SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Reid, 2015 NSSC 276

Date: 20150826
Docket: CR. Am. 434815
CR. Am. 434816
Registry: Amherst

Between:

Her Majesty the Queen

v.

Amanda Lynn Reid

Judge:	The Honourable Justice Jeffrey R. Hunt
Oral Decision:	August 26, 2015, in Amherst, Nova Scotia
Written Decision:	September 29, 2015
Counsel:	Mr. Bruce Baxter, for the Provincial Crown Ms. Catherine Hirbour, for the Federal Crown Mr. Douglas Shatford, Q.C., for the Federal Crown Mr. Robert Rideout, for the Defendant

By the Court:

[1] For sentencing is Amanda Lynn Reid. She has pled guilty to six counts contrary to the *Controlled Drugs and Substances Act* and the *Criminal Code*. The matters to which she has entered pleas of guilty are as follows:

> That between the 1st day of June 2010 and the 30th day of July 2014, at or near Amherst, Nova Scotia, did traffic in a substance included in Schedule I to wit: fentanyl contrary to section 5(1) of the *Controlled Drugs and Substances Act*;
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> AND FURTHERMORE between the 1st day of June 2010 and the 30th day of July 2014, at or near Amherst, Nova Scotia, did traffic in a substance included in Schedule I to wit: hydromorphone, contrary to section 5(1) of the *Controlled Drugs and Substances Act*;
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> AND FURTHERMORE between the 1st day of June 2010 and the 30th day of July 2014, at or near Amherst, Nova Scotia, did unlawfully possess a substance included in Schedule I to wit: hydromorphone, contrary to section 4(1) of the *Controlled Drugs and Substances Act*;
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> AND FURTHERMORE that she between the 1st day of June 2010, and the 30th day of July 2014, at or near Amherst, in the County of Cumberland, Province of Nova Scotia, did steal narcotics the property of the Cumberland Regional Health Care Centre of a value not exceeding five thousand dollars, contrary to section 334(b)(I) of the *Criminal Code*;
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> AND FURTHERMORE between the 1st day of January 2014, and the 8th day of October 2014, at or near Amherst, Nova Scotia, in the County of Cumberland, Province of Nova Scotia, did have in her possession property, to wit: prescription medication belonging to the Cumberland Regional Health Care Centre, of a value not exceeding five thousand dollars, knowing that all of the property was obtained by the commission in Canada of an offence punishable by indictment contrary to section 354(1)(a) of the *Criminal Code*;

> AND FURTHERMORE at the same time and place aforesaid, did knowingly create and use forged documents to wit: reserve stock narcotic control sheets as if they were genuine, contrary to section 368(1) of the *Criminal Code*.

[2] It goes without saying that these are serious offences. Two of the *CDSA* counts carry potential maximum penalties of life in prison. The section 368 *Criminal Code* offence carries a maximum of 14 years incarceration as a potential penalty. Clearly, these offences are among the most serious in our criminal justice system.

[3] During submissions, a side issue arose as to whether a conditional sentence would technically be available, should the sentence of the court fall within that range. I had indicated to the Crown, just to give them an opportunity to reply, that I am going to proceed on the basis that a conditional sentence would be available , should the sentence be in that range. I believe this is the correct approach to take given the span of years over which the counts range.

[4] The facts have been explored at some length today, and indeed on the previous day when we commenced submissions. The facts are extremely troubling. An individual trusted with the care and safeguarding of the most serious and dangerous drugs in the public health care system became a critical part, or maybe the critical

part, by which those drugs were diverted, over a period of years, out of their proper, safe and legal use and instead were trafficked into the illegal drugs market. These drugs include the most potent and dangerous drugs in our system. In the case of fentanyl, this is a drug so powerful that it is considered many times more potent and more powerful, and accordingly more dangerous, than drugs such as hydromorphone, oxycodone and morphine.

[5] A narcotics control audit conducted by the health authority revealed 1731 hydromorphone tablets and 179 fentanyl patches missing between January 2012 and June 2014. This is only a portion of the time to which the charges relate. These missing drugs can be traced to having been handled by Amanda Reid. By her own admission, Ms. Reid acknowledges, in police statements, having misappropriated hundreds of narcotic drugs.

