Docket No.: CAC Nos. 163860; 163244
Date: 20000714

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. Brown, 2000 NSCA 87]

BETWEEN:

BERNARD JOHN BROWN

Applicant

- and -

HER MAJESTY THE QUEEN

Respondent

DECISION

Counsel:	Applicant in person Diane Lynn McGrath, for the respondent
Application Heard:	July 13, 2000
Decision Delivered:	July 14, 2000

BEFORE THE HONOURABLE JUSTICE FREEMAN IN CHAMBERS

FREEMAN, J.A.:

[1] The Crown has opposed the appellant's application for bail pending the scheduled November 28, 2000, hearing of his appeals from conviction under s. 266(a) of the **Criminal Code** and the15-month sentence of incarceration resulting from an assault on his former girlfriend, and three counts under s.127 for breaching orders by contacting her, for which he was sentenced to a total of three months to be served consecutively.

[2] The appellant, who is self-represented, says he has no interest in further contact with the complainant and wishes to return to his seasonal work as a farm labourer. He is incarcerated in the Halifax Correctional Centre and contact with his family in the Annapolis Valley is, therefore, limited. He says he has met his commitments to keep court appointments and successfully completed 13 months probation in 1997-1998.

[3] He has a long criminal record both as a young offender and as an adult, and his pre-sentence report was largely negative. The assault on his girlfriend occurred shortly after he was released from prison early, in February 2000, while serving a nine-month sentence for breaking into her current boyfriend's residence and assaulting him. The offences for which he was convicted under s. 127 occurred while he was in custody or in a halfway house.

[4] The Crown noted that the grounds of appeal allege errors of fact rather than law, but in the case of a self-represented applicant I would be reluctant to dismiss his bail application on the basis of frivolous grounds of appeal before the transcripts of evidence are available for review by the court. My main concern is under s. 679(3)(c), whether his detention is necessary in the public interest. The burden of showing otherwise is on the applicant, and I am not satisfied he has discharged it. I am cognizant of the fact that by the time the appeal is heard the applicant may have completed most or all of the custodial portion of his sentence.

[5] As the late Justice Pugsley remarked in **E.R.H. v. R.** (CAC: 153907, February 18, 1999):

> Public interest includes both the safety of the public and the confidence of the public in the judicial system.
>
> Any action that may detrimentally affect public confidence and respect is contrary to the public interest. . . .

[6] I would dismiss the application for judicial release pending the hearing of the appeal.

Freeman, J.A.