

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Terrio*, 2021 NSSC 310

**Date:** 20211110

**Docket:** CRH 485720

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Alexander Jesse Terrio

**Decision on Post-Conviction Restorative Justice**

**Judge:** The Honourable Justice Peter Rosinski

**Heard:** November 8, 2021, in Halifax, Nova Scotia

**Counsel:** Glen Scheuer, for the Crown  
Sarah White, for the Defendant

**By the Court:**

**Introduction**

[1] In Nova Scotia, sentencing courts can make post-conviction referrals to a Province of Nova Scotia Restorative Justice Program (“NSRJP”), for use “to hold persons accountable, to address or repair harms caused and to restore relationships.”

[2] On November 8, 2021, Mr. Terrio pled guilty to two counts, namely:

that on April 17, 2018, at or near Dartmouth, he did unlawfully have in his possession for the purpose of trafficking, not in excess of 3 kg, both, cannabis marijuana, *and* cannabis resin, substances included in Schedule II the *Controlled Drugs and Substances Act*, and did thereby commit offences contrary to section 5(2) of that *Act*.

[3] His sentencing was set over pending the preparation of a Pre-Sentence Report (“PSR”). Although it is anticipated that the facts of these offences will be more fully presented at the sentencing, I have the advantage of having heard the generic allegations against him during a pre-trial *voir dire*: see *R v Terrio*, 2020 NSSC 88.

[4] His counsel has requested that the court refer him to the NSRJP.

[5] This decision briefly outlines the reasons why I have declined to refer him to that program.<sup>1</sup>

## **Background**

[6] The *voir dire* decision outlines that in the early morning hours an illegal cannabis dispensary was broken into, and its security guard robbed. This triggered an alarm and caused police officers to investigate.

[7] Inside the premises, Mr. Terrio's name was written on one of the whiteboards – he was listed as a “manager”. As a result, police called him to assist them in having someone from the business to whom the premises could be turned over to after the investigation and who could access CCTV recordings which would shed light on the manner of, and the suspect(s) who committed, the intrusion.

[8] Mr. Terrio went to the premises, confirmed that he was a manager at the premises, and assisted the police as requested.

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<sup>1</sup> I believe this may be the first occasion for our Supreme Court where a post conviction referral to NSRJP has been requested. Consequently, I have reduced my reasons to writing, with a hope that they may assist others in the future.

[9] I was not satisfied beyond a reasonable doubt that his answers and assistance given to the police officers were “voluntary”, and therefore I ruled that evidence inadmissible at his trial.

[10] Nevertheless, the break and enter had left the door swinging open. The police could see, in plain view, that the premises were used in the retail business of illegally selling cannabis and cannabis related products to the public. An ATM was present in the public customer service area. A search warrant was subsequently executed. After that search was completed, the premises were turned over to Mr. Terrio.

### **The referral to Restorative Justice Post-conviction Process<sup>2</sup>**

[11] Attached hereto as Appendix “A” are the referral form and materials including, the Court Protocol and the Nova Scotia Restorative Justice Program Protocols.

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<sup>2</sup> I gratefully acknowledge Defence counsel’s responsive letter provided to me after our court appearance on November 8, 2021, wherein she provided information and hyperlinks regarding post-conviction referral to Restorative Justice in Nova Scotia (as administered by the Community Justice Society – Halifax Region). That correspondence also contained a letter forwarded to the Provincial Court in relation to an individual who had been referred to the Program, and is identified as “a separate accused who pled guilty to similar offences, involving the same cannabis dispensary location”.

[12] Some helpful excerpts regarding the purpose of this process and parameters thereof follow:<sup>3</sup>

“Restorative justice is a discretionary tool available to the judiciary post – guilty plea/finding of guilt. It can be used to hold persons accountable, to address or repair harms caused and to restore relationships. The judiciary may, in their authority and discretion, make referrals to the NSRJP to incorporate restorative justice processes into proceedings and assist in sentencing options... Court referrals to the NSRJP are not part of a program of alternative measures for adults authorized by the Atty. Gen. under section 717 of the *Criminal Code*... or a program of extra-judicial sanctions for young persons approved by the Atty. Gen. under section 7 of the federal *Youth Criminal Justice Act* ...and section 10 of the Nova Scotia *Youth Justice Act*... A judge’s discretion to incorporate restorative justice arises from their authority over court proceedings and sentencing including, for adults, under subsections 723 (2) and (3), 726.1 and clause 718 (e) of the *Criminal Code* and, for youth, under section 19 of the *YCJA* and section 16 of the *YJA*.

...

...the following goals and objectives for the NSRJP:

- respond to needs of individuals and communities affected by crime with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- harm reduction: reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system:
- support individual and collective taking of responsibility for harm and public safety
- increase access to justice: more effective, timely, inclusive, equitable justice system
- provide responsive justice: human-centred justice processes that consider root causes and seek meaningful outcomes and responses
- increase public confidence and accountability in the administration of justice

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<sup>3</sup> For persons which the law identifies as Indigenous, consideration must be first given to a referral to the Mi’Kmaq Legal Support Network (MLSN) to assess whether the matter is appropriate for resolution under Customary Law according to policy and procedure. If not, then the matter may be considered for a referral to the NSRJP.

