

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Sellars*, 2013 NSCA 129

Date: 20131114

Docket: CAC 414975

Registry: Halifax

Between:

Kimberley Helen Sellars

Appellant

v.

Her Majesty The Queen

Respondent

Judge: Beveridge, J.A.

Appeal Heard: October 17, 2013, in Halifax, Nova Scotia

Subject: Criminal law: principles of sentence re conditional discharge

Summary: The appellant pled guilty to being involved in a scheme by her partner. He claimed to have paid for health benefits. They were submitted to the appellant's health care plan using her electronic portal, without the need to include receipts. The claims were false. At some point, she realized the claims were bogus. The boyfriend was emotionally and physically abusive. The appellant was diagnosed as enduring a major depressive episode during the time the offence was committed. She had no prior record. Her request for a conditional discharge was denied on the basis that the trial judge was not satisfied that a discharge would be in the public interest.

Issues: Did the trial judge err in applying the wrong test; and if so, what is the result?

Result: The trial judge applied the wrong test by requiring the appellant to demonstrate that a discharge would have a

positive impact on the public interest. Section 730 of the *Criminal Code* only required a court to be satisfied that a discharge was in the best interests of the offender, and not contrary to the public interest. Application of the wrong test is an error of law, and the Court was therefore at liberty to decide sentence having regard to the applicable principles of sentence, and the circumstances of the offender and of the offence. A reasonable observer, with full knowledge of the documented psychiatric history of the appellant, the role that played, and the other circumstances, would conclude that a discharge is not contrary to the public interest. A conditional discharge was granted with an amendment to the three year probation order by requiring the appellant to make full restitution.

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 10 pages.