

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Chevrefils*, 2019 NSPC 16

Date: 20190521
Docket: 8168818
Registry: Halifax

Between:

HER MAJESTY THE QUEEN

v.

LUC CHEVREFILS

SENTENCING DECISION

Judge: The Honourable Judge Elizabeth A. Buckle

Heard: August 13, 14, 15, 16, 17, November 27, December 7, 2018

Decision: May 21, 2019

Charges: Section 5(2) of the *Controlled Drugs and Substances Act*

Counsel: Glen Scheuer, Stephen Lichti for the Crown
Patrick Atherton, for the Defence

Background

[1] I found Mr. Chevrefils guilty of Possession for the Purpose of Trafficking of cocaine, a Schedule I substance, contrary to s. 5(2) of the *Controlled Drugs and Substances Act (CDSA)*.

[2] That conviction resulted from my finding that Mr. Chevrefils had constructive possession of 250 kg. of cocaine with the intent to transport it for eventual sale.

[3] I now have to impose a fit and proper sentence.

Position of the Parties

[4] The Crown seeks a custodial sentence of 13 to 15 years. The Crown emphasises the need for denunciation and general deterrence and relies on the aggravating factors, including the quantity of cocaine and the fact that Mr. Chevrefils was a trusted courier with close connections to the importer.

[5] The defence argues that the appropriate sentence is a custodial sentence of 5 to 7 years. In doing so, he submits that the sentencing range for trusted couriers involved in trafficking cocaine at the multi-kilogram level is 2.5 years to 7 years.

[6] The Crown and defence agree on the imposition of various ancillary orders, including a DNA order, forfeiture of the items seized and a lifetime firearms prohibition.

Circumstances of the Offence

[7] The facts are set out in detail in my trial decision. In summary, on September 3, 2017, Mr. Chevrefils came to Nova Scotia from Montreal. Once here, he acted on texted instructions from an unidentified associate. Based on those instructions, he rented a vehicle, purchased hockey bags and delivered both to Jacques Grenier, the captain of a small sailboat. Captain Grenier had arrived that same day, by sea from St. Maarten, with 250 kg of cocaine. Mr. Chevrefils and

Captain Grenier agreed that Captain Grenier would unload the drugs and transport them to Mr. Chevrefils the next day. Then, Mr. Chevrefils would use a safe house that was to be acquired by his associate and arrangements would be made to transport the drugs, probably to Montreal. It is not clear whether Mr. Chevrefils planned to drive the car with the drugs or if they would be transported using other means.

[8] The total quantity of cocaine was approximately 250 kg and it was of relatively high purity (67% - 84%) with a purchase price of approximately two million dollars and a resale value of between \$11 million, if sold at the kg level, to as much as \$20 million, if sold at the gram level. Given the purity, the cocaine could be cut at least once which would further increase its value.

[9] I have no evidence of any motivation for the offence other than profit. According to the expert who testified at the trial, someone in Mr. Chevrefils' position would have been paid between \$1000 and \$2000 per kg, in cash or product.

[10] I accept that the overall enterprise was a sophisticated commercial one involving a number of people in various positions both in Canada and abroad. The evidence does not persuade me that Mr. Chevrefils owned the cocaine, was a partner in the overall commercial enterprise, was to share in any profits of it, other than his fee, or would be involved in the subsequent distribution once it was turned over to his associate. The evidence also doesn't persuade me that Mr. Chevrefils was involved in the operation for a lengthy time before the date of the offence. He may have been brought in at the last minute. However, I am persuaded that he was highly trusted by his associate: he knew his associate's real name; he was trusted

to transport millions of dollars worth of cocaine alone without any direct supervision; and, was trusted to meet Captain Grenier, who was a valuable asset for the importers.

Mr. Chevrefils' Circumstances

[11] Information about Mr. Chevrefils' background and current circumstances have been provided through a pre-sentence report.

[12] Mr. Chevrefils is 60 years old. He has a criminal record which is, generally, dated. Most relevant is a 2015 conviction for possession of a controlled substance and a 2002 conviction for possession for the purpose of trafficking of a controlled substance for which he received a custodial sentence of 18 months. He has never been sentenced to a penitentiary term of incarceration.

[13] He has suffered from mental health challenges and has been unable to work since 2012. He currently resides with his father and is in receipt of pension income. He is close to his father. He is unmarried but has three children, two of whom are adult and one who is 9 years old. He maintains a good relationship with his children, and they are in regular contact.

[14] The author of the pre-sentence report identifies historical factors that are linked to his previous criminality and notes that many of these factors also contributed to the offence before the court: use of illegal substances leading to financial stress; a lifestyle that brought him into contact with criminal peers; and, criminality to support that lifestyle.

