

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Lynds*, 2023 NSPC 54

Date: 20231115

Docket: 1974013, 1974014

Registry: Truro

Between:

His Majesty The King

v.

Curtis Blair Lynds

Judge: The Honourable Judge Alain Bégin,
Heard: July 26, 2023, in Truro, Nova Scotia
Decision: November 15, 2023
Section: 462.37 Criminal Code of Canada
734.3 Criminal Code of Canada
Counsel: Jan Murray, Crown Attorney
Robert Jeffcock, for the Defendant

By the Court:

[1] On May 1, 2014, Curtis Lynds was sentenced to two concurrent life sentences with no parole eligibility for 20 years. From his JEIN report it appears as though Mr. Lynds has been in custody since December 11, 2010. Consequently, the 20-year mark for parole eligibility would be sometime between December 11, 2030, and May 1, 2034, depending on his initial date of incarceration.

[2] On August 29, 2013, Mr. Lynds consented to a Fine in Lieu of Forfeiture Order by Judge Frank Hoskins pursuant to s. 462.37(3) of the *Criminal Code* in the amount of \$300,000.00 in an acknowledgement by Mr. Lynds that the 16 listed assets in the Order were “proceeds of crime.” The relevant portion of s. 462.37 is as follows:

Imprisonment in default of payment of fine

(4) Where a court orders an offender to pay a fine pursuant to subsection (3), the court shall

- (a) impose, in default of payment of that fine, a term of imprisonment

.....

- (vi) of not less than three years and not exceeding five years, where the amount of the fine exceeds two hundred and fifty thousand dollars but does not exceed one million dollars,

.....

- (b) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively to any other term of imprisonment imposed on the offender or that the offender is then serving.

[3] The Order required that Mr. Lynds pay the \$300,000.00 by August 29, 2018. The Order further stated that, “In default of payment of the fine imposed above, the Respondent shall serve a period of imprisonment of 3 years” and it further states, “...any term of imprisonment shall be served consecutively.”

[4] It is agreed by all the parties that no payment has been made by Mr. Lynds, and this is confirmed by the Affidavit by Naveed Akram dated January 9, 2023.

[5] The Crown filed a Notice of Application on January 6, 2023, seeking a Warrant of Committal in default of the payment. They are seeking three years custody consecutive to the sentence Mr. Lynds is currently serving. Mr. Lynds is also seeking guidance from the Court so that this matter is cleared up before his parole eligibility arrives.

[6] The intent and purpose of the Fine in Lieu of Forfeiture Order was clear: either Mr. Lynds pays the \$300,000.00 by the stated time, or he serves a further three years in jail. The Order was meant to be (a) restorative in terms of Mr. Lynds repaying his ill-gotten gains through his criminal behaviour back to society, or (b) failure to pay the fine carried the consequence of Mr. Lynds serving an additional three years in jail to the time he has already been sentenced to as pursuant to the Order. Mr. Lynds would be ordered to serve three years consecutive to the sentence that he is currently serving.

[7] This was a Provincial Court order, and the Provincial Court has no authority to amend the period of parole ineligibility from 20 years to 23 years as was ordered by the Supreme Court of Nova Scotia.

[8] Further, Mr. Lynds is serving concurrent life sentences, and the Supreme Court of Canada in *R. v. Bissonnette*, 2022 SCC 23 held that courts cannot order sentences consecutive to a life sentence.

[9] The submission by counsel for Mr. Lynds that the Order be amended to be three years concurrent to the time he is serving would defeat the two purposes of the Fine in Lieu of Forfeiture: restoration to society, or additional jail time as a consequence for failing to pay the fine amount.

[10] Mr. Lynds' period of parole ineligibility is 20 years, so he becomes eligible for parole after 20 years, which will be sometime between December 11, 2030, and May 1, 2034, depending on when his period of custody commenced. It is not unimaginable that a person such as Mr. Lynds who is serving a life sentence will be granted parole.

[11] If granted parole Mr. Lynds will be expected to become a contributing member of society which would likely include obtaining gainful employment and earning an income. This will provide Mr. Lynds with the opportunity to commence repaying the \$300,000.00 he has acknowledged owing.

[12] In the case of *R. v. Abdelrazzaq*, 2023 ONCA 112, the Ontario Court of Appeal reviewed fines in lieu of forfeiture. The Court held that the time to pay begins after the offender has been released from imprisonment for the underlying offense, and that there is no set limit on the amount of time that may be granted. The court also held that the ability to pay the fine is relevant when fixing time to pay and imposing terms of payment.

[13] The Court also held in *Abdelrazzaq* that extensions of time may be granted, and that there is no limit to the number of extensions that may be granted.

[14] Further, in *Abdelrazzaq* the Court held that an offender cannot be imprisoned in default of payment without a finding that the offender has failed to pay without a reasonable excuse.

[15] As well, in *Abdelrazzaq* the Court acknowledged that a Fine in Lieu of Forfeiture will add hardship and uncertainty to an already difficult life, which would be the case for Mr. Lynds to be released on parole and having to pay a \$300,000.00 fine. However, the Court noted that these negative effects did not rise to gross disproportionality that could not be mitigated somewhat by the powers available to a sentencing judge.

[16] In applying *Abdelrazzaq* to Mr. Lynds, it is clear that:

1. Mr. Lynds has had a reasonable excuse for not paying his fine as he has been incarcerated since the date of the Fine in Lieu of Forfeiture so he has had no opportunity to make any payments towards his \$300,000.00 fine, and
2. Mr. Lynds is still serving the sentence for the underlying offences, and he has not yet been released from imprisonment, so the time to pay has not yet commenced.

[17] No extensions have yet been granted for Mr. Lynds to pay his fine, and pursuant to *Abdelrazzaq*, extensions can be granted and there is no limit to the number of extensions that can be granted. A lengthy extension could serve to mitigate the negative effects of a Fine in Lieu of Forfeiture facing someone who is out on parole.

[18] This Court also has the authority under s. 734.3 to amend the terms of an Order to pay a fine. S. 734.3 is as follows:

Change in terms of order

734.3 A court that makes an order under section 734.1, or a person designated either by name or by title of office by that court, may, on application by or on behalf of the offender, subject to any rules made by the court under section 482 or 482.1, change any term of the order except the amount of the fine, and any reference in this section and sections 734, 734.1, 734.2 and 734.6 to an order shall be read as including a reference to the order as changed under this section.

Decision

[19] One cannot assume that Mr. Lynds will not be granted parole once he becomes eligible.

[20] The only appropriate Order to respect the intention and purpose of the initial Fine in Lieu of Forfeiture Order dated August 29, 2013, is to grant an extension for the time for Mr. Lynds to pay the \$300,000.00. The outside date for Mr. Lynds to be eligible for parole is May 1, 2034, so an additional 10 years will be granted from that date for Mr. Lynds to pay his fine. A new Order will be prepared by the Crown granting Mr. Lynds until May 1, 2044, to pay the fine.

[21] This lengthy extension of time will serve to mitigate any possible hardships and negative effects on Mr. Lynds upon his release on parole, and he is not precluded from seeking further extensions should that be necessary.

[22] There will be a provision in the new Order stating that “in default of payment of the fine imposed, Mr. Lynds shall serve a period of imprisonment of 3 years.”

Judge Alain J. Bégin, JPC