

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Stewart*, 2016 NSCA 12

Date: 20160224

Docket: CAC 419615

Registry: Halifax

Between:

Dennis Garry Stewart

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: s. 486 CC
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Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: January 20, 2016, in Halifax, Nova Scotia

Subject: Criminal law: Sentencing; credit for time spent in pre-sentence custody

Summary: The trial judge cited the principles of sentencing, and took into account the circumstances of the offences, and those of the appellant to arrive at what he considered were fit sentences for a series of offences committed by the appellant between July 2011 and January 2012. The appellant was in pre-sentence custody (PSC) for more than nineteen months. The appellant committed some of the offences while he was out on bail. The trial judge refused to grant one-to-one credit for the time the appellant was in PSC, instead reducing it to twelve months' credit on the basis that the later offences were committed by the appellant in direct violation of the terms of his release.

Issues: (1) Did the trial judge err in law in refusing to grant one-to-one credit for the appellant's time in PSC?

(2) Even if he did err, should this Court nonetheless uphold the resulting sentence as being fit?

Result: Leave to appeal is granted, and the appeal allowed to the extent that the 580 days the appellant spent in PSC should have been credited against his sentence. The trial judge had already referred to the aggravating fact that the later offences were committed in direct violation of the terms of his release to not associate with any person under the age of 16 years, and sentenced the appellant to terms of imprisonment for those very violations. Further, the trial judge determined that a fit sentence for the offence that led to the PSC to be one of three years' imprisonment. There was no legal basis to deny at least one-to-one credit for the time he spent in PSC. It is not the function of the appeal court to determine afresh what may or may not be a fit sentence. There was no complaint of error by the trial judge about the sentences imposed, only in failing to grant the proper credit for PSC. The correct approach is for this Court to correct the error while otherwise deferring to the sentence arrived at by the trial judge.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 17 pages.