

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** R. v. Rhyno, 2009 NSCA 108

**Date:** 20091023

**Docket:** CAC 297872

**Registry:** Halifax

**Between:**

Her Majesty the Queen

Appellant

v.

Victor William Rhyno

Respondent

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**Judge:** The Honourable Justice Oland

**Appeal Heard:** October 9, 2009

**Subject:** Sentencing - Conditional Sentences

**Summary:** The respondent plead guilty to resisting a police officer by fighting and to assault. The assault was of a Crown prosecutor in open court - the respondent grabbed him from behind by his jacket and pushed him down. For the two offences, he was sentenced to two years less a day, to be served in the community. The Crown seeks leave to appeal the conditional sentence and asks for a sentence of incarceration.

**Issue:** Whether the sentencing judge erred by imposing a sentence which is inadequate or demonstrably unfit.

**Result:** Leave to appeal granted but the appeal is dismissed. Sentencing is an individualized process which deals with a particular offender who committed a particular offence in particular circumstances. It is not an exact science. The judge applied the correct legal principles and considered all relevant facts. He found that the respondent suffered from mental illness and that his mental condition that morning in court,

because of medication not provided him earlier, had a significant impact on his behaviour and his assault of the Crown prosecutor. In imposing a conditional sentence, he did not treat the lack of medication as an overriding factor. The judge was clearly aware of the appellant's background and of his criminal record. He considered specific and general deterrence and relevant aggravating and mitigating circumstances, and was satisfied that serving the sentence in the community would not endanger the safety of the community and that it was consistent with the fundamental purpose and principles of sentencing.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 11 pages.**