

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Jones, 2007 NSSC 309

Date: 20071016

Docket: CR 281926 and CR 282762

Registry: Halifax

Between:

Her Majesty the Queen

v.

Robert Paul Jones

Judge: The Honourable Justice Felix A. Cacchione

Heard: October 15th and 16th, 2007, in Halifax, Nova Scotia

Written Decision: October 23rd, 2007

Counsel: Susan Bour, for the Crown
Christopher Manning and Kelly Ryan, for the Defendant

By the Court:

[1] Robert Paul Jones has entered guilty pleas to three, what I will term drug offences. That is two conspiracies both alleged to have been committed between the 24th of February 2005 and the 20th of June 2005. The only difference between the conspiracies is the substance that the conspiracy revolved around. The first count being crack cocaine and the second conspiracy being what is commonly known as ecstasy. The third drug charge relates to possession for the purpose of trafficking of crack cocaine. In my view these sentences ought to be of a concurrent nature. There is definitely a nexus in time and place with respect to the two conspiracies and the substantive count of possession for the purpose of trafficking. And I will deal with those sentences globally. Each sentence imposed will be concurrent to each of the other sentences on the drug offences.

[2] Mr. Jones also, yesterday, entered a guilty plea to living off the avails of prostitution of Diane Acker and also to the lesser but included offence of common assault with respect to Diane Acker. There is no nexus in time or place with respect to the offences and the sentences to be imposed on those will be consecutive to the drug offence sentences.

[3] The background of this investigation and subsequent laying of charges revolved around what has been referred to as a dial-a-dope operation. While one might argue as to the level of sophistication of this particular enterprise, there is no arguing about the fact that this enterprise operated on a 24-hour per day, 7-day per week basis. The top rung of that organization was occupied by Mr. Bonin who is yet to be sentenced as I understand it. It is the Crown's position, and I do not take that it is really disputed, that Mr. Jones and Mr. Hatch occupied a seat a bit lower in the organization but still involved in the day-to-day operations. Mr. Jones and Mr. Hatch, as I understand it, were charged with making sure that the vehicle that was used to transport and deliver these drugs, be it crack cocaine or ecstasy, was available; that persons were available to man the vehicle and the phone that went with that vehicle. One could compare this type of operation to a take-out pizza parlour. Somebody calls in, orders the pizza and then the delivery man or woman goes out with the product. Same operation, different product. The problem with this product that it is, as I have said in other decisions, *David* was one of those cited, a poison. It is a poison that has infiltrated our community. It has led to numerous criminal offences, both of a property nature and a physical violence

nature. There has been deaths that have ensued as a result of the trafficking of crack cocaine.

[4] It is saddening and disheartening to drive in certain parts of this city and to see young people, and I am talking young offenders - that age group, standing on street corners waiting for their customers to arrive so that they can provide them with their drugs. These low-level dealers are generally persons who are themselves addicted to the substance and operate as dealers in order to support their own addiction.

[5] Mr. Jones is not a young person. I have not been told that Mr. Jones suffers from any addiction to these drugs, and in fact the evidence seems fairly clear that he was in it for profit. The group that Mr. Jones was involved with also operated, if we continue on with the pizza analogy, a pizza parlour where people could in fact go to the local shop and buy their crack.

[6] Mr. Jones' involvement in this operation was that he used others to sell, transport, deliver and hide drugs and profits for him and for other members of the organization. One of the most disturbing factors in this case is the use of a young person, a young offender, to hide the drugs and to hide the money and also, although he is not charged with this, to certainly render some assistance to her being involved in other activities.

[7] Mr. Jones, as well, used his girlfriend, Ms. Acker, to deliver drugs and to sell them. An older woman, Ms. Isaac, who had no prior record was also used to stash or hide the drugs that Mr. Jones' organization was peddling.

[8] During the raid on Ms. Isaac's residence substantial quantities of both cocaine and psilocybin were found. As I calculated it from the Crown's brief, approximately a half of a kilogram of cocaine - 517 grams to be exact and 364 grams of psilocybin were found. Police also found approximately \$13,000.00 in cash in another residence.

