

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. MacDonald, 2013 NSSC 255

Date: 20130809

Docket: Pic No. 415922

Registry: Pictou

Between:

Her Majesty the Queen

Plaintiff

v.

Jesiah Dean MacDonald

Defendant

Judge: The Honourable Justice N. M. Scaravelli.

Heard: August 9, 2013, in Pictou, Nova Scotia

Final Written Submissions: August 8, 2013 - Bronwyn Duffy, Crown
August 8, 2013 - Stephen Robertson, Defence

Oral Decision: August 9, 2013

Counsel: Bronwyn Duffy, for the Crown
Stephen Robertson, for Jesiah Dean MacDonald

By the Court Orally:

[1] Jesiah Dean MacDonald appears for sentencing for the offence of production of marijuana contrary to Section 1 of the *Controlled Drugs and Substance Act*.

[2] On February 20, 2013 the police executed a search warrant on the residence occupied by the offender and seized 46 cannabis marijuana plants. This offence carries a maximum of 14 years imprisonment as a result of an amendment to the *Controlled Drugs and Substance Act*, proclaimed in November of 2012. Due to legislative changes a conditional sentence order is no longer available under Section 742.1 C of the *Code*. There is no mandatory minimum penalty for this offence which does not have a trafficking component.

[3] Both the Crown and the Defence submit that but for the amendments, there would have been a joint recommendation for a Conditional Sentence Order. Both counsel submit the appropriate range for this offence under the circumstances of this case is between a 30 day period of incarceration to a fine and probation.

[4] The Crown recommends 30 days straight time or intermittent followed by a short period of probation.

[5] The Defence recommends a fine and probation.

[6] A Pre-sentence Report has been prepared, the offender is 25 years of age and is single and unemployed. The offender has taken steps to change gender from female to male. The offender's birth name was Jessica Dean MacDonald and has been changed to Jesiah Dean MacDonald. The offender suffers from Crohn's disease and information provided indicates the use of marijuana to help with the painful effects of the disease.

[7] It appears that the motivation for this charge was also intended to assist in payment for surgery for a double mastectomy which is another step in changing from female to male. Subsequently it appears the government has determined it will fund these surgeries.

[8] The offender explains that he was not the owner of the residence or the marijuana plants. He was the caretaker of the premises and the plants for which he

was paid. The offender immediately divulged to police the name of the owner of the operation who was subsequently charged.

[9] As indicated the Crown does not assert the offender was involved for the production for the purpose of trafficking.

[10] The offender has no prior criminal record. Although unemployed the offender has been extensively involved in community volunteer work as set out in the pre-sentence report.

[11] The offender fully co-operated with the police and entered an early guilty plea.

[12] In determining the appropriate sentence I must consider the purpose and principles of sentencing as set out in Section's 718 to 718.2 of the *Code*. The courts have consistently confirmed that the principles of deterrence and denunciation are of prime importance in these cases.

[13] I am also required to consider the rehabilitation of the offender. The sentence must also be proportionate to the gravity of the offence and the degree of the responsibility of the offender. The sentence should be in a range imposed on similar offenders in similar circumstances.

[14] Absent unusual circumstances, sentences imposed even for first offenders usually result in conventional jail sentence or conditional sentence orders which, as indicated is no longer available.

[15] The difficulty in the present case is balancing the need for a strong statement of denunciation and general deterrence and addressing the offender's unique personal circumstances as well as the circumstances of this case. I am satisfied there are unusual circumstances in the present case. I do not doubt that changing one gender's identity is a life altering and difficult process. The offender is a member of the trans gender community. The offender's motive for committing the offence directly relates to the process of changing gender. The offender made a poor choice in attempting to achieve that goal.

[16] I am satisfied that the offender was not involved in the production for his own commercial enterprise. He appears to have been a caretaker and not the principal. The offender appears to be an individual who is not likely to lead a criminal lifestyle. I am also cognizant of the possibility that the offender's trans gender identity could result in personal difficulties if placed in a correctional facility.

[17] In the unique circumstances of this case I believe the purpose and principles of sentencing can be achieved through a fine and period of probation as opposed to a 30 day period of incarceration as suggested by the Crown.

[18] Have your client stand Mr. Robertson.

[19] The sentence will be a fine of \$1,000.00 together with probation for the period of 12 months with twelve months to pay the fine. In addition to the mandatory conditions of probation there shall also be the conditions as read into the record by the Crown. I am not going to require a curfew in these circumstances. I will also grant the ancillary orders as requested by the Crown.

