

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. Dicks, 1996 NSCA 200
Clarke, C.J.N.S.; Matthews and Chipman, JJ.A.

BETWEEN:

DAVID EDGAR DICKS

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

) Gary H. Levine
) for the Appellant

) Denise C. Smith
) for the Respondent

) Appeal Heard:
) September 30, 1996

) Judgment Delivered:
) September 30, 1996

THE COURT: Appeal dismissed from the refusal of the trial judge to grant a stay of proceedings on other charges following a finding that the appellant was a dangerous offender, per oral reasons for judgment of Clarke, C.J.N.S.; Matthews and Chipman, JJ.A. concurring.

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

CLARKE, C.J.N.S.:

On December 22, 1994, Justice Kelly found the appellant to be a dangerous offender pursuant to s. 753 of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46. He was given an indeterminate sentence.

During the hearing on the application reference was made and evidence given of three other charges pending, but not then heard, against the appellant. They related to counts of alleged sexual and indecent assault.

Although the conviction of the appellant for an offence of sexual assault upon a female prompted the Crown's dangerous offender application, Justice Kelly referred to the evidence of the outstanding charges in his decision ((1994), 140 N.S.R. (2d) 162).

The appellant sought a stay of the three charges on the ground that convictions are required before he could be punished for unproved offences. He contended the finding made by Justice Kelly and the indeterminate sentence he imposed took the three outstanding charges into account.

The stay application was heard by Chief Justice Glube. She denied it. She determined that the evidence concerning the unproved charges was relevant to the dangerous offender application and no abuse of process resulted from going forward with their trials at a later time.

In fact the appellant was tried on the three indictments before Chief Justice Glube in May, 1995. He was convicted on two and acquitted on the third. For the two convictions she imposed a total term of nine years to be served concurrent to the indeterminate sentence.

The appellant appeals the decision of Chief Justice Glube wherein she refused to grant his application to stay the proceedings. He alleges she made errors of law with

the result that the convictions which followed should be quashed.

The reasons of Chief Justice Glube on the stay application are reported in **R. v. Dicks (D.E.)** (1995), 143 N.S.R. (2d) 81. We have considered them in the course of our examination of the record and the written and oral arguments in this appeal. It is our unanimous opinion that Chief Justice Glube did not err. We agree with her reasons for judgment.

Accordingly, the appeal is dismissed.

C.J.N.S.

Concurred in:

Matthews, J.A.

Chipman, J.A.

