

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Porter*, 2010 NSCA 93

Date: 20101112

Docket: CAC 317392

Registry: Halifax

Between:

Vincent William Porter

Appellant

v.

Her Majesty the Queen

Respondent

Judges: Saunders, Fichaud and Bryson, JJ.A.

Appeal Heard: November 12, 2010, in Halifax, Nova Scotia

Written Judgment: November 18, 2010

Held: Appeal dismissed per oral reasons for judgment of
Saunders, J.A.; Fichaud and Bryson, JJ.A. concurring.

Counsel: Pavel Boubnov, for the appellant
Mark Scott, for the respondent

Reasons for judgment: (Orally)

[1] Six weeks after barging in to Andrew Gayton's home in Oxford and assaulting him with a power tool, the appellant used a broken beer bottle to slice open the neck of Sydney Crowe while in an alcohol-induced rage at a residence in Springhill. The appellant was on an undertaking with respect to the first assault when he committed the second assault. He was consequently charged with attempted murder and various other offences. A preliminary inquiry resulted in committals on eight charges.

[2] Following his committal for trial, the appellant re-elected to be tried in Provincial Court and pleaded guilty to two counts of assault, one count of breach of an undertaking, and one count of aggravated assault. The matter of sentencing was adjourned to allow for the preparation of a pre-sentence report.

[3] On July 30, 2009, Provincial Court Judge Carole A. Beaton accepted a joint recommendation proposed by counsel and sentenced Mr. Porter to a global sentence of 62 months' incarceration. The appellant, now represented by different counsel, appeals to this Court on the basis that the sentence is unduly harsh.

[4] We are unanimously of the view that the appeal is without merit and should be dismissed. While it has long been recognized that this Court has a supervisory role over the fitness of sentence, whether the result of a joint recommendation or not, it cannot be seriously suggested that there is anything here which would warrant our intervention. The sentencing judge had the benefit of a joint recommendation, by experienced counsel, who had ample time to carefully consider their respective positions. There would not have been any surprises in light of the history of these proceedings and the fact that Mr. Porter was represented by the same trial counsel for all of his court appearances. The appellant had the benefit of certain charges being withdrawn. The alarming facts read into the record by the Crown were all conceded by the appellant's trial counsel. The joint sentencing recommendation was based upon a review of the relevant jurisprudence in Nova Scotia. The global sentence imposed upon Mr. Porter, and in particular the 60 months' incarceration attributed to such a vicious aggravated assault, is certainly within the range for crimes comparable to this offence and this offender.

[5] Accordingly we reject the submission that Mr. Porter's sentence was excessive. The appeal is dismissed.

Saunders, J.A.

Concurred in:

Fichaud, J.A.

Bryson, J.A.