YOUTH JUSTICE COURT OF NOVA SCOTIA

Citation: *R. v. M.A.C.*, 2018 NSPC 12

Date: 2018-05-02
Docket: 8221262, 8221263
Registry: Pictou

Between:

Her Majesty the Queen

v.

M.A.C.

Restriction on Publication: No person shall publish the name of the young person M.A.C., or any other information related to the young person, if it would identify the young person as a young person dealt with under the Youth Criminal Justice Act.

Judge:	The Honourable Judge Del W. Atwood
Heard:	2018: 2 May
Charge:	Paras. 264.1(1)(a) and 267(a) of the *Criminal Code of Canada*
Counsel:	T. William Gorman, for the Nova Scotia Public Prosecution Service M.A.C. not appearing

By the Court:

[1] M.A.C. is a young person charged with counts of assault with a weapon (case 8221262) and uttering a threat to cause bodily harm (case 8221263).

[2] M.A.C. signed a promise to appear before the court, returnable today at 1:30 p.m. A notice to parent confirming that date was served on a person whom I understand to be M.A.C.'s caseworker with the Department of Community Services.

[3] The day prior to court, the caseworker called the court to inform staff that M.A.C. had been admitted to the Wood Street Centre on 30 April 2018 and that, when a young person is first admitted to the Centre, it is harder to get the young person out.

[4] M.A.C. was not before the court for arraignment today. Present was a staff person of the Department of Community Services—who is not the caseworker for M.A.C.—who informed the court that M.A.C. remains at Wood Street and is subject to a care order. Given the limited information in the possession of this staff person, I was not satisfied that she was acting in a representative capacity for M.A.C.

[5] In *R. v. A.B.*, 2013 NSPC 111 at paras. 4 and 5, and in *R. v. M.V.* 2016 NSPC 26 at para. 7, I restated the indisputable proposition that delay in the adjudication of youth-justice cases can have a detrimental effect upon young persons, as underscored emphatically in the Nunn Commission of Inquiry, *Spiralling out of Control: Lessons Learned from a Boy in Trouble: Report of the Nunn Commission of Inquiry* (Halifax: 2006) at 171-182.

[6] In *R. v. A.B.*, 2014 NSPC 77, I observed that an admission to Wood Street does not place the process of the court in suspended animation. After that decision was issued, the court received the written assurance of the Department of Community Services that the Department would ensure young persons admitted to Wood Street, but subject to the compulsory process of the court, would be brought before the court as required by law.

[7] The failure of a care giver in bringing a young person to court as required by law jeopardizes the interests of the young person in a number of ways. First, as I noted earlier, it delays adjudication, which dilutes the effect of youth-justice objectives.

[8] Second, it prevents the young person from having early contact with legal counsel, which occurs most often in court, at the arraignment stage. The assistance

of counsel is of utmost importance to young persons facing charges, particularly when the charges allege violence, carrying the risk of custody given s. 39 of the *Youth Criminal Justice Act*.

[9] Third, it places, at least notionally, the young person in elevated conflict with the law, as the obligation to appear in court under process is compulsory; after all, Part XVI of the *Criminal Code*—which applies in youth-justice cases in virtue of s. 28 of the *YCJA*—deals with "Compelling Appearance of Accused". Compulsory process is not an invitation. To be sure, I am aware of the practicality that a young person in state confinement would have a reasonable excuse for not coming to court; however, in this case, M.A.C. is subject also to a form 11.1 undertaking, and the reality experienced by the court very often is that delay in dealing with a primary offence creates the risk of bail violations, which have a snowball effect.

[10] In *R. v. T.D.N.*, 2013 NSPC 15, I emphasised the importance of the court engaging parental involvement in youth-justice proceedings; this imperative of engagement applies in all cases, even when the parent is a minister of the state.

[11] But engagement will not work absent reciprocity.

[12] The court is a separate branch of government, equal to the executive. Each has its role. The court must not interfere with the exercise of ministerial discretion: *Sriskandarajah v. United States of America*, 2012 SCC 70 at para. 11.

[13] Concomitantly, the executive branch must not delay or defeat the process of the court by failing to do the basic: in this case, ensuring that a young person in state care is brought before the court as required by law.

[14] I adjourn this case until next Wednesday at 1:30 p.m., and I direct that a parental-attendance order go to M.A.C.'s caseworker for that date, in accordance with s. 27 of the *YCJA*.

JPC