

NOVA SCOTIA COURT OF APPEAL

**Cite as: R. v. Cook, 1994 NSCA 201
Clarke, C.J.N.S.; Hallett and Chipman, JJ.A.**

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

APRIL ROSE COOK

Respondent

) Robert C. Hagell
) for the Appellant

) Pamela S. Hutt
) for the Respondent

) Appeal Heard:
) September 14, 1994

) Judgment Delivered:
) September 14, 1994

THE COURT:

While leave to appeal against sentence is granted, the appeal is dismissed from a suspended sentence of three years with conditions involving offences including fraud and false pretences, per oral reasons for judgment of Clarke, C.J.N.S., Hallett and Chipman, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

CLARKE, C.J.N.S.:

The respondent, who is thirty-two years old, pled guilty in Provincial Court to thirteen counts of fraud, five counts of false pretences, two counts of breach of probation and one count of failing to attend court. The offences, which occurred between December 18, 1991 and March 4, 1993, relate to the passing of worthless cheques and in exchange the receipt of money or merchandise. The value, in total, is rounded at \$4,700.00.

The respondent has a record of some thirty-nine earlier convictions for similarly related offences. Her pre-sentence report was discouraging.

On January 7, 1994, after taking time to consider, Judge Gibson suspended the passing of sentence and placed the respondent on probation for three years with a series of strict conditions. Among others, these require her to continue in the recovery program in which she is participating, submit for regular drug screening tests and examinations, perform community service, abstain absolutely from the consumption and possession of alcoholic beverages and non-prescription drugs, and report back to the Court.

The Crown contends the sentence is inadequate in that it fails to reflect the element of deterrence, the nature of the offences and the circumstances of the respondent.

The respondent, for some weeks before her sentencing, entered an in-house program of rehabilitation at Lifestyles in Debert. Judge Gibson had the benefit of both written reports and the evidence of her counsellors. All of these indicated remarkable progress and positive responses in an effort to turn around the life of the respondent from the troubles that have plagued her both as a child and as an adult. Reports to this day indicate that her rehabilitation is continuing, albeit with some difficulties. The sanction

of the suspended sentence awaits her upon a breach of the conditions imposed by the trial judge. She is now married and her involvement with and support by the Lifestyles program is continuing.

It is clear from the remarks of Judge Gibson that he was fully aware of all the principles that apply to the sentencing and circumstances of the respondent. He spoke at length about deterrence, both general and specific, and the rehabilitation and reformation of the offender. He observed that he had to choose between a lengthy period of incarceration in a federal institution and a suspended sentence. He reviewed and considered all the mitigating and aggravating factors. He concluded he would opt for what he described as a "leap of faith". The evidence, thus far, appears to support the confidence he had in his decision.

Being satisfied that Judge Gibson took into account all the circumstances which bear upon this somewhat unusual case, we conclude that his sentence was fit and this Court should not disturb it.

Leave to appeal is granted. The appeal is dismissed.

C.J.N.S.

Concurred in:

Hallett, J.A.

Chipman, J.A.

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ORDER FOR JUDGMENT

REASONS FOR JUDGMENT having been delivered by Clarke, C.J.N.S.;
Hallett and Chipman, JJ.A. concurring;

IT IS ORDERED THAT the appeal against sentence is dismissed from that
imposed by Judge Gibson on the Respondent on January 7, 1994.

DATED at Halifax, Nova Scotia, this 14th day of September, 1994.

Registrar