

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Denny*, 2018 NSCA 11

Date: 20180131

Docket: CAC 464758

Registry: Halifax

Between:

Leroy David Denny

Appellant

v.

Her Majesty the Queen

Respondent

Judge:

The Honourable Justice David P.S. Farrar

Appeal Heard:

January 19, 2018, in Halifax, Nova Scotia

Subject:

Criminal Law. Breathalyzer Refusal. Sentencing.

Summary:

Mr. Denny was charged with two counts of refusing the breathalyzer contrary to s. 254(5) of the *Criminal Code of Canada*, R.S.C. 1985, c. C-46. The appellant pled guilty and was sentenced by Judge Del Atwood to a one year driving prohibition, one day in custody time, concurrently served on both charges, and two \$10 fines, one on each charge.

The Crown appealed to the Summary Conviction Appeal Court (SCAC). The SCAC found that the sentencing judge had erred and varied the sentence imposing a \$1,000 fine in respect of each of the offences, a 12-month probationary period and a driving prohibition of 30 months commencing on the date of the SCAC decision, May 15, 2017.

Mr. Denny seeks leave to appeal and, if granted, appeals the Order of the SCAC.

Issues: Did the SCAC err by setting aside the sentencing judge's decision and imposing its own sentence?

Result: The appeal is allowed, in part. The SCAC did not err in overturning the decision of the Provincial Court. However, the imposition of a driving prohibition which commenced on May 15, 2017 was an error. The driving prohibition should have commenced on April 28, 2016, the date of the original sentencing.

Leave to appeal granted, appeal allowed, in part. The SCAC decision is varied such that the driving prohibition will run from the original sentencing date, April 28, 2016.

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 6 pages.