

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Bonin, 2008 NSSC 152

Date: 2008/05/14

Docket: CR 281926 & CR 283167

Registry: Halifax

Between:

Her Majesty the Queen

v.

Richard Michael Bonin

Judge: The Honourable Justice A. David MacAdam

Heard: May 13th and May 14, 2008, in Halifax, Nova Scotia

Written Decision: May 21, 2008

Counsel: Susan Bour, for the Crown
Kevin Burke, for the Defendant

By the Court:

[1] This is the matter of sentencing in Her Majesty the Queen and Richard Michael Bonin. Mr. Bonin, after re-electing to a trial before a judge alone, plead guilty to five charges including: unlawfully conspiring with others, including among these others a young offender, to commit the indictable offence of trafficking in a controlled substance, cocaine (crack cocaine), contrary to s. 465(1)(c) of the **Criminal Code**; possession of a controlled substance for the purpose of trafficking, being again cocaine (crack cocaine), contrary to Section 5(2) of the **Controlled Drugs and Substances Act (CDSA)**; and possession of a controlled substance, in this case cannabis marihuana, contrary to Section 4(1) of the **CDSA**; and, two offences of unlawfully having in his possession property, meaning cash, one offence involving less than five thousand dollars and the other exceeding five thousand dollars, and knowing that the cash was obtained by the commission of an indictable offence, contrary to Section 354(1) of the **Criminal Code**.

[2] The charges followed a 2005 investigation into the trafficking of controlled substances by a number of individuals. The investigation encompassed the use of

source information, surveillance, the interception of private communications, an analysis of dialled number recorded data, and purchases of controlled substances by undercover police operatives. The police apparently determined early on in the investigation that Mr. Bonin was at the head of an organization involved in the distribution of cocaine within the Halifax Regional Municipality. He operated what is apparently commonly referred to as a “dial-a-dope” drug trafficking business.

[3] The Agreed Statement of Facts indicates Mr. Bonin managed the drug trafficking network through the assistance of a Robert Jones and a Cecil Hatch.

[4] In the sentencing decision of Mr. Jones, who also plead guilty to a number of drug-related offences as well as other offences, Justice Cacchione attributed a pizza analogy to the operation, describing it as a pizza parlour where people could, in fact, go in to a local shop and buy their crack.

[5] According to the Agreed Statement of Facts, the drug trafficking network operated twenty-four hours a day, seven days a week. In order to facilitate a drug purchase, customers would telephone a designated phone number and request that

a trafficker attend a specific location. The trafficker would then meet the customer and exchange a quantity of controlled substances for monies. In order to conduct the drug trafficking activities, the Bonin organization supplied the so-called “dial-a-dope” traffickers with a vehicle and a designated cellular telephone and arranged for them to work twelve hour shifts, either from 7:00 A.M. to 7:00 P.M. or 7:00 P.M. to 7:00 A.M.

[6] The Agreed Statement continues:

On March 29, 2005, a number of intercepted telephone communications confirmed that Mr. Bonin and other individuals in his organization initiated a takeover of apartment units in Halifax. The apartments were subsequently used as locations to traffic crack cocaine. Individuals enlisted by the Bonin organization worked as traffickers at the apartment building and received deliveries of cocaine from other individuals in the organization.

[7] The Agreed Statement also references a number of purchases of crack cocaine by R.C.M.P. undercover operators, which involved the undercover operator initiating the purchase by placing calls to the “dial-a-dope” cellular telephone, and requesting the trafficker to attend a location in Halifax.

[8] The Statement indicates that one of the individuals used by Mr. Bonin and Mr. Jones was a person who was then a young offender. This person trafficked drugs and stashed drugs and money for Mr. Bonin and Mr. Jones at her residence. According to the Statement, this person trafficked ecstasy, supplied to her by Mr. Jones, but was also involved and used on occasion to work as a crack cocaine trafficker in the “dial-a-dope” business.

[9] In June 2005, the police executed a number of warrants, including entering Mr. Bonin’s residence, where they seized approximately \$600.00 cash on his person and approximately \$4,000.00 cash from the residence. In executing another of the warrants on that day, the police seized \$12,985.00 from the residence of one of the named co-conspirators in count one, being the conspiracy charge.

[10] The purpose and objective of the sentencing are codified in Sections 718, 718.1 and 718.2 of the **Criminal Code** and in respect of drug offences in Section 10 of the **CDSA**. The sections of the code describe a number of sentencing objectives, namely, denunciation, deterrence (both specific and general), separation of offenders from society where necessary, rehabilitation, reparation to victims in the community, and the promotion of a sense of responsibility in offenders. Also,

Section 10 stipulates that in the sentencing of drug offenders, the fundamental purpose:

... is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

[11] Justice Wright, in *R. v. Kutappan*, 2008 NSSC 61, stated:

...the courts have repeatedly emphasized the need for deterrence as a sentencing objective in drug trafficking cases in the pursuit of the ultimate goal of protection of the public (see, for example, *R. v. Steeves*, 2007 NSCA 130 and *R. v. Carter*, 2004 NSSC 256). Judges at all levels of court in this province have regularly spoken out about the scourge of cocaine upon our society, which need not be repeated at length here. Those who traffic in it can expect the denunciation of the court and the imposition of federal time as a deterrent.

