

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Lyle*, 2018 NSSC 124

Date: 20180517

Docket: CRH Nos. 459314 and 462865

Registry: Halifax

Between:

Her Majesty the Queen

v.

Donald David Lyle, Kenneth H. Brannen and John Roderick Lyle

SENTENCING DECISION

Judge: The Honourable Justice Gerald R.P. Moir

Heard: February 20, 21, 22, 26, 27, and March 1, 2018,
in Halifax, Nova Scotia

**Sentencing
Date:** May 17, 2018 (for Donald David Lyle only)

Written Decision: May 25, 2018

Counsel: Leonard MacKay and Scott Morrison, for the Crown
Kevin Burke, for Donald David Lyle

By the Court (orally):

[1] I have to sentence Mr. David Lyle for possession of cocaine for the purposes of trafficking at 140 Albro Lake Road on December 10, 2015, possession of marijuana for the purposes of trafficking at the same place on the same date, and possession of money obtained by crime on the same date.

[2] The evidence on this sentencing includes a pre-sentence report prepared on April 19, 2018 by Francis MacArthur and the evidence presented at Mr. Lyle's trial that started on February 20, 2018.

[3] Mr. Lyle conducted a mid-level drug trade that included crack cocaine. He did so mainly in the north end of Dartmouth, a community that suffers from the harms of hard drugs.

[4] On December 10, 2015, the operation included an inventory of 70.6 grams of crack cocaine, having a value at street level of \$5,000, more when cut with adjuncts, more still when short weighted.

[5] On December 10, 2015, Mr. Lyle had \$22,800 in proceeds on his person and another \$227,792 in his home at 28 Woodland Avenue.

[6] The pre-sentence report is mostly positive.

[7] Mr. Lyle has no previous criminal record. He is 57. Mr. Lyle and his spouse had a 30 year relationship that came to an end coincident with the arrest. He and she still get along. After high school, Mr. Lyle completed a barber course. He operated a barber shop for many years. He makes about \$25,000 a year and is financially stable. Mr. Lyle is in good health. He does not now abuse alcohol and he never used illicit drugs.

[8] Mr. Lyle says "Hockey is my life." The pre-sentence report contains the following reference:

This writer was contacted by retired Detective Constable Charles Verge, former member of the Halifax Regional Police for the purpose of completing this pre-sentence report. Mr. Verge stated he was unaware of the charges but stated he wanted to give a reference for the offender as he has known him for most of his life. Mr. Verge stated that the offender was always a good law abiding citizen, that even though he came from a rough family, the offender always remained away from the legal system. Mr. Charles Verge noted the offender was always involved in hockey and gave a lot of time to his community and still does.

[9] The crown recommends two to three years incarceration on the possession of cocaine charge, three to four months on the marijuana charge, and one year for the proceeds of crime. The sentences for cocaine and marijuana would be concurrent. The proceeds sentence would be consecutive.

[10] The defence submits for fifteen months on the possession of cocaine for the purposes of trafficking, twenty days on the marijuana charge, and nine months

consecutive on the money laundering charge. That would make a total of two years incarceration.

[11] The crown referred me to the extensive decision of Justice Warner in *R v. Forward* 2017 NSSC 190, and the defence agrees it provides clear and accurate guidance.

[12] Both parties also agree that *R v. Skinner* 2016 NSCA 54 controls the approach I should take on a concurrent and consecutive sentence and on the application of the principle of totality.

[13] Justice Warner said at paragraph 27 of *Forward*:

It is rare for a cocaine trafficker to receive a sentence less than a Federal Penitentiary sentence.

Other decisions of trial and appeal courts in this province support that statement. It is about trafficking in cocaine or possession of cocaine for the purposes of trafficking. The money laundering is a separate issue.

[14] Despite the positives of Mr. Lyle as an individual, the level of his dealing precludes a two year term for trafficking offences. Subject to totality, Mr. Lyle's operation of a drug business would lead me to impose a sentence of three years. Sixty days concurrent for possession for the purposes of trafficking of marijuana is

sufficient. I accept that a one year term for possession of the proceeds of crime fairly balances Mr. Lyle's positive personal profile with the large amount of drug cash he possessed.

[15] The crown referred me to *R v. TEH* 2011 NSCA 117 at paragraph 37:

When deciding whether sentences should be concurrent or consecutive, a judge should consider the time frame within which the offences occurred, the similarity of the offences, whether a new intent or impulse initiated each and whether the total sentence is fit and proper under the circumstances.

[16] The almost \$230,000 in Mr. Lyle's home was packaged for drug deals to purchase inventory in quick transactions. There was powerful evidence linking Mr. Lyle to the drugs at 140 Albro Lake Road but the reverse is not the case, although selling drugs and possession of the proceeds of crime go hand in hand.

[17] If the quarter million in cash hidden in Mr. Lyle's home and seized from his person were attributed entirely to the business operation at 140 Albro Lake Road, the business was desperately low on inventory. Therefore, what appears at first to be close in time, similar in kind, and animated by the same intent, is revealed on closer examination to be more separate.

[18] *Skinner* says that the fourth consideration should be dealt with separately from concurrency.

[19] In my assessment, a total of four years in penitentiary would be an unjust sentence for a first-time offender with Mr. Lyle's positive attributes. It would be unjust, despite the gravity of what he did. The total should be reduced to three.

[20] Therefore, I impose two years on the possession of cocaine for the purposes of trafficking offence, 60 days concurrent on the marijuana offence, and one year consecutive on the possession of proceeds of crime.

[21] I have granted the orders the crown requested and the defence agreed to.

J.