

**CASE NO.****VOL. NO.****PAGE**

Cite as: R. v. Connolly, 1998 NSCA 190

DAVID FRANCIS CONNOLLY

- and -

HER MAJESTY THE QUEEN

Appellant

Respondent

C.A.C. No. 148973

Halifax

CHIPMAN, J.A.

**APPEAL HEARD:**

September 24, 1998

**JUDGMENT DELIVERED:**

September 24, 1998

**WRITTEN RELEASE OF ORAL:**

September 28, 1998

**SUBJECT:**

**CRIMINAL LAW - Sentence - Principles governing appeal from sentence**

**SUMMARY:**

The appellant pled guilty to a charge of possession of cannabis marijuana for the purpose of trafficking contrary to s. 4(2) of the **Narcotic Control Act**. As a result of a search carried out pursuant to a warrant, a large indoor marijuana operation was discovered in the appellant's home, complete with high wattage bulbs, potting soil, balance boxes, timers, buckets, ventilation systems, and other paraphernalia used for cultivating marijuana. The plants were found in various stages of growth. There was a large number of them in the basement and in one of the upstairs bedrooms there was a cloning room which contained additional plants. The estimated expected yield of this crop was over \$1,140,000.

The appellant has a criminal record. On February 28, 1992, he was convicted of possession of a narcotic for which he was fined \$600.00 and mischief for which he received a suspended sentence of one year, together with probation for one year. On September 28, 1995, he was convicted of driving over 80, for which he was fined \$800.00 and lost his driving privileges for one year. On the same date, he was convicted of failure to appear for which he received a fine of \$100.00. The presentence report reveals that he was on probation when charged with the offence at issue.

**ISSUE:**

Whether the trial judge instructed himself in accordance with the principles of sentencing, including the prerequisites for a conditional sentence.

**RESULT:**

The Nova Scotia Court of Appeal was not satisfied that the sentence was unfit.  
Leave to appeal was granted and the appeal dismissed.

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