

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Jennett, 2005 NSSC 60

Date: 20050321
Docket: CR 216946
Registry: Halifax

Between:

Her Majesty the Queen

v.

Steven Allen Jennett

Judge: The Honourable Justice David W. Gruchy

Heard: January 10 - 12, 2005, in Halifax, Nova Scotia

Written Decision: March 23rd, 2005

Counsel: Tim McLaughlin, for the Crown
Steven Jennett, self represented

By the Court: (Orally)

[1] Needless to say this is a very difficult task for trial judges and I am no exception.

[2] The Crown's recitation of the facts as submitted to me a few minutes ago orally and in the Crown's brief on sentencing is accurate. I can summarize the facts.

[3] The RCMP intercepted certain phone conversations of known cocaine traffickers who were looking for a supply of cocaine for retail purposes and they were comparing prices available from various suppliers. Jennett was repeatedly mentioned by his nickname "Hip". It became clear from the intercepted phone calls that he had supplied cocaine to Dennis Smith. It was also clear that he was well known to these retailers, the brothers Smith, Dennis and Raymond, and others, as a supplier of crack cocaine. In effect it was clear that the offender before me was a mid-level trafficker, somewhere between the source or the wholesaler and the street level retailers.

[4] The other offenders involved in this transaction have pleaded guilty and have been sentenced. Dennis Smith was sentenced to 42 months. Raymond Smith was sentenced to 2 years less a day and Arnell Carter was sentenced to 2 years.

[5] A personal comment to you Mr. Jennett. During the trial, which resulted in the jury convicting you of conspiracy to traffic cocaine contrary to the Act, you came across as a polite and even perhaps cooperative person and for whom I developed a sort of admiration. But despite this experience and despite the presentence reports which I have read, I cannot say that I know you or your background to any extent.

[6] The information given to the probation officers were vague and unhelpful, even possibly misleading. The references given by you were not helpful to the probation officer and were uninformative. Now I have heard some of those people today and to a certain extent I am going to have to revise my thinking that I had formulated in preparing this sentence.

[7] But I am also going to tell you about an experience of my own since I have been on the Bench. Some 12 or 13 years ago I sentenced an individual for

trafficking in marijuana, a relatively minor offence compared to what we are dealing with here. I said at that time that the real danger is not in the drug itself but what it leads to - disrespect for society, the law and fellow citizens. I said that such an offence may be the beginning of a slippery slope of crime. I was attacked and criticized publicly for those remarks. I now repeat them.

[8] In the intervening time I have received ever escalating evidence of drug trafficking, proceeding from the occasional joint to the use of hard drugs, such as cocaine and in some cases the abuse of prescription drugs such as oxy-contin. I have seen the results. Every day in Canada in courts and elsewhere we see thefts and frauds to feed addictions; assaults and murders resulting from the use of trafficking of these drugs; deaths from overdoses, sometimes as suicides, sometimes as simple overdosing and many other ways. We have seen prostitution everyday in this court and elsewhere. Everyday we see it, at least in this Court, in hospitals and on the streets; young girls and women and frequently even boys and young men, selling their bodies for the sake of their addiction. Have you seen those people? Poor, skinny looking people obviously in the process of killing themselves for this cursed habit.

[9] Justice Goodfellow said in *R. v. Gray* (2001), 200 N.S.R. (2d) 77 and I quote:

Trafficking cocaine is a despicable crime that has far reaching consequences. The trafficker places his greed for the easy almighty dollar above all other considerations. The trafficker is a retailer of poison. Cocaine destroys lives and breeds crime. In addition, cocaine is known to foster theft, robbery, embezzlement and often it results in people who are exposed to it becoming involved in the drug trade itself. Often the initial victims are the young and other vulnerable members of society, their families and friends. It is an evil trade. The consequences to society in both human and financial terms are substantial. Many consumers lose all dignity and ability without help to stay away from cocaine. Traffickers are an essential link in this evil trade and by making cocaine available they help to sustain, if not expand, the cocaine consumer market.

[10] So, these are some of the results of your contribution to that terrible segment of our society and it is for that contribution that I must sentence you.

