

IN THE SUPREME COURT OF NOVA SCOTIA

**Citation:** R. v. Boliver, 2005 NSSC 221

**Date:** 20050427

**Docket:** CR.205829

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

William Lee Boliver

**Judge:** The Honourable Chief Justice Joseph P. Kennedy

**Sentence**

**Hearing Heard:** April 27, 2005, in Halifax, Nova Scotia

**Decision:** April 27, 2005  
Written Release: August 10, 2005

**Counsel:** Monica McQueen for the Crown  
Catherine Benton for Defence

**By the Court: (Orally)**

[1] At the end of every sentencing is a human being, complicated humanity.

Mr. Boliver is certainly that. Mr. Boliver is a complicated, interesting young man. I am satisfied that the suggestion that he has some 'smarts' is correct. No question, but that if he, has the necessary gumption, self respect, initiative, that he's capable of finding, accomplishing another kind of lifestyle that would be hugely beneficial to that baby that is on its way, wouldn't it be good if Mr. Boliver could be a role model for that child, exemplary father, rather than a drug dealer, rather than a pusher of cocaine? Wouldn't that be good? That would be good for him, it would be good for the child, it would be good for society, would be good for all of us, so that is a fine prospect.

[2] I have been at this business a long time and I know I sometimes bore people by saying that, but I have been on the bench, primarily in the Criminal Courts of this Province, for over twenty-five years and I know that people change, I've seen it. Sometimes dramatically, and often surprisingly and I have seen situations where people have changed in circumstances where I never would have guessed. I also know, that as people get closer and closer to that magic age, we used to call it twenty-eight, twenty-eight years of age,

that they, most people, majority of people, are significantly less likely to continue to commit criminal offences. We know that happens at around that age. Often people go on to become professional criminals, criminals all their lives, but a lot of people change. It is not unheard of. So that when defence counsel, when Mr. Boliver in his presentence report, when Reverend Armstrong, and thank goodness for people like Reverend Armstrong who have faith in the Billy Boliver's of this world and provide the kind of assistance and counselling that they do, thank goodness, when these people tell this Court that this man is different than he was and he's going to do better, then that's not to be discounted and I don't.

[3] Let me talk to you a bit and I know again that I have done this before, no doubt will do it again. Let me talk to you so that the record will reflect, so that the tape machine that is recording everything that I say will reflect what I know about the crack cocaine world, after having spent all those years as lawyer and as a judge in this Province and in this City. That terrible world that is dominated by crack cocaine. That sad, parallel universe in which people's lives are used up and ruined; and where individuals prosper from the weakness of fellow human beings, are in the business of human misery; the business of human misery, the easy money. It is a major problem in our

society, that world, it is a constant in our criminal courts, in the gas station robberies and the assaults, in the contract murders, in the bank robberies, in the breaking and entering, in the sexual assaults, cocaine, crack cocaine.

Take a look around in this city, in this Province, think about how our society has changed in the last twenty-five years and reasons for that. Why is that? One of the reasons is that there are people who make money from the sale of crack cocaine, from human deprivation and weakness, and those people have to be addressed. We have an obligation as the judiciary in this Province, to say to those people who would profit in that world, in that hell on earth, that is the crack cocaine world, we have an obligation to those people to say, don't do that, because there will be consequences and those consequences will be certain and sure. So I speak to more than Mr. Boliver, I speak to all of those people in this city, in this Province, in this Country, because decisions of the Superior Courts are quoted throughout this Country, cited, and I say if you are going to be in the business of the trafficking and what Justice Cacchione has described as 'this poison', then please understand that there will be consequences, that there has to be consequences, we cannot allow it to go on with impunity. And every time we have a crack cocaine dealer come before this Court, they are unique

individuals. And inevitably, they are going to be doing better and they have changed and they have seen the error of their ways and often that's true.

That's possible, that's true in many cases. Mr. Boliver may be one of those.

In the meantime, in the mix of Mr. Boliver and his interest in starting his new life and I am told he has already started that new life, there is still some business to deal with from his old life. And that's what we are doing today.

[4] We're dealing with an individual before this Court, and what is best for the individual, and I am dealing with what is best for the people for the Province of Nova Scotia. That is also my concern. I have the larger concern than Reverend Armstrong has and then Ms. Benton has. I have more things on my mind when I deal with this matter, than anybody else. I have to take a look at the big picture.

[5] I am aware of the sentencing provisions of the *Act*, dealing with one count possession for the purposes of trafficking I know exactly the details of that offence. I have sentenced in the matter. I have heard Mr. Boliver's testimony in that matter and I discounted it, I did not believe him and I said why.

[6] I am aware of s. 10(1) of the *Act* that speaks to sentencing and when there are aggravating factors in relation to sentencing I consider that there are aggravating factors in relation to this matter, Mr. Boliver has two priors for this kind of offence, in fact, was on probation at the time that he committed this offence. He had just got out and obviously incarceration last time around didn't do the trick, did it? It might be an argument to make. I am aware of *R. v. Proulx* (2000), 140 C.C.C. (3d) 449 in which the Chief Justice of this Country talked about conditional sentencing, when it was appropriate and when it might not be appropriate, and I quote from page 496, para 114 of that decision:

Where punitive objectives such as denunciation and deterrence are particularly pressing, such as cases in which there are aggravating circumstances, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved by a conditional sentence.

[7] Could restorative goals be achieved by a conditional sentence in this matter?

Yes they could. Yes they could. I am also aware of *R. v. David*, [2004]

N.S.J. No. 477, 2004 NSSC 241, in which my brother Cacchione, J. talked

about conditional sentencing in relation to this type of offence in court's

denunciation of deterrence. There's all kinds of caselaw. We have been

sentencing trafficking in this Province for a long time. And just as surely, I

guess the response might be that here we are, here we are, I am very simply put, based upon the aggravating factors in relation to this matter, on the totality of the information, including the real possibility that Mr. Boliver is sincere in his efforts to have a better life, keeping in mind the directives from the s. 10(1) of the *Act* and also the caselaw, trying to consider all of the various factors and doing the balancing act that we always have to do, I am not satisfied that a sentence of less than two years suffices I otherwise would be concerned about a conditional sentence in relation to the likelihood of difficulty of a criminal nature taking place during the period of the conditional sentence, as expressed the same kinds of concerns that Justice Cacchione had in *R. v. David, supra*. Keeping in mind all the various factors, including the importance of deterrent, denunciation, education, but also trying to address the situation with the particular individual before this Court, there will be a sentence of thirty months in a federal institution on that one count.

Chief Justice Kennedy