

Date: 20001101  
Docket: CAC 163532

**NOVA SCOTIA COURT OF APPEAL**  
**[Cite as: R. v. Bevis, 2000 NSCA 125]**

**Glube, C.J.N.S.; Hallett and Flinn, J.J.A.**

**BETWEEN:**

KERRY C. BEVIS  
Appellant

- and -

HER MAJESTY THE QUEEN  
Respondent

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**REASONS FOR JUDGMENT**

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Counsel: Appellant in person  
William D. Delaney for the respondent

Appeal Heard: October 10, 2000

Judgment Delivered: November 1<sup>st</sup>, 2000

**THE COURT:** Appeal dismissed per reasons for judgment of Hallett, J.A.;  
Glube, C.J.N.S. and Flinn, J.A. concurring.

HALLETT, J.A.:

- [1] On January 25<sup>th</sup>, 2000, the appellant was convicted in summary proceedings of breaching the conditions of a recognizance contrary to s. 811(b) of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46.
- [2] He was sentenced on April 7<sup>th</sup>, 2000. He appeals his sentence directly to this Court purportedly pursuant to s. 830 of the **Criminal Code**. Section 830(1) provides for an appeal by a party to summary conviction proceedings to the superior court of criminal jurisdiction. In Nova Scotia this means “the Supreme Court or the Court of Appeal” (see s. 829 and s. 2 of the **Code**).
- [3] Section 830(1) also sets out what that right of appeal encompasses. Section 830(1) states:

830 (1) A party to proceedings to which this Part applies or the Attorney General may appeal against a conviction, judgment, verdict of acquittal or verdict of not criminally responsible on account of mental disorder or of unfit to stand trial or other final order or determination of a summary conviction court on the ground that

- (a) it is erroneous in point of law;
- (b) it is in excess of jurisdiction; or
- (c) it constitutes a refusal or failure to exercise jurisdiction.

[4] There is no express reference in s. 830(1) of a right to appeal sentence.

[5] In **Kourtessis v. M.N.R.** (1993), 81 C.C.C. (3d) 286 at p. 294, LaForest, J. stated:

Appeals are solely creatures of statute: see *R. v. Meltzer* (1989), 49 C.C.C. (3d) 453 at p. 460, [1989] 1 S.C.R. 1764, 70 C.R. (3d) 383. There is no inherent jurisdiction in any appeal court. Nowadays, however, this basic proposition tends at times to be forgotten. Appeals to appellate courts and to the Supreme Court of Canada have become so established and routine that there is a widespread expectation that there must be some way to appeal the decision of a court of first instance. But it remains true that there is no right of appeal on any matter unless provided for by the relevant legislature.

[6] An appeal against a sentence imposed in a summary conviction proceeding is expressly provided for in s. 813 of the **Code** which states:

813. Except where otherwise provided by law,

(a) the defendant in proceedings under this Part may appeal to the appeal court

(i) from a conviction or order made against him,

(ii) against a sentence passed on him, or

(iii) against a verdict of unfit to stand trial or not criminally responsible on account of mental disorder; and

(b) the informant, the Attorney General or his agent in proceedings under this Part may appeal to the appeal court

(i) from an order that stays proceedings on an information or dismisses an information,

(ii) against a sentence passed upon a defendant, or

(iii) against a verdict of not criminally responsible on account of mental disorder or unfit to stand trial,

and the Attorney General of Canada or his agent has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that Government as the Attorney General of a province or his agent has under this paragraph. (emphasis added)

[7] The appeal court referred to in s. 813 is the Supreme Court of Nova Scotia (s. 812(1)(c)).

[8] The avenue for an appeal from sentence in summary conviction proceedings is to the Supreme Court of Nova Scotia in the first instance. Had Parliament intended that there be an appeal directly to the Nova Scotia Court of Appeal from sentence in a summary conviction proceeding, it would have so provided in s. 830. The absence from s. 830 of an expressed right to appeal sentence

directly to the Nova Scotia Court of Appeal speaks clearly as to Parliament's intention. In my opinion, the words "other final order or determination of a summary conviction court" as they appear in s. 830, read in context, do not include within their meaning a sentence imposed in a summary conviction proceeding.

[9] This being a sentence appeal, the appellant ought to have appealed the sentence to the Supreme Court of Nova Scotia pursuant to the right he had by reason of s. 813(a)(ii). His right to appeal sentence to this Court is derived under s. 839 which provides for an appeal, with leave, on a question of law alone from a decision of the Supreme Court of Nova Scotia rendered on a s. 813 appeal.

[10] Although this Court, on occasion, has assumed jurisdiction in sentence appeals taken directly to this Court from a sentence imposed in summary proceedings, in my opinion, there is no jurisdiction conferred on this Court by s. 830(1) to hear such an appeal. The appeal ought to be dismissed.

Hallett, J.A.

Concurred in:

Glube, C.J.N.S.

Flinn, J.A.