

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Bremner* , 2007 NSCA 53

Date: 20070504

Docket: CAC 265732

Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Brian James Bremner (aka Marriott)

Respondent

Judge: The Honourable Justice Thomas Cromwell

Appeal Heard: January 17, 2007

Subject: Special pleas – *autrefois convict* – conspiracy – “sub-agreements” within a larger “dominant plan”

Summary: The respondent was alleged to be one of the leaders of a group operating a retail crack shop. The business allegedly included selling cocaine and supplying prison packages of drugs to members while incarcerated. The respondent was convicted of conspiring over a few days in June to traffic in cannabis (resin) arising out of instructions he gave to a police informant to supply a prison package. The respondent was also charged with two other conspiracy counts arising out of his allegedly having given similar instructions in May. The trial judge upheld the respondent’s plea of *autrefois convict* with respect to these other charges. He found that there was only one, overall plan, that the “sub-agreements” alleged by the Crown did not exist and that the respondent could have been convicted of the other charges at the first trial had proper amendments been made. The Crown appealed.

Issues: Did the judge err in discharging the respondent on the basis of *autrefois convict*?

Result: Appeal allowed. The judge erred in finding that the Crown could not allege and attempt to prove the existence of more than one “sub-agreement” even though the “sub-agreements” were referable to the same overall plan. The Crown had proved the existence of one such sub-agreement to the jury’s satisfaction at the first trial. It was, therefore, not open to the judge to find that such sub-agreements did not in fact exist. The judge erred in finding that the indictment at the first trial could have been amended to include the other charges as no such amendments could properly have been made.

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 26 pages.