Form 63.05

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Court No. CRT 542693
Charge No.
Person No.

Supreme Court of Nova Scotia

Between:

DARREN MARSHALL JR. — Appellant

and

HIS MAJESTY THE KING — Respondent

SUPREME COURT, N.S.
APR 23 2025
COLCHESTER

Notice of Summary Conviction Appeal

Appellant appeals

The appellant appeals from the decision of Her Honour Justice Van Der Hoek a Judge of the Provincial Court of Nova Scotia. The decisions were made on June 7, 2024 (Trial Decision), June 7, 2024 (Constitutional Application Decision), and March 31, 2025 (Sentencing Decision) at Truro, Nova Scotia. The Appellant also appeals from sentence passed on March 31, 2025 at Truro, Nova Scotia.

Motion for directions and to set date

Take notice that at ~~9:30~~ 9:00 a.m. on May 6, 2025, the Appellant will make a motion to the judge presiding in Crownside chambers in the Truro Courthouse at ~~540 Prince~~ 1 Church Street, Truro, Nova Scotia to set a time, date, and place for the hearing of the appeal, set deadlines for filing the transcript, exhibits, and briefs, and obtain other directions.

Parties may dial in using the following:
1-855-453-6963
Conference ID: 8378847#

Decision appealed from

The appellant was charged as follows: S.10(2) Cannabis Act (June 2, 2021); 2) S.9(1)(a)(iv) Cannabis Act (June 2, 2021); 3) S.158.11(1) of the Excise Act, and therefore s.218.1(1) (June 2, 2021); 4) S.158.11(2) of the Excise Act and therefore s.218.1(1) (June 2, 2021); 5) S.158.1(a)(i) of the Excise Act and therefore s.214 (June 2, 2021); and 6) S.158.1(b) of the Excise Act and therefore s.214 (June 2, 2021).

The decision appealed from was a conviction for the offences, a summary dismissal of the *Charter* application raised in response to the convictions, and the sentence imposed as a result of the convictions. The sentence imposed was a six (6) month Conditional Sentence Order (CSO) for the s.10(2) *Cannabis Act* offence and a concurrent CSO of twelve (12) months for the s.158.1(b) *Excise Act* offence and an imposed fine of $8,762.50.

Grounds of appeal

The grounds of appeal are as follows:

1) The judge misapplied the Kienapple principle resulting, among other issues, in an inability to produce materials required in the proceeding including the *Charter* application and the *Haevischer* response;

2) The judge compelled production of the defence record before providing a ruling with reasons relating to the offences before the court;

3) The judge did not release the ruling on what offences the Accused was convicted of/ and the reasons therefore, prior to compelling production of the defence *Charter* application based on that ruling;

4) The judge failed to apply the correct legal standard to the defence challenge regarding continuity of evidence;

5) The judge delayed over eight (8) months in releasing reasons substantiating the conviction upon which the constitutional challenge was predicated and that delay resulted in the ruling on conviction occurring on the same day as the ruling on summary dismissal which created an incurable appearance of bias as defence counsel repeatedly indicated that the reasons were a pre-requisite to the creation of an adequate application record;

6) The judge misapplied the law on summary dismissal as outlined in *Haevischer* and therefore improperly dismissed the *Charter* application that was before the court;

7) The judge stated on the record that she had no intention of hearing the constitutional challenge being raised by the Applicant creating a clear impression of bias;

8) The judge independently introduced a summary dismissal application pursuant to *Haevischer* despite this application not being requested by the Crown;

9) The judge amplified the penal sanction for the accused as a direct consequence of his indigenous ancestry contrary to *Gladue* and repeatedly confused the accused with his indigenous ancestor, Donald Marshall, resulting in a clear bias in the proceedings;

10) The judge applied a twelve (12) month conditional sentence order on the *Excise Act* matters before the court but failed to address which offences under the *Excise Act* the accused was being sentenced on due to the misapplication of *Kienapple*;

11) The judge erred in finding that the case was not a "test case" given the procedural history of the file, the submissions of Crown and defence counsel, and the Crown position;

12) The judge made a finding in support of Her sentence regarding the offence that was not before the court, namely, that "there has been a proliferation of illegal cannabis trafficking operations across the province on First Nations' lands" that was not substantiated by any evidence before the court;

13) The judge made a finding that indigenous communities "did not want" cannabis dispensaries on their land despite evidence being proffered contrary to that finding, and, the same week as the release of Her decision indigenous communities were announced as allowing cannabis dispensaries directly in line with submissions of counsel; and

14) The judge misapplied the *Van Der Peet* test during the *Haevischer* application denying the Applicant the ability to call oral evidence to support his section 35 application.

Order requested
The appellant says the court should allow the appeal, set aside the conviction, allow a re-trial, and stay the sentence pending re-trial, and order a new trial.

Variation of sentence requested
The appellant says that the court should vary the sentence as follows: the conditional sentence order should be vacated and the Applicant returned to his original conditions to keep the peace and be of good behaviour.

Interim order
The appellant intends to make a motion for a stay of the forfeiture order issued by Justice Van Der Hoek.

Transcript
The appellant acknowledges that subsection 821(3) of the *Criminal Code* requires the appellant to cause a transcript to be furnished to the court and the respondent. The appellant has made arrangements for transcription, has made inquiries about when it will be ready, and is able to deliver it no later than August 1, 2025.

Undertaking for Decision Approved by Trial Judge
The appellant undertakes to obtain, for inclusion in the appeal book, a copy of a written decision issued by the trial judge, a written version of an oral decision signed by the trial judge, or a transcript of the decision certified by the trial judge to be accurate.

Notice to judge
The appellant undertakes to cause a copy of this notice of summary conviction appeal to be delivered immediately to the office of the Justice Van Der Hoek who made the decision under appeal.

Contact information
The appellant designates the following address:

Lloyd Law Profcssional Corporation
750 Scarlett Road
Etobicoke, Ontario, M9P2V1

Documents delivered to this address will be considered received by the appellant on delivery. Further contact information is available to the respondent from the prothonotary.

Signature
Signed April 16, 2025

Signature of the appellant
Print name:

OR

Signature of counsel
Jack Lloyd as counsel
for Darren Marshall

Prothonotary's certificate
I certify that this notice of appeal was filed with the court on April 23, 2025.

Prothonotary
KIM MYATT
PROTHONOTARY