

NOVA SCOTIA COURT OF APPEAL

R. v. Reid, 1995 NSCA 59
Matthews, Roscoe and Pugsley, JJ.A.

BETWEEN:

ELWOOD BLAIR REID

Darren MacLeod

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

) for the Appellant

) Kenneth W.F. Fiske, Q.C.
) for the Respondent

) Appeal Heard:
) January 24, 1995

) Judgment Delivered:
) January 24, 1995

THE COURT: Leave to appeal permitted, the appeal allowed the the sentence varied to time served. The probation order stands per oral reasons for judgment of Matthews, J.A.; Roscoe and Pugsley, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

MATTHEWS, J.A.:

The appellant, on October 13, 1994, was found guilty by a Justice of the Supreme Court of the offence that between November 1, 1992 and December 31, 1993, he did defraud the Province of Nova Scotia of \$5545.00. On the same day he was sentenced to serve a term of nine months incarceration together with probation for two years on the usual terms, but including that during the period of probation he must make restitution in the amount defrauded.

The appellant seeks leave to appeal and if that be granted appeals against the sentence imposed, alleging that it is excessive.

He is single and 41 years of age. For 17 years he had been employed as a welder with Lavelin Industries until receiving very serious injuries in a motor vehicle accident on May 12, 1992. As a result, in September of 1992 he applied for, and received, provincial social assistance. In the required documents the appellant disclosed that he was receiving \$300.00 a month municipal assistance, but did not disclose initially, nor in subsequent forms, that he was receiving section B benefits from a motor vehicle insurer in the amount of \$560.00 a month. In so doing, during the stated period, he successfully defrauded the Province of \$5545.00.

The appellant is a first time offender. As a result of his sentence he has served some 50 days incarceration, until released on December 1, 1994, pending disposition of this appeal.

In their submissions on sentencing before the trial judge, Crown counsel suggested a "period of incarceration should be somewhere between three and six months", while defence remarked that "...if a short period of incarceration is deemed to be necessary, that this would satisfy all the principles of sentencing, and that given the extreme difficulty Mr. Reid would face that restitution may be impossible".

The trial judge properly discussed the well known general principles of sentencing. He commented upon the fact that so-called welfare fraud "is becoming more

prevalent before our Courts".

He continued:

This, to my mind, is a rather serious offence, because what the offender is doing is stealing from the pockets of his fellow citizens, he's stealing from his fellow taxpayers of the Province of Nova Scotia in this case, just the same as if he took a gun and held them up and stole \$5,000.00 by that means, it's the same difference, it comes out of the pockets of all of his fellow community members.

On appeals such as this, this Court must consider if a sentence is fit and, in doing so, vary the sentence if, in our opinion, the sentence is clearly excessive.

While welfare fraud is a serious offence, generally calling for a term of imprisonment, with deference, we cannot agree with the categorization given to it in the above quotation. In doing so, the trial judge overemphasized the acknowledged need for both specific and general deterrence.

The appellant has been working full time at his prior employment since December 5, 1994. To again disturb that employment may have a disastrous effect upon the appellant's ability to regain employment and to make restitution.

We permit leave to appeal, allow the appeal and vary the sentence to time served. The Crown does not object to this disposition. The probation order stands.

J.A.

Concurred in:

Roscoe, J.A.

Pugsley, J.A.

C.A.C. No. 110908

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