[6] Ms. Reid was an experienced and trusted pharmacy technician with the Cumberland Health Authority. She had a position of substantial responsibility. She was in a position to safeguard, record, ship and even transport the most critical and potent drugs in the system. She had a critical role in pharmaceutical record keeping as well. This allowed her to manipulate and falsify the records in such a way as to

conceal her actions. She created false orders from other hospitals, to which she faked deliveries. She faked the required oversight approvals of co-workers. She faked records of drug destruction. This was not a case of an impulsive or ill thought out act or short term lapse of judgment. Her actions were sophisticated, well thought out, and of long standing.

[7] The facts reveal that her efforts were so well conceived and executed that the health authority itself did not discover them. She knew the system well enough to be able to protect herself from discovery from that source. Instead, there had been a number of tips from confidential informants to the police, such a number over a number of years, that this investigation eventually revealed the truth. Ms. Reid did not voluntarily stop or turn herself in. She had to be stopped.

[8] When the police raided her home, some of what was found included the following: 13 codeine pills, 0.2 millilitres of hydromorphone, 14 containers with traces of hydromorphone, one millilitre hydromorphone (x 2). Twenty-one (21) tablets of amiodarone, 22 tablets haloperidol, 24 tablets phenytoin, 24 tablets digoxin, 36 tablets domperidone, 37 tablets trazodone, six tablets prednisone, eight tablets doxycycline, eight tablets lorazepam, nine tablets ramipril, fentanyl patches, ten

milligrams liquid hydromorphone, three bottles of high potency hydromorphone, 50 milligram and a Narcotic Control Reserve sheet. This was just a portion of what was found. None of these drugs were prescribed for her.

[9] Also found were dozens of empty boxes and cases of hydromorphone, liquid hydromorphone, fentanyl and oxycodone packages. Many packages were marked for delivery to other hospitals.

[10] In her statement to police, Ms. Reid admitted to having stolen narcotics, at first for her own purposes, and eventually for delivery to others. She indicates that she was pressured to spread her distribution wider, to avoid the disclosure of her own initial thefts. By her own admission, she obtained hundreds of narcotics for distribution. This is troubling given that with her training she was aware of the danger and potency of the materials in which she was trafficking.

[11] The Crown seeks a very substantial period of incarceration, nearly four years in total (44 months). The Defence submits that a conditional sentence served in the community on "house arrest terms" would be appropriate. Defence submits there are

extraordinary circumstances present here which would allow the court to deviate from a sentence of over two years.

[12] The purposes and principles of sentencing are canvassed extensively in the *Criminal Code*, and we would look to section 718 of the *Code* in this regard:

> The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
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> (a) to denounce unlawful conduct;
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> (b) to deter the offender and other persons from committing offences;
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> (c) to separate offenders from society, where necessary;
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> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[13] Section 718.1 goes on to direct that:

> A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

This principle of proportionality is central to the sentencing process. Under section 718.2 of the *Code*, a sentencing court is also required to take into consideration other principles, notably any aggravating or mitigating circumstances relating to the offence or offender, as well as the principle of parity, having regard to sentences imposed on similar offenders for similar offences in similar circumstances. The individualized nature of offenders and their offences can render this factor a complicated one to apply. No two circumstances and no two offenders are ever exactly alike. Perhaps a better way to express this is that there are almost always some differences of circumstances or degree between any two offenders or offences.

[14] I also want to note how the *Criminal Code* views imprisonment as a sentencing option, and that is as a last resort. All other options which are available or reasonable in the circumstances, as directed by case law, must be considered. That direction is found in section 718.2(d) and (e) of the *Code*.

[15] A breach of trust by a person in a position of trust or authority is mandated as an aggravating factor in sentencing under the terms of the *Code*, in section 718.2(a)(iii).

[16] To determine the appropriate sentence, the court must weigh the relevant mitigating and aggravating factors which are present. Mr. Rideout has ably, and I think comprehensibly, canvassed the mitigating factors which exist. Ms. Reid has no record of prior convictions, although I note in passing that this factor has been referred to by our Court of Appeal as really the lack of an aggravating factor, as opposed to a true mitigating factor. But I think in this case it has the same weight. She has no prior record. It is truly mitigating that she changed her plea prior to trial, and she has made an expression of responsibility. She will receive the benefit of this mitigating factor. She has expressed remorse, which is reflected in the pre-sentence report. There is some evidence of Ms. Reid attempting to rehabilitate herself by taking some counselling which was directed at addressing her core issues. I will refer in a few moments to the evidence of her family physician, who talked about issues of depression. As well, I have reviewed certain letters submitted by Defence which are what might be referred to as character reference letters.

