PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v.Wright,* 2015 NSPC 63

Date: 2015-09-21
Docket: 2907798
Registry: Pictou

Between:

Her Majesty the Queen

v.

James David Wright

SENTENCING DECISION

Judge:	The Honourable Judge Del W. Atwood
Heard:	21 September 2015, in Pictou, Nova Scotia
Charge:	Sub-section 5(2) of the Controlled Drugs and Substances Act
Counsel:	Bronwyn Duffy for the Public Prosecution Service of Canada Stephen Robertson for James David Wright

By the Court:

[1] The court has for sentencing James David Wright. Mr. Wright has elected to have his charge dealt with in this court, and has entered a guilty plea at an early opportunity in relation to an indictable count of possession of cocaine for the purposes of trafficking under sub-s. 5(2) and para. 5(3)(a) of the *Controlled Drugs and Substances Act.*

[2] The facts before the court are that, on 11 September 2015, Mr. Wright, then a federal parolee, was passing by a home that was the site of a police search. He was noticed by police going into a neighbouring residence occupied by an offender known by police to be serving a conditional sentence. In entering that home, Mr. Wright broke his parole. Police arrested Mr. Wright for his parole violation; under the authority of ancillary police powers, they conducted an incident-to-arrest search. Additionally, police obtained the informed consent of the owner of the home Mr. Wright had entered in order to carry out a search for contraband. Police found, in a blue bag that Mr. Wright had been carrying, 952 grams of cocaine, a quantity that would allow the court with certainty to draw the inference that Mr. Wright was in possession of that cocaine for the purposes of trafficking.

[3] The positive factors are Mr. Wright's early guilty plea. Mr. Wright was, by and large, co-operative with police. There is no evidence of firearms or weapons being implicated in this crime and no evidence of violence, although I do agree with Ms. Duffy that the presence of cocaine in the community, the presence of any illegal Schedule I substance, inevitably gives rise to the risk of violence. Rip offs and retaliation, turf wars and similar battles are the hallmarks of Schedule I drugs trafficking, and this is part of the reason binding appellate guidance from this province has emphasized consistently the need for denunciation and deterrence in sentencing for this category of offence. Even without accompanying gunplay or violence, the trafficking in cocaine endangers the safety of the community. The federal prosecutor referred the court to an array of sentencing decisions out of this court, but more importantly from our Court of Appeal underscoring this point. In *R. v. Butt*, Bateman J.A for a unanimous three-member panel stated:

> I would agree with the Crown that cocaine has consistently been recognized by this Court as a deadly and devastating drug that ravages lives. Involvement in the cocaine trade, at any level, attracts substantial penalties (see, for example, *R. v. Conway*, 2009 NSCA 95; *R. v. Knickle*, 2009 NSCA 59; *R. v. Steeves*, 2007 NSCA 130; *R. v. Dawe*, 2002 NSCA 147; *R. v. Robins*, [1993] N.S.J. No. 152 (Q.L.) (C.A.); *R. v. Huskins*, [1990] N.S.J. No. 46 (Q.L.) (C.A.); and *R. v. Smith*, [1990] N.S.J. No. 30 (Q.L.) (C.A.)). It is significant that the *CDSA* classifies cocaine as one of the drugs for which trafficking can attract a life sentence.[1]

[1] 2010 NSCA 56 at para. 13.

[4] In *R. v. Dawe*—a case in which the offender had been given by the sentencing court a fifteen-month prison term for trafficking-related possession of merely four grams of cocaine along with marihuana and hashish—Hamilton J.A. observed that:

> The appellant has not satisfied us that the sentence is demonstrably unfit. To the contrary, the sentence is, if anything, unduly lenient. Possession of cocaine for the purposes of trafficking typically results in sentences of two years or more, as the judge pointed out.[2]

[5] There is a joint-submission before the court for a five-year penitentiary term. The Court of Appeal in *R. v. MacIvor*[3] stated clearly that a sentencing court ought to depart from a joint submission only if the court were to be satisfied that the joint submission would bring the administration of justice into disrepute.

[6] In my view, the joint submission in this particular case is a fair one. It reflects Mr. Wright's prior record, including the four-year federal sentence for trafficking-related possession he was serving as a parolee at the time of the commission of this offence. It reflects Mr. Wright's high degree of involvement in the offence and its seriousness, and so it takes into account the principle of proportionality; but it is not so lengthy as to crush entirely the prospects of

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[2] 2002 NSCA 147 at para. 6.
[3] 2003 NSCA 60.

rehabilitation, and in my view, the sentencing recommendation takes into account principles of restraint set out in s. 718.2 of the *Criminal Code*. Finally, it accords with sentence parity, given the 5-year sentence imposed in *Butt*.

[7] Therefore, Mr. Wright, the court will impose a sentence as follows: first of all, there will be the mandatory $200-victim-surcharge amount and you will have six (6) years to pay that amount.

[8] There will be a secondary-designated-offence DNA collection order; we will have the order specify that the charge pertains to cocaine, as there have been instances when the national DNA Data Bank has refused to accept and analyse convicted-offender profiles as the accompanying orders have not specified the controlled substances that were the subject matter of the offences. As I understand it, this has arisen from a concern that not all trafficking-related cases are caught by the *DNA Identification Act*. While it is true that trafficking or PPT in a Schedule VII amount of a Schedule II substance exposes an offender to a maximum penalty of five years less a day only, as set out in para. 5(3)(a.1) of the *Controlled Drugs and Substances Act*, which would not be a DNA-collection designated offence under s. 487.04 of the *Code*, it seems to me that the requirement for a review of a DNA-collection order under s. 5.1 of the *DNA Identification Act* ought to be governed by the presumption of regularity of that order; in any event, Data Bank

anxiety should be resolvable by reference the description of the controlled substance which will inevitably have been set out in the charging document. Nevertheless, the collection order will specify the substance in this case as cocaine.

[9] There will also be a s. 109 weapons-prohibition order to run for life/life, given that this is Mr. Wright's second offence.

[10] The court will order forfeiture of any contraband seized from Mr. Wright.

[11] The court will order and direct, Mr. Wright, that you be sentenced to five-(5) years' imprisonment, to be served in a penitentiary, and to be served consecutively to any sentence currently being served.

[12] Were there any other submissions that counsel wished to make to clarify the sentence?

[13] **Ms. Duffy**: How long to pay that victim surcharge, Your Honour?

[14] **The Court**: Six (6) years. I'm sorry if I forgot to mention that.

[15] **Ms. Duffy:** Six (6) years.

[16] **The Court**: Thank you. So, Mr. Wright, I'll have you go with the sheriffs, please, sir. Thank you very much.

JPC