NOVA SCOTIA COURT OF APPEAL
Citation: ***R. v. Gilbert***, 2009 NSCA 10

Date: 20090127
Docket: CAC 298710
Registry: Halifax

Between:

Catlin Ryan Gilbert

Appellant

v.

Her Majesty the Queen

Respondent

Judges:	Bateman, Oland and Hamilton, JJ.A.
Appeal Heard:	January 23, 2009, in Halifax, Nova Scotia
Held:	Leave to appeal is granted but the appeal is dismissed per reasons for judgment of Bateman, J.A.; Oland and Hamilton, JJ.A. concurring.
Counsel:	Sharon A. French, for the appellant Mark A. Scott, for the respondent

Reasons for judgment:

[1] On January 23, 2009 we dismissed Catlin Ryan Gilbert's appeal from a collection of sentences imposed by Beaton, J.P.C. on June 18, 2008. On that date the appellant pled guilty to several of a number of **Criminal Code** offences contained on a multi-count indictment: assaulting a peace officer on August 29, 2007 (s.270(1)(a)); break and entry into a dwelling house on 11 January 2008 (s.348(1)(a)); break and entry with intent on June 7/8, 2009 (s. 349(1)); breach of an undertaking on June 7, 2008 (s.145(5.1); possession of a weapon for a dangerous purpose on June 7, 2008 (s.88); robbery on June7/8, 2008 (s.344(b)); conspiracy on June 7/8, 2008 (s.465(1)); mischief by damage to property on June 7/8, 2008 (s.430(4)) and robbery on June 7/8, 2008 (s.343(a)).

[2] He was sentenced to a total of 60 months incarceration, the lengthiest sentences being two 24 month periods for each of the robberies and nine months for the break and entry, all to be served consecutively.

[3] The appellant says the judge failed to properly weigh the mitigating factors and that the sentences are excessive and offend the totality principle. We are not persuaded that such is the case.

[4] The judge recognized that the appellant was a young adult offender with a difficult upbringing, no employment history and both self-esteem and addiction problems. He had a related youth record of three convictions. The judge properly noted that his criminal activity was escalating. He and others had broken into a private home in January, 2008. The victim managed to escape. In June he unlawfully entered the home of another victim, beat him and demanded money at knife-point. The appellant and his accomplice damaged the victim's dwelling and its contents, stealing a bank card and cash before leaving the property. The previous day the appellant had extorted money from that same victim. The June offences were committed while he was awaiting sentencing for the August, 2007 assault on a police officer and in breach of his undertaking to refrain from the consumption of alcohol.

[5] Mitigating factors included the appellant's youth, his early guilty plea and his cooperation with the police. In light of these factors the judge reduced the sentences for the robberies below the usual starting point, citing **R. v. Zong**, [1986]

N.S.J. No. 207 (Q.L.), **R. v. Harris**, 2000 NSCA 7, [2000] N.S.J. No. 9 (Q.L.) and **R. v. Bratzer**, 2001 NSCA 166, [2001] N.S.J. No. 461(Q.L.) (see also **R. v. Butler**, 2008 NSCA 102 at para. 23). However, the judge was rightly concerned that the appellant had done nothing to assist in his own rehabilitation and his criminal activity was escalating. He therefore poses a danger to the community and is someone from whom the public must be protected.

[6] We are not persuaded that the judge erred by imposing consecutive sentences for these offences. Neither do we find that the lower sentences subsequently imposed on each of the two co-accused, for lesser included offences arising out of the January 11, 2007 events, impact the fitness of these sentences.

[7] Recently in **R. v. L.M.**, [2008] 2 S.C.R. 163, 2008 SCC 31, the Supreme Court of Canada reaffirmed the high level of appellate deference due to sentencing decisions which deference is driven by the individualized and discretionary nature of the sentencing process.

[8] It is for the above reasons that we concluded that the judge did not err in principle and that the sentences are not, individually or in total, excessive.

[9] Accordingly, while we granted leave, we dismissed the appeal at the conclusion of the hearing.

Bateman, J.A.

Concurred in:

Oland, J.A.

Hamilton, J.A.