

Date: 20150729
Docket: 15/49
Citation: *R. v. Clarke*, 2015 NLCA 35

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

BETWEEN:

JODY CLARKE

APPLICANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

Coram: Green C.J.N.L., Barry and Hoegg JJ.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador,
St. John's - Court File No. 0114A01074

Appeal Heard: July 29, 2015

Decision Rendered: July 29, 2015

Memorandum of Disposition Filed: July 29, 2015

Counsel for the Appellant: Paul A. Kennedy

Counsel for the Respondent: Frances Knickle, Q.C.

MEMORANDUM OF DISPOSITION

Hoegg J.A.:

[1] Jody Clarke seeks leave to appeal and appeals his sentence on the basis that the sentencing judge erred in miscalculating his credit for time served on remand.

[2] On May 21, 2015, Mr. Clarke was sentenced to 420 days for various breaches of the *Criminal Code*. He had been in pre-sentence custody for 195 days

for which the sentencing judge gave him credit on a 1.5 basis. The sentencing judge then ordered Mr. Clarke to serve a balance of 157 days in custody.

[3] Pre-sentence credit on a 1.5 basis calculates to 293 days. When 293 days are subtracted from the 420 day sentence, 127 days remain to be served. Mr. Clarke asks the Court to reduce his sentence accordingly.

[4] The Crown consents to Mr. Clarke's application for leave and to his appeal.

[5] The submissions of counsel for Mr. Clarke and the Crown, as well as the record, support Mr. Clarke's position that the sentencing judge made an arithmetic error in calculating his sentence. Accordingly, we are all agreed that leave to appeal be granted and the incarcerating sentence imposed on Mr. Clarke on May 21, 2015 be reduced from 157 days to 127 days.

L.R. Hoegg J.A.