

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Allen, 2012 NSPC 22

Date: January 16th, 2012

Docket: 2176678/2187660/
2225911/2275279/2361399/
2362519

Registry: Amherst

Between: Her Majesty the Queen

v.

Mark Timothy Allen

Judge: The Honourable Judge Paul Scovil

Heard: January 16th, 2012 in Amherst, Nova Scotia

Oral Decision: January 16th, 2012

**Written Release of
Oral Decision:**

March 27th, 2012

Charge: On September 16th, 2011, by Order # 1363103, the offender was sentenced in the Provincial Court at Amherst, to a term of imprisonment to be served in the community subject to condition(s). The Court is satisfied that the offender has been found or arrested or is in custody at Cumberland Correctional Centre and the offender has, at Amherst, NS, breached, without reasonable excuse, the following condition(s):

- Do not possess alcohol, except as is necessary in the course of your employment, nor are you to consume alcohol or any other intoxicating substances outside of your personal residence.

- Not possess or consume a controlled substance as defined in the Controlled Drugs and Substances Act except in accordance with a physician's prescription for you or a legal authorization;

- Prove compliance with the house arrest condition by presenting yourself at the entrance of your residence or answering the telephone should your supervisor, a peace officer, or any other authorized personnel attend your residence or call you on the telephone to check on your compliance;

Counsel:

Mary Ellen Nurse, for the Provincial crown
Catherine Hirbour, for the Federal crown
Robert Rideout, for the defence

By the Court (orally):

[1] In relation to this, these are breach allegations of a conditional sentence order by Mr. Mark Allen. I am going to deal with them first in relation to the breach of the possession of alcohol at the liquor store.

[2] The accused was seen by Constable Jobe entering the liquor store, in the Amherst area, and coming out with an eight pack of cans and a case of 12 bottled beer.

[3] The Constable investigated further, and indicated that in buying liquor for a liquor licence there would be a liquor licence number on the receipt or on the store documentation, which wasn't there, and he clearly saw on the video that he bought the alcohol.

[4] The accused indicates that he was there for work purposes, but that he did pick up and possess beer for another person who was outside and took it out.

[5] To begin with, proof of the allegations are based on a balance of probability. I find with no evidence other than what I have heard, there is nothing to indicate, other than from the accused, that he was purchasing this beer from a liquor commission for his employment. There is no one here from his employment to say they indicated he should do that, and in fact the contrary evidence of that would be from the Nova Scotia Liquor Store in relation to the number.

[6] In addition, even on that, I find it is a balance of probability he made these purchases for his own use. Even if I was wrong on that, he clearly admitted that he breached when he bought the beer for the individual by the name of "Shelly". That is a breach and I find that is a breach.

[7] In relation to the marijuana issue. Had it have been just the marijuana that the officer saw in the ashtray, I think that would have been hard to prove, on the balance of probabilities, that they were his.

[8] However given that, together with the fact that marijuana was found in his bedroom and in a bong with residue in it beside his bed, pushes this over the balance of probabilities and I find that breach as well.

[9] In relation to his being outside his home during periods. It was clear that he was to provide scheduled employment and not outside of that. It is equally clear that even if he was out having coffee with his employer, past the hours of regular scheduled employment, unless the supervisor was to know that in advance, that is clearly, again, a breach on the balance of probabilities and I find that breach as well.

[10] So I find all three breaches, in relation to this, on the balance of probability.

PCJ