[9] I take into consideration Mr. Jones' plea of guilty to these offences as a mitigating factor. The fact that Mr. Jones entered a plea subsequent to a preliminary inquiry really does not diminish the validity of the plea. The fact that it was entered and that it is an acknowledgment of committing the offences. To say that because an accused person has undergone a preliminary inquiry and

therefore the plea of guilty entered subsequent to the preliminary inquiry should not hold as much weight as a mitigating factor as if the preliminary had been waived or a consent to remand or committal had been given, really does not take into account the fact that in order to properly advise a client, counsel must be aware, not only of the strength of the Crown's case but also its weaknesses and one of the methods used is the preliminary inquiry. In this instance, as I understand it, Mr. Jones, Mr. Hatch and Mr. Bonin were all as one during the course of the preliminary inquiry. So I am not going to diminish his guilty plea because he went through a preliminary inquiry.

[10] I have as well, and I take into consideration, Mr. Jones' expressed statements this afternoon that he has realized the errors of his way in large measure because of a connection that he has made with his eldest child and this is now to be the focus of his life as opposed to his criminal activity. And while I am dealing with that point Mr. Jones, I do not question whatever affection you have for your daughter. I take that as being genuine and truthful coming from you. What I would ask you to reflect on sir, is how you would feel if your 17 year old daughter was cracked over the head with a pistol, was told to go to some other location and sell her body so that some guy could make money off her. I do not think you would be very happy. I know that I certainly would not. But that is, in essence, what occurred here. You let your own needs come before those of anyone else and in fact it would seem to me that certainly at that stage in your life, and I cannot comment on your stage at this point in your life, but at that stage in your life the world essentially ended at the tip of your nose. It was a me, myself and I situation. Whatever was good for me was good, and if it was not good for me well then too bad.

MR. JONES: May I say something?

THE COURT: You may sir.

MR. JONES: I agree with what you're saying and I wouldn't appreciate it very much if my daughter was in that position. This is stuff that I'm starting to realize now. I'm starting...through her... You know what I mean?

THE COURT: Well, it is... I am glad to hear that you are starting to realize it Mr. Jones because the type of behaviour that I have just described has, and in fact I made a notation of this over the weekend as I was reviewing these materials, but

the behaviour that you showed was of a predatory nature and it is heartening to hear that you have changed your ways. But the fact still remains that while you were in your, shall I say other self, you did not really care about anybody or anything other than what was good for you.

MR. JONES: Exactly.

THE COURT: And that was abundantly clear from the intercepts.

MR. JONES: Exactly.

[11] As aggravating factors, the nature of the drug, crack cocaine, I have spoken about that. It is a poison. It has caused just an abundance of criminal activity. You know, I have been doing this for the last 33 years and over 33 years I cannot recall situations where someone was dealing in say marijuana that there would be violence associated with it. It would seem that people would get stoned and they get too stupid to do anything else. Crack cocaine, or cocaine, is a very different animal. It does lead to violence. It does lead to people thinking of nothing but my next fix and how do I get it and whether it means beating on somebody to get money, robbing some place, stabbing someone, it does not matter - as long as I can get my cash for my next hit. And the activity that you were involved in just plays into all of that.

[12] The fact that you were prepared at that stage in your life to use a young person to assist in your enterprise is an aggravating factor.

[13] I have taken into account and reviewed ss. 718 of the *Criminal Code* on the principles of sentencing. I have also reviewed the CDSA with respect to the principles of sentencing. Reformation and rehabilitation is one of the factors that ought to be considered and it is often, and in most instances, considered where a person does not have a prior record or has a prior record that is not lengthy. In essence, you have a very lengthy record. A record that is as long as your age, actually longer now with these convictions, and it does not seem that since 1983 when you started getting involved in this kind of criminal activity, that there really has been any kind of break. I have reviewed the criminal record and it pretty well goes on from 1983 through to 2003 without a break. The only break or gap in the record it would seem is when you were incarcerated. The offences that are before me show a somewhat sophisticated level of planning. These were not isolated

instances. This was not a situation of an addict trying to make some money to feed his or her addiction, but rather it was a well planned operation that was solely there to generate profits for yourself and for others.

