

Date: 20000308
Docket: CR 158657

1999

IN THE SUPREME COURT OF NOVA SCOTIA
Cite as: R. v. Morris, 2000 NSSC 164

BETWEEN:

HER MAJESTY THE QUEEN

- and -

PAUL DRAKE MORRIS

DECISION ON SENTENCE

HEARD: at Halifax, Nova Scotia, before Justice Walter R.E. Goodfellow

DECISION DATE: March 2, 2000

**WRITTEN RELEASE
OF ORAL:** March 8, 2000

COUNSEL: James Martin, for the Federal Crown
Michael Taylor, for the Defence

GOODFELLOW, J.

[1] Counsel for the offender acknowledged the accuracy and correctness of the Pre-Sentence Report. Mr. Taylor made the recommendation to the court to consider a conditional sentence and he refers to the recent Supreme Court of Canada decisions. Mr. Martin made a recommendation for incarceration in a federal institution for a period in the range of 2 ½ to 3 years.

[2] Paul Drake Morris plead guilty to the following three (3) counts: **THAT** at or near Dartmouth, in the Regional Municipality of Halifax, Province of Nova Scotia, on or about the 11th day of March, 1999, he did unlawfully traffic in Cocaine, a substance included in Schedule 1 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and did thereby commit an offence contrary to Section 5(1) of the said Act; **AND FURTHER THAT** on or about the 16th day of March, 1999, at or near Dartmouth, Halifax Regional Municipality, he did unlawfully traffic in cocaine, a substance included in Schedule I of the *Controlled Drugs and Substances Act*, S.C. 1996, c.19, and did thereby commit an offence contrary to Section 5(1) of the said Act; **AND FURTHER THAT** on or about the 17th day of March, 1999, at or near Dartmouth, Halifax Regional Municipality, he did unlawfully traffic in Diacetylmorphine (Heroin), a substance included in Schedule I of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and did thereby commit an offence contrary to Section 5(1) of the said Act.

REMARKS OF THE ACCUSED

[3] The accused expressed remorse not only for his own actions but for the impact on his family. There is reference in the Pre-Sentence Report to his family situation, and his mother is in attendance today in support of him.

[4] The accused has a criminal record as follows:

Date of Offence	Section	Sentence & Date
July 18/94	334 (b)	Sept. 20/94 - \$100
Oct 13/94	334 (b)	Aug. 16/95 - \$350/20 days cons.
June 26/95	334 (b)	Jan. 29/96 - DWOP
B: May 1- Nov 30/96	380 (1) (b)	Apr. 22/98 - s.s., 1 yr. Prob. w/conds.
Oct 24/96	334 (b)	Apr. 17/97 - s.s., 18 ms. Prob. w/conds.

[5] There are many things that go into the determination of what is a fit and proper sentence; certainly, the individual himself; the entry of guilty pleas. This is a man who is described by Dr. Fay in the Pre-Sentence Report as an intelligent, articulate person who could do better for himself than he has. So, this is a tragedy in itself given the fact that Mr. Morris, who is only 45 years of

age, has a lot of promise and that he has reached this stage. As well, he has some family obligations for a son. He has a major health problem—a drug addiction. He labels it in relation to an accident in 1993, which may well be the case, and for the purpose of the hearing, I assume he is correct in that regard.

[6] One of the reasons people find themselves in this type of difficulty is the frequency and availability of drugs and that is why the view of society in terms of deterrence, at least, is expressed in many ways. One of which is the seriousness of the offence and the legislation itself. In these offences, three (3) counts, each of them under Section 5(1) of the *Controlled Drugs and Substances Act* indicates that:

(1) No person shall traffic in a substance included in Schedule I, II, III or IV or any substance represented or held out by that person to be such a substance.

...

(3) Every person who contravenes subsection (1) or (2)

(a) subject to subsection (4), where the subject-matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to go to prison for life;

[7] This is a serious situation before the court and the court is compelled in all sentences to balance a number of factors, all of which relate to the principles of sentencing: the matter of public deterrence; individual deterrence; and the matter of rehabilitation.

[8] It is a real dilemma because it is such a human tragedy. I have read the remarks of your mother, and I read and re-read all the particulars in the Pre-Sentence Report. There is no doubt that you have a serious drug problem. I don't have a "magic wand", I don't have the answer, I don't even have the ability to fully appreciate the agony that you go through and what you put others through. I simply do my best to see what I can for society, because you have such capacity, and Dr. Fay thinks highly of you.

[9] But there is more than one principle of sentencing and the focus is not appropriate in these circumstances, in my view, on rehabilitation, and certainly not in isolation. Mr. Taylor acknowledges that there are treatment programs in federal institutions, and I certainly hope that you will avail yourself of assistance. You have a criminal record and I have some difficulty with your representations that there was no benefit to you. It seems to me you have a habit and we are told repeatedly that people feed their habit one way or another. This is not an isolated event.

[10] You have had extreme difficulty before in dealing with your drug addiction. There is reference to January, 1997, attending the Detox Program at Drug Dependency for four (4) days,

but reportedly you left against medical advice and returned to using.

[11] There is the reference of Mr. Duncan saying that Mr. Morris has a lackadaisical approach to probation and his drug addiction, and you did not put forth a good effort in these areas. He believes that you have not confronted your addiction in a realistic, meaningful way, and you add many excuses as to why you miss tests or you tested positive while on the Methadone Program.

[12] It must be very, very difficult to try to deal with it. It seems to me, given your criminal record and given the fact that you are actively involved in, at least, a *quasi* retail business—for example, somebody comes to you and they know that if they come to you on the 11th of March, they will get the narcotic; they come to you on the 16th of March and they get a narcotic; they come to you on the 17th of March and they get a narcotic—would not make this an isolated event. The amounts may not be large but you are obviously part of a system that is able to deliver drugs to people who want them.

[13] It seems to me that the public's concern for the consequences of drug addiction and the availability of drugs would not be adequately reflected in a sentence less than a sentence to a federal penitentiary.

[14] Would you please stand, sir. It is the sentence of this court that on the 1st count you be incarcerated for a term of three (3) years. The sentence on the 2nd count concurrent, three (3) years; and on the 3rd count, concurrent, three years.

J.

