IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. D.R.L., 2005 NSSC 333

Date: 20051220
Docket: CR. AM. No. 244914
Registry: Amherst, NS

Between:

Her Majesty the Queen
by the Attorney General of Nova Scotia

Appellant

v.

D. R. L.

Respondent

LIBRARY HEADING

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Judge: The Honourable Associate Chief Justice Deborah K. Smith

Heard: September 16th , 2005 in Amherst, Nova Scotia

Written Decision: December 20th, 2005

Subject: Criminal Law

Summary: Sentence Appeal. Rejection of a joint submission on sentence.

A sixteen year old youth pleaded guilty to four counts of theft under $5,000.00 contrary to s. 334(b) of the *Criminal Code* and one count of possession of property obtained by crime valued under $5,000.00 pursuant to s. 355(b) of the *Criminal Code*. All of the charges were proceeded with on

a summary conviction basis. The offences involved minor thefts from vehicles on two different occasions. The evidence indicated that the value of the property stolen was not significant. The young person had a number of previous convictions for a variety of offences and had, in the past, received a variety of sentences including probation, custody and a reprimand. Crown and defence counsel jointly recommended a sentence of six months custody and supervision. The trial judge was of the view that this sentence was disproportionate to the seriousness of the offences, rejected the joint submission and sentenced the young person to a total of 30 days (20 days in custody followed by 10 days under supervision with conditions). The Crown appealed arguing that the sentencing judge had erred in rejecting the joint submission of counsel and on the ground that the sentence imposed was demonstrably unfit.

The Respondent's solicitor had filed a factum supporting the trial judge's decision. However, on the day of the appeal, counsel for both the Appellant and the Respondent advised the Court that they had agreed that the appeal should be allowed. As part of this arrangement counsel had also agreed that the young person (who was then in custody in relation to other charges) would not be required to spend any additional time in custody even though the original joint recommendation would have resulted in such.

Issues: Is the Court obliged to issue a Consent Order allowing an appeal when no judicial finding has been made that the trial judge erred? Did the trial judge err in rejecting the joint submissions of counsel in relation to sentencing? Alternatively, was the sentence imposed demonstrably unfit?

Result: While the Court may elect to issue a Consent Order without hearing an appeal, it is not obliged to do so. In the circumstances of this case the Court concluded that it was appropriate to determine the appeal on its merits despite the fact that both counsel were prepared to agree to the appeal by consent.

The Court held that the leading authorities dealing with the Court's obligation to follow a joint recommendation on sentence establish the following:

> (1) A joint submission resulting from a plea bargain is not binding on the Court (**R. v. MacIvor** (2003), 215 N.S.R. (2d) 344 (C.A.) at ¶ 31.)
>
> (2) Nevertheless, such a submission should be given very serious consideration by the Court. This requires the sentencing judge to do more than assess whether it is a sentence that he or she would have imposed absent the joint submission. It requires the sentencing judge to assess whether the jointly submitted sentence is within an acceptable range - in other words, whether it is a fit sentence. If it is, there must be sound reasons for departing

from it (**R. v. MacIvor**, *supra*, at ¶ 31.)

(3) Even where the proposed sentence may appear to the judge to be outside an acceptable range, the judge ought to give it serious consideration, bearing in mind that even with all appropriate disclosure to the Court, there are practical constraints on disclosure of important and legitimate factors which may have influenced the joint recommendation (**R. v. MacIvor,** *supra*, at ¶ 32.)

(4) The interests of justice are well served by the acceptance of a joint submission on sentence accompanied by a negotiated plea of guilty - - provided that the sentence jointly proposed falls within the acceptable range and the plea is warranted by the facts admitted (**R. c. Verdi-Douglas** (2002), 162 C.C.C. (3d) 37 (Que. C.A.) as approved and adopted in **R. v. MacIvor,** *supra*, at ¶ 34.)

(5) If the sentencing judge is considering departing from a jointly recommended sentence she should advise counsel of this fact in order to provide them with an opportunity to make further submissions justifying their proposal (**R. v. G.P.** (2004), 229 N.S.R. (2d) 61(C.A.) at ¶ 19.)

(6) While joint sentence submissions arriving from a negotiated guilty plea are generally respected by the sentencing judge, ultimately, the judge is a guardian of the public interest and must preserve the reputation of the administration of justice. Where the joint recommendation is contrary to the public interest, would bring the administration of justice into disrepute or is otherwise unreasonable the judge retains the discretion to reject the joint submission (**R. v. Cromwell**, 2005 NSCA 137, at ¶ 20.)

Taking into account the sentencing principles set out in the *Youth Criminal Justice Act* and the relevant case authorities, the Court was not persuaded that the sentencing judge had erred in rejecting the joint recommendation of counsel. Nor was the sentence imposed by the trial judge demonstrably unfit. Accordingly, the appeal was dismissed.