

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Melvin*, 2010 NSCA 5

Date: 20100129

Docket: CAC 312539

Registry: Halifax

Between:

Cory Patrick Melvin

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Nancy Bateman

Appeal Heard: January 28, 2010

Subject: Appeal pursuant to s.839 of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46 from dismissal of appeal from Summary Conviction Appeal Court on fitness of sentence.

Summary: The offender was sentenced to sixty days' incarceration, to be served intermittently, followed by two years' probation with conditions on two convictions for failing to respond to compliance checks in relation to a curfew, contrary to s.145(3) of the **Criminal Code**. He unsuccessfully appealed to the Summary Conviction Appeal Court alleging that the sentence was unfit.

Issue: Was there merit to the further appeal?

Result: Without determining whether fitness of sentence is an error of law (as is required on a s.839 appeal), the appeal was dismissed. The summary conviction appeal court judge (SCACJ) applied a deferential standard of review to the sentence, as is the law. He found that the sentencing judge did not err in principle, fail to

consider a relevant factor or overemphasize irrelevant factors. The SCACJ correctly concluded that the sentence imposed was well within the range of sentencing options. Accordingly, neither the SCACJ nor the sentencing judge erred.

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 4 pages.