SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Marriott, 2012 NSSC 16

Date: 20120106
Docket: CR. No. 330428
Registry: Halifax

Between:

Her Majesty the Queen

-and-

Terrance Cyril Marriott

Sentencing Decision

Judge: The Honourable Justice Robert W. Wright

Heard: January 6, 2012 at Halifax, Nova Scotia

Oral Decision: January 6, 2012

Written Decision Released: January 12, 2012

Counsel:
Crown Counsel - Jeffrey Moors
Defence Counsel - Christopher Manning

Wright, J. (Orally)

[1] The offender, Terrance Cyril Marriott, is being sentenced today after having plead guilty on August 2, 2011 to one count of possession of cocaine for the purpose of trafficking, contrary to s.5(2) of the *Controlled Drugs and Substances Act* ("CDSA").

[2] The facts surrounding the case are not in dispute and can be conveniently summarized from the sentencing brief filed by Crown counsel. On April 28, 2009 Halifax police executed a search warrant at the offender's residence and thereupon seized approximately 28 gms. of cocaine powder. Of that amount, 17 gms. were contained in a single bag and the remaining 11.62 gms. were distributed into 16 individual bags, packaged for resale. The police also seized a digital scale and other packaging material as well as $1,480 in cash.

[3] Mr. Marriott was subsequently arrested whereupon police seized from him an additional $460 in cash. He has since been on interim release under a Recognizance with strict conditions, including house arrest.

[4] The court has now been provided with a pre-sentence report dated October 21, 2011 the highlights of which I will now summarize. Mr. Marriott is 62 years of age and resides with his common-law spouse of 10 years. It is evident that he has a very close relationship with his two teenage grandchildren.

[5] Mr. Marriott's family physician of some 10 years provided a letter to the

probation officer who prepared the pre-sentence report (and which was authenticated by him) outlining the offender's numerous and extensive health problems, namely, Hepatitis C, an irregular heart beat, diabetes, deafness in one ear causing associated balance problems, chronic pain from degenerative changes in both hips and in the neck and shoulder areas, and nerve damage in the right arm. For all of these afflictions, Mr. Marriott takes several prescribed medications.

[6] Mr. Marriott is also receiving a Social Services disability pension, supplemented by limited financial help he receives from family members.

[7] Mr. Marriott reportedly endured a childhood rife with neglect and abuse and became involved with the law at a youthful age. He has since amassed a lengthy criminal record, including 12 convictions for drug related offences between 1975-99. His record has been clean, however, for the last 12 years (except for an isolated breathalyzer conviction).

[8] The purpose and objectives of sentencing of drug offenders is set out in s.10 of the CDSA in conjunction with the more general principles of sentencing codified in ss. 718, 718.1 and 718.2 of the Criminal Code. Under the former, the stated fundamental purpose in the sentencing of drug offenders is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community. Section 718 of the Code similarly sets out a number of sentencing objectives to be attained, namely, (a) denunciation, (b) deterrence (both specific and general), (c)

separation of offenders from society where necessary, (d) rehabilitation, (e) reparation to victims and the community, (f) the promotion of a sense of responsibility in offenders.

[9] In the case of drug traffickers, the courts have repeatedly emphasized the need for deterrence as a sentencing objective in the pursuit of the ultimate goal of protection of the public (see, for example, *R. v. Knickle* [2009] N.S.J. No. 245). Judges at all levels of court in this province have regularly spoken out about the scourge of cocaine upon our society, which need not be repeated at length here. Those who traffic in it can expect the denunciation of the court and the imposition of federal time as a deterrent. As Justice Saunders recently put it in *R. v. Jamieson* [2011] N.S.J. No. 688 at para. 38:

> Persons who seek to profit by trafficking in cocaine, or possessing it for the purpose of trafficking, will upon conviction, be virtually guaranteed a prison term in a federal penitentiary.

[10] In stressing deterrence as the primary consideration in sentencing for drug trafficking offences, the Nova Scotia Court of Appeal recently affirmed in *Knickle* that the normal range of sentence is two to five years imprisonment (also see *R. v. Clarke*, 2005 NSSC 247).

[11] As the Court of Appeal also observed in *R. v. Jones* (2003) 214 N.S.R. (2d) 289 (at para. 8), “sentences for possession of narcotics for the purpose of trafficking imposed by that court over the last 25 years have consistently been largely influenced by the quantity of drugs involved and the function or position of the offender in the drug operation”.

[12] Notwithstanding the petty retail level of the drug operation in the present case, Crown counsel submits that a sentence of four years imprisonment would be appropriate, emphasizing the offender's lengthy criminal record. Defence counsel, on the other hand, recommends a conditional sentence of two years less a day, to be served in the community under strict conditions including house arrest for the duration thereof. In his submission, there are a number of extraordinary and exceptional circumstances existing in this case to justify the imposition of such a conditional sentence.

