

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Simpson, 2008 NSSC 57

Date: 20080208

Docket: CR. Am. 255718

Registry: Amherst

Between:

Her Majesty the Queen

v.

Rickey Logan Simpson

Judge: The Honourable Justice Felix A. Cacchione

Heard: 08 February 2008, in Amherst, Nova Scotia

Written Decision: 26 February 2008

Counsel: Ms. Monica McQueen, for the crown
Mr. Duncan Beveridge, for the defence

By the Court:

[1] Mr. Simpson is a 58 year old individual. He's single. He's been involved in a long term relationship. The pre-sentence report shows that he has a grade eight education, as well as courses through the community college which caused him to become a stationary engineer. He was convicted by a jury of simple possession of cannabis marijuana, possession for the purpose of trafficking, and production.

[2] The first count on the indictment, the crown rightly points out should be stayed on the basis of the *Kienapple* principle, and that count is stayed. The possession for the purpose carries a maximum penalty of five years imprisonment, and the production one of seven years.

[3] The pre-sentence report is, on the whole, a positive document. It shows that Mr. Simpson grew up in a positive family environment with no physical or sexual abuse. He left home at age 16 to seek work, and worked consistently from that time until 1997, when he was disabled due to a work related injury. His present source of income is Workers' Compensation benefits and disability pension. He has been described by various references noted in the pre-sentence report as a kind, considerate, caring person, willing to help anyone, honest, straightforward,

respectful of others, and someone who stands up for his beliefs. That is an understatement and has been evident from his appearances in court.

[4] Various sources named in the pre-sentence report, as well as numerous others who filed affidavits which were used in the *Charter* application, attested to the medical benefits they saw either to themselves or other family members in using the cannabis oil prepared by Mr. Simpson. His girlfriend of 20 years has described him as honest and trustworthy. He was described by the probation officer as polite, matter-of-fact, and someone who did not feel he had done anything wrong, as he had helped others with their illnesses by using the oil he produced.

[5] He has a prior record, which is dated and unrelated, and therefore he will be considered in this sentencing as a first offender.

[6] The only negative comment in the pre-sentence report was the comment that he would not abide by the decision of the court. His counsel has indicated that that apparently was a misunderstanding, that he is prepared to abide by any decision of

the court, and as well that the few days he spent in custody caused him to re-examine his position.

[7] The crown's position today, as well as in the written brief, acknowledges that although 1100 plants were found growing on Mr. Simpson's property, there was no evidence to suggest that this was in fact a commercial grow operation. There was no evidence that cash was exchanged for drugs, or that Mr. Simpson's motivation was one of profit. Mr. Simpson acknowledged, even after the verdict was returned by the jury, that he intended to continue distributing the cannabis oil that he produced for medical reasons. However, he says today that he stopped doing that. He said that through his counsel, and I accept counsel's submission on his behalf.

[8] Mr. Simpson is not a doctor. He is not a pharmacist. However, he truly believes that the oil he produced has medicinal properties. It is alleged that even after the verdict of the jury this past September, that Mr. Simpson continued to distribute the product. He is, however, under our law and the rule of law presumed innocent on the pending charges, and I will not be considering that in my ultimate decision.

[9] None of the aggravating factors that are set out in section 10(2) of the *Controlled Drugs and Substances Act* are applicable in the present case. The crown's position is that because Mr. Simpson has not acknowledged that his behaviour was criminal, and because he is not remorseful, as indicated in the comments in the pre-sentence report, the court must have as its primary goal denunciation of his conduct. The prosecution asks the court to speculate that Mr. Simpson's distribution of the cannabis oil deterred its users from obtaining effective medical treatment, or that the oil may have adversely interacted with other traditional treatments. The crown rightly points out that deterrence has been a principle which has consistently been stressed by our Court of Appeal, and by other courts of appeal as the primary consideration in the sentencing of drug traffickers. It argues that only a punitive sentence will deter Mr. Simpson, because of his stated intention to continue the production and distribution of the oil. That intention, as I have noted, has apparently changed. The crown submitted that Mr. Simpson's activities in growing the marijuana attracts criminal elements to the community. It brings an increased risk of violence from competitors in the growing market, and that the flammable nature of the solvents used in the extraction process is dangerous not only to the accused, but others in the area.

