Date: 20000331
Docket: CAC 157138

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. Beals, 2000 NSCA 43]

Chipman, Bateman, Pugsley, JJ.A.

BETWEEN:

STACEY EUGENE BEALS	)	Appellant In Person
	)	
Appellant	)	
	)	
- and -	)	
	)	
HER MAJESTY THE QUEEN	)	Kenneth W. F. Fiske, Q.C.
	)	for the respondent
Respondent	)	
	)	
	)	
	)	Appeal Heard:
	)	March 21, 2000
	)	
	)	Judgment Delivered:
	)	March 31, 2000
	)	
	)	

THE COURT: Leave to appeal is granted but the appeal is dismissed as per reasons for judgment of Bateman, J.A., Chipman and Pugsley, JJ.A., concurring

Bateman, J.A.:

[1] In January of 1999 Stacey Eugene Beals and another inmate escaped from the Yarmouth Correctional Center. Armed with a metal pipe, Mr. Beals and his accomplice jumped two guards and locked them in the cellblock. The next day Mr. Boudreau, the accomplice, was apprehended. Six days after the break Mr. Beals was found and returned to custody.

[2] The appellant was found guilty, after trial, of two counts of unlawful confinement (s.279(2), **Criminal Code**), assault (s.266) and carrying a weapon dangerous to the public peace (s.87(1)). He pleaded guilty to escaping lawful custody (s.145(1)(a)).

[3] Judge Robert Prince of the Provincial Court, on May 10, 1999, imposed sentences of eighteen months for escaping lawful custody, six months concurrent on each of the two counts of unlawful confinement, three months consecutive on the assault and nine months consecutive on the weapons charge. The total term of imprisonment was thirty months.

[4] Mr. Beals has applied for leave and, if granted, appeals his sentence.

[5] The appellant, who represented himself on the appeal, says that “a sentence of thirty months offends the principle against disparate sentences, and, as well, is far beyond the range for prison break which has been established by the courts over the

years." He cites **R. v. Pelly** (1996), M.J. No. 540.

[6] In **R. v. Proulx**, [2000] S.C.J. No. 6, the Supreme Court of Canada again emphasized the deference owed to sentencing judges. Lamer, C.J., as he then was, said at para 123:

> In recent years, this Court has repeatedly stated that the sentence imposed by a trial court is entitled to considerable deference from appellate courts: see *Shropshire*, *supra*, at paras. 46-50; *M. (C.A.)*, *supra*, at paras. 89-94; *McDonnell*, *supra*, at paras. 15-17 (majority); *R*. v. *W*. *(G.)*, S.C.C., No 26705, October 15, 1999, at paras. 18-19. In *M. (C.A.)*, at para. 90, I wrote:
>
> > Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit. Parliament explicitly vested sentencing judges with a discretion to determine the appropriate degree and kind of punishment under the *Criminal Code*. [Emphasis in original.]

[7] Mr. Boudreau received a sentence of twelve months on the escaping lawful custody offence. As to the disparity between that sentence and the 18 months imposed upon Mr. Beals, I am satisfied that Mr. Beals' record, when compared to that of Mr. Boudreau, warrants the greater sentence. Most aggravating is the fact that Mr. Beals' record contains two prior convictions for attempting to escape lawful custody, as was noted by the sentencing judge.

[8] Both the appellant and Mr. Boudreau received the same total sentence. In view of Mr. Beals' record of seventeen prior convictions, I am not satisfied that a total sentence of thirty months for these five offences is "demonstrably unfit".

[9] Finally, I would reject his submission that the sentences, either individually or in total, are out of line with those which have been granted for similar offences where the offender has a comparable record of convictions. In **R. v. Pelly**, **supra**, the offender

appealed from a sentence of thirty months for a prison break. The two co-accused pleaded guilty to the same charge and received sentences of nine months and twelve months. The offence was not planned, no weapons were involved and no one was injured or threatened. The appellant had not been represented by counsel on the sentencing. The sentence was varied to nine months on appeal. There is no mention in the reported decision of a prior record, nor the commission of other offences in conjunction with the prison break. The circumstances are not comparable to those here. As always, sentencing is an individualized process tailored to the particular offender. Judge Prince concluded that a sentence directed to not only general, but specific deterrence was required. I would agree.

[10] I would grant leave but dismiss the appeal.

Bateman, J.A.

Concurred in:

Chipman, J.A.

Pugsley, J.A.