

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. S.N.G.*, 2007 NSCA 83

Date: 20070706

Docket: CAC 276940

Registry: Halifax

Between:

S.N.G.

Appellant

v.

Her Majesty The Queen

Respondent

Restriction on publication: Pursuant to s. 110(1) and 111(1) of the *Youth Criminal Justice Act*.

Judge: Honourable Justice Linda Lee Oland

Appeal Heard: June 8, 2007

Subject: *Youth Criminal Justice Act - Sentencing*

Summary: A young person pled guilty to break and enter of a dwelling and assault causing bodily harm, and to possession of a weapon for the purpose of committing an indictable offence. He, his father, and two others had driven to Amherst to take possession of a car he claimed to have purchased from the victim. After entering the home where the victim was living, the appellant hit him on the head with the blunt end of a baseball bat he had brought with him. The appellant had no prior record. In sentencing him, the judge considered a pre-sentence report and a psychological assessment report, which recommended that he receive probation with specific conditions. She ordered a custodial sentence of 18 months, 12 months at Waterville and six months under supervision in the community on certain conditions. The appellant sought leave to appeal against sentence and, if granted, appeals the sentence.

Issue: Whether the judge erred in imposing a sentence that was demonstrably unfit; by placing too much emphasis on a concept

equivalent to deterrence, and by imposing a sentence which was harsh and excessive in the circumstances; or, by improperly applying the purposes and principles of sentencing as set out in the *Youth Criminal Justice Act*.

Result: Leave to appeal granted, but appeal against sentence denied. The judge was clearly aware of her obligations to consider alternatives to custody. In her decision, she considered the option of the appellant going west to work, and of his continuing to reside with his father in the community. The former she rejected as neither well-founded nor appropriate, and the latter as detrimental to his rehabilitation. In ordering a custodial sentence, she did not overemphasize and rely upon a factual error in the psychological assessment report. Since the sentencing regime in the *Act* emphasizes an individualized approach when a young person is sentenced, determining whether a sentence is within the range of sentences becomes a particularly difficult and delicate exercise. However, neither the sentences in the home invasion cases from other provinces nor those from this province support the appellant's submission that his sentence is so outside the range as to be demonstrably unfit. While the judge referred to a particular appellate decision in which a custodial sentence was ordered, there is no indication that she took the view that she had to do likewise. The judge consistently emphasized rehabilitation and did not stray into focussing upon denunciation and deterrence and so imposed a sentence which was harsh and excessive in the circumstances.

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 16 pages.