PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Cyr*, 2014 NSPC 6

Date: 2014-02-12
Docket: 2612919, 2617176, 2617177, 2617178, 2612917, 2612918, 2612920, 2577398, 2538479
Registry: Pictou

Between:

Her Majesty the Queen

v.

Donald Roy William Cyr

DECISION ON SENTENCE

Judge: The Honourable Judge Del W. Atwood

Heard: 12 February 2014 in Pictou, Nova Scotia

Charges Section 742.6 of the *Criminal Code of Canada*

Counsel: Bronwyn Duffy, for the Public Prosecution Service of Canada
Andrew O'Blenis, for the Nova Scotia Public Prosecution Service
Douglas Lloy, Q.C., Nova Scotia Legal Aid, for Donald Roy William Cyr

By the Court:

[1] Mr. Cyr has admitted to the breach allegation before the Court. The Court has just resumed following a recess to allow the recalculation of the remanet of Mr. Cyr's conditional sentence.

[2] Mr. Cyr was sentenced on 10 July 2013 to a 15-month conditional sentence term for three counts of breach of judicial undertaking, two counts of assaulting a peace officer, one count of unlicensed possession of a prohibited weapon, one count of breach of form 11.1 undertaking, and one count of criminal harassment. He was sentenced on 22 October 2013 to a conditional sentence of six months less a day in relation to a charge of assault causing bodily harm; this was ordered to be served consecutively to the July conditional sentence in accordance with para. 718.3(4)(a) of the *Code*.

[3] I received the report of supervisor a few moments ago, after Mr. Cyr admitted to the breach allegation. The report showed the number of days of conditional sentence remaining to be served as 241, which did not appear to be correct, given Mr. Cyr's sentencing history as outlined in the JEIN report. I was

advised by counsel that the remanet calculation did not include the sentence imposed on 22 October, as it was believed that that particular sentence had not come into effect as it was to run consecutively to the 10 July conditional-sentence term. There is nothing at all that is unreasonable about such an analysis. However, as I noted prior to the recess, this is a sentence-calculation issue that is covered off in s. 139 of the *Corrections and Conditional Release Act*, which provides as follows:

> Multiple sentences
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> 139. (1) For the purposes of the Criminal Code, the Prisons and Reformatories Act, the International Transfer of Offenders Act and this Act, a person who is subject to two or more sentences is deemed to have been sentenced to one sentence beginning on the first day of the first of those sentences to be served and ending on the last day of the last of them to be served.
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> (2) This section does not affect the time of commencement, pursuant to subsection 719(1) of the Criminal Code, of any sentences that are deemed under this section to constitute one sentence.
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> 1992, c. 20, s. 139; 1995, c. 22, s. 18, c. 42, s. 54; 2012, c. 1, s. 95.

[4] The effect of the statute in this case was creation of one merged conditional sentence for Mr. Cyr; there is a remanet of 423 days which has been agreed upon by counsel in consultation with Mr. Cyr's supervisor.

[5] This breach hearing is conducted under section 742.6 of the *Code*, and operates as a review of the conditional sentences imposed by the Court last July

and October. I say this as there is no offence under the Code of breaching a CSO. A breach hearing is similar in some respects to a re-opening of a conditional discharge under sub-s. 730(4) or of a probation order under sub-s. 732.2(5) of the *Code*, with the obvious exception that, under s. 742.6 of the Code the court need be satisfied only that an offender breached a provision of the CSO, and the standard of proof is on a balance of probabilities; the prosecution need not prove necessarily that the breach involved the commission of a criminal offence.

[6] Although this hearing is a form of review, I find that it is appropriate that the Court consider the principles of sentencing outlined in s. 718-718.2 of the *Code*, particularly the principle of proportionality. The disposition should reflect the seriousness of Mr. Cyr's breach and his degree of responsibility.

[7] I have reviewed in detail the report of supervisor, as well as the signed statement of Cst. Dawson before the Court in accordance with the provisions of sub-s. 742.6(4) of the *Code*. Police searched Mr. Cyr's residence in Pictou on 11 February 2014. They found six cannabis marijuana plants, two tenths of a gram of cocaine, approximately 14 grams of loose cannabis marihuana, an unsecured, single-shot .30-30 rifle, as well as growing equipment and various drug paraphernalia, including a scale and a bong.

[8] Mr. Cyr cooperated with police. Mr. Cyr told police that the cannabis was for personal use. There was one plant in one location and three in another. Mr. Cyr told police that the cocaine was for personal use; he said that the gun had belonged to his grandfather.

[9] In my view, the seriousness of Mr. Cyr's conduct is significant, as the Court is dealing with violations of fundamental provisions of the CSOs. Mr. Cyr was found in possession of a substantial quantity of cannabis marihuana, and a measurable quantity of cocaine. Mr. Cyr had been ordered not to possess any controlled substances. As well, a scale was found among Mr. Cyr's effects, along with marihuana-growing equipment. Mr. Cyr professes that the .30-30 rifle was a family heirloom; I have some difficulty accepting Mr. Cyr's innocent explanation. Mr. Cyr had been prohibited from possessing firearms by the Court last summer. Indeed, one of the offences before the Court in July was a count under sub-s. 91(2) of the Code, which covers unauthorized possession of a restricted or prohibited weapon or firearm. I find it unbelievable and incredible that Mr. Cyr's possession of the .30-30 was accidental or inadvertent.

[10] The Court commented recently in *R. v. Greencorn*, 2014 NSPC 2 of the troubling coupling of drugs and illegal firearms, and this sort of conduct must be deterred very strongly.

[11] Mr. Cyr's breaches were significant and went to the fundamental aspects of the CSOs. The Court has little confidence that Mr. Cyr will be able to remain out of conflict with the law, were the Court to allow Mr. Cyr to resume his community-based sentence. The Supreme Court of Canada stated in *R. v. Proulx*, 2000 SCC 5 at para. 39, that the presumption on a breach hearing should be that the unexpired portion of a conditional sentence be served in custody. The very important purpose behind that principle is to ensure that offenders embarking on conditional sentences be confronted with the strongly deterrent knowledge that, if they breach their sentences, the likelihood of their spending the remaining time in jail is real and substantial. In this case, I believe that a full collapse is the appropriate outcome.

[12] Therefore, Mr. Cyr, the Court orders, pursuant to para. 742.6(9)(d) of the *Code*, that the conditional-sentence order be terminated and that you be committed to custody for the remaining 423 days. I'll have you accompany the sheriffs, please, sir.

JPC