[14] As aggravating factor as well is the fact that you have four prior drug convictions, including a conviction for possession for the purpose of trafficking. You entered a plea of guilty to living off the avails yesterday. Your record shows that you have four prior similar offences. Offences of living off the avails, of procuring. Your record also shows that firearms seem to be part of your criminality. Possession of a prohibited weapon is one of the prior offences on the record.

[15] It would appear to me sir, based on the totality of your record and the evidence that has been put forth that you, certainly at the time that these offences were committed, were firmly entrenched in the criminal subculture and it would appear, at least it would have appeared until you spoke this afternoon, that you were not ready to change your ways. I give you the benefit of the doubt of you changing your ways in the future and certainly for the benefit of, if no one else, your children, but certainly for the benefit of society it would be advantageous if you changed your ways. Because society must be protected from people who choose to use others for their purposes, especially when it comes to criminal involvement.

[16] Having considered all of the principles of sentencing both in the *Criminal Code* and the *Controlled Drugs and Substances Act* it would appear to me that the factor to be stressed in this particular case, given Mr. Jones' record, the length of his record and similar offences, is the protection of society.

[17] I can tell you Mr. Jones that as I sat here listening to the wiretaps, to the comments of counsel, that the sentence that I had in mind was considerably longer than the one that I will be imposing. And the sentence was to be longer because of your record, essentially, and because of the nature of these offences.

[18] As I said, I do give you the benefit of the doubt that this contact with your daughter has perhaps opened your eyes a little and that you do hope to change your ways. So I have reduced the sentence based on this fact and the totality principle. But there still must be a message sent to others and a message must be sent to you

as well so that you do not lose sight of it that this type of behaviour just will not be tolerated.

[19] Although there is nothing in the materials before me to substantiate the following comment, I do not think it is far off base for me to speculate that you could easily have been facing a murder charge. Ms. Acker could have died. You know, somebody comes into the crack house and things are not going right and somebody is being really macho and cavalier and hauls out a pistol. The next thing you know, somebody is on the ground dead. And then you would not be talking about, well, you know give me credit time for remand, etc., you would be looking at a minimum bit of ten, probably twenty-five. So, it is a dangerous scenario. It is dangerous for anybody who is involved in it and I think you have to, and have to a certain degree, take responsibility for your actions.

MR. JONES: Sorry, Your Honour. Could I say something?

COURT: Yes.

MR. JONES: As you know I got a...my record is horrendous. It's long. It's really long and it's bad. I've done pretty well everything, you know. But when I got into this here business of crack cocaine I've seen things I've never even seen before. I've seen people do things that I've never thought they'd do before. I..I do...I understand what you are saying about the seriousness of it, and I wouldn't want anybody in my family to be hooked on it. And I wouldn't want to get anybody else hooked on it again. I understand what you're saying. I really do.

THE COURT: Well I hope so Mr. Jones.

MR. JONES: I do sir. I've seen it first hand, you know.

THE COURT: Well I see it on a regular basis. I would not say a daily basis because my docket is varied, but I see it on a regular basis. I see the misery that comes with the use of that drug. It really is quite sickening...

MR. JONES: It is.

THE COURT: ...to think... You are using and you are preying on people who are young, people who are disadvantaged and actually some of the conversations there is this whole sense of ...

MR. JONES: That it's not even wrong.

THE COURT: ...glee that, you know, welfare day is coming around so it is going to be a heavy business day. I mean, quite frankly, that really is disgusting.

MR. JONES: It's sickening.

THE COURT: Yes, it is.

MR. JONES: That's what it is. I've seen...I've seen people take Christmas presents from underneath their own tree...

THE COURT: Yes, I have seen that too sir.

MR. JONES: ...and tried to trade it.... And that's...that's something that actually really sticks in my mind.

THE COURT: Yes, well something else should stick in your mind. The fact that some of these women get pregnant while they are doing crack cocaine, and what do you know, they give birth to a kid who, through no fault of his or her own, is born addicted to a drug. And that is a bad start to life.

MR. JONES: Yes.

THE COURT: Now, I can appreciate that you did not have a good start to life, and perhaps these twenty years of criminality have brought you to a point where you say you are and that is that you want to change your ways.

