C.A.C. No. 115622

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. MacDonald, 1995 NSCA 67

Freeman, Roscoe and Flinn, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN Appellant - and - **HAROLD SPENCER MACDONALD** Respondent	James C. Martin for the Appellant Jim O'Neil for the Respondent Appeal Heard: September 29, 1995 Judgment Delivered: September 29, 1995

THE COURT: Appeal dismissed, per oral reasons for judgment of Freeman, J.A., Roscoe and Flinn, JJ.A. concurring.

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

FREEMAN, J.A.:

The Crown seeks leave to appeal as "excessively lenient" two concurrent eighteen-month sentences imposed upon the respondent, who pleaded guilty to two charges of trafficking in marijuana. He sold an 18.6-gram sample of homegrown marijuana to an undercover police officer for $150 and was arrested in the act of selling fourteen pounds to the same agent for $35,000.

The Crown had sought a term of federal incarceration and had suggested three years. The respondent expressed a preference for one year or two years, but revised this to eighteen months, upon questioning.

The drug operation was described as "a homegrown situation." Two other defendants, considered by the Provincial Court judge to be "kingpins" closely associated in culpability with the respondent, received one year each. The respondent's criminal record included probation but not incarceration for one previous drug-related conviction, for possession of marijuana. The judge considered a generally positive pre-sentence report that indicated a responsible attitude toward work and family. A letter from the institution in which the appellant is serving his sentence, now about one-third completed, submitted as a post-sentence report, is likewise positive.

The principle governing this Court was stated in **R. v. Cormier** (1974), 9 N.S.R. (2d) 687 at p. 694:

> Thus it will be seen that this Court is required to consider the 'fitness' of the sentence imposed, but this does not mean that a sentence is to be deemed improper merely because the members of this court feel that they themselves would have imposed a different one; apart from misdirection or non-direction on the principles a sentence should be varied only if the court is satisfied that it is clearly excessive

> or inadequate in relation to the offence proven or to the record of the accused.

The Crown argued that the eighteen-month sentence is below the range of sentences for similar trafficking offences established by the case law to which we were referred. Many of these were for two years or more and incarceration in a federal institution is usually appropriate for offences of this magnitude. However, the correct principles of sentencing were fully argued before the trial judge immediately before he passed sentence and it is implicit that he considered them. While obviously extremely lenient, the sentence is not so manifestly inadequate, in all the circumstances, as to justify interference by this Court at this time. We grant leave to appeal but dismiss the appeal.

J.A.

Concurred in:

Roscoe, J.A.

Flinn, J.A.

C.A. No. 115622

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

HER MAJESTY THE QUEEN Appellant - and - **HAROLD SPENCER MACDONALD** Respondent	REASONS FOR JUDGMENT BY: FREEMAN, J.A. (orally)