

YOUTH JUSTICE COURT OF NOVA SCOTIA

Citation: R. v. K.K.R., 2009 NSPC 58

Date: 20090817

Registry: Amherst

Docket: Case Nos. 2008108
2008106, 2008107, 2013254, 2016447
2016449, 2046583, 2046584, 2046585
2046586, 2046587, 2046588, 2050217

HER MAJESTY THE QUEEN

-versus-

R. (K. K.)

**RESTRICTION ON
PUBLICATION:**

Pursuant to s.110 and 111 of the Youth Criminal
Justice Act

HEARD BEFORE:

The Honourable Judge Carole A. Beaton

ORAL DECISION:

August 17, 2009 in Amherst, Nova Scotia

**WRITTEN RELEASE
OF DECISION:**

October 27, 2009

CHARGES:

CC 348(1)(a), CC 145(5.1), CC 355(b), CC 145(3),
CC 335(b), YCJA 137, CC 348(1)(a); YCJA 139,
CC 348(1)(a), YCJA 139, YCJA 139, YCJA 139,
CC 355(a)

COUNSEL:

Mary Ellen Nurse, for the Crown
Robert M. Gregan, for the Defence

Publishers of this case please take note that S. 110 and 111 of the Youth Criminal Justice Act applies and may require editing of this judgment or its heading before publication.

Section 110 and 111 provides:

“110. (1) Subject to this section, 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.

(2) Subsection (1) does not apply

(a) in a case where the information relates to a young person who has received an adult sentence;

(b) subject to sections 65 (young person not liable to adult sentence) and 75 (youth sentence imposed despite presumptive offence), in a case where the information relates to a young person who has received a youth sentence for an offence set out in paragraph (a) of the definition "presumptive offence" in subsection 2(1), or an offence set out in paragraph (b) of that definition for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence); and

(c) in a case where the publication of information is made in the course of the administration of justice, if it is not the purpose of the publication to make the information known in the community.

(3) A young person referred to in subsection (1) may, after he or she attains the age of eighteen years, publish or cause to be published information that would identify him or her as having been dealt with under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, provided that he or she is not in custody pursuant to either Act at the time of the publication.

(4) A youth justice court judge shall, on the *ex parte* application of a peace officer, make an order permitting any person to publish information that identifies a young person as having committed or allegedly committed an indictable offence, if the judge is satisfied that

(a) there is reason to believe that the young person is a danger to others; and

(b) publication of the information is necessary to assist in apprehending the young person.

(5) An order made under subsection (4) ceases to have effect five days after it is made.

(6) The youth justice court may, on the application of a young person referred to in subsection (1), make an order permitting the young person to publish information that would identify him or her as having been dealt with under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, if the court is satisfied that the publication would not be contrary to the young person's best interests or the public interest.

111. (1) Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.

(2) Information that would serve to identify a child or young person referred to in subsection (1) as having been a victim or a witness may be published, or caused to be published, by

(a) that child or young person after he or she attains the age of eighteen years or before that age with the consent of his or her parents; or

(b) the parents of that child or young person if he or she is deceased.

(3) The youth justice court may, on the application of a child or a young person referred to in subsection (1), make an order permitting the child or young person to publish information that would identify him or her as having been a victim or a witness if the court is satisfied that the publication would not be contrary to his or her best interests or the public interest.

By the court (orally):

[1] K.R. comes before the court for disposition on a number of offences committed under the Criminal Code and the Youth Criminal Justice Act: three charges of break and enter, two charges of breach of release conditions, three charges of possession of stolen property, and five charges of breach of a sentence order.

[2] He entered guilty pleas at an earlier date and that's certainly a mitigating feature of this matter. The court is most cognizant of the need to emphasize the rehabilitation of K.R.; his rehabilitation is not only front and center, it is the fundamental driving purpose behind the Youth Criminal Justice Act.

