

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Jamieson*, 2011 NSCA 122

Date: 20111222

Docket: CAC 352641

Registry: Halifax

Between:

Faybion Omar Jamieson

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: November 24, 2011

Subject: **Sentencing. Proportionality. Trafficking in cocaine. Lost right to appeal Deportation Order. Whether unduly harsh.**

Summary: Following his convictions for trafficking in cocaine, the appellant was sentenced to two years in a federal penitentiary and deported to Jamaica. As a result of his having been sentenced to a “federal” term of two years’ imprisonment, his convictions constituted “serious criminality”, such that as a permanent resident of Canada, the appellant forfeited any right to appeal his deportation (**Immigration and Refugee Protection Act**, S.C. 2001, c. 27). Neither trial counsel nor the sentencing judge were aware of the deportation consequences which would result from his plea of guilty or the judge’s acceptance of counsels’ joint sentencing recommendation. Mr. Jamieson appealed arguing that the sentence was unduly harsh given the unintended consequences of the disposition.

Result:

Appeal allowed. The sentencing judge based her decision on incorrect information relating to the appellant's immigration status. The judge was told that the appellant was a Canadian citizen when in fact he was a permanent resident who had never applied for citizenship. Had the judge and counsel been aware of the deportation consequences, the issue would have been given serious consideration before sentence was imposed.

This was a proper case to exercise our authority to relieve against a patently unfair result. To avoid such an unintended and disproportionately severe collateral sanction, we will reduce Mr. Jamieson's sentence by two days, which will then allow him to exercise his immigration appeal rights.

This case is truly exceptional for the single reason that the appellant's sentence denied him an avenue of appeal from his deportation; an unintended result of great significance. Nothing in these reasons should be taken as a softening of this Court's attitude concerning the severity of sentences that will be imposed upon conviction for trafficking in cocaine.

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 13 pages.