

Date: 20010417
Docket: CAC 160866

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. Herbert, 2001 NSCA 63]

Glube, C.J.N.S.; Chipman and Saunders, JJ.A.

BETWEEN:

JOHN TREVOR HERBERT

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

Counsel: James J. White for the appellant
James A. Gumpert, Q.C. for the respondent

Appeal Heard: April 17, 2001

Judgment Delivered: April 17, 2001

THE COURT: Appeal allowed, per oral reasons for judgment of Glube, C.J.N.S.; Chipman and Saunders, JJ.A. concurring.

GLUBE, C.J.N.S.: (orally)

- [1] On August 1, 1997, Parliament passed new provisions dealing with dangerous offenders. Under the former s. 753, after a finding of dangerous offender, the sentencing judge had the option of imposing a determinate or indeterminate sentence. (**R. v. Carleton** (1981), 69 C.C.C. (2d) 1 (Alta. C.A.), affirmed on appeal to the Supreme Court of Canada, [1983] 2 S.C.R. 58.) This entitled a potential dangerous offender to a lesser penalty or punishment than the current legislation. As the predicate offences in the case at bar occurred before the new legislation, the appellant is entitled to that benefit.
- [2] As the dangerous offender application was conducted under the wrong legislation, the appeal must be allowed.
- [3] A new hearing of the dangerous offender application is ordered, to be conducted in accordance with the legislation in effect prior to August 1, 1997, except for procedural changes made to the law since August 1, 1997.

Glube, C.J.N.S.

Concurred in:

Chipman, J.A.

Saunders, J.A.