

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R v Scott*, 2019 NSPC 19

Date: 2019-06-19

Docket: 8294527; 8294533

Registry: Pictou

Between:

Her Majesty the Queen

v.

Tyler Alexander Scott

SENTENCING DECISION

Judge:	The Honourable Judge Del W Atwood
Heard:	2019: 19 June in Pictou, Nova Scotia
Charge:	Subsection 5(2) of the <i>Controlled Drugs and Substances Act</i>
Counsel:	Linda Hupman for the Public Prosecution Service of Canada Joel Pink QC for Tyler Alexander Scott

By the Court:

[1] The court has for sentencing this afternoon Tyler Alexander Scott. Mr. Scott elected trial in this court where required and entered guilty pleas at an early opportunity in relation to two charges under section 5(2) of the *Controlled Drugs and Substances Act*, case numbers 8294527 and 8294533

[2] The § 5(2) count pertaining to a Schedule II substance (case 8294527) carries, given the quantity involved, a maximum penalty of 5 years less a day. The § 5(2) count that pertains to cocaine (case 8294533) carries a maximum potential penalty of imprisonment for life. There are no mandatory minimums applicable in this case.

[3] Proportionality is the primary principle of sentencing. A sentence should reflect the seriousness of the offence and the degree of responsibility of the person who committed the offence. In the recent decision in *R v Chase*, 2019 NSCA 36, the Court of Appeal reinforced its binding authority that the benchmark sentence for possessing cocaine for the purpose of trafficking is, typically, a federal period of incarceration.

[4] There have been sentencing decisions that have recognized exceptions to that benchmark, including sentences imposed in this court; however in my view the

level of Mr. Scott's involvement in trafficking exceeds substantially the circumstances that were before the court in cases such as the *R v AJL*, 2018 NSPC 61, *R v Livingstone*, 2018 NSPC 62 and *R v Terris*, 2019 NSPC 11. This is because Mr. Scott was found in possession of a formally admitted amount of proceeds of crime totalling \$111,559.40, along with 480 g of cannabis and 24 g of cocaine. The amount of cash seized by police offers substantial circumstantial evidence of a well developed retail operation in controlled substances.

[5] In my view the joint recommendation in this case for a two-year federal sentence is a reasonable one. It takes into account the seriousness of this higher level of possession which goes beyond mere petty retailing. Furthermore, it takes into account also the fact that Mr. Scott pleaded guilty, has no record, demonstrates reasonably good antecedents in the pre-sentence report, and would appear to be a good candidate for a restrained sentence. Applying the principles of sentencing set out in *R v Anthony-Cook*, 2016 SCC 43, the joint recommendation is reasonable: it would not bring the administration of justice into disrepute and would not be contrary to the public interest.

[6] To begin with, the court will impose corollary orders as follows:

- In relation to DNA collection: secondary-designated-offence DNA collection, ¶ 487.04 “secondary designated offence” (b)(i), is applicable to the possession for the purpose of trafficking in cocaine, case 8294533. I order and direct that the DNA order refer to the specifics of the charge, that it was possession for the purposes of trafficking in cocaine. Reference to the precise substance must be included in the DNA-collection order. Unless the name of the substance is included, the National DNA Data Bank will not, as I understand it, process the collection.

- The court will order and direct that there be a ¶ 109(1)(c) order that will be applicable to both of the § 5(2) counts. It will order and direct that Mr. Scott be prohibited from possessing any firearm, other than a prohibited firearm or restricted firearm and any crossbow, restricted weapon, ammunition and explosive substance for a period beginning today’s date and ending 10 years after Mr. Scott’s term of imprisonment. In addition, the court orders and directs that Mr. Scott be prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

- The court will order and direct that there be a § 462.37 forfeiture of proceeds of crime in the amount of \$111,559.40. This will apply to both counts.
- There will be a § 16 CDSA order for forfeiture of the seized drugs and related paraphernalia. This will apply to both counts.

[7] I believe that would cover off the ancillary orders.

[8] The court will impose in relation to case number 8294533, the count of possession of cocaine for the purposes of trafficking, a sentence of 2 years imprisonment in a federal institution; in relation to the possession of cannabis marijuana not exceeding 3 kilograms for the purpose of trafficking, case, 8294527, a 9-month sentence to be served concurrently, for a total sentence of 2-years' imprisonment.

JPC