C.A.C. No. 02925

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. Purdy, 1993 NSCA 219

Jones, Chipman and Pugsley, JJ.A.

BETWEEN:

ANTHONY KENT PURDY, RANDALL DALE PURDY, FRANK JOHN PURDY and JOEY LEE PURDY	)	S. Clifford Hood, Q.C. for the Appellants
Appellants	)	
- and -	)	
HER MAJESTY THE QUEEN	)	Kenneth W.F. Fiske, Q.C. for the Respondent
Respondent	)	Appeal Heard: November 18, 1993
	)	Judgment Delivered: November 18, 1993

THE COURT: Applications for leave to appeal dismissed per oral reasons for judgment of Jones, J.A.; Chipman and Pugsley, JJ.A. concurring.

The reasons for judgment of the court were delivered orally by:

JONES, J.A.:

The appellants are applying for leave to appeal against their sentences. On October 17, 1992, the appellants were attending a family wedding. They were advised that a canteen in Rockville, apparently owned by a family member, was on fire. Upon arriving at the scene the appellants wrongfully concluded that James Donald Muise was responsible. They proceeded to the Muise home a short distance away and after breaking down the front door assaulted Mr. Muise. Mrs. Muise and the children were present in the home. The front door and some furniture was damaged. The police were called and Randall, Joey and Anthony Purdy were arrested at the scene. Frank Purdy was arrested at his residence. The appellants had been drinking and were under the influence of liquor at the time of the offence. On May 13, 1993 Frank Purdy pled guilty to a charge of breaking and entering the residence and assaulting James Muise contrary to s. 348(1)(b) of the **Code**. Anthony Purdy pled guilty to a charge of breaking and entering and uttering threats contrary to s. 348(1)(b) of the **Code**. Joey and Randall Purdy pled guilty to charges of breaking and entering a dwelling house and committing assault contrary to s. 348(1)(b) of the **Code**. The appellants are mature individuals and are gainfully employed as fishermen. With the exception of Joey, the three other appellants are married and have families. None of the appellants has a record.

The trial judge suspended the passing of sentence in each case and placed the appellants on probation for a period of two years subject to conditions including a requirement for 350 hours of community service.

The record then discloses the following exchange with counsel:

> "The Court: Following your apology to Mr. Muise and his family, you will not initiate any contact whatsoever with Mr. Muise or any member of his family following that. Do you understand that gentlemen? On each of you there will be a five year prohibition order in respect to the possession of any weapons, ammunition or explosives.
>
> Mr. Prince: Excuse me, Your Honour. Under the amended section it is a first - for the - in the case of the first conviction for such an offence 10 years is the

minimum.

The Court: Ten years, right.

Mr. Hood: Discretionary?

Mr. Prince: No, that is mandatory.

The Court: Mandatory. That was recently changed.

Mr. Prince: In 1992."

In addressing the court prior to sentence neither counsel referred to the necessity of an order under s. 100(1) of the **Code**.

The applications for leave to appeal against the sentences relate only to the orders under s. 100(1) of the **Code**. The main argument on behalf of the appellants is that the learned trial judge erred by denying the offenders the right to satisfy the court that orders under s. 100(1) were neither desirable nor appropriate. The Crown contends the onus was on the appellants to satisfy the court that the orders were not appropriate. The appellants having failed to discharge the onus the court had no alternative but to impose the orders under s. 100(1).

Counsel for the appellants has failed to satisfy this court that there are any grounds under s. 100(1) of the **Code** which would satisfy the court that it was not appropriate or desirable to make the orders. While the appellants have no records these offences were serious. There is no suggestion that weapons were necessary for the sustenance or employment of the appellants. The applications for leave to appeal are dismissed.

J.A.

Concurred in:

Chipman, J.A.

Pugsley, J.A.

C.A.C. No.02925

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Appellants

- and -

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Respondent

R E A S O N S FOR JUDGMENT BY:

JONES, J.A.