

1970

S. C. No. 15230

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and -

JOHN ROBERT BURKE

Appellant

McKINNON, C.J.N.S.:

The Court notes the following excerpt from the report of the learned Judge of the Magistrate's Court.

"I felt that his only hope of getting straightened out was to sentence him to penitentiary with the hope that he might learn a trade there."

The appellant entered a plea of guilty before the learned Judge in the Magistrate's Court and later signed a waiver of his right of appeal.

Under these circumstances, the Court should have before it some evidence to show that when the plea was entered and the waiver signed, the appellant was unaware of the effect of his plea and waiver, and that he did not intend to admit guilt or waive his right of appeal under the circumstances as they appeared to him.

The record here does not disclose that the appellant was under such a misapprehension and, therefore, it is the opinion of the Court that leave to appeal should be denied and the sentence given

in the Court below confirmed.

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 Respondent