C.A.C. No. 102165

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. Schrader, 1994 NSCA 102

Matthews, Chipman and Pugsley, JJ.A.

BETWEEN:

JAMES JOSEPH SCHRADER	)	the appellant appeared
	)	in person
Appellant	)	
	)	
- and -	)	
	)	Gordon S. Gale, Q.C.
	)	for the Respondent
HER MAJESTY THE QUEEN	)	
	)	
Respondent	)	Appeal Heard:
	)	June 2, 1994
	)	
	)	
	)	Judgment Delivered:
	)	June 6, 1994

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

MATTHEWS, J.A.:

On the 15th day of February, 1994, the appellant appeared before His Honour Judge R.B. Kimball of the Provincial Court at Dartmouth, in the County of Halifax on the following charges:

> 1. That he, between the 7th day of September, 1993 and the 10th day of September, 1993, at or near Dartmouth, in the County of Halifax, Province of Nova Scotia, did unlawfully break and enter a place, to wit: The City of Dartmouth bus garage situate at 17 Maitland Street, in the City of Dartmouth aforesaid, and commit the indictable offence therein of theft, contrary to s. 348(1)(b) of the **Criminal Code**.
>
> 2. AND FURTHER on or about the 22nd day of May, 1993, at or near Dartmouth, in the County of Halifax, Province of Nova Scotia, did unlawfully break and enter place, to wit: Astro Equipment, situate at 16 Rosedale Drive, in the City of Dartmouth, aforesaid, with intent to commit an indictable offence therein, contrary to s. 348(1)(a) of the **Criminal Code**.
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> 3. AND FURTHER on or about the 25th day of September, 1993, at or near Elmsdale, in the County of Hants, Province of Nova Scotia, did break and enter a certain place to wit: Elmsdale Bottle Exchange and did commit therein the indictable offence of theft contrary to s. 348(1)(b) of the **Criminal Code**.
>
> 4. AND FURTHER between the 24th day of September, 1993, and the 27th day of September, 1993, at or near Bedford, in the County of Halifax, Province of Nova Scotia, did break and enter a certain place to wit: 22 Topsail Court in the Town of Bedford aforesaid, and did commit therein the indictable offence of theft, contrary to s. 348(1)(b) of the **Criminal Code.**
>
> 5. AND FURTHER between the 15th day of August, 1993 and the 18th day of August, 1993 at or near Halifax, in the County of Halifax, Province of Nova Scotia, did unlawfully break and enter a certain place, to wit: Multi-Concept situate at 2543 Barrington Street, and did commit therein the indictable offence of theft, contrary to s. 348(1)(b) of the **Criminal Code**.

On that same day he pled guilty to the fifth charge. Prior to that, on January 31, 1994, guilty pleas had been entered in respect to the first four charges.

After hearing representations from counsel for the Crown and for the accused Judge Kimball sentenced the appellant to the following terms of imprisonment:

> Charge 1 - 3 years
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> Charge 2 - 1 year consecutive to charge 1
>
> Charges 3 and 4 - 1 year concurrent with each other, but consecutive to the total of 4 years for charges 1 and 2 making the total for charges 1 - 4 inclusive, 5 years.
>
> Charge 5 - 1 year consecutive to the 5 years "already sentenced".

The total sentence for the five charges is six years.

The appellant now seeks leave to appeal and, if granted, appeals from those sentences submitting that the total is "harsh and excessive and over emphasizes the elements of deterrence". He appeared before us without counsel.

At the time of sentencing the appellant was 33 years old. He has a record of some 17 or 18 previous offences, including charges of break, enter and theft. His pre-sentence report discloses that he has a significant drug problem. Understandably, considering his extensive record, that report is far from positive. All of the offences occurred while the appellant was on probation.

In particular two of these five charges are very serious. In #1 the value of items stolen, damage to vehicles and damage to the building totalled in excess of $55,000.00. In #5, tools valued at approximately $4000.00 were stolen. None of these items were recovered.

There are some mitigating factors in the appellant's favour. He has entered guilty

pleas; gave statements to the police admitting his involvement in these crimes; and it may be that without the inculpatory statements his involvement and that of others would have gone undetected. As his counsel said before Judge Kimball:

> We are dealing with a person who wants to wrap things up, get everything that's out there cleared up so that when he finally deals with it he can start fresh and anew. My understanding, from having spoken with the investigating officers with regard to these matters, that Mr. Schrader has provided them volumes of information about these matters and other matters which have led to tidying up and closing a number of outstanding files which has been, I guess, both to Mr. Schrader's benefit, to law enforcement, and to, I guess, ultimately to some extent the persons involved.

The trial judge considered all of these factors. He spoke of the fact that these types of offences are considered so serious that each carries a maximum of 14 years imprisonment. He took into consideration the principle of totality and the range of sentences for like offences.

In my opinion, after a review of all of the material presented to us, and hearing submissions of the appellant and on behalf of the Crown, these sentences meet the test: they cannot individually or in total be considered as clearly excessive.

I would dismiss the appeal.

I do note that on the day prior to sentencing by Judge Kimball, the appellant was sentenced by Judge Randall to 3 years incarceration in respect to two offences of break and enter with intent to commit an indictable offence: s. 348(i)(a) of the **Code**. Those offences occurred prior to the five under consideration by Judge Kimball. Prior to the sentencing by Judge Randall the appellant had pled guilty to the first four of the charges which were considered by Judge Kimball. The result is that sentences meted out for those four offences must be served concurrently with the three year sentence previously given by Judge Randall. s. 717(4) of the

Code. See **Paul v. R.**, [1982] 1 S.C.R. 621: a judge cannot order that a sentence be made consecutive to that imposed by another judge in another case unless that sentence has already been imposed by the other judge at the time of the conviction in the case in which he is sentencing. However, the plea of guilty for the fifth charge was entered before Judge Kimball after the sentencing by Judge Randall. Thus the sentence of one year for that charge is to be served consecutively. It is not affected by the Paul principle.

Appellant's counsel said this before Judge Kimball:

> ...Your Honour, on behalf of Mr. Schrader, I would ask that the court consider in whatever method is used to tally up the final amount that the court consider an overall sentence, including the matters for which Mr. Schrader was sentenced on yesterday, to be in the range of a total period of a five year term to a six year term that he would have to serve with respect to these matters.

The total to be served by the appellant is within that range.

J.A.

Concurred in:

Chipman, J.A.

Pugsley, J.A.