

NOVA SCOTIA COURT OF APPEAL
Citation: R. v. Cunningham, 2007 NSCA 14

Date: 20070201
Docket: CAC 253693
Registry: Halifax

Between:

Her Majesty The Queen

Appellant

v.

Shaun Clarence Cunningham

Respondent

Judges: Roscoe, Bateman and Oland, JJ.A.

Appeal Heard: January 31, 2007, in Halifax, Nova Scotia

Held: Appeal is allowed per reasons for judgment of Roscoe, J.A.;
Bateman and Oland, JJ.A. concurring.

Counsel: Daniel A. MacRury, Q.C., for the appellant
The respondent was not present

Reasons for judgment:

[1] This is a Crown appeal from a refusal by Provincial Court Judge James Burrill to order that Shaun Cunningham's name be registered under the **Sex Offender Information Registration Act**, S.C. 2004, c. 10 (SOIRA).

[2] On July 6, 2004 Mr. Cunningham pled guilty to committing a violent sexual assault of a fourteen year old on August 28, 2003, and three counts of breach of probation. He was sentenced on January 25, 2005 to two years incarceration for the sexual assault and one month concurrent on each of the breach charges. As well, the judge ordered the respondent to provide a DNA sample and issued a firearms prohibition. The question of the applicability of the sex offender registration legislation was adjourned to June 21, 2005. On that date the judge indicated that he would not make a SOIRA order, "for the reasons he gave in the case of **R. v. James Cross**".

[3] In the **Cross** case, Judge Burrill declined to make the SOIRA order because the offence occurred prior to the proclamation of the legislation. See: **R. v. Cross** (2005), 235 N.S.R. (2d) 93; N.S.J. No. 263 (Q.L.). Following the sentencing of Mr. Cunningham, this court overturned Judge Burrill's decision in **Cross**. See 2006 NSCA 30; [2006] N.S.J. No. 87 (Q.L.). The Supreme Court of Canada denied leave to appeal: [2006] S.C.C.A. 161.

[4] For the reasons given by Justice Bateman in **R. v. Cross**, this appeal is allowed. The judge erred in law by concluding that a SOIRA order constituted punishment pursuant to s. 11(i) of the **Charter**. The matter is remitted to Judge Burrill for the SOIRA hearing.

Roscoe, J.A.

Concurred in:

Bateman, J.A.

Oland, J.A.