[3] K.R. has been in custody in relation to these matters since early June. Just doing some quick math, because the court is not at all unfamiliar with K.R. or his background, he came into custody early last August and was released, but was only out on release a number of days before he was back in custody. So if my math is correct, since mid to late August of 2008, he has spent roughly seven of the last twelve months in custody, never serving a custodial sentence, but always on remand as a result of alternatively, not having met the criteria for release, or not even applying for a release hearing, and also in order to allow for the preparation of the December 2008 section 34 assessment, which is Exhibit "1" in this hearing.

[4] K.R. has a record. The crown outlined that record in a general way today and the record is extensive for someone who just turned 14 in June of this year. It contains a number of property-related offences and it contains a number of offences which have demonstrated K.R.'s inability to abide by the various conditions that have governed him, including at various times conditions of release and/or conditions of a sentence order.

[5] K.R. was the subject of a probation order imposed on December 19, 2008 in this court. I was the presiding Judge and I don't recall everything that was said at that time, but I do distinctly recall this court's observation, having reviewed the extensive recommendations made in the section 34 assessment report prepared by the IWK, that K.R.'s rehabilitation was most definitely going to be a work in progress that would require more than simply having everyone involved in his life look at him and say: okay, are you ready to do what needs to be done? It was

going to require a highly integrated and focused approach by a number of community resources if there was to be any meaningful result and if the sentence order was to have any teeth at all.

[6] The court listened carefully at the Section 19 sentencing conference held last month on July 15th and it became abundantly clear in that conference that K.R. is the product of a constellation of factors, a “perfect storm” if you will, that through either complete inaction or fractured efforts has allowed him to essentially “fall through the cracks” as that phrase was at one point used by Veronica Richards of Cumberland Mental Health during that conference. Certainly the court doesn’t have the advantage of the insight that many who have worked with K.R. would have, but it has become more and more apparent since he has been coming to this court, that for whatever reason, a lot of things that should have happened at a community level in relation to this young man during his short life, have not happened.

[7] At the conference, Mr. C., the Vice-Principal of (***) Junior-Senior High School, described efforts in the last academic year to have K.R. access the intensive support that he needs. Mr. C. was very quick to point out that K.R. is not learning disabled; in fact, he’s quite capable and has a real aptitude for math, which was also discussed in the section 34 report, but the resources of the educational system are such that K.R. needs but cannot have somebody seated by his side in class all day, five days a week. Mr. C. discussed that the plan for the coming academic year is for the school to be able to utilize a “floating” educational assistant for five classes of junior high along with the possibility of students being moved out of the mainstream classroom from time to time and into a learning center. With all due respect to Mr. C., who certainly seemed well apprised of K.R.’s situation, and quite willing to engage in terms of a discussion of what might help K.R., it was entirely apparent to the court that the school where Mr. C. works is operating under the same strain as many of our public institutions, which results in the dichotomous combination of a lack of resources and a tremendous need.

[8] Mr. C. and K.R.’s grandmother, M.R., discussed at the conference how there had been some efforts specifically directed at accommodating K.R. in the last semester, such as having him arrive late school and get out early, which worked well in terms of keeping him focused on going to class and out of trouble or away from the distraction of other students who could provide such, but M.R. did

bemoan the lack of resources for a one-on-one program which would see someone with K.R. in the classroom all the time. That is one of the gaps for this young person; not a lack of commitment to support, but a lack of educational resources.

[9] At the conference, Mr. Ripley, K.R.'s probation officer, described that K.R.'s reporting has improved over time since he initially began reporting to probation services in December 2008, but the problems were and continue to be obvious. There were and are substance abuse issues that need to be explored, a lot of problems at school, and an inconsistent commitment by his mother and stepfather to notify Mr. Ripley when K.R. doesn't follow the conditions of probation. Mr. Ripley, a probation officer of thirty plus years experience, was of the view that K.R. requires more structure and accountability at home. There is a base level of support at home but it isn't always consistent, so again, that has been another gap for K.R.

