

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Corbett*, 2008 NSCA 7

Date: 20080121

Docket: CAC 283849

Registry: Halifax

Between:

James Colin Corbett

Appellant

v.

Her Majesty the Queen

Respondent

Judges:

MacDonald, C.J.N.S.; Roscoe and Bateman, J.J.A.

Appeal Heard:

January 18, 2008, in Halifax, Nova Scotia

Held:

Leave to appeal granted and appeal allowed per reasons for judgment of Bateman, J.A.; MacDonald, C.J.N.S. and Roscoe, J.A. concurring.

Counsel:

Bradley G. Sarson, for the appellant
Paul J. Carver, for the respondent

Reasons for judgment:

[1] The appellant originally pled not guilty to a charge of possession of crack cocaine for the purpose of trafficking. On the day of trial, with the consent of the Crown, he changed his plea to guilty to the lesser charge of simple possession. Counsel advised the court that they had reached a joint recommendation of 90 days incarceration for that lesser offence, after taking into account the time spent on remand. The appellant requested that he be permitted to serve the 90 days on an intermittent basis. The Crown took no position on the manner of serving the custodial sentence.

[2] The judge rejected the request for intermittent time and sentenced the appellant to the 90 days, but added one year's probation. The parties to the appeal agree that the judge erred in principle by failing to alert counsel of his intent to deviate from the joint recommendation; by failing to allow them to make further submissions in support of the sentence; and by failing to provide reasons for departing from the recommendation (**R. v. MacIvor**, 2003 NSCA 60; (2003), 215 N.S.R. (2d) 344 (C.A.); **R. v. G.P.**, 2004 NSCA 154; (2004), 229 N.S.R. 92d 61 (C.A.); **R. v. Cromwell**, 2005 NSCA 137; (2005), 238 N.S.R. (2d) 17 (C.A.)).

[3] We would agree that the process followed here reflects error in principle. Having now heard the submissions of the parties in support of the joint recommendation, as announced at the conclusion of the hearing, we would grant leave to appeal sentence, allow the appeal and set aside the sentence imposed. We are satisfied that, in the circumstances here, the recommended sentence falls within an acceptable range. Accordingly we confirm the sentence of 90 days custody (not followed by probation), which custodial term has already been served by the appellant.

Bateman, J.A.

Concurred in:

MacDonald, C.J.N.S.

Roscoe, J.A.