Date: 20021127
Docket: CAC No. 181944
Registry: Halifax

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. Dawe 2002 NSCA 147]

BETWEEN:

Geraldine M. Dawe

Appellant

v.

Her Majesty The Queen

Respondent

Judges:	Glube, C.J.N.S., Cromwell & Hamilton, JJ.A.
Appeal Heard:	November 15, 2002, in Halifax, Nova Scotia
Held:	Leave to appeal granted, but appeal dismissed as per reasons for judgment of Hamilton, J.A.; Glube, C.J.N.S. and Cromwell, J.A. concurring.
Counsel:	Patrick J. Eagan, for the Appellant Stan W. MacDonald, for the Respondent

Reasons for judgment:

[1] This is an application for leave to appeal, and if granted, an appeal from the sentence of Judge A. Peter Ross given orally on May 23, 2002, sentencing the appellant on each of three charges to fifteen months in an institution, to be served concurrently. The appellant seeks to serve her sentence in the community and to have the time reduced.

[2] The appellant was found guilty, after a trial in Provincial Court, of possession of four grams of cocaine for the purpose of trafficking (eight .5 gram packages), possession of 200 grams of hashish for the purpose of trafficking and possession of 235 grams of marijuana and one ounce separate for the purpose of trafficking. These drugs were seized by the police from the appellant's home as the result of a search. $1,240 in cash was also seized from the appellant's person, along with the cocaine. Also found was a large quantity of prescription drugs and plastic bags with the corners cut out to contain drugs.

[3] The appellant's application to present new evidence was withdrawn.

[4] The appellant submits the trial judge erred in imposing a sentence that was too long and that was to be served in an institution. The appellant submits the trial judge erred by overemphasizing certain factors, such as lack of remorse and the appellant's criminal record, and by failing to give due consideration to the appellant's medical condition, when he was considering the appropriate sentence to impose.

[5] The standard of review on a sentence appeal is as stated at paragraph 90 of *R. v. C.A.M.*, [1996] 1 S.C.R. 500:

> Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit. Parliament explicitly vested sentencing judges with a discretion to determine the appropriate degree and kind of punishment under the Criminal Code.

[6] The appellant has not satisfied us that the sentence is demonstrably unfit. To the contrary, the sentence is, if anything, unduly lenient. Possession of cocaine for the purposes of trafficking typically results in sentences of two years or more, as the judge pointed out.

[7] While we are concerned that the judge may have allowed the appellant's lack of remorse and illegal but uncharged conduct to count improperly as aggravating circumstances, he nonetheless arrived at a fit sentence that should not be disturbed on appeal. We do not accept the appellant's submission that undue weight was given to her criminal record as there was only one reference to it in the decision and that reference was in the context of whether a conditional sentence was appropriate.

[8] The failure of the trial judge to mention the appellant's medical condition in his decision was not an error, given the minimal mention made of the appellant's health in the thorough submissions made to the trial judge by appellant's counsel. If there were medical issues that ought to have been taken into account in sentencing, they should have been raised before the trial judge who was in the best position to determine the appropriate sentence having heard the evidence at trial.

[9] The trial judge stated in his decision:

> And finally, to sentence you to a house arrest when you committed an offence where a house was used as the very base of your operations, I think would not just fly in the, ah, in the community as being a fit and appropriate sentence. It, ah, simply, ah, would be seen as somewhat ridiculous.

[10] This was a relevant factor for the trial judge to consider when determining whether the sentence should be served in an institution or in the community, given the statement at paragraph 131 of *R. v. Proulx*, [2000] 1 S. C. R. 61, "However, trial judges are closer to their community and know better what would be acceptable to their community."

[11] Accordingly we grant leave to appeal, but dismiss the appeal.

Hamilton, J. A.

Concurred in:

Glube, C.J.N.S.

Cromwell, J. A.