WARNING

THIS IS AN APPEAL UNDER THE

YOUTH CRIMINAL JUSTICE ACT

AND IS SUBJECT TO:

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.

138(1) Every person who contravenes subsection 110(1) (identity of offender not to be published), 111(1) (identity of victim or witness not to be published), 118(1) (no access to records unless authorized) or 128(3) (disposal of R.C.M.P. records) or section 129 (no subsequent disclosure) of this Act, or subsection 38(1) (identity not to be published), (1.12) (no subsequent disclosure), (1.14) (no subsequent disclosure by school) or (1.15) (information to be kept separate), 45(2) (destruction of records) or 46(1) (prohibition against disclosure) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. A.C., 2015 ONCA 103
DATE: 20150213
DOCKET: C58801

Laskin, Feldman and Simmons JJ.A.

BETWEEN

Her Majesty the Queen

Appellant

and

A.C.

Respondent

Maura Jette, for the appellant

Robert C. Sheppard and Lucas W. O'Hara, for the respondent

Heard: Feb 3, 2015

On appeal from the acquittals entered on April 14, 2014, by Justice A. Thomas McKay of the Ontario Court of Justice.

ENDORSEMENT

[1] The respondent was charged in January, 2011 with a number of offences against his then girlfriend, including sexual assault with a weapon. The events that gave rise to the charges were alleged to have occurred between 1996 and 1999.

[2] The trial that was scheduled for two days commenced in July 2013, but had to be adjourned to be completed in October. In the intervening period, the trial judge made a comment to the Crown Attorney about the trial, which caused the trial judge to accede to the motion for a mistrial brought on the return date in October, 2013. She also recused herself from the case.

[3] Following the declaration of the mistrial, no attempt was made to immediately recommence the 2 to 3 day matter before another judge. Instead it was adjourned to October 22, 2013 to set a new date for trial. The dates of April 15, 16 and 17 2014 were set on consent, based on the reported first availability of defence counsel for that length of trial. No attempt was made by the Crown or the court to canvas any earlier dates.

[4] The respondent moved before the application judge for a stay of the charges on April 14, 2014 on the basis of undue delay, contrary to s. 11(b) of the Charter. The application judge granted the stay, focusing his analysis on the characterization of the period of delay following the mistrial. He also analyzed the earlier periods and concluded that 15.5 months of that time was properly characterized as Crown or systemic delay.

[5] He found that the 6.25 month period of delay following the mistrial was properly characterized as institutional delay based on two factors: 1) the unusual

circumstances of the mistrial which could not be attributed to the accused; and 2) that defence counsel was not expected to be “in a perpetual state of readiness”.

[6] We see no error in the application judge’s conclusions. First, the mistrial in this case was caused by a misstep by the trial judge and therefore must be attributed as institutional delay and not neutral delay. Second, neither the Crown nor the Court attempted to offer or canvas with defence counsel earlier dates than the ones he had suggested.

[7] In oral submissions on the appeal, Crown counsel also argued that the application judge misapprehended the record in failing to recognize that defence counsel had never asked for earlier dates throughout, thereby effectively waiving any delay, and that he erred in his balancing on the issue of prejudice. We see no merit in these submissions.

[8] The application judge was familiar with the local jurisdiction’s practice for the setting of dates, and, contrary to the submission on appeal that the defence bore the responsibility for any delay, he was critical of both the crown and the court for their failure to be aware of the passage of time when setting dates leading up to the trial.

[9] On the issue of prejudice, the application judge found both inferred and actual prejudice. He was also aware of the serious nature of the charges. There

is no basis to interfere with his balancing of the factors or to interfere with his conclusion.

[10] In the result, the appeal is dismissed.

"J.I. Laskin J.A."
"K. Feldman J.A."
"J. Simmons J.A."