[17] It is accepted by the Crown that profit motive was not a core motivating factor here. It's a small factor. There was some financial benefit to her, but that is not being relied on by Crown as a core motivating factor.

[18] With respect to aggravating factors in this case, the nature of the drugs, and the fact that as a trained person she knew they were among the most potent and dangerous drugs in our system, must be an aggravating factor. In submissions the Court and counsel reviewed the numerous cases from all over Canada where Judges have in the most strident, strong language talked about these drugs, the ones we're dealing with here. Judges have commented on how much more potent and more dangerous fentonyl is versus other drugs which are still considered very potent and dangerous.

[19] Ms. Reid committed an extreme violation in breach of a position of trust given to her. That's an aggravating factor. She stole from her employer. This alone, as was noted in submissions, is a factor that, even leaving aside the drug element, even the theft from an employer will often result in Crown making representations that a period of custody is required. It's an aggravating factor. Ms. Reid engaged in a sophisticated plan of concealment using forged documents. This was not a spur of the moment lapse of judgment. I believe that's an aggravating factor. The amount and circumstances of the stolen material, and the empty boxes at her home, do not seem consistent with anything but a sustained effort to steal and traffic in the materials.

[20] With respect to her personal circumstances, the accused is currently 35 years old. She lives alone. She has no children. Her father was a police officer in the town of Amherst. After losing her job in pharmacy, she has re-employed as an employee in the retail sector, and by all accounts appears to be successfully holding that position. Other elements of personal circumstance are reflected in the pre-sentence report and have been referred to in submissions.

[21] I want to refer to the principle of totality. Section 718.2(c) of the *Criminal Code* directs that a court must consider the principle of totality. This principle, in summary, requires the court to ensure that a sentence taken as a whole is just and appropriate. A cumulative sentence may offend the totality principle if the effect is to impose on the offender a crushing sentence, not in keeping with his or her record or prospects. Many cases stand for this proposition, and I don't need to cite them all. Two leading authorities would be *R. v. Jones*, 2008 NSCA 99, and *R. v. Adams*, 2010 NSCA 42.

[22] The principles of totality and restraint will also be weighed together with the fact that this is Ms. Reid's first sentencing as a first time offender. I don't think it's

necessary for me to conclude that she is a youthful offender, as was urged by the defence. I think the proper principle to take into account, and to give weight to, is the fact that she is a first time offender going through her first sentencing.

[23] The court has weighed the fact that this will be a first sentence for Ms. Reid. This allows the court to temper the need for denunciation and deterrence, with an application of the prospect for rehabilitation, and the consideration of appellate direction that in circumstances such as this, the overall sentence ought not be so crushing in nature that the prospects for rehabilitation and reintegration are lost.

[24] This is a case of multiple, and to some extent, overlapping counts. Not perhaps truly overlapping in the *Kienapple* sense, but charges that are inter-related. The Nova Scotia Court of Appeal has provided guidance for sentencing in matters such as this involving multiple counts and offences. In *R. v. Adams*, (supra), the Nova Scotia Court of Appeal stated as follows:

> In sentencing multiple offences, this court has, almost without exception, endorsed an approach to the totality principle consistent with the methodology set out in **C.A.M., supra.** (see for example **R. v. G.O.H.** (1996), 148 N.S.R. (2d) 341 (C.A.); **R. v. Dujmovic**, [1990] N.S.J. No. 144 (Q.L.)(C.A.); **R. v. Arc Amusements Ltd.** (1989), 93 N.S.R. (2d) 86 (S.C.A.D.) and **R. v. Best**, 2006 NSCA 116 (CanLII) but contrast **R. v. Hatch** (1979), 31 N.S.R. (2d) 110 (C.A.)). The judge is to fix a fit sentence for each offence and determine which should be consecutive and which, if any, concurrent. The

> judge then takes a final look at the aggregate sentence. Only if concluding that the total exceeds what would be a just and appropriate sentence is the overall sentence reduced. (See for example, **R. v. G.O.H., supra** at para. 4 and **R. v. Best, supra**, at paras. 37 and 38)
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> This court has addressed and rejected any approach that would suggest that, when sentenced for a collection of offences, the aggregate sentence may not exceed the "normal level" for the most serious of the offences (see **R.v. Markie**, 2009 NSCA 119 (CanLII) at paras. 18 to 22, per Hamilton, J.A.).

