

**CASE NO.**

**VOLUME**

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Cite as: R. v. Tsyganov, 1998 NSCA 227

SERGEY TSYGANOV

HER MAJESTY THE QUEEN

- and -

(Appellant)

(Respondent)

C.A.C. No. 142953

Halifax, N.S.

HALLETT, J.A.

APPEAL HEARD:

December 4, 1998

JUDGMENT DELIVERED:

December 18, 1998

SUBJECT:

**Criminal Law - Sentencing - Second Degree Murder - Appeal from 19 years parole ineligibility fixed by trial judge**

SUMMARY:

The appellant was convicted of second degree murder. No recommendation from jury re: period of parole ineligibility. The trial judge fixed the period at 19 years.

On appeal the offender submitted the trial judge erred in law in failing to take pre-trial custody of 18 months into account in fixing the period and that 19 years was excessive. it was submitted 14 years would have been appropriate:

Held on Appeal - Section 719(3) of the **Criminal Code** has no application with respect to considering the appropriate period of parole ineligibility. In the absence of any express provision in s. 745(4) that the trial judge consider pre-trial custody in fixing the period of parole ineligibility, and in light of the express provision of s. 746 that gives a person sentenced to life credit for pre-trial custody in calculating the expiration of the parole ineligibility period, the sentencing judge did not err in failing to consider pre-trial custody.

In fixing a period of 19 years the trial judge considered the criteria established by s. 745.(4) of the **Code**. Nineteen years is within an acceptable range. Appeal dismissed.

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