

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Smith*, 2012 NSCA 37

Date: 20120411

Docket: CAC 337898

Registry: Halifax

Between:

Mykel Smith

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice M. Jill Hamilton

Appeal Heard: January 25, 2012

Subject: Interaction of youth and adult sentencing principles, when an adult sentence is imposed under the **Youth Criminal Justice Act**, S.C. 2002, c.1, on a 17½ year old for attempted murder; Fitness of sentence.

Summary: Mr. Smith, while bound by a Deferred Custody and Supervision Order, attempted to murder Mr. Patriquen in Mr. Patriquen's home, by shooting him in the chest at close range. Mr. Patriquen suffers many health problems as a result of the shot, including thoracic level 3/4 paraplegia which confines him to a wheelchair. His life expectancy could be shortened by 20 to 29 years. Mr. Smith was sentenced to 14 years in prison; 12 years and 261 days on a go-forward basis.

Issues: Did the judge identify the proper sentencing principles? Did he overemphasize the adult sentencing principles of deterrence and denunciation to the exclusion of the youth sentencing principles, "objectify" the appellant as "evil" or impose a manifestly unfit sentence?

Result: Appeal dismissed. The judge identified the applicable

sentencing principles and applied them properly. The circumstances of the offence, including his shooting Mr. Patriquen simply because he was asked to get a gun and “fuck this guy up”, the circumstances of Mr. Smith, including his age, prior criminal record and poor prognosis for rehabilitation, and the extremely severe consequences to the victim, indicate the sentence imposed was not manifestly unfit.

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 20 pages.