

1969

S. C. No. 14639

IN THE SUPREME COURT OF NOVA SCOTIA  
APPEAL DIVISION

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and -

FRANCIS JOSEPH BENOIT

Appellant

McKINNON, C.J.N.S.:

The appellant was sentenced by Ronald J. MacDonald, Q.C., a Judge of the Provincial Magistrates Court on August 27, 1969, at Baddeck, Nova Scotia, to a term of five years' imprisonment pursuant to his conviction on a charge contrary to section 289 of the Criminal Code; on the same day, he was also sentenced by Magistrate MacDonald to a term of three years' imprisonment pursuant to his conviction on charges contrary to sections 292 (1) (b) and 296 (a) of the Criminal Code of Canada. The three-year sentences were directed to be served concurrently with the five-year sentence referred to above and with each other.

On November 18, 1969, the Court had before it an application by the appellant for leave to extend time to appeal. As no reasons were presented to this Court for the appeal being out of time, the Court denied leave to extend time.

Subsequently, on April 30, 1970, the Minister of Justice, pursuant to subsection (b) of section 596 of the Criminal Code, referred the matter to this Court for hearing and determination as if it were an appeal by the appellant from the sentences imposed upon him on August 27, 1969.

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It is the opinion of the Court that leave to extend time to appeal should be granted. After carefully considering the record before the Court, it is our opinion that the sentence of three years imposed for the infraction of section 296 (a), being in excess of the maximum penalty provided by the Code, should be quashed. It is also the opinion of the Court that the sentence imposed for infractions of section 292 (1) (b) and section 289 of the Code should be varied to one year for each offence.

Members of Appeal Division present

McKinnon, C.J.N.S.

Coffin, J.A.

Cooper, J.A.

Counsel

D. W. Thomas, Esq. Appellant

G. S. Gale, Esq. Respondent

Halifax, Nova Scotia

June 23, 1970