

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. MacDonald, 2007 NSSC 308

Date: 20071018

Docket: CRH 282103

Registry: Halifax

Between:

Her Majesty the Queen

v.

Franklyn Dennis MacDonald

Judge: The Honourable Justice Felix A. Cacchione

Heard: October 18th, 2007, in Halifax, Nova Scotia

Written Decision: October 23rd, 2007

Counsel: Mark J. Covan, for the Crown
Lance Scaravelli, for the Defendant

By the Court:

[1] This is a joint recommendation for a three year sentence following pleas of guilty to two offences under the *Controlled Drugs and Substances Act* - production of marijuana and possession for the purpose of trafficking, quantity not in excess of three kilograms.

[2] Mr. MacDonald has no prior drug record and his record has been acknowledged as being dated and unrelated. It is an unfortunate situation when someone of Mr. MacDonald's age involves himself in this type of activity. The appellate decisions are quite clear with respect to production or "grow-ops" as they are known, that deterrence really is the primary consideration. To label this operation as sophisticated or unsophisticated really does not add much to the picture. It looks much like any other "grow-op" that has come before the Court with high intensity lights, fans, deflectors for the light, ventilation system. The reason that courts have taken such a serious view of these operations relates not only to the illicit nature of the operation, it is contrary to law but also the court's concern of the danger that is posed by these operations to persons who are not involved. Next door neighbours for example. Most of the wiring found in these operations is not, shall we say up to code and there is a an increased danger of fire. Mr. Covan pointed out there is also a danger of violence if somebody hears about the "grow-op" in a certain locale, then there is the possibility that they might want to go in and try to steal what is there being produced illegally.

[3] The penalty is serious. Mr. MacDonald, as I understand it, has never been in federal custody. I believe there was one custodial term before, but that was a short term. This is a different ball game.

[4] Fortunately for Mr. MacDonald he has the support of his family. I am told that some of his brothers at least, are present in court and hopefully they will be there for you Mr. MacDonald when you get out. It is a bad way to make a living. Stand up Mr. MacDonald.

[5] I am going to accept the joint recommendation of the Crown. With respect to the first count, that is unlawful production, you are sentenced to a period of three years in a federal institution. With respect to the second count, possession for the purpose of trafficking, giving that there is a nexus in time and place, the sentence there will run concurrently. There will be a three years sentence as well on the

second count, but concurrent to the first count. The total sentence is three years in a federal institution.

[6] There will be forfeiture granted of scales, Belkin power bar, four fans, lights, shades, bulbs, electric ballasts, electrical panel.

[7] As well there will be a firearms prohibition for a period of ten years.

[8] Given that Mr. MacDonald may, at some point, probably not until he is released from the institution at the earliest, come into some monies as result of a lawsuit that is presently in the system involving a motor vehicle accident, I will grant the request for a restitution order. There will be restitution ordered in the amount of \$3,483.73. I will give him time to pay that restitution order. That is to be paid on or before October 31st, 2010.

Cacchione, J.