C.A.C. No. 112372

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. Degenhardt, 1995 NSCA 218
Pugsley, Hart and Matthews, JJ.A.

BETWEEN:

LAURA LILLIAN DEGENHARDT	)	Christopher Manning
	)	for the Appellant
Appellant	)	
	)	
- and -	)	
	)	Dana Giovannetti
	)	for the Respondent
HER MAJESTY THE QUEEN	)	
	)	
Respondent	)	Appeal Heard:
	)	November 28, 1995
	)	
	)	
	)	Judgment Delivered:
	)	November 28, 1995
	)	
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	)	

THE COURT: Appeal dismissed per oral reasons for judgment of Matthews, J.A.; Hart and Pugsley, JJ.A. concurring.

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

MATTHEWS, J.A.:

At the conclusion of a trial before a Supreme Court judge sitting with a jury the

appellant was found guilty of the second degree murder of her husband.

Although in her notice of appeal she advanced six grounds of appeal, before us she proceeded on one ground only:

> That the Learned Trial Judge erred in imposing a parole eligibility date of fifteen (15) years which is excessive having regard to all the circumstances of the case.

The Supreme Court of Canada recently pronounced upon the principles to be applied when considering the period of parole ineligibilty to be imposed pursuant to s. 744 of the **Code**: **R. v. Shropshire**, not yet reported, reasons delivered November 16, 1995. There Iacobucci, J., speaking for the Court and referring to the role of an appellate court said at p. 23:

> An appellate court should not be given free reign to modify a sentencing order simply because it feels that a different order ought to have been made. The formulation of a sentencing order is a profoundly subjective process; the trial judge has the advantage of having seen and heard all of the witnesses whereas the appellate court can only base itself upon a written record. A variation in the sentence should only be made if the court of appeal is convinced it is not fit. That is to say, that it has found the sentence to be clearly unreasonable.
>
> I would adopt the approach taken by the Nova Scotia Court of Appeal in the cases of **R. v. Pepin** (1990), 98 N.S.R. (2d) 238, and **R. v. Muise** (1994), 94 C.C.C. (3d) 119. In **Pepin**, at p. 251, it was held that:
>
> > ...in considering whether a sentence should be altered, the test is not whether we would have imposed a different sentence; we must determine if the sentencing judge applied wrong principles of [if] the sentence is clearly or manifestly excessive.

We have considered the record, the material placed before us and have heard counsel.

It is our unanimous opinion that the trial judge did not err in sentencing the

appellant to a term of life imprisonment with no eligibility for parole for a period of 15 years. The sentence is fit. It is not clearly or manifestly excessive.

We dismiss the appeal.

J.A.

Concurred in:

Pugsley, J.A.

Hart,J.A.

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NOVA SCOTIA COURT OF APPEAL

BETWEEN:

LAURA LILLIAN DEGENHARDT	)	
Appellant	)	
- and -	)	R E A S O N S FOR
	)	JUDGMENT
BY: HER MAJESTY THE QUEEN	)	
	)	MATTHEWS,
	)	J.A.
Respondent	)	