[15] According to the author of the pre-sentence report, Mr. Chevrefils recognizes his share of responsibility for the offence. He says that, at the time, he was isolated and vulnerable and succumbed to re-establishing contacts with a negative peer group. He accepts that his choices were the result of poor judgement and he admits that he voluntarily ignored the criminal nature of the activity.

Sentencing Principles

General

[16] In sentencing Mr. Chevrefils, I have to apply the objectives and principles set out in 718, 718.1 and 718.2 of the *Criminal Code* and s. 10 of the *CDSA*. The best means of addressing these principles and attaining the ultimate objective of sentencing will always depend on the unique circumstances of the case. Because of that, it has been consistently recognized that sentencing is a delicate and inherently individualized process (*R. v. LaCasse*, 2015 SCC 64 at para. 1 and *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at paras. 91-92).

Objectives of Sentencing

[17] The purpose of sentencing is to protect the public and contribute to respect for the law and the maintenance of a safe society. Section 718 instructs that this purpose is to be accomplished by imposing just sanctions that have one or more of the following objectives: denunciation; general and specific deterrence; separation from society where necessary; rehabilitation of the offender; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community.

Denunciation and Deterrence

[18] Denunciation is the means by which a sentence communicates society's condemnation of conduct. As Justice Lamer said in *R. v. C.A.M.* “a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law.” ([1996] 1 S.C.R. 500, at para. 81). The goal of general deterrence is to discourage others from committing similar offences. The goal of specific deterrence is to discourage Mr. Chevrefils from committing further offences.

[19] Our Court of Appeal has repeatedly stated that denunciation and general deterrence must be the primary considerations when sentencing traffickers in Schedule I drugs (for examples, see: *R. v. Steeves*, 2007 NSCA 130; *R. v. Butt*, 2010 NSCA 56; *R. v. Scott*, 2013 NSCA 28; *R. v. Oickle*, 2015 NSCA 87; and *R. v. Chase*, 2019 NSCA 36). Emphasizing these objectives reflects society's condemnation for these offences and acknowledges the tremendous harm they do to communities. General deterrence is most effective in cases such as this one, where offenders tend to make calculated decisions to balance the potential financial reward against the risk and consequences of getting caught.

[20] There are circumstances here that also indicate a need to deter Mr. Chevrefils, specifically. In the opinion of the author of the pre-sentence report, he has turned to crime for financial reasons and because he perceived it as an easy way out. Given that the circumstances in his life have not changed, there is a risk that he would make the same choices again if faced with the same options. This risk is mitigated because he is now 60 years old and it is generally recognized that increasing age reduces risk of recidivism.

Rehabilitation

[21] Rehabilitation continues to be a relevant objective even in cases requiring that denunciation and deterrence be emphasized (*LaCasse*, at para. 4). It appears that Mr. Chevrefils could benefit from counselling to address his use of illegal substances, mental health challenges and financial stress.

Proportionality

[22] Section 718.1 says that the fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. It requires that a sentence not be more severe than what is just and appropriate given the seriousness of the offence and the moral blameworthiness of Mr. Chevrefils. It also requires that the sentence be severe enough to condemn his actions and hold him responsible for what he's done (*Lacasse*, at para. 12; *R. v. Nasogaluak*, 2010 SCC 6, at para. 42).

[23] Assessing the gravity of the offence requires me to consider both the gravity of these offences in general and the gravity of Mr. Chevrefils' specific offending behaviour.

[24] Possession of cocaine, a Schedule I substance, for the purpose of trafficking is a very serious offence. This is reflected in the fact that Parliament has set the maximum sentence at life imprisonment and removed the offence from consideration for a conditional sentence order.

[25] The tremendous harm that comes from trafficking cocaine has been repeatedly commented on by our Court of Appeal and can be seen in this and other courts every day. Going back to the Court of Appeal decision in *R. v. Huskins*, 95

N.S.R. (2d) 109, and perhaps before, the Court of Appeal has recognized the “creeping evil” and danger of cocaine. In *Butt* (at para. 13), the court referred to cocaine as a deadly and devastating drug that ravages lives. People who traffic in cocaine take advantage of the vulnerabilities of others.

[26] My assessment of the gravity of this specific offence and Mr. Chevrefils’ degree of responsibility is impacted by the quantity of drug and Mr. Chevrefils’ level of involvement in the drug business. In *R. v. Fifield*, ([1978] N.S.J. No. 42), the Nova Scotia Court of Appeal described general categories of drug traffickers: the young user sharing drugs with a companion; the petty retailer who is not shown to be involved full-time or in a large-scale commercial distribution; the large-scale retailers and commercial wholesalers. That decision involved marihuana, but these categories are also applicable to other drugs.

