

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. MacKenzie*, 2007 NSCA 10

Date: 20070125
Docket: CAC 266773
Registry: Halifax

Between:

Daniel John MacKenzie

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Nancy Bateman

Appeal Heard: January 16, 2007

Subject: Ineffective assistance of counsel; sentence appeal

Summary: Appeal of both conviction and sentence in relation to a charge of break and entry with intent (s. 348(1)(a) **Criminal Code of Canada**, R.S.C. 1985, c. C-46)

The appellant was found in a dwelling house. The defence at trial was that he was not the perpetrator. Pre-trial eyewitness identification was weak. The accused did not testify. He was convicted on dock identification and circumstantial evidence. He complains of ineffective assistance of counsel in, *inter alia*, advising him not to testify and of excessive sentence.

Issue: Is complaint of ineffective assistance made out? Is sentence excessive?

Result: Applying the reasonableness standard, ineffective assistance claim not made out. Three year sentence after credit for time served not excessive for this mature, repeat offender.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 5 pages.