

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Newhook, 2008 NSSC 205

**Date:** 20080625

**Docket:** CR 292876

**Registry:** Halifax

**Between:**

Her Majesty the Queen

Plaintiff

and

Philip Eric Newhook

Defendant

**Judge:**

The Honourable Justice Felix A. Cacchione

**Heard:**

June 13, 2008, in Halifax, Nova Scotia

**Written Decision:**

June 25, 2008

**Counsel:**

Timothy McLaughlin, Federal Crown  
Robert Morrison, Provincial Crown  
Anne Calder, for Mr. Newhook

**By the Court:**

[1] Mr. Newhook was convicted, after trial, on a charge of possession for the purpose of trafficking. No defence evidence was called at trial. Mr. Newhook now indicates that, well yes he was in possession but it was not for the purpose of trafficking, and suggest that that should have been something that ought to have been heard under oath at trial. It was not, and the facts surrounding his possession are consistent with the possession being for the purpose of trafficking. The quantity and certainly the way the drugs were packaged. In any event, on the evidence presented he was convicted of that offence.

[2] He is 34 years of age. Has been involved in a long term common law relationship. Mr. Newhook has minimal formal education. He has a Grade 8 education, but I gather is quite skilled as a mechanic. The presentence report notes that his parents were divorced when he was a year old. He lived with his mother until he was age 14 when he moved to Nova Scotia and started living with his father. He stayed with his father for approximately two years and has been on his own since age 16.

[3] Initially his difficulties were motor vehicle infractions. For example, driving while suspended or driving without registration. However, the report according to his father notes that he began associating with a negative peer group which led to further involvement with the law. His father says that on three occasions he tried to help him to return to school or to full time employment but that was not successful. His father believes, what is abundantly clear to anybody who has looked at his record and looked at the offences that he has committed, that he does have a substance abuse problem.

[4] Mr. Newhook says that he is a crack cocaine user, perhaps an addict. I do not dispute that he has a substance abuse problem. He hopes to obtain treatment and to obtain an upgrade in his education. What is interesting and what is often the case with persons who are before the Court who are involved with crack cocaine is that either members of their family or their friends or others in the community will say “you know he is a really nice guy. He is a really good guy, except when he is drinking or except when he is using” and I think that applies to Mr. Newhook as well. Certainly his friend and neighbour said that when he was not using he was a good neighbour, a good mechanic and a hard worker.

[5] His prior record dates back to I believe it was, I think I said to Mr. McLaughlin 1991, but the *NCA* charge was 1996. Since 1991 I have counted 105 *Motor Vehicle Act* infractions, and that in and of itself says something. Not about Mr. Newhook's criminality but certainly about his respect for the rules and regulations that everybody is supposed to operate under. The longest sentence that he ever served prior to being sentenced last month or two months ago on a robbery was a four month sentence back in 1995. Other than that he received fines or a short conditional sentence in 2003.

[6] Mr. Newhook in addition to being sentenced today for the *Controlled Drugs and Substances Act* waived in seven charges from Cape Breton. Five of those charges were break and enters into commercial enterprises, convenience stores basically, described by Mr. Morrison for the Crown as being "smash and grab". I was not surprised at all when Mr. Morrison said the only thing taken, certainly in the first one and I think all of them, was cigarettes.

[7] Whether Mr. Newhook just stole the cars to drive the thieves to their location of the offence or whether he walked in and took the cigarettes himself is

really irrelevant because under s.21 of the *Code* he would be a party to offence and liable for the full offence of break and enter.

[8] The principles of sentencing are well known to the Court. They are codified in ss. 718-718.2. Of all the principles that are listed there, the ones that ought to be stressed in this case, given Mr. Newhook's prior history, are the principles of deterrence and denunciation. Denunciation in particular with respect to the *Controlled Drugs and Substances Act*. Mr. Newhook as a user/crack addict you of all people should be aware of the damage that that particular drug has caused to the community. It has caused people to lose their livelihood. It has caused people to fritter away inheritances. It has caused people to steal. It has caused people to hurt others, to rob others and in fact many of the offences of violence that come before the Court are offences committed by persons who have been fuelled by crack cocaine and then the sudden lack of it causes them to do whatever they think is necessary in order to get some more. The problem is just expanding and I do not understand why, apart from the economics of it, but I do not understand why the communities that are so affected do not stand up and rebel against those who are dealing in this stuff who are standing on street corners. In some areas of this city it

is essentially a drive-through. You go to crack corner, you put out your twenty bucks and you get your stone and you drive away.