[25] Very recently, in *R. v. Draper*, 2010 MBCA 35, the Manitoba Court of Appeal succinctly described the proper approach as follows:

> That procedure is for the sentencing judge to first determine whether the offences in question are to be served consecutively or not. Second, if they are to be served consecutively, then an appropriate sentence for each offence should be determined. Third, the totality principle should be applied to the total sentence thereby arrived at to ensure that the total sentence is not excessive for this offender as an individual. In effect, the sentence must be given a last look. Fourth, if the judge decides that it is excessive, then the sentence must be adjusted appropriately. In some cases, that might require a significant adjustment.

[26] The Nova Scotia Court of Appeal has also provided direction in the case of *R. v. Naugle*, 2011 NSCA 33:

> In *R. v. Adams*, 2010 NSCA 42 (CanLII) this court reiterated the appropriate relationship between the selection of concurrent or consecutive sentences and the principle of totality. Bateman, J.A., in her unanimous reasons for judgment explained:
>
> > In sentencing multiple offences, this court has, almost without exception, endorsed an approach to the

> totality principle consistent with the methodology set out in *C.A.M.*, *supra*. (see for example *R. v. G.O.H.* (1996), 148 N.S.R. (2d) 341 (C.A.); *R. v. Dujmovic*, [1990] N.S.J. No. 144 (Q.L.) (C.A.); *R. v. Arc Amusements Ltd*. (1989), 93 N.S.R. (2d) 86 (S.C.A.D.) and *R. v. Best*, 2006 NSCA 116 (CanLII) but contrast *R. v. Hatch* (1979), 31 N.S.R. (2d) 110 (C.A.)). The judge is to fix a fit sentence for each offence and determine which should be consecutive and which, if any, concurrent. The judge then takes a final look at the aggregate sentence. Only if concluding that the total exceeds what would be a just and appropriate sentence is the overall sentence reduced. (See for example, *R. v. G.O.H.*, *supra* at para. 4 and *R. v. Best, supra*, at paras. 37 and 38.)

And then he continues:

> I think it is fair to say that where multiple offences arise out of the same transaction, the court must ensure that the selection of consecutive, as opposed to concurrent sentences, does not give rise to a sentence out of proportion to the overall gravity of the conduct, or otherwise create a sentence that is unduly long or harsh.

[27] While these offences are serious and are deserving and even demanding of the most serious sanction, we cannot lose sight of the fact that Ms. Reid can have a positive and productive future. Why do we know this is possible? She is an intelligent and capable person. She has the support of family, friends and some members of the community. This is reflected in the materials submitted by her counsel. There is a likelihood that she can make a positive change in her life. But does this mean we can ignore the offences and the need for denunciation and deterrence? The case law says that we cannot. A sentence must be proportionate to

the gravity of the offence and the degree of responsibility of the offender. The trafficking of these class one drugs is one of the most serious offences in our criminal law. The breach of trust aggravates the offence. With respect, I have been unable to bring myself to the point of agreeing with the Defence that extraordinary circumstances apply here, such that we are able to resist the clear and directive and compelling weight of the case law, which requires a federal sentence.

[28] The offender's responsibility is high. A critical principle here in sentencing for these offences is general deterrence, the sending of a clear message to others who would be like minded, or tempted to engage in the same or similar conduct, that the consequences must be and will be severe. There is also a need to reflect denunciation, to affirm the public's view of this as a most serious offence. If this court were to sentence Ms. Reid to less than 24 months custody for these offences, the sentence would be contrary and out of line with the prevailing authorities. It would be contrary to the case law in the appellate direction, and would offend the principle of parity.

[29] I have satisfied myself that a sentence in excess of 24 months is demanded by the facts, circumstances and precedent. The court takes no pleasure in this

conclusion, and the overall sentence will be guided by the principles of totality and restraint. Along with these considerations, I weigh the mitigating factors and the need for rehabilitation as outlined previously. Both counsel have shared with the court a series of cases on sentencing. I have reviewed all these cases, together with some others which involve similar issues. Of particular note are cases involving situations of persons in positions of trust in the health care system who diverted hard core drugs out of the system, and into the illicit drug trade. Case law which has been reviewed includes *R. v. Knickle*, 2009 NSCA 59. That case really just sets a general range. I'm not suggesting the facts are exactly similar, but it does address the range, which the Nova Scotia Court of Appeal believes is more than two years, and in some cases significantly more. *R. v. Buckingham*, 2008 NLTD 55, is a case which is more serious than this one. In that case, that individual was a doctor who abused his position of trust and was given a seven year sentence. The sentencing in that case perhaps sets the upper limit for sentencing.

