

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** R. v. Barry, 2004 NSCA 145

**Date:** 20041207

**Docket:** CAC 221556

**Registry:** Halifax

**Between:**

Shane Douglas Barry

Appellant

v.

Her Majesty the Queen

Respondent

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**Judge:** The Honourable Justice Nancy Bateman

**Appeal Heard:** November 23, 2004

**Subject:** *Appeal from guilty plea*

**Summary:** The appellant inmate pled guilty to, inter alia, possession of a weapon for a purpose dangerous to the public peace (**Criminal Code of Canada**, R.S.C. 1985, c. C-46, s.88). He pursued another inmate, Chan, with a shiv, threatening to kill him. Inmate Chan had been involved in a prison yard confrontation and had stabbed a third inmate, Williston, who was a friend of the appellant. The appellant did not witness and was not involved in the prison yard brawl, but when Williston returned to their cell area, wounded, the appellant took off after Chan. Chan was tried (after the appellant's guilty plea and sentencing) on a number of offences (including a s. 88 offence) arising from the confrontation with Williston and was acquitted. The Crown attorney on the Chan trial, who had also been the Crown attorney on the appellant's sentencing hearing, contacted the appellant's counsel and advised that it was his opinion that the appellant's guilty plea should be withdrawn because Chan had been acquitted. In furtherance of that end, the appellant appeals. Crowns in the Appeals Division did not share trial

Crown attorney's view and opposed the appeal.

**Issue:** Should the offender be entitled to set aside a guilty plea?

**Result:** Fact specific. Appeal dismissed. In the unusual circumstances of this case, the Crown on appeal did not act improperly in opposing the appeal. Nor was there a basis to permit the withdrawal of the guilty plea.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 6 pages.**