

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. Robb, 1993 NSCA 220
Jones, Hallett and Pugsley, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

JOHN SINCLAIR ROBB

Respondent

David M. Meadows
for the Appellant

Robert McCleave
for the Respondent

Appeal Heard:
November 24, 1993

Judgment Delivered:
November 24, 1993

THE COURT:

The appeal is allowed and the total sentence is increased from six months to 16 months, together with probation for a period of one year on the same terms and conditions as set by the trial judge, as per oral reasons for judgment of Pugsley, J.A.; Jones and Hallett, JJ.A., concurring.

The reasons for judgment were delivered orally by

PUGSLEY, J.A.:

This is an application by the Crown for leave to appeal and, if granted, an appeal from sentences imposed by a judge of the Supreme Court upon the respondent after he pled guilty to one

count of trafficking in cocaine by selling 0.31 grams of cocaine to an undercover police officer for which he received 15 days incarceration, a second count of trafficking in cocaine by selling 0.41 grams of cocaine to an undercover police officer for which he received 30 days incarceration consecutive, a third count of trafficking in cocaine by selling 0.40 grams of cocaine to an undercover police officer for which he received 45 days incarceration consecutive, and a fourth count of trafficking in cocaine by selling 28.8 grams of cocaine to an undercover police officer for which he received 90 days incarceration consecutive, plus two years probation.

The respondent was 53 years of age at the time of the offences. He had a grade 11 education. He was raised in a large family that was financially secure and non-abusive.

He was married for a period of 20 years and has three children. He has a reasonably close contact with one of his daughters.

He was employed with the Department of National Defence for a period of 15 years, but had to give up work in 1986, as a result of back problems.

He has, in the past, suffered from depression, anxiety, arthritis and other ailments, which occasionally required antibiotics.

He was addicted to alcohol for a period of some years but gave up drinking about seven years ago. At the time these offences were committed, he was addicted to cocaine, but had discontinued this habit at the time of trial.

He has no other conviction except one for misleading a police officer contrary to s. 140(2)(a) of the **Criminal Code** for which he was given a one year suspended sentence on the condition that he report to, and be under the supervision, of a probation officer, which he did consistently as directed.

The trial judge, while referring to the evils of drug trafficking and the importance of deterrence, concluded that although the case did not have exceptional circumstances, it "certainly approaches a case where exceptional circumstances exist".

The circumstances that seemed to influence the trial judge were a positive presentence report, feelings of remorse expressed by the respondent, and a conclusion that specific deterrence

was not required.

The trafficking in this case was premeditated. The respondent provided a telephone number at which he could be reached. He was contacted in advance and plans were made and transportation provided in order for the sales to take place. The drug in each case was pre-packaged and weighed. On the occasion of the last sale, the respondent advised the undercover officers of search and "trade secrets" to assist the undercover officer who professed a desire to commence selling drugs. The respondent brought with him a set of scales upon which he weighed the cocaine to verify the quantity he was providing.

There is some evidence to suggest that the respondent engaged in trafficking to obtain funds to satisfy his own drug dependency rather than for gain solus and that since his arrest he has mastered the habit. This is a mitigating factor (**R. v. Lebovitch** (1979), 48 C.C.C. (2d) 539). There would be persuasive arguments for incarceration in a federal penitentiary but for this, and the other considerations which influenced the trial judge.

This Court has, however, consistently taken the position that general deterrence must be prominently addressed to ensure that the justice system plays its part in combatting the evils of the narcotics trade.

Dealing in cocaine corrupts all those engaged in it and its influence spreads to affect all society.

In our opinion, the trial judge has failed to adequately consider, let alone emphasize, the importance of general deterrence.

The sentence is, in our opinion, manifestly inadequate.

We would allow the appeal, and increase the sentence on each of the first three counts to three months each consecutively, and for the fourth count to seven months, to run consecutively.

The total sentence will, therefore, be increased from six months to 16 months, together with probation for a period of one year on the same terms and conditions as set by the trial judge.

J.A.

Concurred in:

Jones, J.A.

Hallett, J.A.