

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Keats*, 2018 NSCA 16

Date: 20180306

Docket: CAC 457306

Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

James Duncan Keats

Respondent

Restriction on Publication: s. 486.4 of the Criminal Code

Judge: The Honourable Justice Elizabeth Van den Eynden

Appeal Heard: September 25, 2017, in Halifax, Nova Scotia

Subject: concurrent versus consecutive sentences

Summary: Mr. Keats was found guilty of two counts of sexual assault. Each count involved a different female complainant. Mr. Keats was sentenced to 30 months' incarceration—12 months' incarceration for the sexual assault of TH and 18 months' incarceration, to be served consecutively, for the sexual assault of ML. However, this 30-month term was to be served concurrent with a four-year term Mr. Keats was already serving for sexually assaulting another female, BW.

All three assaults were committed while Mr. Keats was acting in his capacity as a paramedic. The offences took place over approximately five months and the assault which gave rise to the first conviction occurred after the assaults against TH and

ML. The sequence of convictions played a role in the judge's ordering of consecutive sentences. It was apparent that the judge thought that Mr. Keats being a first-time offender for purposes of the sentencing was a bar to a consecutive sentence being imposed.

The Crown sought leave to appeal against sentence. It argued the judge erred in principle and that imposing a concurrent sentence to the sentence which Mr. Keats was already serving resulted in an unfit sentence.

Mr. Keats also appealed his convictions. The conviction and sentence appeals were filed separately, but heard the same day. Mr. Keats' conviction appeal was dismissed (see *R. v. Keats*, 2018 NSCA 15).

Issues:

1. Should leave to appeal be granted?
2. Did the judge err in principle by failing to order consecutive time?

Result:

Leave is granted and appeal allowed. The judge was incorrect in holding the view that the timing of the offence involving BW was a bar or a constraint to ordering consecutive sentences. This error had a material impact on his reasoning as to whether to impose concurrent or consecutive sentences. There is no principled reason for there to be concurrent sentences on this record. Such an order trivializes these serious sexual assaults by a person in trust and does not adequately reflect Mr. Keats' moral blameworthiness. The 30-month sentence imposed (12 months' incarceration for TH and 18 months' incarceration for ML) shall be served consecutive to the four-year sentence Mr. Keats is currently serving. The ancillary orders made by the sentencing judge stand.

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 15 pages.

