

Date: 20110124
Docket: 09/84
Citation: *R. v. Russell*, 2011 NLCA 11

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

BETWEEN: GEORGE RUSSELL APPELLANT

AND: HER MAJESTY THE QUEEN RESPONDENT

Coram: Wells, Rowe and Hoegg, JJ.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador
Judicial Centre at St. John's

Appeal Heard: January 20, 2011
Judgment Rendered: January 20, 2011
Memorandum of Disposition Filed: January 24, 2011

Counsel for the Appellant: William Collins, Q.C.
Counsel for the Respondent: Elaine Reid

MEMORANDUM OF DISPOSITION

Wells, J.A.:

[1] The appellant (Russell) and one Jamie Glover (Glover) were convicted of assault causing bodily harm (s. 267(b) of the **Criminal Code**). The trial judge decided that:

Their involvement in the incident was somewhat inseparable and as a consequence their responsibility is going to be shared equally and they will be sentenced accordingly.

He sentenced each to nine months imprisonment. He also ordered that “there will be a primary DNA order, there will be a mandatory firearms prohibition under s. 109 and they both will be placed on twelve months [probation]...”. He ordered a victim fine surcharge of one hundred dollars.

[2] On appeal by Glover (2010 NLCA 55) this Court decided the sentence was demonstrably unfit and decided that:

... a fit sentence would be on the lower end of the range but would appropriately include a period of incarceration. The Appellant has served slightly less than one month of incarceration prior to release pending appeal. Taking account of the time served, a fit sentence (including the time already served) is a total of three months incarceration.

[3] Russell now appeals. In his factum Russell submits that “as a panel of this Honourable Court has found this to be an error in Mr. Glover’s appeal, it is likewise and equally an error in relation to [Russell]”. In his factum Russell’s counsel has also written “in the case at issue, there are essentially no differences in the facts or circumstances of [Russell] and ... Glover”.

[4] In its factum, the Crown agrees that the errors made by the trial judge with respect to Glover were also made with respect to Russell. In summary, Crown counsel writes:

After reviewing the decision or[sic] *R. v. Glover*, the Respondent concedes that errors were made by the trial judge in sentencing George Russell, the Appellant, and therefore the appeal should be allowed. The Respondent further submits that the principle of parity should be applied and recommends, based upon the disposition in *Glover*, a sentence of three months incarceration as a fit sentence.

[5] At the hearing counsel for Russell sought to change his position somewhat and argued that Russell had a lesser responsibility for the assault than did Glover and so should be sentenced only to time served, i.e., 30 days. He referred to the evidence and argued that Glover had a more extensive involvement in the assault.

[6] The Court disagrees. There is no significant difference in the responsibility of Russell from that of Glover. The arguments made by defence counsel as to the differences are not persuasive. As well, for

purposes of considering sentence, there is no difference in the antecedents of Russell from that of Glover. As both counsel submitted in their facts, there is no basis for differential in the punishment to be imposed.

[7] Leave to appeal is granted. Having regard to the principle of parity, this Court allows Russell's appeal and, as this Court did in Glover, orders that "taking account of the time served, a fit sentence (including the time already served) is a total of three months incarceration".

C. K. Wells, J.A.