

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. Hawkins, 2011 NSCA 7

Date: 20110117

Docket: CAC 232269

Registry: Halifax

Between:

Herbert John Hawkins

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: September 28, 2010

Subject: Criminal law: Sentence for second degree murder

Summary: The appellant appeals the life sentence without eligibility for parole for 20 years on the basis that the trial judge erred in principle by extending the automatic 10 year period mandated by the *Criminal Code* by: considering the appellant's refusal to accept responsibility and lack of remorse as aggravating factors; relying on principles of segregation and specific deterrence which were not justified; failing to have regard for the principles set out in the *Criminal Code*, in particular, the sentence should be similar to sentences imposed in similar cases.

Issues: What are the correct principles and relevant factors that a sentencing judge must consider in exercising his or her discretion to increase the period of parole ineligibility? Did the trial judge here commit an error in principle? Otherwise, is the 20 year parole ineligibility period directed by the trial judge unreasonable? If the trial judge erred, what is the appropriate period of parole ineligibility?

Result:

The appeal from sentence is allowed and the period of time that must be served before becoming eligible for parole is set at 15 years.

The trial judge erred in principle by considering the appellant's refusal to accept responsibility and lack of remorse as an aggravating factor. Applying the sentencing principles of segregation and specific deterrence was not justified. The trial judge should have taken into account other principles set out in the Criminal Code, in particular, the sentence should be similar to sentence orders imposed by Canadian courts for second degree murder convictions in similar cases.

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 38 pages.