

NOVA SCOTIA COURT OF APPEAL
Citation: R. v. MacKenzie, 2013 NSCA 109

Date: 20131002
Docket: CAC 411710
Registry: Halifax

Between:

Daniel John MacKenzie

Appellant

v.

Her Majesty the Queen

Respondent

Judges: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: September 30, 2013, in Halifax, Nova Scotia

Subject: **Unlawful Sentence. Standard of Review. Break and Enter of a Dwelling House – s. 349(1) of the Criminal Code. Mandatory Weapons’ Prohibition Order – s. 109(1)(a) of the Criminal Code. Error of Law.**

Summary: The Crown supported the appellant’s appeal on the single ground that the sentencing judge did not have the authority to impose a weapons’ prohibition order under s. 109 because the statutory requirements for making such an order had not been established.

Result: Appeal allowed. Violence, per se, is not an incidental or presumed element of the offence of unlawfully entering a dwelling house. The facts of the case did not disclose that violence was used, threatened or attempted. The trial judge made no such finding. Accordingly, the factual basis or

foundation for a weapons' prohibition order under s. 109 did not exist. The judge erred. This aspect of the sentence was unlawful and should be quashed. In all other respects and especially considering the appellant's lengthy criminal record for similar crimes, the sentence of two years' imprisonment in a Federal penitentiary remained in full force and effect.

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 3 pages.