[10] Ms. Richards described that K.R. has over time had seven years of involvement with Cumberland Mental Health. He just turned 14, he's spent portions of half of his life involved with Cumberland Mental Health and despite that, Ms. Richards was quite frank in acknowledging that he's had a number of different workers over that time. He's had some people he's met with on one occasion. A certain worker might read his file and meet with him on one occasion but would not be the person who met with him the next time. I am certainly not a social scientist but I take the view that it is fair for this court to make the general observation that it is a well accepted tenet of child rearing, absent any definitive academic focus on my part, that children need structure and consistency. I can't see how any adult could get anything out of mental health counselling where they met with a different counsellor every time, much less a child who started down that path of contact at seven years of age. That's been a serious gap in my view and absent any rational explanation as to why or how K.R. hasn't been followed consistently by the same person, it is not much wonder there is no defined treatment plan in place for K.R. at Cumberland Mental Health - there couldn't possibly be, under those circumstances.

[11] Ms. Richards reported that Susie Vokey of Cumberland Mental Health, who had most recently dealt with K.R. reported that perhaps this youth had fallen through the cracks concerning a reference to the Adolescent Centre for Treatment ("ACT") program. Referral to that program is a possibility that should have been

explored virtually immediately after the December 2008 probation order was imposed. Ms. Vokey's observation was frank, but the lack of action is entirely unacceptable.

[12] The court should be the last bastion for any of society's troubles. Society's ills don't get fixed in court. K.R.'s problems don't get fixed in court. But this court was abundantly clear last December that the rehabilitation of K.R. was going to require a concerted effort on the part of a number of social agencies and health and welfare providers. Indeed, one of the driving philosophies behind the imposition of the Youth Criminal Justice Act was to force various community based components - such as education and health - to come together and develop a multi-faceted, rehabilitative and prevention-based approach to dealing with young people in conflict with the law, thereby forcing our society to abandon the often perceived practise of simply pegging young people into the "justice slot" to become a problem to be dealt with by that sector alone.

[13] I find it completely and entirely unacceptable that one of the recommendations that was specifically identified in the December 2008 IWK Report - that K.R. be focused in the direction of and have explored the ACT program - as incorporated in a comprehensive probation order with a number of conditions was never acted on. It is clear to this court that absolutely nothing was done in terms of exploring with and on behalf of K.R. the ACT program or any other residential treatment program or any other outpatient program that would explore or address his mental health issues or needs. Quite frankly, not one of the service providers, not one of the agencies, not one member of the public and not one member of law enforcement should be even remotely surprised that K.R. ultimately ended up back in custody and before the court today. To be blunt, the biggest surprise is that it took as long as it did.

[14] There are also gaps in K.R.'s home environment. Based on everything I've read concerning K.R. and everything I've seen when his mother, step-father or grandmother have been present in court, I don't doubt that they love him and are interested in seeing something happen in terms of help for him. But with the greatest of respect to them, their efforts have been inconsistent. I thought that the discourse that went on at the sentencing conference, in the presence of K.R., between his mother and his grandmother over the question of the purchase of his last pair of glasses was a pointed illustration of a lack of communication, a lack of

cooperation among family members and the immediate need for them to stop blaming each other and focus on getting the job done.

[15] And continuing on with the matter of K.R.'s glasses, in one of the passages I read, either in my notes from the case conference or in the section 34 report, K.R. himself made the observation that it's hard for him to read without his glasses. That begs the question: since he's been sitting in Waterville with no glasses since June, what could be the success of any efforts to have any remedial education plan put in place there? What could be the success of any meetings, when he might sit down with a counsellor in Waterville, if he can't even read the paperwork or help somebody fill out a form, because he doesn't have his glasses? His grandmother opined at the sentencing conference that she thought he would like to have contact lenses. Perhaps not an unusual wish for a 14-year-old boy, but the question is how can you run before you walk? How can K.R. progress to the point where somebody might help him get contact lenses if he isn't even armed with his glasses? This has been another serious gap. There may well be an explanation for this, but it is lost on the court. The court is left wondering why the folks in Waterville have not picked up the ball over the last number of weeks and seen to it that this young man has glasses. I find that difficult to accept, in an era where we fund institutions like provincial jails and penitentiaries where people have routine access to health care, dental care and eye care. Why doesn't this young man have a pair of glasses? It's a small question, but it's a bigger illustration of another gap in his current situation.

