C.A.C. No. 116212

NOVA SCOTIA COURT OF APPEAL

Bateman, Hart and Jones, JJ.A.

Cite as: R. v. D'Eon, 1995 NSCA 221

BETWEEN:

ROBERT D'EON appellant - and - HER MAJESTY THE QUEEN respondent	)	the appellant appeared in person Paula R. Taylor for the respondent Appeal Heard: December 5, 1995 Judgment Delivered: December 5, 1995

THE COURT: Appeal allowed per oral reasons for judgment of Bateman, J.A.; Hart and Jones, JJ.A. concurring.

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

BATEMAN, J.A.:

Mr. D'Eon entered a guilty plea to a charge under s. 4(2) of the **Narcotic Control Act** and to a second charge under s. 87 of the **Criminal Code**. Crown and defence made a joint recommendation for a sentence totalling nine years, eight years on the drug offence and one year consecutive on the weapons offence. The joint recommendation included a request for a weapons prohibition order of 10 years, pursuant to s. 100 of the **Criminal Code**. The Crown indicated to the court that it was part of the negotiations on sentence that the Crown would not seek an order pursuant to s. 741.2 of the **Criminal Code**.

Section 741.2 reads as follows:

> 741.2 Notwithstanding subsection 120(1) of the **Corrections and Conditional Release Act**, where an offender is sentenced, after the coming into force of this section, to a term of imprisonment of two years or more on conviction for one or more offences set out in schedules I and II to that **Act** that were prosecuted by way of indictment, the court may, if satisfied, having regard to the circumstances of the commission of the offences and the character and circumstances of the offender, that the expression of society's denunciation of the offences or the objective of specific or general deterrence so requires, order that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or ten years, whichever is less.

The learned sentencing judge imposed a sentence consistent with the joint recommendation, however, as to the parole provisions he said:

> . . . I can't go along with the half time - waiver of the half time on the eight years for the drug offence and therefore having regard to the circumstances of the offence, your character and your circumstances I envoke section 740 (1) [sic] with respect to that so that you will have to serve at least four years of that time before you start.

The appellant has appealed the imposition of the order pursuant to s. 741.2.

In a decision of this Court, **Marie Louise Izzard v. R**., dated November 21, 1995, Matthews, J.A., said, as regards a trial judge who grants an order pursuant to s. 741.2:

> A trial judge must grant counsel an opportunity to be heard when such an order is considered and must articulate reasons for making such an order. See **R. v. Dankyi** (1993), 86 C.C.C. (3d) 369 (Que C.A.); **R. v. Warren** (1994), 95 C.C.C. (3d) 86 (Sask. C.A.); and **R. v. Goulet** (1995), 97 C.C.C. (3d) 61 (Ont. C.A.).

The Court said in **Goulet**, **supra**, at p.67:

> In my view, s. 741.2 should only be invoked as an exceptional measure where the Crown has satisfied the court on clear evidence that an increase in the period of parole ineligibility is "required". There should be articulable reasons for invoking s. 741.2 and, as suggested in **R. v. Dankyi**, supra, the trial judge should give clear and specific reasons for the increase in parole ineligibility.

Here the learned sentencing judge imposed the s. 741.2 order unilaterally. He articulated no reasons, specific to this offender, for imposing the order. We have considered the November 16, 1995 decision of the Supreme Court of Canada in **R. v. Shropshire**. In these circumstances we are satisfied that the sentence jointly recommended by counsel was fit.

We allow the appeal by striking the order issued under s. 741.2.

J.A.

Concurred in:

Hart, J.A.

Jones, J.A.

C.A.C. No. 116212

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

ROBERT D'EON	)	REASONS FOR
	)	JUDGMENT BY:

appellant	)	BATEMAN, J.A.
	)	
- and -	)	
	)	
HER MAJESTY THE QUEEN	)	
	)	
respondent	)	