

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Oliver*, 2007 NSCA 15

Date: 20070202

Docket: CAC 265935

Registry: Halifax

Between:

Percy Garfield Oliver

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: Pursuant to s. 486(3) of the **Criminal Code**

Judge: The Honourable Justice Jamie W. S. Saunders

Appeal Heard: January 23, 2007

Subject: Sexual assault. Conditional sentence. Defence expert evidence. Principles of denunciation and deterrence. Sufficiency of reasons. Fitness of sentence.

Summary: Appellant pleaded guilty to three incidents of sexual intercourse with a 12 year old resulting in her impregnation and delivering a baby. He appealed his sentence of two years in penitentiary followed by one year probation.

Held: Appeal dismissed. The judge's reasons showed a careful consideration of the evidence, the issues, and the law, and provided a window through which his reasoned analysis could be discerned. The judge did not ignore the expert evidence given by a psychologist called by the defence. The weight to be given to such opinion evidence was entirely for the judge to decide.

The judge did not ignore the evidence concerning the appellant's

intellectual deficits or the need for appropriate therapy and counselling in his rehabilitation. However, denunciation and deterrence are to be given the highest ranking among all of the principles of sentencing in cases involving the abuse of children (s. 718.01 **Criminal Code**).

In light of the horrific circumstances of this case, no error in concluding that the need for deterrence and denunciation required a custodial sentence, in other words actual, institutional incarceration.

The judge recognized the mitigating and aggravating features of the case. No merit to the submission that the sentence was demonstrably unfit.

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 11 pages.