- build and support healthy, safe, and strong communities.

...

#### Eligibility<sup>4</sup>

... referral agents (Police, Crown, Courts, Corrections and Victims serving agencies) shall also consider the following factors:

- opportunity for more culturally appropriate, meaningful and effective justice process
- reduction of harm for direct parties (trauma-informed)
- potential for victim participation

- enhanced opportunity for access to justice for affected communities – increased confidence in the administration of justice

- opportunity to understand and consider root causes or systemic issues connected to the parties or offence
- reduce over-representation in justice system for individuals from vulnerable and marginalized communities/groups
- access to better supports and wrap-around responses to parties needs”

### **Why a referral is not appropriate here**

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<sup>4</sup> All matters are eligible for referral, and Police, Crown and Corrections “shall consider all matters for referral except where a Provincial hold or moratorium is in place, or referral is otherwise barred by law.” *Offences presumed eligible for referral only post – guilty plea/findings are:* murder, manslaughter, criminal negligence causing death, impaired driving causing death; offences involving abuse of a minor child (under 18 years old) or another vulnerable person, by a person in a position of trust; child pornography (adult); firearms offences; impaired driving (adult); serious crimes against the administration of justice (perjury or intimidation of a justice system participant).

[13] Whether to make a referral will be guided by the circumstances of the offender and of the offence (including considerations arising from reasonably foreseeable victim impact).

[14] I do not have precise details about Mr. Terrio's circumstances, however he confirmed on the record that he is neither African Nova Scotian nor Indigenous/Aboriginal. From my limited knowledge of his circumstances, I infer that he is not from a marginalized community.

[15] The circumstances of the offences are that he was managing an illegal retail so-called "cannabis dispensary". He and his offences are eligible for NSRJP.

[16] The discretionary nature of this Court's decision regarding whether to refer an individual is not without constraints. Such a decision should be made on a principled basis.<sup>5</sup>

[17] I conclude that ultimately the court should be satisfied that it is in the "interests of justice" to make the referral.

[18] I bear in mind that typically this process will implicate a number of individuals/representatives of community interests, in a process designed to meet

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<sup>5</sup> Notably, unlike the authority to "order" a PSR per s. 721 of the *Criminal Code*, a referral to NSRJP is akin to an administrative decision as it draws its existence from policy of the Provincial government. I am doubtful that declining to refer an individual to NSRJP would give rise to an avenue of justiciable legal challenge.

the objectives of the NSRJP. Their time and the resources required to support them are limited, and should be expended on those cases demonstrably suited to this process.

[19] A significant consideration arises from the representation by counsel that experience suggests that the preparation and execution of such a restorative process (which, although its specific form in a particular case may vary, was analogized to a “sentencing circle”) often takes 3 to 5 months.<sup>6</sup>

[20] In the HRM region, PSRs can usually be completed within 8 to 10 weeks. I have already ordered a PSR herein.

[21] I must bear in mind that section 720 of the *Criminal Code* mandates that “[a] court shall, as soon as practicable after an offender’s being found guilty, conduct proceedings to determine the appropriate sentence to be imposed.”

[22] I ask myself: is the engagement of the NSRJP process and consequent delay justifiable in all the circumstances here?

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<sup>6</sup> In advance of my determination about whether to refer Mr. Terrio’s case to NSRJP, on November 8, 2021, we tentatively set dates for the sentencing on May 6, 2022, largely so far into the future in an effort to accommodate the time we anticipated may be required for the filing of the NSRJP response herein.



[23] The crimes here did not victimize a specific individual, and there is no evidence anticipated that young persons were customers. Arguably, the “community” may have been victimized.

[24] However, I respectfully conclude that these are not circumstances where the input of the “community”, namely HRM and the other NSRJP participants generally, is materially necessary to holding Mr. Terrio “accountable”, or to address and repair harms caused, and restore relationships.<sup>7</sup>

[25] I do not reasonably foresee how that process will materially inform the sentencing or acquire material information to assist me in discharging my sentencing responsibilities. There are already such avenues in place at sentencings: the offender may present evidence personally, or through other witnesses; and his Counsel and the Crown Counsel may make representations to the Court. A PSR is also intended to provide some of his information.

[26] Moreover, while the NSRJP process could make sentencing recommendations, institute interim measures to introduce a measure of pre-sentence accountability, or an offender could be referred back to the NSRJP

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<sup>7</sup> Section 722.2 of the *Criminal Code* permits “community impact” statements.

process post-sentencing, I see no material expected advantages of such possibilities in the case at Bar.

[27] Speaking entirely for myself only, I am satisfied that *post-conviction referrals* to NSRJP should be:

1. made in exceptional circumstances;
2. confidently expected to provide informational or other value commensurate to engaging such a process; and
3. expected to generate such information and outcomes that are not reasonably available to the court otherwise.

### **Conclusion**

[28] The invocation of the NSRJP process in Mr. Terrio's case is not in the interests of justice. There will be delay, and there is no reasonably foreseeable commensurate benefit to the sentencing process.

[29] I respectfully decline to make the referral to NSRJP.

Rosinski, J.