

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Barton*, 2011 NSCA 12

Date: 20110124

Docket: CAC 327825

Registry: Halifax

Between:

Gerald Gaston Barton

Appellant

v.

Her Majesty the Queen

Respondent

Judges: Saunders, Hamilton and Beveridge, JJ.A.

Appeal Heard: January 24, 2011, in Halifax, Nova Scotia

Written Judgment: January 25, 2011

Held: Fresh evidence admitted; appellant granted leave to withdraw guilty plea; conviction quashed and an acquittal entered per oral reasons for judgment of Saunders, J.A.; Hamilton and Beveridge, JJ.A. concurring.

Counsel: W. Dale Dunlop and Duane A. Rhyno, for the appellant
Mark Scott, for the respondent

Reasons for judgment:

[1] Largely for the reasons set out by Mr. Scott in his factum on behalf of the respondent and which were adopted by Mr. Dunlop on behalf of the appellant, we are unanimously of the view that the relief claimed ought to be granted.

[2] The fresh evidence proves that the appellant did not commit the offence to which he pleaded guilty. This Court retains a discretion, to be exercised in the interests of justice, to receive fresh evidence in order to explain the circumstances that led to the plea and which demonstrates that a miscarriage of justice occurred.

[3] Accordingly, we admit the fresh evidence to explain the circumstances that led to Mr. Barton's guilty plea in 1970 to a charge of having sexual intercourse with a female between 14 and 16 years of age, pursuant to s. 138(2) of the **Criminal Code of Canada**, (1953-54, c. 51) and which demonstrates that a miscarriage of justice occurred; we grant leave to the appellant to withdraw his plea; and we order that the conviction be quashed and that an acquittal be entered with respect to the sole count which gives rise to this appeal.

[4] We wish to thank counsel for their diligence and co-operation in bringing this case before the Court.

Saunders, J.A.

Concurred in:

Hamilton, J.A.

Beveridge, J.A.