[13] The mitigating circumstances relied upon can be summarized as follows:
(a) The small quantity of cocaine seized by the police (approximately one ounce) indicate that Mr. Marriott once again became involved in the drug trade at the petty retailer level, as opposed to a large retailer or wholesaler;
(b) Mr. Marriott entered a guilty plea at a relatively early date, has taken responsibility for the offence, and has expressed remorse for the impact of his actions on his family (and especially his grandchildren);
(c) His advanced age and numerous debilitating health problems;
(d) The fact that he has spent the past 32 months under virtual house arrest as a condition of his Recognizance, without breach of any of its conditions;
(e) His motive in returning to the drug trade was to again become active on the street in an attempt to find information that might solve the murder of his son which occurred in February, 2009.

[14] Considerable emphasis was placed by defence counsel in his submissions on the last of the foregoing factors. No evidence was called on the point but the court

was provided with a letter written by Mr. Marriott in connection with an earlier bail application which included an explanation of why he committed this offence after years of no longer being involved in any illegal activity. He explained that he did so in order to find out information to assist in the arrest of the person or persons responsible for the death of his son; that he has since assisted the police in that investigation and if he had been asked to do so from the outset, this offence would never have been committed.

[15] In the absence of any testimony on this point, it is difficult for the court to assess and decide what weight, if any, should be attached to this representation made by defence counsel. Even if it were to be taken at face value, however, I would not consider it to be such an extraordinary or exceptional circumstance that would justify a deviation of the sentence outside the normal range above referred to. In my view, a conditional sentence would not be the appropriate outcome in this case.

[16] In coming to that conclusion, I refer to the following passages from the Nova Scotia Court of Appeal decision in *Knickle* (at paras. 18 and 28):

> 18. Numerous other sentencing decisions from this court repeatedly and consistently emphasize that persons involved in trafficking in cocaine will be subject to sentences of incarceration. This has been absolutely clear since the very first case heard by this court involving trafficking in cocaine: *R. v. Merlin*, [1984] N.S.J. No. 346, 63 N.S.R. (2d) 78. See also, for example: *R. v. Dawe*, 2002 NSCA 147; *R. v. Jones*, 2008 NSCA 99; R. v. Stokes, [1993] N.S.J. No. 412, 126 N.S.R. (2d) 66; and *R. v. J.B.M.*, 2003 NSCA 142. This court has never approved or endorsed a conditional sentence on charges of possession for the purpose of trafficking or trafficking in cocaine. As well, we have regularly allowed appeals from conditional sentence orders for trafficking in large amounts marijuana and substituted penitentiary terms. See for example: *R. v. Hill*, 1999 NSCA 118; *R. v. McCurdy*, 2002 NSCA 132; *R. v. Jones*, 2003 NSCA 48.
>
> . . . .

> 28. In this case the sentencing judge erred in principle by imposing a conditional sentence to be served in the community. The range of sentencing for a higher level retailer of cocaine starts at two years in penitentiary. It does not include two years less a day or any other sentence that is available to be served in the community. The judge erred in excluding the penitentiary term in the first stage and it was not necessary to consider the second stage of the *Proulx* analysis. There are no extraordinary or exceptional circumstances in this case that deserve any consideration of the possibility of deviation from the normal range of sentence. The sentence is excessively lenient and demonstrably unfit. It was, as mentioned above, also an illegal sentence because conditional sentences are only available for sentences of less than two years.

[17] As stressed by Crown counsel, there is also one aggravating factor at play in this case, namely, the lengthy criminal record of the offender, which must be taken into account as directed by s.10(2)(b) of the CDSA. However, that aggravating factor is attenuated to some degree in this case by the fact that the offender has maintained a clean record over the past 12 years (excepting one breathalyzer offence in 2004).

[18] Although the cumulative weight of the mitigating factors earlier identified is not sufficient to justify a deviation from the normal range of sentence for this offence, it is in my view sufficient to place the appropriate sentence to be imposed on Mr. Marriott at the low end of that range. Accordingly, I conclude that the appropriate sentence to be imposed upon Mr. Marriott is two years imprisonment in a federal institution.

[19] The Crown also seeks as part of this sentencing three ancillary orders,

namely, a weapons prohibition order under s.109 of the Criminal Code for 10 years, a DNA sampling order, and an order of forfeiture of all the items seized from the offender's residence under the search warrant. Those ancillary orders are not contested by the defence and will be granted by the Court in the usual form.

J.