] I sentenced J.J.C. on 21 November 2012 to a term of probation of twelve months, having made findings of guilt in relation to charges of uttering threats, possession of a prohibited weapon, possession of a concealed weapon, and two counts of breach of *YCJA* probation. The Minister of Community Services, who is the “parent” of J.J.C. in virtue of an order of permanent care and custody, applies to the Court pursuant to sub-section 59(1) of the *Youth Criminal Justice Act* (*YCJA*) for leave to advance an application for a review of that sentence within six months of its imposition.

[2] The element of the sentence which the minister wishes reviewed is a condition of probation order number 1492586 which prevents J.J.C. from returning to the Bridges Program in Pictou County. The Bridges Program is a residential facility for young persons in the care of the minister. It used to be run by the Children’s Aid Society of Pictou County; the administration of the program was assumed by the Department of Community Services in 2010.

[3] After receiving the minister’s application for leave on the morning of 5 December 2012, I conducted a teleconference the morning of 6 December 2012 with prosecution and defence counsel. Court staff made very diligent attempts to contact counsel for the minister, starting the afternoon of the day prior to the

teleconference, to arrange for his participation; however, they were unable to establish contact. I decided to proceed with a teleconference with prosecution and defence, given the urgency the minister had assigned to the application, and given that I already had a thorough and comprehensive letter outlining the minister's position from Mr. McVey.

[4]I would observe first of all that no appeals have been taken from the sentence order which I made on 21 November 2012, so that there exists no statutory bar under sub-ss. 59(5) or 94(7) of the *YCJA* to the minister's application for leave.

[5]I would observe as well that neither the prosecution nor defence supports the minister's application for leave.

[6]The facts that were put before me at J.J.C.'s sentencing hearing on 21 November 2012 made it clear to me that J.J.C. posed a significant risk to the safety of staff and residents at the Bridges Program. J.J.C. had engaged in a significant level of violence against another resident of the program; further, it was clear to me that J.J.C. and a small cohort had formed a loosely knit gang within the program that posed a real risk to the safety of staff and residents. Most alarmingly, while AWOL from the program, J.J.C. was found by police in possession of a prohibited "knuckles knife", concealed on his person. This was a fearsome weapon, clearly designed for wounding and maiming; it was not

explained to me how J.J.C. had come into possession of it. I have come across only one other case in Pictou County involving such a dangerous device.

[7]It was and remains clear to me that the presence of J.J.C. at the Bridges Program will expose staff and residents to risk of significant harm. This is not meant as a criticism of the level of supervision provided by the staff at that facility; it is simply the fact that J.J.C. has chosen to place himself beyond their prudent and careful management.

[8]The minister seeks to have J.J.C. returned to the Bridges Program in the near future in order commence, following a short period of secure treatment, therapy with a licenced psychologist in New Glasgow. This psychologist authored a psychological assessment of J.J.C.'s needs, and cautions against taking a punitive approach when attempting to encourage the development of pro-social skills in J.J.C.'s life.

[9]I agree with such an approach. That is why the Court placed J.J.C. on probation, accompanied by conditions intended to advance his rehabilitation. However, in accordance with section 3 of the *YCJA*, the Court must also have special concern for the protection of the public, which includes staff and residents at the Bridges Program. Returning J.J.C. to his cohort there would, in my view,

work against that core objective of promoting the long-term protection of the public.

[10]I note as well that J.J.C.'s family connections are to * County, quite some distance from Pictou County, and it is not clear to me that this expanse of separation from his parents has promoted or hindered his pro-social development.

[11]Counsel for the minister noted in his application for leave that J.J.C. was admitted to a secure treatment facility on 23 November 2012; a judge of the Family Court ordered later that secure treatment may continue until 28 December 2012, unless earlier terminated or renewed. Counsel for the minister proposes that J.J.C. be permitted to return to the Bridges Program so that “after a successful period of secure treatment . . . [he] then pursue the counselling services with Dr. Webster.”

[12]The problem with this proposition is that I have no evidence before me regarding J.J.C.'s response to secure treatment. That, in my view, is essential evidence to a determination regarding leave.

[13]Based on the foregoing, it is the judgment of the Court that leave to apply to review the non-custodial sentence imposed on 21 November 2012 not be granted. The Act does not prevent further applications for leave being brought, once additional material and relevant evidence is in the hands of the minister.

[14]ORDER accordingly.

J.P.C.