

On January 26, 1994, the appellant pled guilty to one count in a three count information; that on January 24, 1994 he committed a break, enter and theft at a place of business in Springhill: s 348(1)(b) of the **Code**. On April 19, 1994 he was sentenced by a judge of the Provincial Court to a term of imprisonment for three years, consecutive to time being served.

He now applies for leave to appeal and, if that is granted, appeals from that sentence.

At the time of the offence the appellant was 36 years old and was living in a common law relationship.

As do many, his pre-sentence report contains both positive and negative features. Unfortunately his criminal record is such that it shows that for most of the time since 1989 he has been incarcerated or on parole. Since 1989 he has been found guilty of 10 offences, six of which are property related, one for obstruction of justice, and one for escape from lawful custody, that is, from the Cumberland Correctional Centre in Amherst. One of the break, enter and theft offences was of particular significance when looting took place and thefts involving items of great value occurred. The serious nature of some of his offences and the appellant's participation in them was explained by Crown counsel at sentencing. He was on parole at the time this offence took place, with approximately one and a half years left to serve on a three year sentence.

We disapprove of some of the comments made by the sentencing judge. After due consideration, it is our opinion that the trial judge took into consideration the applicable principles of law; the sentence imposed is not manifestly excessive.

We grant leave to appeal and dismiss the appeal.

Concurred in:

Roscoe, J.A.

Pugsley, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

DANIEL ROY DOWNEY

Appellant

- and -
FOR

BY:
HER MAJESTY THE QUEEN

Respondent

)
)
) REASONS
) JUDGMENT
)
) MATTHEWS,
)
) J.A.