[16] Then there is the matter of another very telling exchange at the section 19 conference, when it came to the attention of this court that the local mental health office has never received a copy of the December 2008 section 34 report. It would be very clear from the record of the December 2008 sentencing hearing that this court took a very broad view, a very broad interpretation, a generous and liberal approach to the wording of the Youth Criminal Justice Act to try to get that report into the hands of people who would need it, in order to meaningfully assist K.R., and to ensure that service providers were armed with enough information to help K.R., to assist in his rehabilitation. This court went to great lengths to make dissemination of the section 34 report a specific clause of the probation order. However, at the July conference, K.R.'s grandmother said she never received one, and neither did K.R.'s mother. Mental health, K.R.'s mother and his grandmother are but three of the parties specifically named in the probation order as parties who

were to have a copy of the section 34 assessment. This court was satisfied at the time that it was what was needed in order to help facilitate matters for K.R.

[17] How anybody thought that this young man, who was 13 last December, was in a position to start generating the reports and the paperwork and the copies to all of the people who needed to get them, I don't know. That condition didn't appear in the probation order because the court thought that K.R. was going to run around with an envelope to everybody in Cumberland County that needed to read the section 34 report. That condition was in the probation order to demonstrate to everyone involved in K.R.'s program of rehabilitation that this was the kind of coordination and communication, and I emphasize that word, communication, that was needed.

[18] I find it very troublesome that things have come full circle for K.R. and that the gaps continue. K.R. came to a point in his life where he came to the attention of the criminal justice system, he came through the criminal justice system, everybody came together to try to formulate a framework for rehabilitation, he went back into the community and many of the people supposed to be involved with him seem to have thrown up their hands and waited for the clock to tick by to the point that he is here again. This cycle cannot continue.

[19] It has occurred to me more than once as I have thought about the appropriate disposition for this young man today, that perhaps it is somewhat unfortunate that there are not consequences in the Youth Criminal Justice Act for those persons or institutions in the community that fail to do what they are supposed to do to assist or allow an individual to complete their youth sentence without finding themselves back before the court again. A mechanism does exist in the Act, for example, to extend probation orders so that people can do community service hours when the community service supervisors advise the hours can't be completed in the prescribed length of time. A mechanism is also there for people to be prosecuted if they are a responsible person acting under a responsible person undertaking and don't live up to their obligations. It is ironic that section 38 of the Youth Criminal Justice Act discusses the accountability of the young person, and yet few of the adults or adult-manned service providers and/or institutions seem to have been accountable to this point for their role in where K.R. finds himself today.

[20] I have referred to only a few examples of the serious gaps that I see have allowed K.R. to fall through a very large crack. And now, the criminal justice system demands that he receive a sentence that responds to the big “hole” that he’s stuck in, some of which is directly of his own making and much of which, in my view, is not.

[21] Crown and defence today have made a recommendation for a further period of probation but with a very specific clause - the key or feature piece of the sentence - being a requirement that K.R. enroll immediately in the ACT program and stay there until he has successfully completed that program. I think that’s an excellent suggestion. It’s unfortunate that it had to take K.R. spending another couple of months in custody and racking up more charges on his record before anybody got the wheels in motion, but here we are, and it’s time to make the best of a poor situation.

[22] I agree entirely with that recommendation as both crown and defence have made it. I see that K.R. needs the structure, the supervision and the accountability that a residential treatment program will provide. He clearly cannot, at this time, get that at home. I did note in the conference that there is a lot of defensiveness on the part of K.R.’s mother and grandmother and that may have a historic genesis, but it is not helpful to focus on past history at this point. There was much time spent by them in the conference harping on the ills that the family perceives have been heaped upon K.R. in the past. A considerable amount of that vigorous emotion, directed at Family and Children’s Services (as it then was, now the Department of Community Services) is entirely counterproductive in my view. Indeed this sort of negative retelling of the past, in the presence of K.R., cannot possibly be helpful and some might suggest that if there does exist “a chip on the shoulder” of K.R., it only serves to irritate that chip and make it bigger. So I would think that the time for focusing on the past is over. It’s time to move on. K.R. has indicated through his lawyer a willingness to move on by attending the ACT program, but it seems to me, as I observed last December, it’s not only going to require K.R.’s efforts, it’s going to require the efforts of his family. If they’re not going to assist and they’re not going to participate in a meaningful way in the follow-up and in the community-based portion of the ACT treatment program, then I fear for K.R.’s future.

