

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. Markie, 2009 NSCA 119

Date: 20091201

Docket: CAC 308818

Registry: Halifax

Between:

Brett Jason Markie

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: Restriction on publication pursuant to s. 486.4 of the **Criminal Code**

Judge: The Honourable Justice Hamilton

Appeal Heard: November 13, 2009, in Halifax, Nova Scotia

Subject: Criminal law, Sentencing, Joint Recommendation

Summary: Provincial Court Judge Alana Murphy sentenced the appellant to 10 years for breaking and entering into a dwelling house on or about April 1, 2005 and sexually assaulting with a weapon an 18 year old girl while he covered her head. This sentence was to be served consecutively to the nine year, eight month sentence the appellant was then serving for twelve robberies and other property related offences he had committed in March and April 2005. She imposed this sentence despite a joint recommendation for a four-year sentence.

Issue: Did the judge err in rejecting the joint recommendation, in imposing an excessive sentence or by not giving adequate consideration to the principle of totality?

Result: Appeal dismissed. The judge did not err. The process she

followed when faced with the joint recommendation with which she had some concerns was flawless. Her reasons indicate she understood and considered counsels' arguments in favour of their joint recommendation and rejected them. She considered all of the appropriate factors in reaching her decision, including the principle of totality.

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 13 pages.