[12] The effects of the drug trade, and in particular crack cocaine, on the users and their families and friends is well known. There is also the effect on the community at large with the side effects of increased criminal activity to generate monies to purchase these drugs. In *R. v. Jones*, 2007 NSSC 309 Justice Cacchione observed in respect to the sentencing in that case of Mr. Jones:

... 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 lead 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.

He then made the observation,

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.

And then later,

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.

[13] Mr. Bonin was described by his counsel as being 37 years of age with three children, married and having a high school equivalency certificate that he obtained while he was in prison. During the course of his submission, his counsel referred to the fact his family continues to support him and briefly outlined some of the circumstances and background of Mr. Bonin.

[14] In her submission, crown counsel observed that Mr. Bonin's record includes ten prior convictions with one being of violence, three related to property and six to drugs. She acknowledged a mitigating factor to be considered in assessing the appropriate sentence is that Mr. Bonin has accepted responsibility by his guilty pleas to these offences. Aggravating factors, she suggests, are the type of drug, being a hard drug that is extremely addictive and that causes spin-off crimes by the users. The obvious premeditation involved is indicated by the wire taps, during the period of the investigation from February to June of 2005. The crown also refers to the lucrative nature of the enterprise, noting that one of the undercover purchases was a half ounce of crack cocaine with an agreed upon price of \$1,000.00. Also noted by crown, was the fact that Mr. Bonin was at the top of the pyramid, that he was the brains behind the operation and used the others in carrying out his drug distribution activities.

[15] Aggravating also, as observed by Justice Cacchione in *R. v. Jones, supra.*, was the use of the young offender in the operation. Crown counsel referred to the decision of Justice Cacchione in *R. v. David*, 2004 NSSC 241, as to the importance

of denouncing criminal activity involving drugs, considering the sentencing objectives in Section 10 of the **CDSA**.

[16] Having heard the submissions of counsel and having perused and reviewed the Agreed Statement of Facts, including Mr. Bonin's extensive criminal record, I am satisfied there is little optimism, based on the history of Mr. Bonin as demonstrated by the extent of his criminal record, particularly as it relates to these serious drug offences, to suggest reformation or rehabilitation are likely, at least in the near future. Clearly in respect to setting an appropriate sentence deterrence, both of this offender and others in respect to this type of offence remains the overriding principle. Perhaps in time, he like others before him, will realize, albeit with difficulty, that other options are available. Indeed his counsel referred to the fact this realization should come at some point, having in mind his present age of 37.

[17] The comments of the court in a 1993 sentencing on a conviction for break and entering of a dwelling place included the observation that, "there is no doubt that the sentences the offender has received to date have not had any specific deterrent effect upon him," are in my view appropriate in these circumstances.

[18] Now, although the joint recommendation has finally been agreed by counsel and provided to the Court, and recommends a credit of two times the time Mr. Bonin has been on remand, I have nevertheless considered the issue of enhanced credit that was raised during the first day of defence counsel's submissions. I have considered *R. v. Smith*, [1995] O.J. No. 214, where Justice Watt approved an enhanced credit and *R. v. Kravchov*, [2002] O.J. No. 2172, where the enhanced credit effectively completed the period of incarceration under the sentence.

[19] I am satisfied; however, that neither are particularly applicable in the present case. In *R. v. Smith* the enhanced time was part of the joint recommendation itself. In *R. v. Kravchov* there were a number of factors, other than simply the period of remand, that caused the court to grant the enhanced credit. A review of the decision indicates a number of factors were considered that do not appear to be applicable in the present circumstance.

[20] Nevertheless, in light of the subject of the period of remand having been initially raised by defence counsel, although counsel have agreed it will not be part of the joint submission, and considering the fact the period of remand here was

almost three years, I am prepared to grant the credit for the period of Mr. Bonin's remand based on three years with double time, in effect six years against the total period of the sentence. I am also aware that this is a joint recommendation.

However, it is well recognized, and has been noted by counsel, that the court is not bound by the joint recommendation and it is the duty and responsibility of the court to determine the appropriate sentence.

[21] Mr. Bonin, will you stand please. Mr. Bonin, I have considered the sentencing objectives outlined in both the **Criminal Code** and the **CDSA** with respect to the principles of sentencing. I have considered the submissions of your counsel and counsel for the crown and I have considered your record. In the circumstances, having considered all of these factors, I am satisfied that the recommended sentence of ten and a half years is appropriate and within the guidelines for the offences for which you have accepted responsibility, by your guilty pleas. Therefore, with respect to these five offences the sentences on the first two counts, conspiracy to commit the indictable offence of trafficking in a controlled substance, cocaine (crack cocaine), contrary to s. 465(1)(c) of the **Criminal Code**, and possession of cocaine (crack cocaine) for the purpose of trafficking, contrary to s. 5(2) of the **Controlled Drugs and Substances Act**, will

each be ten and a half years to run concurrently. The sentences on the three remaining offences will be the maximum permitted in the **Criminal Code** and the **Controlled Drugs and Substances Act**, also to run concurrently with the sentence on the conspiracy offence. The total sentence will be ten and a half years.

[22] As I have indicated during my remarks, I am prepared to grant a slightly enhanced remand time of six years, which means the period of incarceration remaining is four and one half years.

[23] A number of other matters were included in the joint recommendation, namely, the mandatory firearms prohibition that is called for under the **Criminal Code**; a Forfeiture Order and a DNA Order. In the circumstances, I am prepared to grant the necessary orders to effect the same.

[24] In view of the remaining period of incarceration there will be no victim fine surcharge.

J.