

1970

S. C. No. 15225

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

JOSEPH ROBERT GEORGE

Respondent

McKINNON, C.J.N.S.:

It is the opinion of the Court that leave to appeal should be granted.

The Court wishes to commend Mr. Donahoe for the very, very able manner in which he presented the case for the respondent on this appeal. [Mr. Donahoe: Thank you, my lord.]

However, the Court has examined very closely the report of the psychiatrist, Dr. Leslie L. Kovacs, in which he describes the respondent as having a

"personality disorder - emotionally unstable, explosive, aggressive type".

In the last paragraph of his report, he notes the following:

"I would also take the liberty to express pessimistic views about the future behaviour of this man. He told me that nothing will hold him back from getting even with his brother or to do any drastic actions to deal with family problems as they arise in the foreseeable future and psychiatric treatment in hospital setting or on an out patient bases is highly unlikely to make him less explosive. Unfortunately the situation in his environment will not change either, there will be ample provocations leading to violent reactions on his part. Unfortunately, for the time

10

being the psychiatric profession can go as far as assessing this man and making predications with some degree of reliability but when it comes to treatment there is nothing we can offer."

In view of that report, and the other material before the Court, it appears to us that the learned trial Judge failed to consider the gravity of the crime or the effect of the punishment as a deterrent in imposing sentence. Accordingly, in the circumstances of the case, he failed to apply the proper principles.

It is the opinion of this Court that the sentence imposed by the learned trial Judge should be varied to two years in Dorchester penitentiary.

DATED at Halifax, Nova Scotia, this 16th day of June, A. D., 1970.

Members of Appeal Division present

McKinnon, C.J.N.S.

Coffin, J.A.

Cooper, J.A.

Counsel

N. R. Anderson, Esq., for the Appellant

Terence R. B. Donahoe, Esq., for the Respondent