

**NOVA SCOTIA COURT OF APPEAL**

**Citation: *R. v. Conway*, 2009 NSCA 95**

**Date:** 20090923

**Docket:** CAC 303692

**Registry:** Halifax

**Between:**

Her Majesty the Queen

Appellant

v.

Michael Foster Conway

Respondent

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**Judge:** The Honourable Justice Nancy Bateman

**Appeal Heard:** September 14, 2009

**Subject:** Sentencing - drug trafficking - cocaine and marijuana

**Summary:** A sixty-five year old married father was operating a Dial-a-Dope operation out of his truck. Distribution paraphernalia was found in his home. The total drug weight, value and amount of currency was 103.1 grams of crack cocaine with an approximate street value of \$10,310.00; 264.12 grams of cannabis marihuana with an approximate street value of \$2,650.00 and \$2,938.00 in Canadian currency. He entered an early guilty plea. He was given a conditional sentence of two years less a day followed by two years probation. He was permitted to attend work as a driver for his wife's cleaning business and necessary medical and legal appointments. Otherwise, house arrest for full term. The Crown appealed.

**Issues:** Did the judge err in law or principle or is the sentence manifestly unfit?

**Result:** Appeal allowed. The judge failed to conduct the analysis required by **R. v. Proulx**, 2000 SCC 5. Had he done so, applying the law as summarized in **R. v. Knickle**, 2009 NSCA 59 and **R. v. Steeves**, 2007

NSCA 130, he could not have concluded that a sentence of less than two years was available for this offender and this offence. The judge did not identify any exceptional circumstances sufficient to warrant a sentence below the usual range for this level of trafficker. A sentence of 2.5 years, as sought by the Crown at first level, substituted.

**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 7 pages.**