

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Maltais, 2011 NSSC 368

Date: 20110906

Docket: CRH330050

Registry: Halifax

Between:

Her Majesty the Queen

v.

Gerald Joseph Maltais

Judge:

The Honourable Justice Felix A. Cacchione

Heard:

September 6, 2011, in Halifax, Nova Scotia

Written Decision:

October 13, 2011

Counsel:

Shaun O’Leary and Denise Boudreau, for the Federal Crown
Claude A. Haché, for the defendant

By the Court:

[1] Mr. Maltais had pled guilty on April the 5th to one count under section 5.1 of the *Controlled Drugs and Substances Act*.

[2] This morning he pled guilty to a charge under section 99(2) of the *Criminal Code*, dated October 21, 2007.

[3] It was a joint recommendation by Crown and defence. The basis of the joint recommendation in part stemmed from the Crown's difficulties in establishing proof beyond a reasonable doubt with regards, certainly, to the three counts on the drug indictment. The police agent who was integral to the Crown's case has disappeared.

[4] Mr. Maltais pled guilty, as I indicated, about the *Controlled Drugs and Substances* and to the *Criminal Code* offence. He acknowledged that his plea was voluntary. That he, by pleading guilty, admitted all of the essential elements of the offence and recognized that the Court is not bound by any joint recommendation or any recommendations or agreement reached between Crown and Defence.

[5] Mr. Maltais is 57 years old, he's a father of two and involved in a common law relationship for the past 10 years. He has no prior criminal record.

[6] As I indicated, it was a joint recommendation, the recommendation for the *CDSA* offence was two and half years which was acknowledged by both Crown and defence to be somewhat lower than would normally be imposed for this type of offence and this type of drug. However, the recommendation was made based on the difficulties the Crown had with its case.

[7] The section 99 *Criminal Code* offence was on a different date, different place. Therefore, that sentence would be consecutive to the two and a half years. There is a mandatory minimum penalty of one year.

[8] Mr. Maltais is therefore sentenced to two and a half years on the *Controlled Drugs and Substances* with one year consecutive on the *Criminal Code* offence. Total imprisonment, three and a half years.

[9] There will be a prohibition on the possession, use, etcetera of a firearm under section 109 of the *Criminal Code*. That will be a lifetime ban.

[10] There will also be a DNA order prepared.

[11] Both of those orders have been agreed to by the defence.

[12] Finally, with respect to Mr. Maltais' bail. Mr. Maltais was originally released, I believe, in February of 2009 on \$20,000 bail. That was amended in November of 2009. The cash bail was reduced to \$10,000 and \$10,000 was returned to Mr. Maltais. There is no need to go into the other changes in the recognizance. Save to say that the \$10,000 presently with the Court with respect to Mr. Maltais' release is now returned to Mr. Maltais and should staff have any difficulties with that, they should consult the Court record which indicates that the Court has ordered the return of those monies to Mr. Maltais.

[13] Finally, with respect to counts 1 and 2 on the *Controlled Drugs and Substances* indictment in Nova Scotia, those counts are dismissed for want of prosecution.

Cacchione, J.