

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Starratt*, 2007 NSCA 21

Date: 20070214

Docket: CAC 269727

Registry: Halifax

Between:

Joseph R. Starratt

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice M. Jill Hamilton

Appeal Heard: January 22, 2007

Subject: Criminal law, procedure to be followed when judge does not accept joint recommendation of counsel for penalty for breach of conditional sentence

Summary: The appellant admitted that he breached his conditional sentence by committing the offence of driving while under the influence in a location he was not authorized to be. Counsel made a joint recommendation that the penalty imposed for the breach be time served, which was 5 days at that time. Without indicating to counsel that she had a concern with the joint recommendation and giving them an opportunity to make further submissions, the judge terminated the conditional sentence.

Issue: Did the judge err in terminating the conditional sentence?

Result: The judge erred by not indicating to the parties her concern with their joint recommendation and giving them an opportunity to make further submissions. Appeal allowed and penalty varied to time served after counsel were given the opportunity to make the arguments they would have made to the judge if given the opportunity to do so.

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 10 pages.

