

**IN THE SUPREME COURT OF NOVA SCOTIA**

**APPEAL DIVISION**

**Clarke, C.J.N.S.; Hallett and Chipman, JJ.A.**

Cite as: R. v. Bourgeois, 1992 NSCA 28

**BETWEEN:**

GLENN BRIAN BOURGEOIS

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

## The Appellant in Person

Gordon S. Gale, Q.C.  
for the Respondent

Appeal Heard:  
November 24, 1992

Judgment Delivered:  
November 26, 1992

## THE COURT:

Appeal dismissed from sentences to be served consecutively of four years (armed robbery) and one year (weapons) per reasons for judgment of Clarke, C.J.N.S., Hallett and Chipman, J.J.A. concurring.

CLARKE, C.J.N.S.;

The appellant, Mr. Bourgeois, was charged with two offences. The first, generally known as armed robbery, was contrary to s. 343(d) of the **Criminal Code** which reads:

343. Every one commits robbery who

. . .

- (d) steals from any person while armed with an offensive weapon or imitation thereof.

The maximum penalty is imprisonment for life (s. 344).

The second offence, generally called unlawful use and possession of a firearm, was contrary to s. 85(1)(a) of the **Code** which provides:

85. (1) Every one who uses a firearm

- (a) while committing or attempting to commit an indictable offence, . . .

whether or not he causes or means to cause bodily harm to any person as a result thereof, is guilty of an indictable offence and liable to imprisonment . . .

The minimum penalty in the case of a first offence is not less than one year and the maximum is not more than fourteen years (s. 85(1)(c)).

The circumstances arose from an armed robbery at a store at Halifax. Both counsel for the Crown and the defence informed the trial judge that around 4:30 o'clock in the afternoon of the day of the robbery, Mr. Bourgeois was involved in a conversation about the use of a gun in the robbery of a store in concert with another person. Mr. Bourgeois was in the store when the armed robbery occurred about 6:00 o'clock in the same afternoon, by another person, known to Mr. Bourgeois, entering the store masked and carrying a hand gun. Later the hand gun used in the robbery and a kit bag containing the clothes of

the masked robber were found in Mr. Bourgeois' possession.

Mr. Bourgeois pled guilty to each of the two offences with which he was charged. He was represented by a lawyer who spoke on his behalf. He was sentenced to four years imprisonment for the armed robbery and one year for the weapons offence, to be served consecutively. Thus the total period of imprisonment is five years. In addition the trial judge imposed an order prohibiting Mr. Bourgeois from having possession of firearms, ammunition and explosives for ten years from the date of his release, as is provided by s. 100(1) of the **Criminal Code**.

Mr. Bourgeois was 21 years old and the parent of one child when these offences were committed. He had a prior record of several convictions, including dispositions entered by the Youth Court. He was on probation when the present offences occurred.

This is an appeal against the sentences imposed by the trial judge. Although Mr. Bourgeois submits there were extenuating circumstances in his favour that should have detracted from his conviction, there is nothing that this court can do about that. He was represented by counsel. He pled guilty. After hearing the submissions made by Mr. Bourgeois' lawyer, and before he was sentenced, the trial judge gave Mr. Bourgeois an opportunity to make any further representations he wished. The record indicates none were made. That his counsel understood the law that made Mr. Bourgeois a party to the offences is evidenced by his observation to the trial judge when he said:

" . . . Mr. Bourgeois is technically guilty of the two charges even though he was not actually the person who was holding the gun."

(Transcript, p. 9)

The court has carefully reviewed the record in this matter and considered the submissions that have been made by both Mr. Bourgeois and counsel of the Crown. The trial judge considered the serious nature of the offences and the necessity of deterring this kind of criminal conduct. He took into account, as a mitigating factor, that Mr. Bourgeois had pled guilty at "virtually the first opportunity". The lawyers for both Mr. Bourgeois and the Crown jointly

recommended that the court impose sentences of three to four years for the armed robbery and one year for the weapons offence. Section 85(2) of the **Criminal Code** mandates the sentence for the weapons offence "shall be served consecutively". The trial judge, after reviewing the circumstances of the offences and the principles of sentencing applicable to them, accepted the recommendations advanced to the court and imposed the sentences which are now under appeal. In doing so, he committed no error. The sentences are consistent with the range that this court has approved in many of its judgments where armed robbery and weapons violations have occurred. These are crimes of violence where strongly deterrent sentences must be imposed.

While granting leave to appeal, I would dismiss the appeal for the reasons given.

C.J.N.S.

Concurred in:

Hallett, J.A.

Chipman, J.A.