

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Cross, 2009 NSSC 322

Date: 20091030

Docket: Hfx. No. 300612

Registry: Halifax

Between:

Her Majesty the Queen

v.

Donald Gordon Cross

SENTENCING DECISION

Judge: The Honourable Chief Justice Joseph P. Kennedy

Heard: October 30, 2009 in Halifax, Nova Scotia (Sentencing)

Written Decision: November 2, 2009

Counsel: Shaun O’Leary for the Crown
Pat Atherton for the accused

By the Court:

[1] Thank you, good afternoon counsel.

[2] I won't have to hear from counsel. Let me just quickly review.

[3] I had this matter before me for sentencing on September 21, 2009. At that time the matter was adjourned because we did not have a Pre-Sentence Report. We didn't have a Pre-Sentence Report because Mr. Cross had failed to participate in that process as was expected, and so on that date I set the matter over until October 26, 2009 and remanded Mr. Cross into custody so that it would be easy to accomplish that Pre-Sentence Report. Notwithstanding, we do not have, and never have had, a Pre-Sentence Report in the matter. However the failure is hardly Mr. Cross's at this stage.

[4] On October 26, the matter was spoken to and I was reminded that there had been a pre-trial resolution conference in relation to the matter. It was something that I wanted to review and also I wanted to consider what had been said in relation to the matter on September 21 so that in combination, in order to accomplish that, I set the matter over until today's date, this being the 30th day of October.

[5] There has been a joint recommendation.

[6] I'll just speak to some of the background. Mr. Cross is charged on two counts, more accurately pleads guilty to two counts and I'll make reference to them. He had been indicted on four counts, entered changes of plea on two, those counts being that he did on or about the 10th day of August, 2007, at or near Halifax in the Regional Municipality of Halifax in the Province of Nova Scotia, unlawfully have in his possession for the purpose of trafficking, cocaine, a substance included in Schedule 1 of the *Act* and did thereby commit an offence contrary to s. 5(2) - a plea of guilty; further, at the same time and same place aforesaid did unlawfully have in his possession for the purposes of trafficking, ecstasy, a substance included in Schedule 3 of the *Act* and did thereby commit an offence contrary to s. 5(2) of the *Act* - two counts of possession for the purposes, in one instance cocaine and the other instance the chemical commonly referred to as ecstasy.

[7] Mr. Cross has a prior record, most significantly - frankly the only aspect of the prior record that is of any significance to me - is a prior possession for the purposes in 1998 I think. A considerable period of time ago he got three years at that time.

[8] In this instance, I have heard what the Crown has said about the events that led to the laying of these charges - found in possession of a narcotic of a value of something in the area of \$3,900 - I presume that's street value, and a considerable amount of cash - something in excess of \$2,000. He was under surveillance - all of the suspected indices of a drug dealer were noted prior to his arrest. So Mr. Cross was at it again.

[9] The joint recommendation after the resolution conference was that he serve again a period of three years federal time and with the expected collateral orders - a DNA Order and a s. 109 and, in this instance, a 109(3) Order. Again both Crown and the Defence agree to that recommendation complicated only by the fact that he has now served in excess of a month on remand.

[10] I had at that resolution conference, pending the Pre-Sentence Report, indicated that I would in this instance be prepared to acquiesce to the recommendation. I'm still at that position, notwithstanding the fact that I haven't seen a PSR - I have not seen a PSR - I don't know whether I made that clear or not. It seemed to be that in this instance, the provision of a PSR was something too complicated for the criminal justice system to have accomplished.

[11] So here we are. Mr. Cross, it's a good time to make up your mind whether this is all your life is going to be about. One thing for sure, sir, you are a known quantity. If, when released, you go back into the business then it's only going to be a matter of time - you know that. If you are going to continue to be in the business of the merchandising of drugs then, if I were you, I'd do it in Brazil or some place. This isn't a good place to do it. You're going to be under surveillance. They know you, Mr. Cross. They will be watching and if you continue, you'll be back and I'll state the obvious, for sure and certain this is the last time you're going to get three years. So make up your mind if this is all your life is going to be about - if your life is more significant than this, then that would be good. If, on the other hand, it isn't, if this is all there is, Mr. Cross, then that's why we build penitentiaries. Decision time for you.

[12] I'm going to sentence him to a period of two years and eleven months. I'm going to give him credit, real time, for the slightly in excess of the one month he spent on remand. But times one - real time. Mr. Cross was on remand because he didn't cooperate in relation to the preparation of the elusive PSR.

[13] The first time around the Crown recommendation - the joint recommendation - in relation to the two orders is perfectly usual and correct. The DNA Order will apply and also the lifetime ban associated with s. 109(3) - 109(3) does apply to this specific.

[14] So - bottom line - two years, eleven months and the two orders when prepared - anything further Crown?

[15] MR. O'LEARY: My Lord, just one other thing. I think there may have been an indication in the joint recommendation that the Crown would also be seeking a Forfeiture Order of all items seized.

[16] Oh, there was a Forfeiture as well and Defence counsel is fully aware of the Forfeiture Order - I'll sign that Forfeiture Order also. A Forfeiture Order is also a part of the sentence.

Kennedy, C.J.S.C.