

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. J.E.S.*, 2009 NSCA 115

Date: 20091113

Docket: CAC 315311

Registry: Halifax

Between:

J.E.S.

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on publication: pursuant to s. 110(1) and 111(1) of the Youth Criminal Justice Act

Judges: MacDonald, C.J.N.S.; Bateman and Beveridge, J.J.A.

Appeal Heard: November 13, 2009, in Halifax, Nova Scotia

Written Judgment: November 16, 2009

Held: Leave to appeal is granted but the appeal is dismissed per oral reasons for judgment of Bateman, J.A.; MacDonald, C.J.N.S. and Beveridge, J.A. concurring.

Counsel: Chandrashakhar Gosine, for the appellant
Peter Rosinski, for the respondent

PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT s. 110 (1) and s. 111(1) OF THE *YOUTH CRIMINAL JUSTICE ACT* APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION.

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.

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.

Reasons for judgment:

[1] On January 6, 2009 fifteen year old J.E.S., while a passenger in the back seat of a passing vehicle, shot a teenage pedestrian in the back. The bullet narrowly missed the victim's spine. Charged with attempted murder and related weapons offences, after numerous court appearances he pled guilty to one count of aggravated assault. The Crown withdrew its application to try J.E.S. as an adult.

[2] J.E.S. was apprehended within a day or two of the shooting and remanded pending trial. At the time of sentence he had spent about six months in custody. The maximum period of custody available under the **Youth Criminal Justice Act**, S.C. 2002, c. 1 (the "**Act**") for this offence is two years.

[3] Judge Jamie S. Campbell of the Nova Scotia Provincial Court (Youth Court) imposed a twelve month custodial sentence, after giving nine months credit for the six months on remand. Under the **Act**, J.E.S. will serve 243 days of the sentence in secure custody and the balance of 122 days under supervision in the community (s.41(2)(n)).

[4] On appeal J.E.S. says the judge wrongly emphasized general and specific deterrence and, in any event, that the sentence is excessive.

[5] Absent error in principle an appellate court may only intervene if the sentence is clearly inadequate or excessive (**R. v. D.T.G.**, 2003 NSCA 23 at paras. 22 and 23).

[6] J.E.S. has a record for violent offences which reveals ongoing and persistent contact with the criminal justice system and disregard of Court orders. At the time of this drive-by shooting he was subject to two Probation Orders and an Undertaking to the Court, which required him to keep the peace and contained specific provisions that he not be in possession of firearms.

[7] Judge Campbell's thorough and thoughtful reasons reveal a proper application of the principles of the **Act**. The judge emphasized not deterrence but rehabilitation and the imposition of meaningful consequences. He gave appropriate recognition to the few mitigating factors. He was not satisfied that the period on remand had been sufficient to provide J.E.S. with the requisite

rehabilitative services or to constitute meaningful consequences for the offence. As his reasons make clear, he concluded that the only appropriate disposition, given J.E.S.'s history and the circumstances of this crime, was a further period of custody.

[8] We are not persuaded that the judge erred in principle or that the sentence is excessive. While leave is granted, the appeal is dismissed.

Bateman, J.A

Concurred in:

MacDonald, C.J.N.S.

Beveridge, J.A.