

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Allen, 2012 NSPC 23

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] This is a decision after a finding of a breach of a conditional sentence order in relation to Mr. Mark Allen. He was only sentenced to this conditional sentence order in September of this year for a total of, I believe, of 21 months.

[2] Early into it, we have seen what appears to be a complete lack of regard of ensuring that his supervisor knows what's going on, following it in relation to possession of alcohol and as well possession of drugs.

[3] In relation to this, I also note that part of the reason he was on a conditional sentence order to begin with, were a number of breaches of court orders, to begin with.

[4] I have to decide whether I should do nothing under section 742.6, which I don't think would be appropriate in this case, change the conditions or suspend the conditional sentence order. Something has to be done. The public has to have confidence in conditional sentence orders for them to continue to have them in place.

[5] They are, in my opinion, an invaluable sentencing tool for offenders, such as the accused, to have an opportunity to serve a custodial order, while in the community. What breaks down is when people pay no attention to it, find themselves in a situation like this. The public would undoubtedly have difficulty with this situation and eventually ask that the whole conditional sentence order regime be terminated. We are seeing inroads on that with the government as it is, and offenders and the public have to be clear what happens.

[6] In relation to that, given that it was so early into the conditional sentence order, given that there were three separate breaches, given the difficulty that the supervisor indicated that they were having him follow these orders and given what he was on a conditional sentence for in the first place, I am collapsing it and he will have to serve the remainder of his time. I do not think it appropriate to have him serve a portion of the unexpired time.

[7] He will get credit from, I believe he was in custody on Friday, if I am not mistaken.

MR. ALLEN: Your Honour?

THE CLERK: I'm not sure whether we can take that into account, Your Honour.

THE COURT: I believe that I have to. That it would start running, I think from the time that the warrant issues. So it would be the remainder of the sentence from the time that the warrant started, from when he was in custody. And that's based on...

MR. ALLEN: Your Honour?

MR. RIDEOUT: These are the matters that I have, permission to withdraw?

THE COURT: I haven't finished yet.

MR. RIDEOUT: Oh, I am sorry.

THE COURT: What's the crown's position on whether, my understanding is from *R. v. Atkinson* that the conditional sentence of imprisonment stops running between the issuance of the warrant of arrest and the time when the adjudication is complete. It runs again immediately upon the accused, pending a hearing under 515 or after a hearing that the section which the accused was detained, which would have been Friday, I think.

MS. NURSE: I would say it runs from Friday forward...

THE COURT: From Friday.

MS. NURSE: ...is my opinion, because I've looked, I've recently looked...

THE COURT: Any comment on that?

MR. RIDEOUT: No.

THE COURT: So I order that the time commenced on Friday and it will be a further...

THE CLERK: How many days would that be Your Honour?

THE COURT: ...so 522 days.

THE CLERK: Thank you.

MR. ALLEN: Your Honour?

THE COURT: And that's all I have to say, you can go with the sheriff.

PCJ