

IN THE YOUTH JUSTICE COURT

R. v. A.B., 2013 NSPC 111

Date: 20131120

Docket: 2663199

Registry: Pictou

Between:

Her Majesty the Queen

v.

A.B.

**Restrictions on
publication:**

The name of the young person A.B. shall not be published or broadcast in any way.

Judge:

The Honourable Judge Del Atwood

Heard:

November 20, 2013 in Pictou, Nova Scotia

Charge:

Section 264.1(a) of the *Criminal Code*

Counsel:

Patrick Young for the Nova Scotia Public Prosecution Service

Douglas Lloy, Nova Scotia Legal Aid Commission,
for the young person, A.B.

Cory Roberts for the Minister of Community Services

By the Court:

[1] **The Court:** The court has for sentencing A.B.. A.B. has entered a guilty plea at a very early opportunity in relation to a charge under para. 264.1(1)(a) of the *Code* and the Court has made a finding of guilt under s. 36 of the *Youth Criminal Justice Act*.. It's an acknowledgment of responsibility. The facts are that A.B. is in the care of the Minister of Community Services, and lives at the Bridges Program in Stellarton; on 13 October 2013, A.B. threatened to harm another Bridges resident.

[2] A.B. had a sentencing hearing before the court on 2 October 2013. The court imposed a discharge in that case because of the fact that the court was satisfied that it was a lower-end offence.

[3] The chronology of the laying of this charge causes the court substantial and real concerns. The offence date was 13 October 2013. The charge was not sworn by the investigator until 30 October 2013. That delay is difficult to comprehend, given that the paperwork for a form 11.1 undertaking was signed by A.B. on 13 October 2013. There was a promise to appear that was

issued to A.B. on 13 October 2013; that process required A.B.'s appearance in court today, 20 November, over a month after the offence.

[4] This clearly does not comply with the 7-day time line stipulated in the government response to the *Nunn Inquiry Report*, which contained a number of commitments regarding expeditious dealing with *Youth Criminal Justice Act* matters, and which underscored the importance of dealing with *YCJA* matters quickly.¹ The need for that is underlined by this case.

[5] First of all, I wish to say, Mr. Young, obviously, this isn't the responsibility of the Public Prosecution Service. The Public Prosecution Service doesn't lay charges or issue process. This is the responsibility of the charging policing agency. Not only did the charging agency operate well outside the 7-day time line of the *Nunn Report* response, the investigator chose to include in a form 11.1 undertaking a condition that essentially prevented A.B. from returning to the Bridges Program, the residence chosen for him by the Minister of Community Services. This is an issue that has been well covered by this court, and, indeed, by

¹Nova Scotia, *Helping kids–Protecting communities: Response to the Nunn Commission*, (January 2007), at p. 16.

the Nova Scotia Supreme Court in a decision rendered approximately seven months ago in a judicial review of *R. v. J.J.C.*² Ultimately, the police operate as a branch of the executive division of government; the Minister of Community Services is a member of the executive division of government. The Minister has full and plenary authority over the placement of young persons in care. And based on the outcome of the review of *J.J.C.* I am satisfied that I would not have the authority as a Youth Justice Court Judge to make an order preventing A.B. from returning to the Bridges Program if the Minister of Community Services were to conclude that that be the appropriate placement for A.B.. If I do not have the authority, then no police officer has the authority to do that, either.

[6] In my view, that condition in the undertaking should never have been put there and A.B.'s removal from the Bridges program has had a very negative impact on his treatment and rehabilitation. This has been detailed very fully by Mr. Roberts. Furthermore, this charge could have been laid much sooner, given the fact that the undertaking and the promise to appear were both prepared on 13 October, 2013. The following day, yes, was a holiday. But then there were Youth

²2012 NSPC 110.

Justice Court sitting days on the 16th, 23rd, 30th October. As a result of the undertaking and the delay in laying the charge, A.B. wound up having to be transferred by the Minister to the Reigh Allen Centre where things have been very difficult for A.B..

[7] This sort of thing should never happen again. Obviously, there's no way the court can prohibit it, but in my view, the outcome ought to reflect the very serious concern that the court has about this, recognizing that A.B. has already been penalized by his re-location from Bridges, where he appeared to have been doing well, to an unfamiliar environment, as has been described by Mr. Roberts.

[8] In my view, the appropriate outcome here is an absolute discharge, and that will be the sentence of the court.

[9] And as I say, Mr. Young, this is attributable in no way to the prosecution service.

[10] **Mr. Young:** Thank you, Your Honour. I will pass on the message to the RCMP.

[11] **The Court**: Well, I think what the court is going to do is this, we're going to have the reasons for judgment typed up, please, and I will arrange to have them distributed. Anything further in relation to A.B.?

[12] **Mr. Lloy**: Not by Defence, Your Honour.

[13] **The Court**: Does A.B. still require ... is there any order ... a secure-care order requiring A.B. to remain at the Reigh Allen Centre or is he returned ...

[14] **Mr. Roberts**: At this point, he's at the Wood Street Centre in secure care.

[15] **The Court**: Oh, at the Wood Street Centre.

[16] **Mr. Roberts**: I think the plan, if it's appropriate, would be for him to return to Bridge's.

[17] **Unidentified voice**: Once our application and in time with Wood Street has been dealt with, Your Honour, our plan is to move A.B. back to Bridges as soon as possible.

[18] **The Court**: So, A.B., I'll have you accompany the sheriffs. They'll make sure that you're conducted back to the Wood Street Centre but it sounds as though you'll be returned to the Bridges Program in the near future. Thank you very much.

J.P.C.