

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. McCabe*, 2009 NSCA 50

Date: 20090519

Docket: CAC 304329

Registry: Halifax

Between:

Nicholas Duncan Ray McCabe

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Nancy Bateman

Appeal Heard: May 15, 2009

Subject: Joint sentence submission

Summary: The appellant entered guilty pleas to hostage-taking and drug offences and was sentenced on the basis of counsels' agreement to recommend a global sentence of five years (which included one year for each of the drug offences, running concurrently with the hostage-taking). Without notice to counsel, the judge imposed a higher sentence of six years, by ordering that the drug sentences run consecutively. Now self-represented, the appellant sought leave to appeal and imposition of the joint recommendation.

Issues: Did the judge err in jumping the joint submission?

Result: A judge who is considering rejecting a joint recommendation should so advise counsel and provide them with an opportunity to justify the recommended sentence. (**R. v. MacIvor**, 2003 NSCA 60; **R. v. G.P.**, 2004 NSCA 154; and **R. v. Cromwell**, 2005 NSCA 137;). In not doing so here the judge erred.

Crown counsel on appeal urged the Court to confirm the sentence imposed. He says the jointly recommended sentence was substantially below the range for these crimes, focussing, in particular on the hostage-taking. The Crown did not appeal the sentence for the hostage-taking. The fitness of that 5 year sentence is not before this Court. The only issue raised on this appeal is the fitness of the concurrency of the sentence for the drug offences and that for the home invasion. There is no factual record for this Court to conclude that the jointly recommended concurrency would offend standards of fitness or bring the administration of justice into disrepute. Leave granted, appeal allowed and joint recommendation substituted.

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 3 pages.