

NOVA SCOTIA COURT OF APPEAL
[Cite as: *R. v. M.W.C.*, 2002 NSCA 161]

Date: 20021210
Docket: CA No. 181301
Registry: Halifax

(On Appeal and Cross Appeal from the Supreme Court of Nova Scotia)

Between: Her Majesty the Queen
Appellant
v.
M. W. C.
Respondent

JUDGE: Saunders, J.A. (orally)

APPEAL HEARD: December 10, 2002

JUDGMENT DELIVERED: December 10, 2002

WRITTEN JUDGMENT: December 12, 2002

SUBJECT: Indecent assault. Sexual Assault. Gross Indecency. Incest. Elements of assault. Proof beyond a reasonable doubt. Credibility. Sufficiency of reasons. Principles of sentencing. Aggravating circumstances. Fitness of sentence. Powers of an appellate court to enter convictions and impose sentence, s. 686(4)(b)(ii) of the *Criminal Code*.

SUMMARY: The offender appealed his convictions for attempted gross indecency and attempted sexual intercourse. He also appealed against the sentences imposed on each offence, two years in penitentiary to be served consecutively. The Crown appealed against Mr. C.'s acquittals on charges of indecent assault and sexual assault.

HELD: Dismissed the offender's appeals against his convictions. No

error by trial judge in applying proper standard of proof, or in his assessment of the evidence and credibility, or in the sufficiency of his reasons. Verdicts were reasonable.

While leave to appeal sentence granted, appeal against sentence dismissed. Considering the aggravating features of the case, four years, in the aggregate, was not excessive.

Crown appeal against acquittals allowed. The trial judge erred in supposing that an assault, in law, required that a degree of strength or power be exercised by an accused. He had acquitted the offender upon the implicit and erroneous premise that because no power or strength was exercised no “force” was used and therefore an “assault” had not occurred. Acquittals set aside and convictions entered. Imposed sentence of one year incarceration on each offence concurrent to each other, but consecutive to the original aggregate of four years, making a total period of imprisonment of five years, pursuant to court’s authority under s. 686(4)(b)(ii).

This information sheet does not form part of the court’s decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of **8** pages.