[27] Mr. Chevrefils was a courier in an operation that would clearly fall into the top of the *Fifield* categories - a commercial wholesale operation.

[28] The offence of possession for the purpose of trafficking includes a broad range of culpability ranging from the mere courier or “mule” to the “owner-trafficker”. Mr. Chevrefils is in between. He was a trusted courier with connections. He knew the identity of the person who was arranging the final stages of the importation and transport, he was trusted to meet the captain who carried out the physical importation and trusted to have sole responsibility for the multi-million dollar cargo.

[29] Mr. Chevrefils’ moral responsibility is heightened because he chose to ignore the criminality of what he was doing and made a conscious choice to be

involved for financial gain. His responsibility is not lessened by youth or addiction. While he has experienced addiction during his life, there is no indication that it was a significant contributing factor to this offence.

Aggravating and Mitigating Factors

[30] Section 718.2 requires that I consider the aggravating and mitigating factors relating to the offence and the offender.

Aggravating Factors

- Nature of the substance (cocaine, a Schedule I substance);
- The quantity (250 kg) and the fact that it is of relatively high purity which allows it to be cut resulting in it being more valuable and harming the lives of more people; and,
- Mr. Chevrefils' place in the hierarchy as a trusted courier, as indicated by his high-level connections and proximity to the importation.

Mitigating factors:

- Mr. Chevrefils' age as it impacts the need for specific deterrence;
- Mr. Chevrefils has been in the community under conditions since his arrest; and,
- Mr. Chevrefils has accepted responsibility for his part in the offence.

None of the statutory aggravating factors are present and there is an absence of aggravating factors that are sometimes seen such as possession or use of weapons.

Parity / Range of Sentences

[31] Section 718.2 also requires consideration of the principle of parity. Within reason, similar offenders who commit similar offences should receive similar sentences. This requires an examination of the range of sentences imposed for trafficking Schedule I substances. The range for a given offence is not the theoretical minimum to maximum possibilities for the offence but is narrowed by the context of the offence committed and the circumstances of the offender (*R. v. Cromwell*, 2005 NSCA 137). The *Fifield* categories can help identify the actual, as opposed to the theoretical, range for a given offence.

[32] Sentencing ranges are important. They are intended to encourage greater consistency between sentences and respect for the principle of parity. However, ultimately, each sentence has to reflect the unique circumstances of that offence and that offender.

[33] A long line of cases from our Court of Appeal have established that cocaine traffickers, even petty retailers, should generally expect to be sentenced to imprisonment in a federal penitentiary (See: *Steeves*; *R. v. Knickle*, 2009 NSCA 59; *Butt*; *R. v. Jamieson*, 2011 NSCA 122; and *Oickle*).

[34] To assist in identifying the appropriate range, the Crown has provided me with the following cases: *R. v. Oddleifson*, 2010 MBCA 44 (leave to appeal conviction to the Supreme Court of Canada, refused, [2010] S.C.C.A. No. 244); *R. v. D'Onofrio*, 2013 ONCA 145; *R. v. Bacon*, 2013 BCCA 396; *R. v. Nero*, 2008 ONCA 622; *R. v. Bryan*, 2011 ONCA 273; *R. v. Mendoza-Jaramillo and Galindo-Escobar*, NBQB, unreported, 1989; *R. v. Malanca*, 2007 ONCA 859; *R. v. Buttazzoni*, 2016 ONSC 1287; and, *R. v. Couture*, 2009 ONCJ 655.

[35] The defence provided me with: *R. v. Ziaee*, 2016 BCSC 1293; *R. v. Majnoon*, 2009 ONCA 876; and, *R. v. Bajada*, 2003, ONCA.

[36] I have also considered: *R. v. Shane Williams*, 2016 NBQB 231; *R. v. Shawn Decker*, unreported, NSSC, 2015; *R. v. Field*, 2013 NSPC 51; *Butt*; and, *R. v. Mugford*, 2019 NSSC 127.

[37] From these decisions, it appears that sentences in the range of 4 - 8 years are typical in cases involving trafficking or possession of cocaine for the purpose of trafficking at the kilogram or single digit multi-kilogram level (see: *Williams*; *Decker*; *Field*; *Majnoon*; *Bajada*; *Bryan*; *Nero*; *Butt*; and, *Mugford*.) In *Ziaee*, a sentence of 2.5 years was imposed for trafficking cocaine. The accused was a trusted courier, who was found in possession of 2 kg of cocaine and admitted to daily trafficking in a sophisticated operation. The sentence was the result of a joint recommendation for an accused who pleaded guilty and had no criminal record. That sentence would not be typical in Nova Scotia.

