

NOVA SCOTIA COURT OF APPEAL

Jones, Hart and Chipman, J.J.A.  
Cite as: R. v. Downey, 1993 NSCA 54

**BETWEEN:**

DANIEL R. DOWNEY	)	)	Greg B. Collins
	)	)	for the Appellant
	Appellant	)	
	)	)	
- and -	)	)	.Gordon S. Gale, Q.C.
	)	)	for the Respondent
HER MAJESTY THE QUEEN	)	)	
	)	)	
	Respondent	)	Appeal Heard:
	)	)	February 2, 1993
	)	)	
	)	)	Judgment Delivered:
	)	)	February 2, 1993
	)	)	

**THE COURT:** Leave to appeal granted, the appeal allowed and the sentence varied to four months imprisonment consecutive to time being served per oral reasons for judgment of Jones, J.A.; Hart and Chipman, J.J.A. concurring.

The reasons for judgment of the Court were delivered orally by:

JONES, J.A.:

The appellant escaped from the Cumberland County Correctional Centre in Amherst, Nova Scotia, with another prisoner on February 11, 1992, after serving approximately eight months of an eighteen month sentence for break, enter and theft.

The appellant was captured by the police on or about May 16, 1992. The Crown elected to proceed by indictment and the appellant plead guilty to a charge under s. 145(1)(a) of the **Criminal Code** for escaping lawful custody. The other escapee had been previously captured and sentenced to two months in prison for the same offence.

On July 21, 1992, the appellant was sentenced to twelve months imprisonment to be served consecutive to any other time he was serving.

This is an application for leave to appeal against sentence. The appellant contends that the sentence is unduly harsh having regard to the offence and the background of the appellant. He also contends that the learned trial judge did not have regard to the principle of uniformity. The appellant was 25 years of age. In addition to the offence for which he was incarcerated he had a previous record for obstructing a police officer and possession of property obtained by crime in 1989. For those offences a sentence of one day was imposed apparently having regard to time spent in prison awaiting trial. He has worked as a labourer. There is no evidence that he has a problem with drugs or alcohol. In sentencing the appellant the trial judge considered representations by the Crown that the appellant had failed to comply with directions regarding court appearances. Having regard to the fact

that the maximum sentence for this offence is two years we agree that the sentence in all the circumstances was clearly excessive. We grant leave to appeal, allow the appeal and vary the sentence to four months imprisonment consecutive to time being served.

J.A.

Concurred in:

Hart, J.A.

Chipman, J.A.

