

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Goodwin, 1994 NSCA 250

Matthews, Jones and Pugsley, J.J.A.

BETWEEN:

LUCILLE J. GOODWIN

)
Danny Graham

Appellant

) for the Appellant

- and -

HER MAJESTY THE QUEEN

)
Respondent

) Christopher Bundy
) for the Respondent

) Appeal Heard:
) November 16, 1994

) Judgment Delivered:
) November 23, 1994

THE COURT: Appeal dismissed per reasons for judgment of Matthews, J.A.; Pugsley, J.A. concurring, Jones, J.A. dissenting.

MATTHEWS, J.A.:

The appellant pled guilty to a charge of trafficking in cocaine: s. 4(1) of the **Narcotic Control Act**. On August 10, 1994, Chief Judge Elmer J. MacDonald of the Provincial Court sentenced her to six months incarceration to be followed by a two year period of probation.

She now appeals from that sentence imposed. On August 18, 1994, she was granted bail pending this appeal.

Appellant's counsel argued strenuously before the sentencing judge and before this Court, that due to the extenuating and mitigating circumstances here present, a sentence of 90 days intermittent would be appropriate.

Chief Judge MacDonald has had extensive experience dealing with crimes of this nature. He knows and spoke of the sentencing principles applicable to trafficking offences, particularly in a drug of this nature. As this Court has repeatedly said, we will not interfere with the sentence prescribed simply because we would have imposed a different sentence.

There can be no doubt there are mitigating circumstances here. In addition the pre-sentence report is favourable. If that were not so, undoubtedly Chief Judge MacDonald would have imposed a much more severe sentence, in keeping with remarks from this Court in recent years.

If true rehabilitation has occurred, application may be made by the appellant for early parole.

After reviewing the record, the facts and hearing counsel it is my unanimous opinion that the sentence imposed is not clearly or manifestly excessive. In consequence, I would dismiss the appeal.

J.A.

Concurred in:

Pugsley, J.A.

JONES, J.A.: (Dissenting)

The appellant is 37 years old and has grade 8 education. She was married at 18 to a man who was 33. There are two children of that marriage, a son age 15 and a daughter 13. The husband abandoned the family in 1986. The appellant was living with one Adam Comeau after 1987. She has a 3 year old daughter from that relationship. She and Comeau developed a drug problem including the use of crack. The relationship with Comeau was a difficult one which she has terminated.

On June 15, 1993 the appellant was in the company of a Mr. Byers. They parked on Gottingen Street where they smoked crack. They subsequently attempted to sell crack to

two women police officers on the street who were posing as prostitutes. The drug weighed 0.1 gram with a street value of \$10 to \$16. The appellant denied that she was involved in any type of commercial enterprise.

The appellant ceased using drugs in August, 1993. She is in receipt of social assistance. On July 1, 1994, she moved to Hubbards where she rents a house and resides with the three children. She did this in an effort to change her environment and rehabilitate herself. We were advised that the children are attending school in that area. Her family are supportive of the appellant's efforts at rehabilitation. The probation report stated:

Ms. Goodwin's primary problem of an addiction to crack cocaine, appears to have been the motivating factor in the commission of this offence. Although she has not participated in a drug rehabilitation program and has claimed to have stopped using this substance in August 1993, the offender expressed a willingness to be assessed and receive treatment if necessary, to ensure her recovery continues. Her level of motivation to become a productive citizen and positively change her lifestyle; at this time, seems to be quite high and she has the benefit of the support of her mother.

Chief Judge MacDonald sentenced the appellant to a term of six months imprisonment to be followed by a period of probation for two years. In imposing sentence the learned trial judge referred quite properly to the recent decisions of this Court in **R. v. Huskins** (1990), 9 N.S.R. (2d) 235, **R. v. Byers** (1989), 90 N.S.R. (2d) 263 and **R. v. Robbins** (1993), 121 N.S.R. (2d) 254 where the need for deterrence in the case of drug traffickers was emphasized.

With respect the trial judge did not give sufficient weight to the element of rehabilitation in this case. In my view an extended period of imprisonment would be detrimental to the rehabilitation of the appellant and could adversely affect the family relationship which has gained some stability. I think the protection of the public can best be served by fostering the appellant's rehabilitation. I would allow the appeal and vary the term

to two months imprisonment to be served intermittently from 6 p.m. on Friday to 6 p.m. on Sunday to be followed by the period of probation ordered by the trial judge.

J.A.

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) REASONS

) JUDGMENT

) MATTHEWS,
) J.A.

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