[38] Cases where offenders were sentenced for possession for the purpose of trafficking or trafficking cocaine in the tens or hundreds of kilograms are relatively rare and I am not aware of any from Nova Scotia. However, it is evident from those cases I have reviewed from other jurisdictions that, when the quantity of cocaine involved is in the tens or hundreds of kilograms, the sentences are typically in the 8 to 15 year range (see: *Oddleifson*; *D'Onofrio*; and, *Bacon*).

[39] In *Oddleifson*, the Manitoba Court of Appeal upheld a sentence of 10 years imposed on a 49 year old who was convicted of possession for the purpose of trafficking of 46 kg of cocaine found hidden in the van in which he was a

passenger. In doing so, the appeal court said that “when the offence involves the multi-kilogram transport of hard drugs in a sophisticated high-end trafficking scheme, by a person who has a greater degree of involvement in the scheme than a mere courier, the range would be 8 - 12 years”. The sentencing judge had concluded that the accused was an “overseer” (someone who accompanies the courier), so was more trusted than a mere courier and higher up in the hierarchy.

[40] In *D’Onofrio*, the Ontario Court of Appeal upheld a sentence of 15 years imposed on a 46 year old who was convicted of possession for the purpose of trafficking of 111.85 kg of cocaine. He had a prior record and the cocaine was of high purity.

[41] In *Bacon*, the British Columbia Court of Appeal increased a sentence to 14 years for a 29 year old who was convicted of conspiracy to traffic by agreeing to purchase 100 kg of cocaine from a police agent.

[42] *Mendoza-Jaramillo and Galindo-Escobar, Malanca, Buttazzoni, and Couture* are all importing cases. They demonstrate that sentences for importing cocaine in the hundreds of kilograms are in the range of 12 - 22 years, depending on the aggravating and mitigating factors. I am also advised that Captain Grenier, the captain who imported the cocaine that Mr. Chevrefils intended to transport, pleaded guilty to importing and possession of cocaine for the purpose of trafficking. He had no prior record and was 69 years old at the time of sentencing. He was sentenced by another judge of the Nova Scotia Provincial Court to 13 years in custody. The judge acknowledged that the sentence of 15 years recommended by the crown would have been appropriate but for the accused’s age.

[43] I have to be careful about using the *Grenier* decision and the others involving importing in sentencing Mr. Chevrefils because importing is generally considered to be a more severe crime than trafficking or possession for the purpose of trafficking. However, I accept that those sentences, when they involve similar quantities of the same substance, can be a useful reference in locating the proper range for the related crime of possession for the purpose of trafficking.

[44] No two cases will be the same. The quantity in this case is more than twice what was involved in *Bacon* and *D'Onofrio*. However, there were aggravating circumstances in those cases that are not present here. In *Bacon*, the offender was a partner in the wholesale drug operation. He arranged the financing for the purchase, would have been a part owner of the drugs and would have shared in the profits from their sale. In *D'Onofrio*, the offender had a record for possession of 10 kg of cocaine for the purpose of trafficking for which he had received a six-year sentence. In my view the circumstances here are most like the circumstances in *Oddleifson*. I recognize that the quantity in that case, 46 kg., is significantly lower than here. However, information in the sentencing decision discloses many similarities: the accused, at 49, was a mature adult; he had a relatively minor related record; he was working for a sophisticated criminal organization who had imported the drugs; and, held a trusted position similar to that of a trusted courier.

Restraint

[45] Finally, s. 718.2 requires me to consider the principle of restraint; that the punishment should be the least that would be appropriate in the circumstances. This principle applies in all cases.

Conclusion

[46] In this case, proportionality, the objectives of denunciation and general deterrence and parity require a custodial sentence. These principles together with the principle of restraint and the goal of rehabilitation inform how long that sentence should be.

[47] Denunciation and deterrence require that Mr. Chevrefils be sentenced to a significant period of incarceration. Given the quantity of cocaine and Mr. Chevrefils' role in the offence, the sentence suggested by the defence would be below the appropriate range. The sentence recommended by the Crown is supported by the cases I have reviewed, but at the upper end. Given all the circumstances and considering Mr. Chevrefils' age and the principle of restraint, I conclude that a fit and proper sentence for Mr. Chevrefils is 10 years in custody.

[48] I also make the following orders:

- Mr. Chevrefils is prohibited from possessing weapons, firearms, ammunition and explosive materials for life;
- He will provide a sample of his DNA for the DNA databank.
- I will sign a consent Forfeiture Order for various seized items when it is presented to me

Elizabeth Buckle, JPC.