

CASE NO.**VOL. NO.****PAGE****Her Majesty the Queen
(Appellant)****- and -****David Thomas Smith
(Respondent)****CAC 178324****Halifax, N.S.****Hamilton, J. A.**

[Cite as: *R. v. Smith* 2002 NSCA 148]**APPEAL HEARD:****November 15, 2002****JUDGMENT DELIVERED:****November 28, 2002****SUBJECT:****Criminal law - offence occurring more than six months before date on which information was sworn - election by Crown****SUMMARY:**

An information alleged an offence which occurred more than six months before the date on which it was sworn, contrary to section 786(2) of the Criminal Code. The trial on this information proceeded summarily, until this was realized. Once realized, the accused was asked if he would consent to the trial proceeding summarily and he refused. The trial judge declared the information a nullity. The Crown laid a second information electing to proceed indictably. On application the trial judge held the second indictment was an abuse of process and stayed the matter.

ISSUES:

Did the trial judge err in ruling the second information was an abuse of process and staying the matter?

RESULT:

Appeal allowed. The case followed by the trial judge differed from this case in that there the information was laid within the six month limitation period but was for the wrong charge. Here since the information was laid outside the six month limitation period there was never an option to proceed summarily. Accordingly the jeopardy of the accused remained the same with the second information. Therefore he did not suffer any prejudice on account of the laying of the new information.

<p>This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 7 pages.</p>
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