[23] The ACT program is four months in length and that means that K.R. is still going to have community service hours to do associated with his current probation order when he is discharged from that program, so while I don't necessarily disagree that community service hours allow him to give something back and allow him to make a positive contribution to the community, I'm concerned that in this particular case, given the timing of a new probation order vis-a-vis the running of the last order, coupled with the fact that he's spent a considerable amount of time in custody, adding yet more hours to the picture may in the end be counter-productive. I agree wholly with Mr. Gregan's observation that K.R. does have a tremendous amount of work to do and needs to focus his efforts and once he gets finished with the hours that he's doing now, adding additional hours might only serve to distract from other work that needs to be done, or set him up for failure if the hours don't get done. So, on that basis, I'm going to decline to impose any community service hours in the new probation order, as the crown advocated that I do.

[24] Then there is the question of the length of the new probation order. Clearly it needs to be long enough for participation in the ACT program, follow-up in the community and ongoing work in the community after the ACT program has completed its work.

[25] These are serious charges. K.R. has demonstrated his continued inability to live by conditions of release and sentence orders. The break and enter offences I find most disturbing. They're not break and enters of the variety where someone enters a stranger's home and helps themselves. K.R. has had few constants and few supports in his life, but clearly his grandparents have been there for him in their own way and I understand that the dynamic of the family is complicated and by times chaotic, as well documented in the section 34 report, but there must be a sense of violation on the part of his grandparents that K.R. would sneak into their home and steal from them. I think it's a very good illustration of his specific disregard for the property of the people in his life who do care for him and who are willing to stick up for him, even when perhaps some of their comments are focused in the wrong direction, if well meaning. That offence had to be a disappointment to his grandparents and he needs to get some counselling, among many other things, with regard to respecting other people's property, to say nothing of respecting other people.

[26] Clearly, the structure of the ACT program is needed and I don't know what K.R.'s personal feelings are, but he's lucky to go there. Many youth who might want to attend the ACT program won't get the chance, because of a lack of resources. There are only so many people who can be in the program at one time. This court is aware that there have been young people in this community who have benefitted from time at that program. So, as Mr. Gregan says, the prospects for a positive outcome are reasonably good but it is going to take work on K.R.'s part, not just work on the part of the staff at ACT.

[27] In terms of the length of the probation order, a two-year probation order is the maximum that the court can impose. K.R. is 14 years of age and he has managed to collect quite a record, but in terms of the criminal justice system, he's a very, very young man. The string of offences that are before the court demonstrate his unwillingness and/or inability over time to function in the community, but they are not the most serious of offences and they are not offences of violence. They are offences that demonstrate a disrespect for the property of others and a disrespect for the orders of the court, but are not the worst of those types of offences. I am not persuaded, when I consider the principles of the Youth Criminal Justice Act, that the maximum length of probation should be imposed, as the crown asserts. The stiffest kinds of sentences should speak to the worst kinds of offences and further, K.R. is 14 years of age so two years might seem like a lifetime to him, as the concept of the measurement of time by young people as being different from that of adults has been discussed in this court on many occasions.

[28] The ACT program will require four months of in-house treatment and four months follow-up in the community and, in my view, there should be six months probation beyond that, for a total of 14 months probation. I'll be blunt - if K.R. has not found success through the ACT program and if all of the people involved in his care in the community have not found success in the follow-up that must come from them after the ACT program, then six months is more than enough time for that to become apparent. This court certainly hopes that won't be the case, but in any period longer than 14 months, I suspect the message would be lost to K.R. and he would not make the connection that section 38 of the Youth Criminal Justice Act would have him make between his actions and the consequences.

[29] The 14-month probation order will be associated with each of the break and enter charges and the possession of stolen property charges, and on each of the

section 145, section 137, and section 139 offences there will be a concurrent sentence of probation of one month in length, concurrent on each count, one to the other, and concurrent to the 14 months probation imposed.

