

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Briand, 2013 NSSC 63

Date: 20130218

Docket: CRH 405269 and CRH 411926

Registry: Halifax

Between:

Her Majesty the Queen

v.

Michael Raymond Briand

Judge:

The Honourable Justice Felix A. Cacchione

Heard:

February 18 2013, in Halifax, Nova Scotia

Written Decision:

February 20, 2013

Counsel:

Angela Nimmo, for the Federal Crown
Ron Lacey, for the Provincial Crown
Lee Seshagiri, for Mr. Briand

By the Court: (Orally)

COURT: Mr. Briand, is there anything you would like to say before I sentence you sir?

MR. BRIAND: Mostly just, sorry for what happened. I apologize to the courts and I just want to get this past me, get out, get back to school and get my life back on track.

COURT: Have a seat sir. Thank you.

[1] Mr. Briand, before I impose a sentence, you are aware that I have heard the application with respect to the search warrant of your residence and from that the evidence that was presented, if my memory serves me correctly, the day after the break and enter you were captured on video camera at PC Medic trying to buy, or buying a power cord for the laptop which was subsequently recovered. That to me, sir, tells me that the line of business that you were engaged in at the time in early January of last year, is not your calling. You should reassess your motivation. I can appreciate that you may have found yourself in some tight financial circumstances, but the route to go is not to commit criminal offences.

[2] You obviously have a work history that shows that you are diligent when you want to be, that you have worked one place two and half years, another place, what some six years or more. So, I think you can get your life back together. You have to understand that if you appear before a court in future on a criminal matter, the sentence is going to be longer, because you have at this point a criminal record, and court will be forced to sentence you to jail. So I hope that for your sake and for the sake of your family that you will turn things around.

[3] Mr. Briand has pled guilty to two charges this morning. One of possessing stolen property and the other one possession of cocaine.

[4] The Federal Crown and defence presented a joint recommendation for two years on the cocaine charge. That is in keeping with pronouncements of our Court of Appeal with respect to possession of that drug and I am prepared to accept that recommendation.

[5] Alright. He has pled guilty to s.5(2) of the CDSA. As worded the charge is simple possession on the indictment. Now, I am referring to the section number to make it possession for the purpose of trafficking, but the charge as read to him is that “he did unlawfully have possession of cocaine, did thereby commit an offence”.

MS. NIMMO: I’m sorry Your Lord.

COURT: Are we all on the same page? It was possession for the purpose of trafficking.

MR. SESHAGIRI: That’s correct. And I suppose the reference to 5(2) on the indictment...

COURT: Yes that does it, but I’m just...

MR. SESHAGIRI: Certainly.

COURT: Just to make sure.

MS. NIMMO: Yes, My Lord. My apologies.

MR. SESHAGIRI: That is the intention.

MS. NIMMO: That should have been for the purposes of trafficking.

[6] Alright. As indicated, he has pled guilty to possession for the purposes of trafficking in cocaine. That is the most serious of the charges that is before me. It would appear that at the time of this offence he was without criminal record. No prior criminal convictions. He has had one subsequently for a breathalyser offence, but that was some 10 months later.

[7] As I have said, there is a joint recommendation for two years plus a DNA order and a firearms prohibition, together with a forfeiture order, all of those orders are consented to by the defence.

[8] So with respect to the s.5(2) *Controlled Drugs and Substances Act*, the sentence is one of two years in a federal institution.

[9] With respect to the possession of stolen property. That offence predates the offence for which he has been given a two year sentence. Mr. Lacey for the Provincial Crown indicates that given that his plea of guilty, that the offence occurred before the one for which he is receiving a federal term of incarceration, that a period of incarceration, perhaps on an intermittent basis is required. Mr Seshagiri, on behalf of Mr. Briand, points out the totality principle and the step principle.

[10] At the time of this offence, that is the possession of stolen property, Mr. Briand was without criminal record. This offence is first in time with respect to the two offences that I have before me this morning. I do take into consideration the totality principle and the step principle. Mr. Seshagiri is right that in a situation like this, if it was simply the possession of stolen property charge before the Court and as a first offender, Mr. Briand would most likely not have received a term of incarceration. Now I appreciate that there may not be a nexus in time or a nexus in place with respect to the offence of possessing stolen property. I still cannot lose sight of the fact that it was Mr. Briand's first offence, that the totality principle is in play. I do not think there should be additional time. He is going to a federal institution and a deterrent factor would come into play with his presence at such an institution. What I propose to do is to give him a 30 day sentence to run concurrently to the two years.

[11] So if you would stand Mr. Briand.

[12] With respect to the s.5(2) of the *Controlled Drugs and Substances Act*, I am sentencing you to two years in a federal institution. With respect to the s.355, that is possessing stolen property, *Criminal Code* offence, 30 days concurrently. That means to run at the same time, Mr. Briand. There will as well be a DNA order, a s. 109 firearms prohibition order and a forfeiture order granted. Whether or not a baseball cap should be forfeited, I think I will leave it to the Crown's discretion.

MR. LACEY: Not a Red Socks cap, certainly.

COURT Sorry?

MR. LACEY: Not a Red Socks cap, certainly.

COURT: Well, you know, it might be a different thing if it was a Maple Leafs cap.

MR. LACEY: (Inaudible). On the Provincial information, count#2.

COURT: First count.

MR. LACEY: Sorry.

COURT: The first count, Crown's offering no evidence on that?

MR. LACEY: Correct.

[13] The break and enter charge on the Provincial indictment, that is break and enter at 3560 Albert Street on January 1st is dismissed for want of prosecution.

MR. LACEY: Thank you My Lord.

COURT: Thank you.

[14] Mr. Briand, you have to change your ways. I think you understand that. It is not a road you want to go down again. Alright. Thank you sir. Thank you counsel.

MR. LACEY: My Lord, did you address the victim fine surcharge? It might have been just missed.

[15] I am going to waive that.

MR. LACEY: Thank you.

Cacchione, J.