

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Pyke*, 2013 NSCA 61

Date: 20130510

Docket: CAC 394824; CAC 395341

Registry: Halifax

Between:

Cordelle Alvin Pyke

Appellant/Respondent

v.

Her Majesty the Queen

Respondent/Appellant

Judge: The Honourable Chief Justice J. Michael MacDonald

Appeal Heard: April 2, 2013

Subject: Criminal law; reasonableness of verdict; standard of review; sentencing – attempted murder.

Summary: In the Winter of 2011, Mr. James Sprague was attacked outside his mother's apartment and stabbed several times by a gang of young men. The Crown alleged that the appellant, Cordelle Alvin Pyke, was one of the attackers and inflicted one of the wounds. A Nova Scotia Supreme Court jury agreed and convicted him of several serious offences, including attempted murder. He was sentenced to five years in prison, less credit for time served. Mr. Pyke now appeals this verdict, asserting that it is unreasonable. Meanwhile, the Crown appeals the sentence, asserting that it is too lenient.

In challenging the verdict, the appellant highlights many concerns regarding the complainant's credibility, the judge's expressed unease with the verdict, and a purported lack of evidence linking the appellant to the crime.

In challenging the 5-year prison term, the Crown essentially asserts that the trial judge's concerns over the verdict led him to mis-apply the principles of sentencing and, in any event, to order a demonstrably unfit sentence.

Issues:

1. Was the verdict unreasonable?
2. Did the sentence reflect an error in principle or was it otherwise demonstrably unfit?

Result:

1. The conviction appeal is dismissed. It was exclusively for the jury to assess the complainant's credibility and to draw all appropriate inferences. They were properly charged on all issues and their unanimous decision must be respected. Despite all the concerns highlighted by the appellant and echoed, to some extent, by the trial judge, this verdict was "one that a properly instructed jury, acting judicially, could reasonably have entered". See **R. v. Yebes**, [1987] S.C.J. No. 51. Therefore, it is not for this court to interfere by acting as a "13th juror". See **R. v. W.H.**, 2013 SCC 22.
2. Aside for correcting a mathematical error regarding the remand credit, the sentencing appeal is dismissed. It cannot be said that the judge's concern over the verdict affected the sentence. There was no error in principle and it cannot be labelled as demonstrably unfit in the circumstances.

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 34 pages.