[30] I have considered the principles discussed in the 2005 Supreme Court summary conviction appeal court decision in *R. v. D.R.L.* and the 2003 Nova Scotia Court of Appeal decision in *R. v. MacIvor*. I recognize that the recommendation wasn't joint with respect to the length of a probation order and the imposition of community service hours, but the essence or spirit of the recommendation was joint, and I'm satisfied that the recommendation for probation as opposed to custody is entirely appropriate under the circumstances.

[31] The probation order is made pursuant to section 42, subsection (2), paragraph (k) of the Youth Criminal Justice Act. The conditions of the probation order are:

- *K.R. shall keep the peace and be of good behaviour.*
- *He shall appear before the court when and if required to do so at any time.*
- *He shall report to the Youth Justice Court probation worker at 26-28 Prince Arthur Street no later than noon on August 20th, by telephone, and thereafter at such times, in such locations and in such manner as he may be directed to do by the Youth Justice Court probation worker from time to time.*
- *He shall advise his Youth Justice Court probation worker of any change in his address or telephone number within 24 hours of any such change.*
- *He shall reside as directed by the Provincial Director or their designate from time to time.*
- *He shall abstain from the use, possession or consumption of alcohol.*
- *He shall abstain from the use, possession or consumption of any drugs, as defined in the Controlled Drugs and Substances Act, unless he has a legal authorization or a physician's prescription.*
- *He shall abstain from the use of any weapons, firearms, ammunition or explosive substances.*

- *He shall attend for and participate in any and all counselling, assessment, treatment or programming to which he is directed or which may be recommended for him at any time.*
- *He shall attend at the Adolescent Centre for Treatment under the auspices of the IWK Health Centre at 1161 Hollis Street, Halifax, Nova Scotia, no later than 5:00 p.m. on Monday, August 17, 2009.*
- *He shall not associate with any person having an adult criminal record or a youth criminal record, unless that person is a member of his immediate family.*
- *He shall not associate with any person specifically identified to him from time to time by his Youth Justice Court probation worker.*
- *He shall not be within 10 metres of the premises of A.R. and M.R. at (***) , unless with the advance permission of either of the homeowners.*
- *He shall make all reasonable efforts to locate and maintain a program of education and abide by the rules and regulations of that program.*
- *He shall remain in the ACT program until such time as he has successfully completed that program and been discharged upon successful completion by the administrators of that program.*
- *He shall participate in and attend at any follow-up counselling, appointments or treatment which may be recommended to him or arranged for him by the officials of the ACT program.*
- *He shall abide by a curfew in his usual and ordinary residence, 24 hours a day, seven days a week from 10:30 p.m. to 6:30 a.m. For the purposes of this order, the residence is defined as the dwelling house in which he is specifically directed to reside from time to time by the Provincial Director and the lands surrounding it, within five metres of the dwelling. The only exceptions to the curfew are when K.R. attends at a medical emergency involving him or a member of his household and travelling to and from by the most direct route or when he attends a counselling appointment or a treatment program at the direction of or with the permission of his probation officer and travelling to and from by the most direct route or when he is in attendance at a residential treatment program as approved in advance by his probation officer and abiding by the rules and regulations of that residential treatment program which may include an adjustment to the curfew or when he is in the immediate company of a parent, stepparent, or grandparent, or when he is in the immediate company of an authorized*

individual from a residential treatment program or when he has the written permission of his probation officer to be out of the house during the curfew hours provided that he carries that written permission on his person at all times. With respect to the curfew, in all such cases and pertaining to all such exceptions, there is an additional requirement that the curfew may be at times different than 10:30 p.m. to 6:30 a.m. at the discretion of a parent, grandparent, stepparent, guardian, residential treatment worker, or probation officer as they, in their sole discretion, may deem appropriate.

[32] This is a situation that has been 14 years in the making and anyone who thinks it is going to be solved after four months is kidding themselves. So K.R. has lots of work to do, but a number of service providers also have lots of work to do as well. Good luck to you, K.R.

YJCJ