IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Nimchuk, 2002 NSSC 285

Date: 20021231
Docket: C.R. 169495
Registry: Halifax

Between:

Her Majesty the Queen

v.

James C. Nimchuk

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Judge:	The Honourable Justice Walter R. E. Goodfellow
Heard:	December 31st, 2002 in Halifax
Written Decision:	January 2nd, 2002
Subject:	Criminal Law - Sentence for Breach of Conditional Sentence

Summary: James Nimchuk, while on conditional sentence, committed a break and enter for which he was sentenced to incarceration for four months during which his conditional sentence was suspended. On December the 17th, 2002, he was apprehended on a charge of robbery and remanded. Bail was denied December the 20th and on the 30th of December a hearing into his alleged breach of the statutory condition, to keep the peace and be of good behaviour, by committing robbery was heard and the breach was established on a balance of probabilities without reasonable excuse as set by s.742.6(9) of the *Criminal Code*. Offender's request for a sentencing to take place the 31st of December after his arraignment on the robbery charge was granted. On sentencing, followed direction of Lamer, C.J.C. in *R. v. Proulx* that there should be a presumption that an offender who breaches a condition of a conditional sentence without reasonable excuse, should serve the remainder of his or her sentence in jail. No paramountcy to options on breach of condition, as set out in s.742.6(9) of the *Criminal Code*; nevertheless, credibility of conditional sentences rests on the fact that it is always conditional

upon offender abiding by and fulfilling his undertaking not to breach conditions that gives rise to the presumption and here Nimchuk ordered to serve the balance of his conditional sentence in jail.

Issue: Sentence for breach of conditional sentence

Result: Sentenced to balance of term of conditional sentence