

**SUPREME COURT OF NOVA SCOTIA**

Citation: R. v. Murphy, 2014 NSSC 14

Date: 20140110

Docket: CRS. No. 376782

Registry: Sydney

**Her Majesty the Queen**

-and-

**Gordon James Murphy**

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**Sentencing Decision**

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**Judge:** The Honourable Justice Cindy Bourgeois

**Heard:** November 19, 2013 at Sydney, Nova Scotia

**Oral**

**Decision:** January 10, 2014

**Written**

**Decision:** January 20, 2014

**Counsel:** Crown Counsel - David Iannetti  
Defence Counsel - Darlene MacRury

Bourgeois, J. (Orally)

[1] Mr. Gordon James Murphy is being sentenced today after having been found guilty on October 2, 2013, by a jury, of two counts of possession of controlled substances for the purposes of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*. The charges relate to the possession of cocaine and hydromorphone, both of which are Schedule 1 controlled substances.

[2] The evidence before the Court, and apparently accepted by the jury, is that Mr. Murphy was in control of an apartment located at 73 Dominion Street, Glace Bay, Nova Scotia. A search warrant was executed at that residence on September 4, 2008. The evidence at trial disclosed that among the items found and seized were the following:

A total of 73.1 grams of cocaine;

26 hydromorphone 30 mg tablets;

\$715.00 in cash;

Digital scales;

Various plastic baggies, some of which contained cocaine residue.

[3] The Crown called evidence from Constable Steve Timmons, who testified that the quantity of drugs seized, the cash and accompanying paraphernalia was not indicative of personal use, but rather indicators of a “mid-level” trafficker.

[4] In addition to the evidence at trial, the Court has had the benefit of the two Pre-Sentence Reports prepared in relation to Mr. Murphy; and the submissions of Counsel. I have taken the opportunity to also review those authorities cited to me by both the Crown and Ms. MacRury, in both the written and oral submissions. I thank counsel for them, as they were very helpful in my deliberations.

[5] In terms of the Pre-Sentence Reports, I am aware that Mr. Murphy is presently 50 years of age. He had not been employed since 1992 due to a workplace accident which has left him with significant physical disabilities. He has received treatment for chronic pain and the emotional consequences thereof, for more than a decade. This treatment is ongoing.

[6] In the Pre-Sentence Reports, Mr. Murphy is described very positively by members of his family. He is described as being the primary caregiver for his elderly father who reportedly suffers from Alzheimer's disease. Those closest to Mr. Murphy report being shocked by the charges before the Court.

[7] In terms of prior criminal activities, I have noted that Mr. Murphy had no criminal history prior to September 4, 2008, the date of these offences.

[8] As counsel would be aware, the purpose and objectives of sentencing of drug offences is set out in s. 10 of the *Controlled Drugs and Substances Act*, in conjunction with the more general principles of sentencing codified in ss. 718, 718.1 and 718.2 of the Criminal Code. Under the former, the stated fundamental purpose in the sentencing of drug offenders is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

[9] Section 718 of the Criminal Code similarly sets out a number of sentencing objectives to be attained, namely, (a) denunciation, (b) deterrence - both specific

and general, (c) separation of offenders from society where necessary, (d) rehabilitation, (e) reparation to victims and the community, and (f) the promotion of a sense of responsibility in offenders.

[10] Turning to the particular offences, the Courts of this province have repeatedly emphasized deterrence as a sentencing objective when sentencing drug traffickers, with the goal of protecting the public. Those who traffic in cocaine are of particular concern, given the devastating effect that drug has wrecked on our communities. Money, and lots of it, has been made by those who traffic in cocaine. In their wake however, are broken lives and broken families suffering the results of addiction, greed and the frequent violence it spawns. Hydromorphone triggers similar damage, to individuals and society in general.

[11] The Crown suggests that the two offences should attract a sentence of between 4 and 5 years. Ms. MacRury submits that there are a number of factors which support a significantly lesser sentence; namely Mr. Murphy's lack of a pre-offence criminal record; and absence at trial of evidence of actual trafficking; Mr. Murphy has been under very strict release conditions since September of 2008; and that he is needed to care for his elderly father. A term of 2 years less a day is

submitted by Ms. MacRury to be appropriate in the circumstances, and that a conditional sentence followed by a term of probation should be ordered. In this regard, Ms. MacRury has impressed upon the Court the recent decision of the Nova Scotia Court of Appeal in **R. v. Scott, 2013 NSCA 28**, as supportive of the availability of a conditional sentence in the present circumstances.

[12] I turn now to consider the nature of these offences. The jury has made a determination that Mr. Murphy was in control of the substances in question. I cannot displace that finding, notwithstanding his protestations of innocence. I further agree with the testimony of Constable Timmons, that the quantity of drugs, as well as the additional items seized are indicative that the drugs were being sold for profit, as opposed to being used for personal use. In my view, the presence of a second drug, hydromorphone, in an unlabeled bottle is also supportive of the fact that a commercial enterprise was being undertaken.

[13] I further agree with Constable Timmons' assessment that the quantity of drugs found is indicative of activity beyond that of a petty retailer. There is no indication before the Court that Mr. Murphy was utilizing the drugs himself, or

needed to resort to selling small quantities in order to feed his own drug habit.

The evidence supports that Mr. Murphy was a mid-level trafficker.

[14] The Court must also consider the circumstances of the particular offender.

It is a very important factor in my view, that Mr. Murphy had no previous pre-existing criminal record. It is further noted that none of the aggravating factors outlined in s. 10(2) of the *Controlled Drug and Substances Act*, are present in this case. I have also considered that Mr. Murphy has been subject to release conditions in excess of 4 years, prior to trial. Although sympathetic to the demands often occasioned by the care of elderly parents, given Mr. Murphy has a number of other family members in the local area, and as such this particular factor is not overly significant in my view in terms of reaching an appropriate disposition.

[15] After considering the totality of the circumstances, I find that a sentence of 36 months on each count, to run concurrently, is appropriate. Mr. Murphy is to have credit for the 4 days he was held in pre-trial custody following the charges, on a straight time basis. It is my hope that correctional officials will be able to arrange for Mr. Murphy to continue to have resources made available to him in

relation to the treatment and management of his longstanding chronic pain condition.

[16] Given the length of the sentence imposed, there is no need to address s. 742.1 of the Criminal Code, or the directions given by the Supreme Court of Canada in **R. v. Proulx** relating to conditional sentences.

[17] The Crown has sought several ancillary orders, namely forfeiture of the cash seized; a 10-year firearms prohibition pursuant to s. 109 of the Code; and a DNA order. Those orders are granted.

J.