S.C.C. No. 02779

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Jones, Roscoe and Freeman, JJ.A.

Cite as: R. v. Gould, 1993 NSCA 55

B E T W E E N:

STEVEN WADE GOULD	**Chris Manning for appellant**
appellant	
- and -	**Robert C. Hagell for respondent**
HER MAJESTY THE QUEEN	
respondent	**Appeal Heard: January 22, l993**
	Judgment Delivered: January 22, l993

THE COURT: Leave to appel granted and appeal dismissed per oral reasons for judgment of Freeman, J.A.; Jones and Roscoe, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by

FREEMAN, J.A.:

This is an appeal, subject to an application for leave, from a sentence of fifteen months imposed for possession of property obtained by the commission of an indictable offence, contrary to s. 355(b)(1) of the **Criminal Code.**

The appellant, Steven Wade Gould, was stopped by police and found to be in possession of an antique clock stolen in one of four house burglaries in the area during the previous month. He consented to a search of his home which disclosed other items; on the sentencing his counsel offered explanations for most of the items found in the home. The Crown said $30,000 worth of goods had been taken in the burglaries; the items for which the appellant was charged were valued at less than $200. The appellant pleaded guilty.

There was no presentence report. Mr. Gould is 28 years old with a record of 17 previous offences including narcotics trafficking and possession, theft, assault, break, enter and theft, and possession of stolen goods. He was on probation for possession of narcotics when he was sentenced to ninety days for three counts of possession of stolen goods in February, 1992. He was still on probation when he committed the present offence in September, 1992

Section 687 (1) of the **Criminal Code** sets out the powers of the appeal court in sentence appeals;

> 687(1) Where an appeal is taken against sentence the court of appeal shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may on such evidence, if any, as it thinks fit to require or to receive,
>
> (a) vary the sentence within the limits prescribed by law for the offence of which the accused was convicted; or
>
> (b) dismiss the appeal.

In **R. v. Sonier**, 70 N.S.R. (2d) 310 Macdonald, J.A., then of this court, stated;

> "A practical guide to what is fit and not excessive is the range of sentences imposed for similar offences within a period reasonably contemporaneous with the commission of the offence."

It is to be noted that he spoke of the range of sentences, implying a broad sampling of cases. Individual cases, whatever their apparent similarities, are not a reliable guide because of the numerous factors related to the offence and the offender, many of which may be unstated, which must be reconciled and balanced by the sentencing judge.

With respect to the offences under s. 355(b)(i,) we have been referred to **Evenden**, 76 N.S.R. (2d) 436 in which a 27 year old repeat offender was sentenced to two years; **Hawco**, 104 N.S.R., in which a 34 year old offender with 32 previous convictions received six-month consecutive sentences on two counts; **Salter**, (1987), 80 N.S.R. (2d) 289 in which a 21-year-old repeat offender received one year for possession of two motor vehicles; **Morrison** (unreported--N.S.A.D. 1988) in which a repeat offender was sentenced to three months for possession of stolen cheques; **Blentzas**, (1983), 60 N.S.R. (2nd) 113 (C.A.) in which a pawn shop owner was sentenced to three months and **Brown** (1983), 52 N.S.R. (2d) 379, in which a 29-year old repeat offender received ten months reduced on appeal from l8 months.

In addition the Crown referred to a number of cases in a higher range for the more serious offence of possession of stolen property valued at more than $1,000.

The sentence of fifteen months is in the high end of the appropriate range. It is not the practice of this court to vary a sentence unless it is manifestly excessive or inadequate. See **Dedham**, 83 N.S.R. (2d) 310.

In our opinion the sentence imposed by the trial judge was not manifestly excessive, particularly in view of the fact that the appellant had received a lenient sentence earlier the

same year for three similar offences. Both specific and general deterrence must be emphasized in the case of this appellant.

Leave to appeal is granted but the appeal is dismissed.

Freeman, J.A.

Concurred in: Jones, J.A.

Roscoe, J.A.