

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Reid, 2006 NSSC 248

Date: 20060803

Docket: CR 260665

Registry: Halifax

Between:

Her Majesty The Queen

- and -

David Samuel Reid

Judge: The Honourable Justice C. Richard Coughlan

Heard: May 1 - 3, 2006, in Halifax, Nova Scotia

Decision: August 3, 2006 (Oral Decision on Sentencing)

Counsel: Timothy McLaughlin, for the Crown
Brad G. Sarson (for the trial), for the Accused
Lawrence W. Scaravelli (for the sentencing), for the
Accused

Coughlan, J.: (Orally)

[1] On May 3, 2006, David Samuel Reid was found guilty of:

THAT on or about June 22, 2005, at or near Halifax, Regional Municipality of Halifax, Province of Nova Scotia, he did unlawfully have in his possession, for the purpose of trafficking, 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(2) of the said *Act*.

[2] I have read the pre-sentence report prepared June 19, 2006, the written briefs from counsel for the Crown and Mr. Reid, and the other material filed, heard the evidence of Harold Joseph Gibson and the oral submissions from counsel.

[3] On the day of the offence, Mr. Reid was in violation of his parole. He was arrested on his parole warrant. Upon search incidental to arrest, Mr. Reid was found in possession of a cell phone, knife and crack cocaine in four separate pieces - three pieces weighed 0.3 grams each and one piece weighed 6.5 grams, totalling 7.4 grams.

[4] Mr. Reid is twenty-four years of age. He obtained his general education diploma while in custody in 2001. Mr. Reid has been unemployed for the past three years, but has worked intermittently for his stepfather, building cabinetry.

[5] Mr. Reid was in a five year relationship, which produced a daughter, now five and a half years old. The relationship ended two years ago and his former partner relocated to Ontario with their daughter. Mr. Reid is now in a fifteen month relationship with an eighteen year old woman who is three months pregnant.

[6] Mr. Reid has had a troubled life. He had a significant drug addiction, which requires treatment. During his teenage years, he had behavioural problems and was placed in various group homes and foster homes, as well spent time at the Shelburne Youth Centre and the Nova Scotia Youth Centre at Waterville, Nova Scotia.

[7] Mr. Reid began using marihuana, Valium and acid at the age of fifteen, and by eighteen he had progressed to the daily use of cocaine. Crack cocaine became

his drug of choice, which he used on a daily basis. Mr. Reid says he stopped his drug use in December, 2005. He attended substance abuse programs while in custody, but not while he was in the community. He states he wishes to participate in a long term substance abuse program.

[8] Mr. Reid has an extensive criminal record. His record does not include drug related offences.

[9] I have considered the judicial principles of sentencing, including s. 10(1) of the *Controlled Drugs and Substances Act*, s. 718 to 718.2 of the *Criminal Code* and s. 742.1 of the *Criminal Code* dealing with conditional sentences. I have considered the cases to which I have been referred.

[10] While not exhaustive, the following are aggravating and mitigating factors in this case:

- Mr. Reid committed the offence while on parole.
- Although Mr. Reid does not have any prior drug related offences, he does have a lengthy criminal record which occurred over a number of years.
- Without minimizing the terrible effects of cocaine, the quantity of cocaine Mr. Reid had in his possession was relatively small, and was a “retail” amount, rather than a “wholesale” amount.

[11] The Court of Appeal of this Province has expressed its opinion on many occasions concerning the trafficking in hard drugs, such as cocaine.

[12] In *R. v. Huskins* (1990), 95 N.S.R. (2d) 109, Macdonald, J.A., in giving the judgment of the Appeal Division, stated at p. 113:

No one can seriously dispute that cocaine is an extremely dangerous drug and that society demands that those who are involved in selling it must be dealt with severely. Rare indeed will be the case where less than federal time should be considered as a proper sanction for such offence.

[13] In *R. v. Robins* (1993), 121 N.S.R. (2d) 254, Clarke, C.J.N.S., in giving the judgment of the Court of Appeal, stated at p. 255:

The trial judge was impressed by the mitigating circumstances of the offender upon which he placed great emphasis. He characterized the case as one having exceptional circumstances that caused him to impose a sentence considerably lighter than that which this court has been advocating in its decisions where cocaine is involved, principally beginning with *R. v. Byers* (1989), 90 N.S.R. (2d) 263; 230 A.P.R. 263. The position of this court, repeated in many of our decisions since *Byers*, is that there are no exceptional circumstances where cocaine is involved. We are persuaded that general deterrence must be prominently addressed if the public is to be protected from the nefarious trade that has developed in this drug that is so crippling to our society.

[14] More recently in *R. v. Dawe (G.M.)* (2003), 210 N.S.R. (2d) 212 (C.A.), Hamilton, J.A., in giving the Court's judgment stated at p. 214:

The appellant has not satisfied us that the sentence is demonstrably unfit. To the contrary, the sentence is, if anything, unduly lenient. Possession of cocaine for the purposes of trafficking typically results in sentences of two years or more, as the judge pointed out.

[15] The Crown is seeking a sentence of four to five years of federal incarceration.

[16] The defence is seeking a conditional sentence.

[17] The issue of conditional sentences was addressed by the Supreme Court of Canada in *R. v. Proulx* (2000), 140 C.C.C. (3d) 449 where Lamer, C.J.C. stated at p. 475 in referring to s. 742.1:

In my view, the first three criteria are prerequisites to any conditional sentence. These prerequisites answer the question of whether or not a conditional sentence is possible in the circumstances. Once they are met, the next question is whether a conditional sentence is appropriate. This decision turns upon a consideration of the fundamental purpose and principles of sentencing set out in s. 718 to 718.2. I will discuss each of these elements in turn.

[18] In this case, the offence is not punishable by a minimum term of imprisonment.

[19] Considering the need for denunciation and general deterrence when sentencing persons involved in selling crack cocaine and the particular facts concerning Mr. Reid, I am not satisfied an appropriate sentence in this case is less than two years.

[20] Mr. Reid, would you please stand.

[21] I sentence you to a term of imprisonment of three years, to be served in a federal institution.

[22] It is for the trial judge to determine the credit to be given for pre-detention custody.

[23] Mr. Reid was on remand from May 3, 2006 - a period of 93 days. I determine credit is to be given for the remand time at a rate of two for one, which totals 186 days. Deducting the remand time results in a total sentence of two years 179 days.

[24] I grant an order for a mandatory firearms prohibition pursuant to s. 109 of the *Criminal Code* for a period of ten years.

[25] I order the items seized from Mr. Reid at the time of his arrest be forfeited to the Crown.

[26] Considering Mr. Reid's incarceration, I waive the victim surcharge.

Coughlan, J.