IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. P.J.S. , 2008 NSSC 128

Date: 20080430
Docket: SH 284547(A)
Registry: Halifax

Between:

P.J.S.
(A Young Person within the meaning of the Youth Criminal Justice Act)
Appellant

v.

Her Majesty the Queen
Respondent

Judge:	The Honourable Justice Frank Edwards
Heard:	January 9, 2008, in Halifax, Nova Scotia
Counsel:	Chandra Gosine, for the appellant Terry Nickerson, for the respondent

By the Court:

[1] This is an appeal from a decision by a Provincial Court Judge before whom the Appellant had pleaded guilty to a charge of assault. The offence charged had initially been robbery. After hearing an agreed statement of facts, the Learned Judge placed the appellant on probation for a period of nine months. At the sentencing hearing, the Defence had sought a conditional discharge while the Crown had sought probation. The Judge concluded that, while a discharge might be in the young person's best interests, a discharge would be contrary to the public interest. He therefore placed the Appellant on probation.

[2] During the appeal hearing before me, Appellant's Counsel argued that the Judge had considered facts which had not been agreed upon. Specifically, he says that the Appellant never agreed that he had chased the Complainant. I disagree. A review of the record discloses that in his initial rendition of the facts, the Crown stated that the Complainant "... started to run. PJS caught him and started to punch him. Struck him numerous times in the head ..." (p. 31). In effect, the Crown said there was a chase.

[3] Defence Counsel then submitted that PJS "got out of the car and hit the man twice in the face" (p. 32). The only reasonable interpretation of that exchange is that the Defence was taking issue with the number of blows that were struck not with whether or not there had been a chase. Crown Counsel then got up and agreed to "two kicks" (p. 33).

[4] The main issue raised by the appeal was whether the Judge had applied the adult test when he refused to grant the conditional discharge. Subparagraphs 42(2)(b) and (c) of the ***Youth Criminal Justice Act*** state that the Court may:

> "(b) by order direct that the young person be discharged absolutely, if the court considers it to be in the best interests of the young person and not contrary to the public interest;
>
> (c) by order direct that the young person be discharged on any conditions that the court considers appropriate and may require the young person to report to and be supervised by the provincial director;"

[5] Obviously, subparagraph (c) regarding conditional discharges makes no reference to the two criteria (best interests of the young person and the public interest) set out in subparagraph (b) regarding absolute discharges. Incidentally, those criteria are similar to those set out for adult offenders in Section 730(1) of the Criminal Code. I have no sympathy for the argument that, because subparagraph

(c) is silent, the same criteria do not apply to the granting of conditional sentences under the ***Youth Criminal Justice Act***. It is difficult to understand what criteria a judge should otherwise apply. Surely he cannot disregard the interest of the young person and the public interest.

[6] I therefore conclude that, when the Learned Judge referenced the two criteria when rejecting the conditional sentence option, he was not in error. On that basis alone, I would dismiss the appeal.

[7] In any event, at the outset of the hearing before me, Crown Counsel advised that, since his sentencing, the offender has been convicted as an adult under the ***Liquor Control Act***. Accordingly, he is no longer eligible for a discharge. Since that is exactly what he is seeking through this appeal, the appeal is moot. The appeal is dismissed.

Order accordingly.

J.