[9] It has to stop. It has to be brought home to people that this is a dangerous drug. I have referred to it as a poison because that is exactly what it is and people must know that if you come before the Courts and you are charged with cocaine or crack cocaine offences there will be serious consequences.

[10] Having said that I must consider the principle of totality, given that I am sentencing Mr. Newhook not only on the *Controlled Drugs and Substances* offence, but also on five break and enters and two taking a motor vehicle without consent. There is no nexus in time or place between the drug offence and the *Criminal Code* offences. The *Criminal Code* offences do not really have a nexus other than one can consider it almost a spree, but they are committed on different dates. They were committed in different locations, so it was not the scenario of someone breaking into a series of businesses located in a mall. Then we could look at concurrent sentences, but my view is that those sentences have to be consecutive to each other and consecutive to his present term.

[11] But I have to consider the big picture. You know Mr. Newhook the Crown's recommendation or the Crown setting out that the range is two and a half years for the offence for which you were convicted on the crack cocaine is a fair recommendation. That is the range, but all the Crown asked for was that I consider the range, not that I look at and apply or sentence you to the bottom end or the top end of that range. Mr. Morrison has indicated that I should consider close to the top end of the sentencing range for break and enters when they are summary conviction offences.

[12] I also have to factor into my decision that Mr. Newhook was sentenced just recently, I believe it was late April, to two years in a Federal Institution for the offence of robbery and that robbery had real overtones of the break and enters in Cape Breton. It was not a smash and grab. The clerk was present, but certainly the persons who went in were looking for cigarettes, and that is what they took.

[13] I will make a recommendation to Correctional Services Canada that any addiction programs available in the institutions be offered to you. As I said, I cannot order them. I can just recommend that you participate in addiction programs, counselling, programs for addictions.

[14] With respect to the charge under s.5(2) of the *Controlled Drugs and Substances Act*. The sentence of this Court is that you be incarcerated in a Federal Institution for a period of two years consecutive to any term presently being served.

[15] With respect to the offence of break and enter on October 11, 2005 at the Last Chance Convenience Store, a sentence of three months consecutive to any term being served.

[16] With respect to October 11, 2005 taking a motor vehicle without consent, one month consecutive.

[17] With respect to the October 22, 2005 break and enter in Port Hood, three months consecutive.

[18] The October 23, 2005 break and enter in Mabou, three months consecutive.



[19] With respect to the October 22, 2005 taking of a motor vehicle in Judique, two months consecutive.

[20] With respect to the two break and enters on November 4, 2005 three months on each count consecutive.

[21] Total sentence for the break and enters and the taking of a motor vehicle without consent is 15 months. The global total sentence, factoring in all of the offences, the break and enters and the *Controlled Drugs and Substances*, is 39 months consecutive to the term presently being served.

[22] Mr. Newhook, as I have said to you before you now are going to have time to deal with these issues. Nobody else can quit except for you.

**MR. NEWHOOK:** I'm not going to sir.

**THE COURT:** You're not going to quit?

**MR. NEWHOOK:** I'm not going to quit trying to get help I need.

**THE COURT:** Well, I hope that you don't. I really hope that you don't quit trying.

**MR. NEWHOOK:** No, I want the help. I want to get his all straightened out. I want to become a normal person.

**THE COURT** You know you've got to recognize that just because you're going to an institution doesn't mean that it's going to be a drug free area, because it isn't.

**MR. NEWHOOK:** Oh, I know. I've heard about it.

**THE COURT:** So, it's going to be even harder on you to quit.

**MR. NEWHOOK:** If I can, if I can...if I can quit there I'll be able quit and keep it anywhere, according to what I've heard from other people.

**THE COURT:** Well, and I think that is accurate. The question is whether or not you have the internal strength say this is the end. I've really blown 34 years of my life. A lot of them just because I've been using drugs and associating with the wrong people. If you can change that around, I am sure you are a very competent mechanic and you can be very successful. But until you get that monkey off your back it's just going to be a revolving door.

**MR. NEWHOOK:** You'll never see me in a courtroom again, sir.

**THE COURT:** I hope not sir. Good luck to you.

[23] I am not going to order another firearms prohibition and if the Crown wants to appeal me on that, you can go right ahead and the Federal Government can spend a lot of money. It does not make sense when there has been a mandatory, s.109 order made for life, to order another one.

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Cacchione, J.