

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Fenton, 2005 NSSC 108

Date: 20050506

Docket: CR. S. At 218110

Registry: Antigonish

Between:

Her Majesty the Queen

Appellant

v.

Keith Wayne Fenton

Respondent

LIBRARY HEADING

- Judge:** The Honourable Justice Glen G. McDougall
- Heard:** November 15, 2004, in Antigonish, Nova Scotia
- Subject:** Appeal and cross-appeal of an acquittal on a charge of breach of probation
- Summary:** The accused was acquitted on a charge of breach of probation. The trial judge found that an administrative oversight had invalidated the probation order. If not for this irregularity, the trial Judge would have convicted the accused.
- Issue:**
1. Did the Learned Trial Judge err in acquitting the accused based on the Court's failure to properly issue the probation order?
 2. Did the Learned Trial Judge err in finding that the accused had been in possession of alcohol?
- Result:** The probation order accurately reflected the conditions imposed by the sentencing judge. The evidence at trial established that the accused was aware of and understood the conditions of the probation order and he, furthermore, understood the consequences of a breach. He had signed the probation order acknowledging

this and gave testimony at trial confirming his understanding. The lack of a signature of the court representative who had been delegated the responsibility of reading over and explaining the statutory requirements of the *Criminal Code* to the offender was an administrative error that did not invalidate the order. The important thing is that the offender knew and understood the contents of the probation order and furthermore knew and understood the potential consequences of a breach.

The cross-appeal is dismissed. The trial judge made no error in deciding that the accused had been in actual possession of an alcoholic substance. He did err, however, in stating that he also found him in possession by virtue of being a party to an offence. The acquittal is overturned and the accused is instead found guilty. The matter is referred back to the Learned Trial Judge for sentencing.

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