

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Farler*, 2013 NSCA 13

Date: 20130130

Docket: CAC 379999

Registry: Halifax

Between:

Timothy Charles Farler

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: Pursuant to s. 486(4) of the *Criminal Code*.

Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: November 19, 2012

Subject: Criminal Law – appeal from conviction and sentence on the availability of a prohibition order under s. 161 of the *Criminal Code*.

Summary: The appellant was convicted in a judge alone trial of sexual assault under s. 246.1 and s. 271 of the *Code* covering two different time periods in relation to the same complainant and acquitted of all other counts involving other complainants. He was sentenced to 24 months. A number of ancillary orders were made including a prohibition order under s. 161(1). The appellant claimed a variety of legal errors by the judge on his appeal from conviction and that the conviction on the s. 271 count was unreasonable. He also appealed the length of his sentence and the imposition of some of the ancillary orders.

Issue: Did the trial judge commit any reversible errors in his reasons for judgment; were either verdicts unreasonable?
Was the sentence unfit or otherwise marred by error in principle and did the trial judge err in imposition of any of the ancillary orders?

Result:

The trial judge found the complainant to be a reliable and credible witness. He had testified that at no time did he consent to any of the myriad sexual incidents with the appellant. This evidence was unchallenged in cross-examination, or by other evidence. The appellant's denials of sexual incidents until the complainant was 19 years of age was not believed. The trial judge found the offences to be proved beyond a reasonable doubt. The trial judge made no legal errors that put in jeopardy the validity of the verdicts. However, the conviction on the second count was unreasonable and must be quashed.

The s. 161 prohibition order was not legally available for an offence under s. 246.1 of the *Code*.

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 49 pages.