While acknowledging that the accused's motivation was not financial gain, the crown argued that his conduct involved planning and forethought.

[10] The crown lists a number of cases involving a large amount of cannabis marijuana, which stand for the principle that denunciation and deterrence, both specific and general, must be emphasized in these cases. All of the cases cited: *R. v. Collette*, [1999] N.S.J. No. 190; *R. v. Shacklock*, [2000] N.S.J. No. 338; *R. v. McCurdy*, [2002] N.S.J. No. 459; *R. v. Jones*, [2003] N.S.J. No. 146 and *R. v. Creelman*, [2006] N.S.J. No. 305, involve persons who were involved in trafficking, or possession for the purpose of trafficking of large amounts of drugs, including cocaine, and they were doing so for profit. Crown also points to the quantity of drug involved, and submits under the *Fifield* categorization, Mr. Simpson should be considered a large retailer or a small wholesaler, and the leader of the operation because he involved others in the planting and tending of the plants. It would appear, however, that those persons who were involved shared the accused's belief that the oil had some beneficial effect. There is no evidence before this court that Mr. Simpson was a leader, in the usual sense used in drug cases. He made no money. He had no employees. He did not direct the activities

of others. Those who assisted him did so because of a similar belief concerning the medicinal properties of this drug.

[11] Crown argues that Mr. Simpson should be treated as a first offender, given his age and the unrelated nature of the prior conviction, and I agree with that. I've already stated that. Crown also cited in its brief cases out of British Columbia such as *R. v. Hornby*, [2003] B.C.J. No. 495 and *R. v. Lucas*, [2002] B.C.J. No. 1631, where discharges or conditional sentences were imposed for such offences. It is noteworthy that the discharge in *R. v. Lucas* (supra) was granted because Mr. Lucas was doing what he was, not for profit but for compassionate purposes.

[12] The defence argues that some form of discharge, whether conditional or absolute, would be appropriate in this case, given the circumstances of Mr. Simpson and the circumstances of the offence. It points out that all the cases relied upon by the crown for its recommendation of the custodial term of two years in a federal institution are cases where the purpose of the offender was financial gain. The defence also correctly states that the range of sentences for these types of offences is very broad. It is the defence submission that there is no commercial

aspect to the case, and that Mr. Simpson's motivation was purely altruistic, based on his honest belief in the efficacy of hemp oil as a medical treatment.

[13] The defence refers, for sentencing purposes, to the 40 plus, I believe it was 46 affidavits that were filed on behalf of Mr. Simpson during the *Charter* challenge, as evidence that using the hemp oil, either topically or by ingestion, improved the medical condition of the affiants. It is the defence submission that in this case we have a unique situation, both in terms of the circumstances of the offence and those of the offender. It points to there being no aggravating factors set out in the *Controlled Drugs and Substances Act* that apply in this case, that Mr. Simpson's motives were altruistic, and that no harm was done to others. In conclusion, the defence argues that there is no need for denunciation in this case.

[14] I agree with the defence submission that this case is unique, both in terms of the circumstances of the offender and the circumstances of the offence. I have never, in my 34 years in the criminal justice system, encountered a "drug trafficker or cultivator" who has advertised widely what he was doing, especially not one who has advertised to the authorities, the R.C.M.P., as did Mr. Simpson. He

brought in a videotape of his operation and told them “that’s what I’m doing”. He also did that at various community meetings.

[15] Mr. Simpson truly believes what he is promoting - that is that the cannabis oil he produced is an effective medical treatment for many illnesses, ranging from mild to life threatening. It appears that his views regarding the medicinal nature of cannabis are not farfetched, given the research that has been done and that is ongoing on this subject. As well, the Canadian government has recognized this and responded to it by enacting the *Marijuana Medical Access Regulations*, which enable persons to apply for an exemption to possess or to grow marijuana for medical or medicinal purposes.

[16] The evidence is clear that Mr. Simpson was not motivated by greed or by financial gain. His motivation was purely altruistic. The evidence led at trial showed none of the usual indicia of a financial purpose to the operation. There were no score sheets. There were no baggies used to package the drugs. There were no weapons. There were no large sums of money secreted in the residence or its environs. There was no evidence of numerous and frequent visitors to his residence, staying just a short time and leaving, usually the hallmark of a trafficker.