[30] A case which was referred to in submissions which has a number of factual similarities to the present case is *R. v. Medeiros-Sousa*, 2014 ONCJ 626. The accused diverted drugs, serious drugs, similar drugs to those in this case, out of the

health care system, and not for a financial motive. The person was sentenced to two and a half years.

[31] I reviewed *R. v. Pontarini*, [1999] O.J. No. 1539, a case which factually can be distinguished from this one, *R. v. Silva*, 2015 ONCA 301, and *R. v. Mitchell*, [2014] O.J. No. 2556. In the *Mitchell* case, an individual having no criminal conviction record, other than a conditional discharge, trafficked in fentanyl and received a 70 month custody term. In *R. v. Brooker*, [2014] O.J. No. 2609, the accused trafficked in 23 fentanyl patches and 22 hydromorphone pills. He received a 39 month sentence.

[32] In *R. v. Rowley*, [2014] O.J. No. 2610, the accused trafficked in 50 fentanyl patches, together with five pounds of marijuana. He received a four and a half year term of incarceration. In *R. v. Baks* (unreported decision of Beatty, J.) May 16, 2014, Ontario Court of Justice, a case again where profit was not the motive. There was some minimal financial gain involved, but again, profiting was not the primary motivator. The person involved there was a young mother, a young single mother. She worked for a doctor, used her position to divert drugs out of the system, substantial amount of drugs, and received a nine year sentence. Overall the facts are

more serious than those in this case. There is reference in the *Baks* case to the fact that the accused's situation in a number of ways engendered sympathy in the court. Ultimately, however, the court had to weigh the seriousness of the drugs involved and the harm to society.

[33] I listened carefully to the submissions of Defence counsel, and the evidence of Dr. Ferguson who gave evidence on behalf of the Defence. He obviously has a great care for his patient of over 20 years. I reviewed the written character references filed by the Defence. I have also assessed the pre-sentence report. I accept that Ms. Reid was depressed, and became addicted to opiates not prescribed for her. I accept that she had a very difficult time after a home fire, a house fire that led her to become despondent. I accept that financial gain was not her main motivation for her offences. I have also heard and considered the victim impact statement ably delivered by Ms. Fage.

[34] The Crown sought a sentence of 44 months. The Defence effectively sought a sentence of two years less a day.

[35] I have concluded as follows:

> With respect to the section 5(1) offence, (trafficking in fentanyl), the sentence is 30 months. Section 5(1), (traffic in hydromorphone), 30 months concurrent. Section 4(1), (possess hydromorphone), three months concurrent. Section 334(b)(I), (steal narcotics not in excess of five thousand dollars), eight months concurrent. Section 354(1)(a), (possess less than five thousand dollars stolen goods), six months concurrent. And section 368(1), (create and use forged narcotic sheet), six months concurrent. In totality, that is a 30 month period of incarceration.

[36] What I want Ms. Reid to know is that the effective submissions of her counsel were critical, because I think that the case law on its own could demand a greater sentence for these offences. But your counsel effectively communicated your personal circumstances, and the mitigating factors. So I heard that clearly, and the principles that were argued, including totality and the fact that there is every reason to believe that you can be a positive and contributing member of society. All the factors have played a role in creating a sentence that I believe is on the lower end of the range of what the case law requires.

[37] Not a great deal of time was spent in submissions addressing ancillary orders, 109, DNA. Any comments on those, please?

MS. HIRBOUR: Yes My Lord, I do have the forfeiture order drafted, and a DNA order prepared, as well, for Your Lordship, and I understand the 109 order is prepared by the court.

THE COURT: Yes.

MS. HIRBOUR: Thank you.

[38] So there will be an order prohibiting Ms. Reid from possessing any firearm other than a prohibited, restricted firearm, cross-bow, restricted weapon, ammunition or explosive substance for a period of ten years post-release. And the prohibited firearm, restricted weapon, prohibited weapon, prohibited device and prohibited ammunition for life, which I believe is mandatory, unless counsel wants to take a different position.

MR. RIDEOUT: No.

[39] So that's section 109. DNA comments?

MS. HIRBOUR: I've provided the order.

THE COURT: Good, okay.

MR. RIDEOUT: I'm not objecting. I figure this, under 5(1) it's pretty...

[40] I agree, okay. I just want to give you a chance, in case you disagree or thought differently. Okay, so those are mandatory orders. They're already drafted and before the court. They will be granted.

J.