C.A.C. No. 02897

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. Sparks, 1993 NSCA 214

Clarke, C.J.N.S.; Hart and Chipman, JJ.A.

BETWEEN:		
HER MAJESTY THE QUEEN		Paula R. Taylor for the Appellant
	Appellant	
- and -		
CRAIG ANGELO SPARKS		Deloras M. O'Neill for the Respondent
	Respondent	
		Appeal Heard: November 16, 1993
		Judgment Delivered: November 16, 1993

THE COURT: Leave to appeal is granted, the appeal is allowed and the sentences are substituted for those imposed by the trial judge as per oral reasons for judgment of Chipman, J.A.; Clarke, C.J.N.S. and Hart, J.A., concurring.

The reasons for judgment were delivered orally by

CHIPMAN, J.A.:

This is an application for leave, and if granted, an appeal by the Crown from sentences imposed upon the respondent with respect to five convictions under the **Narcotic Control Act**.

On April 30, 1993, the respondent pleaded guilty in Provincial Court to four charges of trafficking in a narcotic contrary to **s. 4(1)** of the **Act** and one charge of possession of a narcotic for the purpose of trafficking contrary to **s. 4(2)** of the **Act**.

The offences took place between March 18 and March 21st, 1992.

On March 18, 1992 at about 11:30 p.m. a female undercover police officer attended at an apartment on Jackson Road, Dartmouth making inquiries about purchasing crack cocaine. A man at the premises accompanied the officer to a phone booth at a nearby gas station where he dialed a number and instead of engaging in conversation entered a phone number in the pay phone. Shortly thereafter the pay phone rang and the man spoke to the caller. He and the undercover officer then returned to the Jackson Road apartment where they were met by the respondent. The respondent then sold the undercover officer two pieces of crack cocaine for $80.00. Each piece weighed .45 grams. The respondent wrote down his pager number and name on a piece of paper and gave it to the undercover officer.

On March 20, 1992, at 1 a.m. the undercover officer called the respondent's pager number from the Concorde Inn in Dartmouth and entered her telephone number. Approximately one-half hour later the respondent returned her call and a meeting was arranged. Shortly after the respondent arrived at the Inn and sold the undercover officer a rock of cocaine for $40.00. This piece weighed .27 grams.

On March 21, 1992, at around 1:00 a.m. the undercover officer again called the respondent on his pager following which he came to her room at the Inn and sold her a single rock of cocaine weighing .19 grams for $40.00. On the same day at about 5:00 p.m. the undercover officer called the respondent requesting that he bring more cocaine to her room at the Inn. He arrived with another man and sold her another rock of cocaine for $40.00. It weighed .19 grams.

As the respondent and his friend left the room they were approached by two police officers;

the respondent put a kleenex in his mouth but this was removed by one of the officer's and a rock of cocaine wrapped in foil fell to the floor. When the respondent was searched the police found another rock of cocaine weighing .20 grams as well as $70.00 in cash, a digital pager and a voice pager.

The respondent was charged with the four counts of trafficking and one count of possession for the purpose of trafficking on March 21st, 1992. At the time of his arrest the respondent was on parole and that parole was suspended. On April 1st, 1992, a trial date was set for September 3rd, 1992. The respondent who had been released on parole in the meantime failed to appear for trial and a warrant was issued. He was arrested on December 21st, 1992, and remained in custody until he was sentenced in Provincial Court on June 2nd, 1993.

At the sentencing the circumstances of the offence and the offender were reviewed.

The respondent was at the time 23 years of age. He had a lengthy record consisting of a total of 34 criminal offences committed between March of 1986 and March of 1991. Seven of these were committed as a young offender. Most of the offences were theft or theft-related. Sentences ranged all the way from probation to federal time. There were no drug-related offences. As noted, the respondent was on parole at the time of the commission of the subject offences having been released on November 6th, 1991.

The Provincial Court Judge reviewed the relevant principles relating to sentencing, particularly with reference to drug offences. He reviewed the circumstances of the respondent including the fact that he had already served five months on remand and had pled guilty thereby saving court time. He characterized the respondent as a petty retailer as had counsel for the Crown in summation. There were, however, aggravating circumstances consisting of the lengthy criminal record and the fact that the offences took place while the respondent was on parole. The judge considered that the emphasis must be on general deterrence. He concluded:

> "I see Mr. Sparks as a petty retailer and one transaction doesn't make him any different than the other and for simplicity, it may be more appropriate to apply that sentence concurrently with respect to all of those transactions given that they fall over such a short period of time and involved one

> purchaser. And I think, therefore, rather than piecemealing it up into little bits of months here and months there, it would be appropriate to impose 20 months for each one of the activities, one sentence of 20 months to be concurrent to each and every one of the other."

Finally, the judge placed the respondent on probation for a period of two years following his release.

In this appeal the Crown takes the position that the trial judge did not give due emphasis to the proper principles of sentencing and that the sentences were excessively lenient. We agree. A clearer message must be sent here.

The evils of the drug trade have been denounced by this court and other courts over and over again. In so doing it has been made abundantly clear that the primary consideration in sentencing for drug trafficking must be deterrence. Trafficking in cocaine is particularly serious, as has been emphasized in such cases as **R. v. Byers**, (1989) 90 N.S.R. (2d) 263 where Hart, J. A. speaking for the court said at p. 264:

> "I would point out that the courts of this country have repeatedly made reference in recent years to the need to suppress a narcotic as dangerous as cocaine. It is a highly addictive substance and unfortunately has lately dropped in price to the point where it is one of the commonest drugs marketed on the North American continent. Its ease in handling and transportation results in greatly increased profits to the traffickers who deal in cocaine and some of its derivatives. One has only to look at the daily reports in the press to observe the extent of its presence and the increase in many types of crime in the places where it is found.
>
> In my opinion the time has come for this court to give warning to all those greedy persons who deal in the supply and distribution of the narcotic cocaine that more severe penalties will be imposed even when relatively small amounts of the drug are involved. Nor should the lack of a criminal record stand in the way of a substantial period of imprisonment. No one today can claim to be so naive as to think that trafficking in cocaine can be conducted without serious damage to our social structure."

As was pointed out in **R. v. Huskins** (1990), 95 N.S.R. (2d) 109 at 113 rare indeed is the case where less than federal time should be imposed for trafficking in cocaine.

While in view of the size of each transaction one might call the respondent a petty retailer there are a number of aggravating factors. These transactions were entered into with a complete

stranger, virtually on demand, with the aid of efficient facilities for communication. The respondent's ready response to the call of the trade suggests that he was seriously in the business of selling drugs. He cannot be considered to be the type of petty retailer referred to in **R. v. Fifield** (1978), 25 N.S.R. (2d) 407 at 409-411. The respondent has a lengthy record and he committed these offences while on parole. He failed to show up at his scheduled trial. All of this reveals a heightened lack of respect for the law and for society. The circumstances of the respondent and his offences call for the imposition of substantial federal time.

In fixing the period of incarceration we have regard, not only to the principle of totality, but to the fact that approximately five months have been served by the respondent while on remand. We impose a sentence of eight months incarceration on each of the four counts of trafficking to be consecutive one to the other, together with a period of four months incarceration for the offence of possession for the purposes of trafficking to be concurrent with the others. This makes a total of 32 months incarceration. Leave to appeal is granted, the appeal is allowed and the sentences are substituted for those imposed by the trial judge. A period of probation is not required.

J.A.

Concurred in:

Clarke, C.J.N.S.

Hart, J.A.