

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Jones, Macdonald and Matthews, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN)	Briant N. Burgess, Q.C.
)	for the Appellant
Appellant)	
- and -)	Christopher Manning
)	for the Respondent
)	
KIM CONNOR BRADSHAW)	
)	Appeal Heard:
Respondent)	February 14, 1990
)	
)	Judgment Delivered:
)	February 14, 1990
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THE COURT: Application for leave to appeal granted, appeal allowed and sentences varied for a total sentence of 12 months imprisonment to be followed by probation on the terms and conditions as directed by Judge Cacchione, per oral reasons for judgment of Macdonald, J.A.; Jones and Matthews, JJ.A. concurring.

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

MACDONALD, J.A.:

The respondent, Kim Connor Bradshaw, was convicted in the County Court Judges Criminal Court of District Number One on a three-count bill of indictment alleging that he:

1. on July 12, 1988, trafficked in a narcotic, to wit: cannabis resin, contrary to s. 4(1) of the Narcotic Control Act;
2. that on October 29, 1988, he had in his possession cannabis resin for the purpose of trafficking, contrary to s. 4(2) of the Narcotic Control Act;
3. that also on October 29, 1988, he had possession of L.D.S., contrary to s. 42(2) of the Food and Drugs Act.

On the first count the respondent was sentenced to two months imprisonment by the Honourable Judge Felix Cacchione, together with probation for two years with certain specified conditions. On the second count the sentence was a term of imprisonment of two months consecutive to the first sentence. On the third and last count, the respondent was sentenced to a term of imprisonment of four months to be served concurrently with the sentence imposed on the second count. The total sentence therefore was six months imprisonment together with probation for two years.

The Crown now applies for leave to appeal and, if leave is granted, appeals against the sentences contending generally that they are excessively lenient and do not give proper emphasis to the principle of deterrence and to the

protection of the public.

The factual background of these three offences as agreed to by counsel for both the appellant and the respondent is that on July 12, 1988 Mr. Bradshaw sold two grams of cannabis resin to an undercover police officer for \$30.00. On October 29, 1988 the residence of the respondent was searched by the police and the following items were found:

- (1) a piece of cannabis resin from the respondent's bedroom weighing approximately 70 grams valued at \$1000 street value, if sold by the gram;
- (2) a piece of cannabis resin weighing five grams from a rosebowl in the respondent's bedroom;
- (3) a set of scales from the top of a dresser in the respondent's bedroom;
- (4) a knife with the residue of cannabis resin on it from a coffee table;
- (5) \$270 in cash found in the rosebowl in the respondent's bedroom;
- (6) thirty-eight pieces (hits) of Lysergic Acid Diethylamide (L.S.D.) valued at \$190 found on top of a bureau on the respondent's bedroom.

The respondent is 26 years of age, single, has a Grade 12 education and, at the time these offences were committed, was employed by Seawood Property Management.

Mr. Bradshaw does have a prior criminal record dating back to 1981. This record reveals six convictions for property related offences and two for possession of illegal drugs. In addition, he has twice been convicted for violating terms of probation orders.

Mr. Bradshaw received a quite favourable presentence

report from Ms. Janis M. Aitken, a senior probation officer. She concluded her report by stating:

"... As previously stated, this writer's impression of Mr. Bradshaw is that he has certainly matured in his outlook on life and seems to have acquired more pro-social values than were previously evident in contacts with him. He has accepted responsibility for placing himself in the situation in which he finds himself and is prepared to accept the consequences of his behaviour."

In imposing sentence, Judge Cacchione categorized Mr. Bradshaw as a petty drug retailer who had a troubled past, but who still could be reformed or rehabilitated.

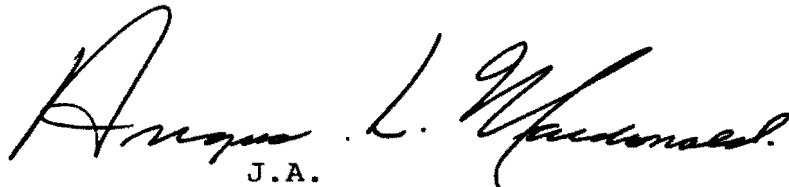
Deterrence must be the dominant consideration in imposing sentences upon those found guilty of drug trafficking or possession of drugs for the purpose of trafficking. As this Court stated in R. v. Ferguson (1988) 84 N.S.R. (2d) 255, the range of sentences, even for minor traffickers, is now in this province between six and twelve months. That is as it should be.

The sentences imposed by Judge Cacchione are therefore, in our opinion, inadequate to properly reflect the element of deterrence. Having said that, however, we would also state that we accept the learned trial judge's opinion to the effect that the reformation and rehabilitation of the respondent are real possibilities and, therefore, are proper factors to be taken into consideration in assessing the proper sanction to be imposed for these offences.


Normally, the total sentence for these offences committed by a person with the prior criminal record of Mr.

Bradshaw would be in the range of two years or more. However, since there appears to be a real possibility that Mr. Bradshaw may be or is now reformed, we have concluded that under all of the circumstances, a fit and proper sentence would be six months imprisonment on the first count, together with probation as directed by Judge Cacchione. On the second count, we would vary the sentence to a consecutive term of imprisonment of six months. On the third count, we would impose a concurrent sentence of six months imprisonment. The total sentence, therefore, as varied, is 12 months imprisonment to be followed by probation on the terms and conditions as directed by Judge Cacchione.

We, therefore, allow the application of the Crown for leave to appeal, allow the appeal and vary the sentences as we have just indicated.


J.A.

Concurred in:

Jones, J.A. 

Matthews, J.A. 

CANADA
PROVINCE OF NOVA SCOTIA
1989

C.R. 10936

IN THE SUPREME COURT OF NOVA SCOTIA
APPEAL DIVISION
on appeal from the
COUNTY COURT OF DISTRICT NUMBER ONE

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

KIM CONNOR BRADSHAW

Respondent

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

HEARD BEFORE: The Honourable Judge Felix Cacchione
PLACE HEARD: Halifax, Nova Scotia
DATES HEARD: August 6, 1989 (Application to Sever)
September 6, 1989 (Trial)
November 6, 1989 (Sentencing)

COUNSEL:

Briant N. BURGESS, Q.C., for the Crown
Stephen E. TURNER, Esq., for the Defense