[11] In passing sentence I am bound to follow s.718 of the Criminal Code and I want to emphasize this to those who are here who gave evidence on your behalf. I

am bound by the law. The law comes from the Criminal Code and it comes from superior courts. Justice Cacchione said in *R. v. Tony David* and I quote:

Parliament has codified the fundamental purpose and principles of sentencing in sections 718 - 718.2 of the Code. Section 718 sets out the fundamental purpose of sentencing as contributing along with crime prevention initiatives, to respect for the law and to the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following principles; denunciation, deterrence of the offender and others, separation from society where necessary, rehabilitation, reparation for the harm done and acknowledgement of the harm done. The sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (718.1). The **Code** mandates a consideration of aggravating and mitigating factors. It requires that the sentence be similar to sentences imposed on similar offenders in similar circumstances as well as a consideration of the principle of totality and less restrictive sanctions than incarceration where appropriate; s.718.2(a-e).

Section 742.1 allows for the imposition of a conditional sentence of imprisonment where the offence carries no minimum term of imprisonment and the court determined that the sentence imposed should be one of less than two years imprisonment and that the safety of the community would not be endangered by allowing the offender to serve his or her sentence in the community.

[12] I have to say that it is extremely exceptional that a conditional sentence be imposed for the trafficking of cocaine.

[13] I note, as the Crown did, that the maximum sentence available for the trafficking of cocaine is life imprisonment. There is no minimum prescribed by the Code, but it is clear by the Appeal Courts of this country that there is in fact a minimum.

[14] As I consider each of the subjects mandated by the Code I am conscious of the fact that you have probably heard all of this before, obviously to little avail. I refer to the two presentence reports. A letter of February 28th, 2005, which updated the presentence report of March 11th, 2004. Quite frankly the reports are far from favourable. For whatever reason the offender did not give information whereby the probation officers could locate collateral contacts. At that time no fixed address was given. No permanent relationship was admitted. He was described as single. He had no regular job - occasional work at Fairview Cove Terminal and fixing cars. He expressed no remorse or any admission to his participation in this

awful business. Even at the time of this particular offence I note that you were on probation. I will say more about your record below.

[15] You gave to the probation officer names of contacts who really could not or did not give information. I think some of them have given me some information here today. I conclude that from the presentence reports that you are an intelligent individual as was my impression during the pretrial conference and during the trial. But your record is controlling to a certain extent in this decision.

[16] On July 24th, 1989 you were convicted of theft under and was given 6 months probation. In October of 1990 you were again sentenced to theft under together with mischief and you were give 12 months probation. In January 1991 you were convicted of possession of a narcotic and was fined \$150.00. In March of 1992 you were again found guilty of theft under and you were fined \$1,000.00 and costs. In October 1992 you were convicted of theft, 4 charges and you were sentenced to 1 month concurrent on each charge consecutive together with mischief, 2 charges, 1 month for each charge consecutive. In October 1995 you were convicted of trafficking in narcotics contrary to s.4(1) of the Narcotic Control Act - 3 charges, 2 years on each charge concurrent, possession of a narcotic and you were convicted of failing to comply with a recognizance and you were sentenced to 1 month on each charge concurrent but consecutive. In August 2001 you were convicted of possession for the purpose of trafficking - 2 charges and you were sentenced to 11 months on each charge, to which record a conviction of 2004 which I mentioned above must be added.

[17] While the presentence reports are careful not to intrude on the jurisdiction of the court, I conclude that the report was far from favourable.

[18] Deterrence is a major consideration in this case and as Iacoboucci of the Supreme Court of Canada said in *Shropshire* (1995), 102 C.C.C. (3d) 193 it is a well established objective of sentencing policy. That statement was in effect a reiteration of many statements of the appeal courts of this province and of Canada to the effect that deterrence is a primary or important consideration in drug trafficking cases. I refer you to *R. v. Ferguson* (1988), 84 N.S.R. (2d) 255 and *R. v. Huskins* (1999) N.S.J. No. 46 where it was said:

No one can seriously dispute that cocaine is an extremely dangerous drug and that society demands that those who are involved in selling it must be dealt

with severely. Rare indeed will be the case where less than federal time should be considered as a proper sanction for such an offence.