[17] The crown has argued that because Mr. Simpson has shown no remorse for his breaking the law, then denunciation of his conduct should be the court's primary objective. This argument has merit in drug cases where the offender has profit as a motive, and criminality as a life choice. However, it is difficult to accept this argument where the offender's sole purpose in breaking the law is to help others who have suffered because of illness, and whom he believes can be helped through non-traditional means. It would be speculative to find that Mr. Simpson's distribution of the cannabis oil he produced has deterred its users from obtaining effective medical treatment, or its use has caused adverse interaction with traditional treatments. All of the affidavits tendered at the *Charter* hearing refer to improvements in the affiants' medical conditions gained through the use of Mr. Simpson's product.

[18] I am mindful that there is a risk of attracting a criminal element to his community posed by Mr. Simpson's cultivation of marijuana plants in his backyard, and the potential risk of violence associated with that. This is a factor which I have considered in arriving at my sentence in this case. It would seem, however, despite Mr. Simpson's notoriety in the community, his open discussion

of what he was doing and where he was doing it, together with the attention generated by these proceedings, which identified the location of his activities, that no violence or attraction of criminal element has been shown to have occurred.

[19] It is clear that Mr. Simpson, by his actions in growing marijuana for medicinal purposes, and distilling these plants into cannabis oil, is not only attempting to assist others with their medical difficulties, but also in some fashion engaging in a test of wills with the legal community. He truly believes that the law should be changed regarding marijuana for medical purposes. In doing what he has done, he has embarked on a course of civil disobedience. My duty is not to resolve or to participate in that debate, the debate surrounding the medical benefits of marijuana. That is a debate that should be carried on by Parliament and by the scientific community. Certainly it is still carried on by the scientific community. Parliament has spoken with respect to the medical uses of marijuana. My function in this case is to impose a sentence for Mr. Simpson's wrongful conduct.

[20] There is no evidence to suggest that Mr. Simpson regrets breaking the law, as it now stands, or that he is remorseful for his actions. On the contrary, there is Mr. Simpson's remark, once the jury returned its verdict, that he intended to

continue doing what he had done, that is providing free of charge what he believes to be a miracle cure for various ailments. Mr. Simpson's sincere and genuine belief in his cure and his efforts to assist others should be commended. The reality is, however, that Mr. Simpson broke the law in a very public way. I accept his counsel's submission that Mr. Simpson has, as a result of the few days he spent in jail late last year, learned a lesson and will not continue his activities.

[21] One cannot doubt Mr. Simpson's compassionate motivation. Perhaps Mr. Simpson's energy and belief in his cause should be redirected and focus towards those in our society who can make changes to the law, that is the Parliamentarians. It would appear from the evidence that Mr. Simpson did attempt to convince some politicians of the benefits of his treatment. However, those efforts were in my view minimal and once rebuffed, Mr. Simpson chose to simply ignore the law and proceed on his course of action instead of continuing with his efforts to change the law. Mr. Simpson could have applied for a medical exemption under the *Marijuana Medical Access Regulations*. He chose not to do so. It would appear that he became easily frustrated with the reluctance of local physicians to even discuss prescribing this drug, and to politicians even listening to his pleas.

[22] I have considered the principles of sentencing set out in sections 718 to 718.2 of the *Criminal Code*. Their application in the present case is somewhat problematic, given the accused's motivation for committing these offences. It is difficult to denounce unlawful conduct which has as its sole purpose the alleviation of pain and suffering. The same also applies to deterrence of this accused and others who have the same altruistic motivation. Mr. Simpson is not a danger to society in the usual sense, in that he is not a violent person or someone whose activities have harmed others, and therefore someone who should be segregated from the rest of society for the protection of society.

[23] In considering the principle of parity, I find the cases referred to by crown counsel to be of very little assistance. All those cases dealt with offenders whose motivation was financial gain. Those offenders were not concerned with the harm their actions might bring about. In the present case, Mr. Simpson's actions were brought about by a belief that he was helping others who had not been helped by traditional medical intervention. It is for this reason that this sentencing is one of the most difficult that I have had to do in my decades on the Bench.