MR. JONES: I don't think I have any choice but to do that. I don't have the energy to live like that anymore.

THE COURT: You know I do not think I have sentenced you before so I do not know if you are giving me a line or not, but it is something that I have heard

before, but I do take into consideration Mr. Manning's comments about burnout factor. I take into consideration my own experience in the criminal justice system that when they get advanced in age, I am not saying you are old, but when they do start maturing they start realizing that maybe this is not the right business. And even if that does not happen, just on a very practical business plan level, you look at your record and it shows, you are not very good at what you are doing, right?

MR. JONES: Exactly.

THE COURT: Twenty years, forty convictions.

MR. JONES: Not the smartest tool in the toolbox.

THE COURT: A lot of the smart ones do not get caught. But as I said, there has to be a message. There has to be a message that goes out to you and a message that goes out to others.

[20] I have taken into consideration your comments, the comments of your counsel, and this is the sentence that I will impose Mr. Jones. If you would stand please.

[21] As I said initially the three drugs sentences, that is the two conspiracies and the possession for the purpose of trafficking, are to be concurrent to each other. The fact that your record consists of four prior similar offences requires that a substantial period of incarceration be imposed on those. There will accordingly be a sentence of six years on each of the three drug charges. That is, the two conspiracies and the possession for the purpose of trafficking. Each sentence will be concurrent to the other. So for the three drug offences the sentence is six years.

[22] With respect to the living partly off the avails of Diane Acker's prostitution that offence really is as serious, if not more serious than some of the other offences. You have a prior record for that. It demonstrates that you were prepared to use young women for your personal gain. Have them work for you and turn over the money from the sale of their bodies to you. Accordingly, given the record for similar offences, given that there is no nexus in time or place with respect to that offence and the drug offences, the sentence on the living off the avails will be consecutive to the six years and there will be a term of three years imprisonment consecutive to the six years for the living off the avails.

[23] The common assault, although it is a common assault, at least a plea was entered, there is evidence before me that it was a serious assault, an assault that required some degree of hospitalization. Not a lengthy stay, but some degree. The fact that this was your girlfriend or common law partner and the fact that you used a weapon, a pistol to beat her, shows the severity of that particular offence. There will be a one year consecutive sentence for the assault on Diane Acker. And I have said, I have considered totality.

[24] I told you before the sentence I had in mind was lengthier, but given the principle of totality, your pleas of guilty, I have decided that the fit and proper sentence for all of these offences is a global sentence of ten years incarceration.

[25] With respect to the remand time and whether or not you should be given credit for time on federal remand, I do not think that is applicable. You were in a federal institution. You were released from that institution on parole with conditions. You obviously violated those conditions. You knew you were going back there. So there will be no credit for the federal remand.

[26] With respect to the provincial remand which amounts to about four months, four and a half months, that is a different situation. I recognize that being on remand in a provincial institution is very different and more onerous than being on a federal remand in a federal institution and I will credit you for eight months for the time that you served provincially on remand.

[27] So in total the sentence is 120 months or 10 years, less the 8 months which gives you a total sentence of 112 months.

[28] With respect to whether or not you should be ordered to serve at least half of the time before you are eligible to apply for parole, I will grant that motion. Your record, the offences that are on your record and the offences that were committed and for which you are being sentenced are similar. The fact that you used others and in particular young persons to do your dirty work and that it was for your personal gain, in my mind are factors that would lead to an order that you serve half the 112 months before you are eligible to apply for parole.

[29] I would urge you sir if you are telling me the truth about your involvement with your daughter and your children that you think long and hard during the time

that you are going to spend incarcerated about those children and perhaps you might give some thought to the other children that you may or may not know but that were certainly affected by your actions.

[30] All right. So it is 112 months, to serve half the time before being eligible for parole.

[31] There will be a firearms prohibition for life. That is under s.109 of the *Code*.

[32] Forfeiture is granted. Counsel will draft the order. The sixth count on the indictment dated the 25th of June 2007 alleging that Mr. Jones, being one of three on this count, did unlawfully have in his possession cash exceeding \$5,000.00 knowing that it was obtained by the commission of an indictable offence, that count is dismissed for want of prosecution.

Cacchione, J.