SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Melvin, 2009 NSSC 152

Date: 20090520
Docket: Hfx. No. 302257
Registry: Halifax

Between:

Corey Patrick Melvin

-and-

Her Majesty the Queen

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Judge: The Honourable Justice Robert W. Wright

Heard: March 11, 2009 in Halifax, Nova Scotia

Last Written Submission: March 24, 2009

Written Decision: May 20, 2009

Subject: Summary conviction sentence appeal - s.145(3) breach of interim release condition - negotiated plea agreement.

Summary: The appellant was charged with six counts of breaching a curfew condition imposed under his interim release order. As part of a plea negotiated agreement, the appellant agreed to plead guilty to two of the counts. The Crown agreed to drop the remaining four counts and to recommend a sentence of 30 to 60 days custody, leaving it open to the appellant to argue for a more lenient sentence.

After hearing submissions during which the appellant urged the court to impose a conditional sentence or, in the alternative, 15 to 20 days of intermittent custody, the judge imposed a sentence of 60 days intermittent custody (30 days on each count to

be served consecutively). The judge then added a two year term of probation, including an initial six month curfew, which neither counsel had contemplated. The appellant appealed on the grounds that (a) The judge erred in refusing to impose a conditional sentence to be served in the community and by instead imposing an excessive period of custody, and (b) The judge erred in "jumping" a joint submission of counsel on the appropriate range of sentence made pursuant to the plea agreement, by adding a further term of probation with a curfew.

Issue: Whether the sentencing judge erred by imposing a sentence that was demonstrably unfit and/or manifestly excessive and in failing to apply the proper principles of sentencing.

Result: There was no error on the part of the sentencing judge in denying the appellant a conditional sentence, which is a discretionary decision. The sentence imposed was well within the range of sentencing options and warranted considerable deference.

As set out by the Nova Scotia Court of Appeal in **R. v. MacIvor** [2003] N.S.J. No. 188 and **R. v. G.P.** [2004] N.S.J. No. 496, a sentencing judge, when dealing with a joint recommendation arising from a genuine plea bargain that falls within an acceptable range, should not depart from it without providing sound reasons for doing so. A sentencing judge must also in that situation advise counsel that consideration was being given to a departure from the joint submission and afford them an opportunity to make submissions justifying their proposal. These obligations arise not only when dealing with a joint recommendation for a specific sentence but also to a joint recommendation that goes only to a range of sentence. These obligations did not arise in the present case, however, because the sentencing judge was never expressly informed that counsel's recommendations on the range of sentence arose from a negotiated plea agreement. The appeal was accordingly dismissed.
