

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Chipman, Hart and Freeman, J.J.A.

BETWEEN:

IAN LAYTON MacDONALD)	The Appellant
)	in person
Appellant)	
)	
- and -)	John D. Embree
)	for the Respondent
)	
HER MAJESTY THE QUEEN)	
)	
Respondent)	
)	Appeal Heard:
)	December 4, 1990
)	
)	Judgment Delivered:
)	December 10, 1990
)	
)	
)	
)	

THE COURT: Application for leave to appeal refused, per reasons for judgment of Hart, J.A.; Chipman and Freeman, J.J.A. concurring.

HART, J.A.:

This is an application for leave to appeal and, if granted, an appeal against a total sentence of two years made up of one year for assault with a weapon and one year to be served consecutively for possession of a knife for a purpose dangerous to the public peace.

The appellant, who was not represented by counsel, stated in his notice of appeal:

"I am not appealing because of the duration of time handed down, but rather the status of the sentence imposed. I was serving 39 months, received a two year concurrent sentence, plus a month consecutively. My understanding is that only a judge's order can move one warrant expiry date of a sentence to a new date in the future with an order of consecutive sentencing. How can a concurrent order move a warrant expiry date, and if a concurrent order can move the warrant expiry date, then technically it is a consecutive order set down by the judge is it not? And if it is not a consecutive order, then the judge's order is not being upheld by the standards of that order, therefore I am serving a consecutive sentence against the judge's order."

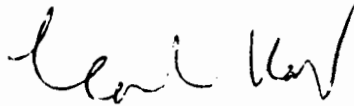
The appellant is obviously under a misunderstanding about how his past and present sentences are to be treated. Since the final two year sentence was not stated to be consecutive to time already being served, it will expire two years after the sentence was imposed, that is, on June 28, 1992. His release date will not arrive until July 28, 1992, because he received a subsequent sentence of 30 days for another offence and it was made consecutive to the time already being served.

Unless a sentence is declared to be consecutive to time being served, it commences on the date on which the sentence is imposed. See ss. 717(4)(a) and 721(1) of the Criminal Code of Canada.

It became apparent during the argument that the appellant has been told that he will not be released on mandatory supervision after serving 21 months of the two year sentence as he expected. Whether he should be released under the provisions of the Parole Act or any other statute is not a matter that can be

considered by this Court. Our jurisdiction in a sentence appeal is merely to determine whether the sentence imposed by the trial judge is a fit and proper one under all of the circumstances.

I would refuse leave to appeal.



J.A.

Concurred in:

Chipman, J.A.



Freeman, J.A.



CANADA
PROVINCE OF NOVA SCOTIA

1990, C.R. 11511

IN THE SUPREME COURT OF NOVA SCOTIA
APPEAL DIVISION
on appeal from the
COUNTY COURT JUDGE'S CRIMINAL COURT
OF DISTRICT NUMBER ONE

BETWEEN:

HER MAJESTY THE QUEEN

-and-

IAN LAYTON MACDONALD

Heard Before: The Honourable Judge N.R. Anderson
Place Heard: Halifax, Nova Scotia
Date Heard: June 29, 1990

Mr. John Scott, for the Prosecution
Ms. Ann Copeland, for the Defence

C A S E O N A P P E A L