

CASE NO.**VOLUME****PAGE**

Cite as: R. v. Reynolds, 1998 NSCA 230

ROBERT MICHAEL REYNOLDS

HER MAJESTY THE QUEEN

- and -

(Appellant)

(Respondent)

C.A.C. No. 145258

Halifax, N.S.

CROMWELL, J.A.
(orally)**APPEAL HEARD:**

November 10, 1998

JUDGMENT DELIVERED:

November 10, 1998

WRITTEN RELEASE OF ORAL:

November 13, 1998

SUBJECT:**Criminal Law - Appeals from Conviction - Unreasonable Verdict
Appeal against sentence - spousal assault****SUMMARY:**

The appellant was convicted by a Provincial Court Judge of one count of common assault. The Crown proceeded by Indictment and alleged that the assault occurred between January 1, 1985, and September 15, 1996. The trial judge convicted the appellant and sentenced him to one year in jail to be followed by two years probation. The appellant appealed the conviction on the basis that it was unreasonable and sought leave to appeal the sentence on the basis that it was excessive.

ISSUES:

- (1) Was the verdict unreasonable?
- (2) Was the sentence excessive?

RESULT:

The conviction appeal was dismissed. The appellate court is not to substitute its view for that of the trial judge but rather is to determine whether the verdict is one that a properly instructed judge or jury acting judicially could reasonably have rendered. The trier of fact may quite properly accept all, part or none of the witness' evidence. The trial judge considered all of the evidence, including an alleged motive to concoct. He accepted the evidence of the complainant and this was a credibility finding that he was entitled to make and it was supported by the evidence. There was no basis for the Court of Appeal to interfere with his findings.

Leave to appeal against sentence was granted but the appeal dismissed. The Court of Appeal will intervene on a sentence appeal only if the

sentencing judge failed to apply the correct principles, ignored relevant factors or imposed a sentence that is clearly excessive or inadequate. There was no error in principle and the sentence was not clearly excessive.

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