

CASE NO.

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Carolyn Mary Dipenta Rizzetto

- and - Her Majesty The Queen

(Appellant)

(Respondent)

CAC 173010

Halifax, N.S.

Saunders, J.A.

Cite as: *R. v. Rizzetto* 2002 NSCA 142

APPEAL HEARD:

November 13th, 2002

JUDGMENT DELIVERED:

November 15th, 2002

SUBJECT:

Fraud exceeding \$5,000, s. 380(1)(a) of the Criminal Code. Opinion evidence. Reasonableness of verdict. Time for community service. Restitution Order. Aggravating circumstances.

SUMMARY:

The appellant, a 66 year old woman, was convicted by a jury of defrauding the Province of Nova Scotia of more than \$100,000 during a period of almost 20 years. She appealed her conviction alleging error on the part of the trial judge in his handling of certain “opinion evidence” given by the appellant’s son, a practising lawyer and Crown witness at the trial. She also appealed alleging that the jury’s verdict was unreasonable. She sought leave to appeal on the basis that her sentence was excessive.

HELD:

Appeal against conviction dismissed. Leave to appeal sentence granted, but appeal against sentence dismissed.

The judge’s instructions to the jury were timely, clear and unambiguous and there was no risk that the jury’s finding of guilt was based upon the “opinion evidence” offered by the appellant’s son. In light of the evidence offered by the Crown and the defence at trial, the verdict was reasonable.

The sentence of two years conditional sentence, followed by two years probation and an order to make restitution in the amount of \$71,486 was not excessive. Two technical errors made by the judge in his sentencing remarks were corrected. The additional 100 hours of community service work must be performed over a period not exceeding 18 months. Further, resistance to forced restitution cannot trigger negative consequences and must not be taken to be an aggravating circumstance.

Considering the egregious features of this case where the appellant's deceit, dishonesty and fraudulent receipt of social service benefits were found to be planned, deliberate and continuous over a period of twenty years, imposing a restitution order was an appropriate exercise of judicial discretion which gave full effect to proper sentencing principles.

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.