

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Hart, Pace and Chipman, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN	)	Gregory A. Cann
	)	for the Appellant
Appellant	)	
- and -	)	David S. Green
	)	for the Respondent
	)	
BRUCE HAROLD SMITH	)	Appeal Heard:
	)	January 30, 1990
Respondent	)	
	)	Judgment Delivered:
	)	January 30, 1990
	)	
	)	
	)	
	)	
	)	
	)	

THE COURT: Leave to appeal granted, appeal allowed and sentences varied accordingly, per oral reasons for judgment of Hart, J.A.; Pace and Chipman, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

HART, J.A.:

This is an application by the Crown for leave to appeal and, if granted, an appeal from the sentences imposed upon the respondent by Cacchione, J.C.C., after the respondent pled guilty to two counts of trafficking in a narcotic, to wit: cocaine, contrary to s. 4(1) of the Narcotic Control Act.

The first count involved the sale of two ounces of cocaine to an undercover police officer for \$5,000.00. The second offence occurred a month later and involved two ounces of cocaine costing \$4,800.00. On each occasion the respondent took one-half of the price in cash and a short while later delivered one ounce and then took the balance and delivered the second ounce at a second location forty minutes after. He claimed he had to put the money "up front" to obtain the cocaine from his supplier.

The respondent and the undercover agent had only met about ten days before the sales commenced and the respondent advised the police officer about the source, potency and method of cutting the drug, all of which revealed his association with the illegal drug trade.

The trial judge sentenced the respondent to one year on the first count and eight months on the second count, to be followed by probation for two years with conditions to refrain from drug use and to take treatment and counselling.

The Crown claims that the sentence imposed is

excessively lenient in light of the quantity of cocaine involved and the surrounding facts.

The respondent is 35 years old and at the time of the offence was employed, as was his wife. Since his arrest he has lost his job and made efforts to rid himself of his drug dependency problem. The trial judge recognized these efforts and tried to reach a balance between general deterrence and reformation in imposing the sentence that he did.

In our opinion, however, the seriousness of present-day trafficking in cocaine requires more substantial emphasis on deterrence than has been recognized in the past. The ease of dealing with and distributing of this very dangerous drug caters to those who succumb to the temptation to make quick and easy money in the trade.

We would, therefore, conclude that a fit sentence under these circumstances would be two years on the first count and two years consecutive on the second count, for a total sentence of four years.

We, therefore, direct that leave to appeal be granted, the appeal be allowed and the sentences varied accordingly.



J.A.

Concurred in:

Pace, J.A.

Chipman, J.A.

  


CANADA

PROVINCE OF NOVA SCOTIA

1988

C.R. 10818

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

on appeal from the

COUNTY COURT JUDGE'S CRIMINAL COURT  
OF DISTRICT NUMBER ONE

HER MAJESTY THE QUEEN

versus

BRUCE HAROLD SMITH

HEARD BEFORE: The Honourable Judge F. Cacchione, J.C.C.

PLACE HEARD: Halifax, Nova Scotia

DATE HEARD: September 29, 1988

Counsel:

Gregory Cann, Esq., for the Crown

David Green, Esq., for the Defence

A P P E A L O N S E N T E N C E