

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Hobbs, 2008 NSSC 424

Date: 20081010

Docket: CRH 288101

Registry: Halifax

Between:

Her Majesty the Queen

v.

Kevin Patrick Hobbs

Judge:

The Honourable Justice Felix A. Cacchione

Heard:

October 10, 2008, in Halifax, Nova Scotia

Written Decision:

September 22, 2009

Counsel:

Glen Scheuer, for the Crown
Brian F. Bailey, for Mr. Hobbs

By the Court:

[1] There is really no need for me to go over the facts of this case. I tried Mr. Hobbs, and at the conclusion of the trial I convicted him of both counts.

[2] The presentence report indicates that he is 28 years of age. He is single. He is, as I read the report, five credits short of a university degree. For purposes of today's sentencing he has no prior criminal record. He was raised by his mother. His father deserted the family when he was of a very young age. His mother has confirmed that information. She believes that he is depressed, weakened, afraid, insecure and without a support system in this province. She indicates he has been working at a restaurant and taking on-line mutual fund courses which she paid for.

[3] Ms. Hobbs testified at the trial and indicated at that time that in a period of approximately four years she had provided her son with approximately \$50,000.00 to help him and his brother financially. There is a comment that is quite interesting, and I cannot read much into it, but the comment is that she feels he is not totally guilty and that others should be held responsible as well. The question that comes to mind is "what others" and "what degree of responsibility", but that is an issue that I do not have to determine. She does describe him as the victim of a fatherless society and a victim of the "guys he's involved with" and perhaps Mrs. Hobbs knows more about her son than we do. But certainly if that comment is reflective of her knowledge, it is consistent with some of the evidence that was led during the course of the trial.

[4] As any caring mother would, she hopes that he will not be incarcerated. She believes that he has learned from this and needs to be given a chance.

[5] In the presentence report Mr. Hobbs indicates that he lived alone until these charges, yet at trial the evidence was that he was living with his girlfriend. His present roommate, Mr. Harris, says that he has no substance abuse issues and describes the charges against him as "bullshit".

[6] Mr. Hobbs indicates that he is employed at the Investor's Group. This, however, could not be confirmed through receipt of any pay stubs. Mr. Hobbs indicates he is not being paid for his work at that group.

[7] He denies his guilt. He does not accept responsibility for the offences, is not remorseful, but as I have said previously Mr. Hobbs is entitled to maintain his innocence and I draw no adverse inference from that denial.

[8] I have already indicated that I am disregarding Constable Bernier's comments in the presentence report as being inappropriate.

[9] The evidence which I heard during the course of this trial indicates that Mr. Hobbs is not a stranger to the world of drugs and drug trafficking. It is evidenced by his subsequent conviction in the United States.

[10] Crown has cited three cases in support of its position that a minimal federal term of incarceration, that is two years, should be imposed. I have referred in the *R. v. Stephen* 2008 NSSC 204 decision that the range, as I see it for such offences, goes from a conditional sentence to a period of approximately three years. That is affirmed in cases such as the British Columbia Court of Appeal case in *R. v. Laseo*, [2000] BCCA 551. and our Court of Appeal case in *Jones* [2003] NSJ 146.

[11] Mr. Hobbs' counsel seeks a conditional sentence and s.741.1 of the *Criminal Code* sets out the requirements which must be considered in order to assess whether a conditional sentence is appropriate, and there are three. One, that there is no minimum penalty for the offence. Two, that the sentence is one of less than two years, and three that serving it in the community would not endanger the safety of the community. However, the section goes on to say, "and would be consistent with the fundamental principles of sentencing outlined in 718 to 718.2 of the *Code*."

[12] I am satisfied, as I have said, that there is no minimum penalty and that given the accused's lack of prior criminal record, the sentence ought to be one of less than two years incarceration. However, I am not satisfied that serving this sentence in the community would not endanger the safety of the community. I am concerned about the risk of recidivism. I do not treat Mr. Hobbs' subsequent involvement in the drug trade as prior convictions, but they are indicative of Mr. Hobbs' close connection with the world of illicit drugs and illicit drug dealing.

[13] Having considered *R. v. Proulx*, [2000] 1 S.C.R. 61 I am of the opinion that Mr. Hobbs does pose a risk of reoffending. I am not satisfied that a conditional

sentence would properly address the principles of specific deterrence, general deterrence and denunciation.

[14] In cases such as this one, the objectives of deterrence and denunciation are of great importance. There must be a period of incarceration to deter Mr. Hobbs specifically and to deter others generally. This type of offence must be denounced because it is, as the court indicated in *Laseo* the invidious byproduct of commercial drug dealing. I have already indicated, and counsel have agreed that the sentences to be imposed ought to be concurrent ones, given the nexus in time and place.

[15] Mr. Hobbs needs to recognize that a quick way of making money has significant risks. Perhaps this sentence, coupled with the one that he previously served in the United States, will bring home that message to him.

[16] I do not believe that this is a case that requires a minimum term in a federal institution. I believe that a short sharp sentence would be appropriate, and in this case I sentence Mr. Hobbs as follows. If you would stand please Mr. Hobbs.

[17] The sentence of this Court is that you be incarcerated at the Central Nova Correction Centre for a period of nine months. That will be followed by a period of two years probation with the statutory conditions that you keep the peace, be of good behaviour, appear before the court as required and notify your probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment. You are to report as directed once you are released. You are not to possess any substances listed in the *Controlled Drugs and Substances Act* unless prescribed by a medical doctor for a known medical condition. Do you understand the terms of that probation order Mr. Hobbs?

MR. HOBBS: Yes, Your Honour.

[18] All right. You will sign the order. You will be bound by that order from the time that you are released from the Correctional Centre.

[19] There will also be a DNA order, secondary designated offence. I am going to strike out the portion that refers to the offender's record and initial that.

Cacchione, J.