

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Johnson*, 2007 NSCA 102

Date: 20071026

Docket: CAC 278213

Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Brian Joshua Johnson

Respondent

Judge: The Honourable Justice Nancy Bateman

Appeal Heard: September 21, 2007

Subject: Criminal law - sentence appeal.

Summary: Crown appeals the conditional sentence imposed on youthful adult offender for robbery.

Issue: Did the judge err in failing to consider the safety of the community as mandated by s.742.1 of the **Criminal Code**?

Result: Appeal allowed. The Judge erred in failing to satisfy herself “. . . that serving the sentence in the community would not endanger the safety of the community...”(s. 742.1(b)). In view of Mr. Johnson's extensive and continuous criminal record; his significant pattern of breaching court orders; the fact that he had received two prior dispositions equivalent to a conditional sentence; his recent conviction for breaching a court order; and the fact that he was on probation at the time of this offence, the judge erred in concluding that a conditional sentence was available here. She erred as well in determining that a sentence of two years less a day would be fit for this crime and this offender (s.742.1(a)) A sentence of three years

was substituted, with full credit for the nine months served conditionally.

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 14 pages.