

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Savoury, 1996 NSCA 111

Roscoe, Hart and Jones, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

)
)
) Robert E. Lutes, Q.C.
) for the Appellant

- and -

EDWIN LEO SAVOURY

Respondent

)
)
) Pamela S. Hutt
) for the Respondent

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)
) Appeal Heard:
) April 2, 1996

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) Judgment Delivered:
) April 2, 1996

THE COURT:

Leave to appeal is granted, but the appeal is dismissed as per oral reasons for judgment of Roscoe, J.A.; Hart and Jones, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by

ROSCOE, J.A.:

This is an appeal by the Crown from a sentence imposed by a Provincial Court judge for a break, enter and theft charge to which the respondent pled guilty. The respondent was sentenced to pay a fine of \$2,500.00 or 50 days in default, plus a victim fine surcharge of \$250.00 and three years probation. The terms of the probation order included a direction that the respondent pay restitution to the victims in the amount of \$300.00, that he not have contact with the victims and that he continue treatment with his psychiatrist.

The respondent used a rock to break the patio doors of his neighbour's house, cutting his hand in the process. He removed lingerie from a chest of drawers in the master bedroom, and dripped blood throughout the house. He has a prior record for a similar offence also involving a break into a house for which he received a suspended sentence.

The Crown contends the sentence inadequately reflects the element of deterrence, and that it is inadequate having regard to the nature of the offence and the circumstances of the respondent.

The pre-sentence report indicated that the respondent, aged 24, was suffering from physical ailments that caused him to be depressed and that he had attempted suicide. He was seeing a psychiatrist who recommended further treatment. Although the respondent was unemployed at the time of the offence, he had, by the time of sentencing, obtained full-time employment with the Armed Forces for a six month term with the possibility of further extension. We have been advised

that his employment has in fact been extended for another year.

The sentencing judge was obviously persuaded that there was more hope for rehabilitation of the respondent if he was able to continue the sessions with his psychiatrist and retain the employment opportunity. He said:

. . . I don't think incarceration is required for the protection of the public in this case. I think it is important that Mr. Savoury deals with his underlying problem and obtains insight in his behaviour. I think it is important, of course, that there is an address of the general deterrence aspect, but I think it can be done through a heavy fine and a three year probation with the terms suggested by Crown Counsel.

The role of this Court in sentence appeals is as stated by Macdonald, J.A. in **R. v. Cormier** (1974), 9 N.S.R. (2d) 687 (S.C.A.D.) at pages 694 - 695:

Thus it will be seen that this Court is required to consider the "fitness" of the sentence imposed, but this does not mean that a sentence is to be deemed improper merely because the members of this Court feel that they themselves would have imposed a different one; apart from misdirection or non-direction on the proper principles a sentence should be varied only if the Court is satisfied that it is clearly excessive or inadequate in relation to the offence proven or to the record of the accused.

This test was recently approved by the Supreme Court of Canada in its decision in **R. v. Shropshire** (1995), 102 C.C.C. (3d) 193.

The trial judge, in our view, considered the correct principles of

sentencing in this unique case. It is apparent that the respondent did not commit this break for the usual reasons and that he requires psychiatric assistance. While obviously extremely lenient, the sentence is not so manifestly inadequate, in all the circumstances, as to justify interference by this Court at this time. While we grant leave to appeal, we dismiss the appeal.

Roscoe, J.A.

Concurred in:

Hart, J.A.

Jones, J.A.