

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. Tattrie, 2007 NSCA 71

Date: 20070608

Docket: CAC 276364

Registry: Halifax

Between:

Trevor Miles Tattrie

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Bateman

Appeal Heard: June 4, 2007

Subject: The application of **W.(D.)**/fitness of sentence.

Summary: In an assault case the key issue was whether the victim's injuries had been sustained in a single, consensual fight, or whether the accused had attacked the victim a second time. Given the extent of the injuries sustained by the victim, the judge concluded that there had been a second fight and, therefore, did not accept the evidence of the accused. Nor did his evidence raise a reasonable doubt. On the whole of the evidence the judge convicted the accused and sentenced him to 12 months incarceration. Accused, who was on a conditional sentence at the time of the assault, was found to have breached that sentence by the assault and on a subsequent occasion. Judge ordered him to serve the remaining 97 days of the conditional sentence consecutive to the 12 mos.

Issue: Did the judge misapply **W.(D.)**? Did the judge err by failing to credit the accused with the time spent under house arrest while on a recognizance during trial? Was the sentence for the assault excessive?

Result: Appeal dismissed. While at one point during his decision ,the judge misstated the **W.(D.)** test, it was clear from a reading of the reasons as a whole that he properly applied the three part test. The sentence was not excessive, nor did the judge err in not reducing the sentence for the time spent under house arrest while on recognizance.

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 3 pages.