[19] The Crown has referred me to a large number of cases for my guidance. I will not cite them all, but I have reviewed them. Some of them I feel should be mentioned now. I have already mentioned the *R. v. David* which is an excellent review of sentences. *R. v. Moore* (2003) C.R. 156029 where the accused had dated priors, was involved in the traffic of cocaine and was sentenced to 30 months on 3 counts concurrent.

[20] *R. v. Messervey* which the Crown has referred to extensively in his submissions to me, involved a very young man with a very positive presentence report.

[21] *R. v. Carter* and that is the very Carter that we were dealing with in this matter - CR 216943. He was sentenced to 2 years. He had no recent criminal record. He had family and children. There was a very positive outlook in his presentence report and he was sentenced to 2 years.

[22] *R. v. Blair David*, a decision by Mr. Justice Scanlan, CR 206679, a very bad record - trafficking, pimping and juvenile prostitution. He was sentenced to 4 years.

[23] *R. v. Gray*, CR 165473, a decision referred to again by the Crown extensively. This was a decision by Justice Goodfellow where there was a very good presentence report and Justice Goodfellow treated him as a first offender. He was sentenced to 2¼ years.

[24] *R. v. Downey* [2000] N.S.J. NO. 311. This was a decision of the Appeal Court where Downey had a very bad record and was on probation at the time.

[25] *R. v. Byers* [1989], N.S.J. No. 168 and in that case the Appeal Court said:

...The time had come for the Court to give warning to all those greedy persons who dealt in the supply and distribution of the narcotic cocaine that more severe penalties would be imposed even when relatively small amounts of the drug were involved. Nor should the lack of a criminal record stand in the way of a substantial period of imprisonment. No one today can claim to be so naive as to

think that trafficking in cocaine can be conducted without serious damage to our social structure.

[26] From the perspective of deterrence both the accused and of those in the public who might be tempted to do the same as the accused did here, I cannot think of any rational reason why a federal term of imprisonment should not be imposed. You have not learned from your previous activity and I rather believe that there is a strong likelihood that you will re-offend, notwithstanding what your witnesses have said today.

[27] To the witnesses who gave evidence I accept your sincerity, I accept your truthfulness, but the accused has been down this road before. As I have already said I am bound by law, by the law that Parliament gives us and I am bound by the law as the Appeal Courts give us.

[28] The accused has downplayed his record. He has downplayed to you and to me his involvement in this case. I heard the evidence. The jury heard the evidence. The jury was convinced that the accused did in fact participate in the trafficking of cocaine with all of the consequential effects. Quite frankly, I agreed with the jury. I was satisfied that the jury reached an appropriate verdict.

[29] It may be cruel to a certain extent. On February 28th of this year Mr. Jennett had given evidence, given his story to the probation officer. He said, and the probation officer put this in his report and I want you to understand this,

...Mr. Jennett reports that he is currently not in a relationship, but recently became the father of a one-month old child, Steven Matthew. He stated the child's mother is Carolynn, but he was not sure of her last name, adding their relationship was brief, and the pregnancy was unplanned. Mr. Jennett stated he has regular contact with the child and Carolynn, but there is no formal Court Order in place with respect to access visits. Attempts to contact Carolynn for the purpose of this report were unsuccessful.

[30] A similar situation was reported with respect to the information he gave with respect to his employment.

[31] I was very much impressed by the evidence given by Carolyn Lowe. I think that she is a very sincere person and is in a very difficult position. Again, touching

almost on the verge of cruelty, I note that Mr. Jennett has 3 other children. No mention was made of those.

[32] The Crown is correct, Parliament has set forth that the maximum sentence is one of life. I am not considering that, obviously. As a result of the evidence given by Mr. Jennett's witnesses today I am lowering what I considered originally to be the appropriate sentence. I will not add any period of probation to the sentence I am about to impose. I consider that to be totally fruitless.

[33] Mr. Jennett in the presentence report of March 11th, 2004 it was recommended that you receive "further psychological counselling". Quite frankly I do not know why that recommendation was made, but I draw it to the attention of the custodial authorities.

[34] I sentence you to 30 months in a federal penitentiary.

[35] There will be firearms prohibition for 10 years.

[36] Mr. Jennett, good luck. I hope you can come out of this alright.

Gruchy, J.