[24] The present case is not only unique, it is exceptional. I have considered the cases referred to by both crown and defence counsel and conclude that the cases which stress specific and general deterrence are not applicable in this situation. I am also mindful of the cases such as *R. v. Lucas* (supra), *R. v. Lange* [2002] B.C.J. No. 2622, *R. v. Hornby* (supra), *R. v. Evers* [2006] B.C.J. No. 1312, which were cited in the crown's brief, together with *R. v. Krieger* [1998] A.J. No. 1119, *R. v. Small* [2000] B.C.J. No. 2040 and *R. v. Orr* [2005] B.C.J. No. 794 cited in the defence brief where discharges, either absolute or conditional, were granted in situations where there was cultivation, and in some cases even a profit motive for the cultivation. However, the cultivation in those cases appeared to be for medicinal purposes.

[25] The decision in *R. v. Fallofield* (1973), 13 C.C.C. (2d) 450, sets out that a discharge can be granted where it is in the accused's best interests, and not contrary to the public interest. While it certainly may be in Mr. Simpson's best interests not to have a conviction registered against him, I am not convinced that it would be in the public interest to grant a discharge. Doing so, in my opinion, would amount to condoning a disregard for the law and the rule of law. It would in effect be saying, "If you don't like the law, just ignore it, and there will be no

consequences”. Mr. Simpson had the opportunity to consider the consequences of breaking the law when his residence was first raided by the police, his crop taken and no charges laid. He chose not to take that path. He has, in various writings sent to the court, indicated that he has little, if no, respect for the law and the rule of law, or those who uphold it.

[26] Should Mr. Simpson wish to change the law respecting the medical use of marijuana, he should do so through proper channels, and not through the court process. Not following the rule of law leads people to taking the law into their own hands, and this can have some very serious consequences for our society as a whole. By way of example only, this attitude may cause persons who believe that simply because one is charged, they must be guilty. In such cases, the persons ignoring the law or the rule of law could decide to impose their own sentence or retribution against the accused, simply because that person has been charged. In other words, to act as judge, jury and executioner.

[27] To grant a discharge in this case, despite the accused’s altruistic purposes, would be to send a message to the community that if you don’t like certain law,

just ignore it and there will be no consequences. That, in my opinion, would not be in the public interest.

[28] Having considered the submissions of counsel, the cases cited, the principles of sentencing set out in the *Criminal Code*, the circumstances of these offences and this offender, I am of the opinion that a fit a proper sentence is one which has some element of deterrence for this offender and other like-minded individuals who choose to break the law, even if that is done for altruistic purposes.

[29] If you would stand please, Mr. Simpson. The sentence of this court is that you be sentenced to one day in jail, considered by your time in court as time served. There will be a fine in the amount of two thousand dollars, or in default of payment of that fine, six months in custody. I will hear submissions as to time to pay. There will be....

MR. BEVERIDGE: Six months to pay, Your Honour.

[30] Six months, thank you. The fine will be payable on or before August 15th, 2008. There will be an order under section 109 of the *Criminal Code*, a ten year

prohibition on possessing firearms, ammunitions or explosives. There will be forfeiture of the items seized in the commission of these offences, save for exhibit 17, which the crown has agreed will be returned. Regarding the DNA order, I am not satisfied that such an order should be made in this case. I recognize that cultivation is a secondary designated offence. I am not convinced that such an order is necessary to deter Mr. Simpson. His counsel has advised that he will not repeat his behaviour which led to these charges. He is someone who at age 58 is considered a first offender. The nature of the offence in this case is serious in the general sense. However, in the specific case, given his motivation, it is less serious than if it was done for profit. I recognize that there is a minimal invasion of privacy involved in the taking of such a sample. However, it still is an invasion of privacy. The taking of such a sample would not, in my view, assist in the detection of serial offenders, the resolution of cold cases. It would simply be taking it *pro forma* because it is a secondary designated offence. I am not satisfied that it should be granted, and will not be granted.

[31] Mr. Simpson, you will discuss the sentence with your counsel. The fine has to be paid before August the 15th. If not, you will be put in jail for six months. I do hope, sir, that the sentiments expressed by your counsel regarding your

continued disregard of the law are accurate. There are channels available to you to forward the cause that is dear to your heart. Just don't go and break the law.

Thank you, sir.

J.