**NOVA SCOTIA COURT OF APPEAL**
**Citation:** *R. v. Turnbull*, 2020 NSCA 10

**Date:** 20200207
**Docket:** CAC 488012
**Registry:** Halifax

**Between:**

John Turnbull

Appellant

v.

Her Majesty the Queen

Respondent

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| **Judges:** | Beveridge, Hamilton and Bryson, JJ.A. |
| **Appeal Heard:** | January 27, 2020, in Halifax, Nova Scotia |
| **Held:** | Leave to appeal denied, per reasons for judgment of Beveridge, J.A.; Hamilton and Bryson, JJ.A. concurring |
| **Counsel:** | Sarah White and Matt MacLellan (articled clerk), for the appellant<br>Glen Scheuer, for the respondent |

**Reasons for judgment:**

[1] Mr. Turnbull and a co-accused pled guilty to possession of marijuana not in excess of three kilograms for the purpose of trafficking, contrary to s. 5(2) of the *Controlled Drug and Substances Act*, S.C. 1996, c. 19. At the time of the commission of the offence, the maximum sentence was five years less a day.

[2] On April 9, 2019, the Honourable Judge Gregory E. Lenehan imposed conditional sentence orders—four months for the appellant and six months for his co-accused. The appellant did not seek to have the conditional sentence order suspended pending the outcome of the appeal. Hence, he has served his sentence.

[3] The appellant seeks leave to appeal. He argues the sentence is outside the range for the circumstances of the offence and the offender. Further, that the trial judge erred in principle by his failure to take into account the appellant's lesser moral culpability and the principles that govern the option of a conditional discharge and parity.

[4] The respondent says leave should not be granted because the appeal is moot, as the appellant has served his sentence. In many circumstances, a sentence appeal may well be moot if it has been fully served and the appeal could not result in practical consequence. I am not convinced that the issues raised by the appellant equate to a moot appeal. I say this because if a panel were to be convinced that the trial judge committed reversible error in not granting the appellant a conditional discharge, this would result in an immediate and significant outcome for the appellant.

[5] Nevertheless, I am not convinced that leave should be granted. The appellant asks us to establish the appropriate range of sentence for an offender who is a party to the offence of possession of marijuana for the purpose of trafficking in the context of businesses which operate as medical cannabis dispensaries.

[6] The appropriate range of sentence in a particular case is a product of the circumstances of the offence and of the offender. Even if a particular sentence falls outside the appropriate range, it is not necessarily unfit (*R. v. Nasogaluak*, 2010 SCC 6 at para. 44; *R. v. Lacasse*, 2015 SCC 64 at paras. 56-61).

[7] In this case, the information about the circumstances of the offence and of the offender were sparse in the extreme. The only information about the offence

was that the police observed members of the public buying cannabis at a dispensary, Coastal Cannapy. On the day of the offence, the police watched the appellant and his co-accused arrive, unlock the premises, and turn off the alarm system. The record is silent about how the dispensary actually operated. That is, whether it restricted sales to people who had legitimate prescriptions.

[8] The appellant twice failed to show up for appointments to enable preparation of a Pre-sentence Report. The only information provided to the trial judge about the appellant was that he: was 37 years of age; had no prior record at the time of the offence; has a young daughter that he tries to support and sees regularly; was merely an employee in the dispensary; was no longer involved in the dispensary business; and, had set up a recycling and salvage business.

[9] Trial counsel (not Ms. White) simply suggested to the trial judge that it was obvious a criminal record would be a detriment to the appellant in finding employment and in travel, so it would be "a benefit" to him if he was not saddled with a criminal record. Nothing was said about the potential impact on the public interest.

[10] The trial judge said he was not persuaded that he should grant the appellant a conditional discharge. While if I had been the trial judge, I may have been persuaded to do so, I am not satisfied, based on this record, that it is reasonably arguable that the trial judge erred in principle or that the sentence is manifestly excessive.

[11] Despite the valiant efforts of Ms. White, I would deny leave to appeal.

Beveridge, J.A.

Concurred in:

Hamilton, J.A.

Bryson, J.A.