

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Benoit*, 2007 NSCA 123

Date: 20071212

Docket: CA 282476

Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Roland Chakono Benoit

Respondent

Judge: The Honourable Justice M. Jill Hamilton

Appeal Heard: November 16, 2007

Subject: **Criminal Law; Sentencing**

Summary: The respondent received a conditional sentence for a robbery committed on a public bus. The Crown appealed arguing the judge erred by reducing the appropriate range of sentence from 2 to 2 ½ years to less than 2 years, and hence bringing it within the conditional sentence regime, by giving Mr. Benoit credit for the time he spent on remand prior to trial.

Issue: Did the judge err by taking into account the time spent on remand when determining the appropriate range of sentence, allowing consideration of a conditional sentence? If so, what sentence should be imposed?

Result: Leave granted and appeal allowed. A conditional sentence cannot become available to an offender who otherwise deserves a penitentiary term solely because of the time he spent on remand prior to trial; *R. v. Fice*, [2005] 1 S.C.R. 742. The appropriate sentence is a term of imprisonment of two years commencing the date sentence was originally imposed giving Mr. Benoit credit on a one for one basis for the approximate six months he has already served on his conditional sentence.

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 6 pages.