

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Fawcett*, 2017 NSPC 6

Date: 2017-01-30

Docket: 8069516, 8069517, 8069518

Registry: Pictou

Between:

Her Majesty the Queen

v.

Joshua John Fawcett

Sentencing Decision

Judge: The Honourable Judge Del W. Atwood

Heard: 30 January 2017 in Pictou, Nova Scotia

Charge: Section 5(2) *Controlled Drugs and Substances Act*, Section 4(1) *Controlled Drugs and Substances Act*, Section 4(1) *Controlled Drugs and Substances Act*

Counsel: Bronwyn Duffy, for the Public Prosecution Service of Canada
Douglas Lloy, Q.C., Nova Scotia Legal Aid, for Joshua John Fawcett

By the Court:

- [1] The court has for sentencing Joshua John Fawcett. Mr. Fawcett elected as required to have his charges dealt with in this court and entered guilty pleas to a count of possession of cocaine for the purpose of trafficking, as well as counts of simple possession of MDMA and cannabis. Mr. Fawcett has also admitted to breaching a conditional-sentence order.
- [2] The sub-s. 5(2) *CDSA* count of possessing cocaine for the purpose of trafficking is a straight indictable offence. The prosecution proceeded by indictment in relation to the sub-s. 4(1) *CDSA* count involving methylenedioxyamphetamine and proceeded summarily in relation to the sub-s. 4(1) count of possession of cannabis marihuana.
- [3] The parties have put before the court a joint recommendation in relation to sentences for all of the charges and the disposition for the conditional-sentence breach. A joint recommendation before the Court ought to be departed from only if the Court were to be satisfied that the joint recommendation would bring the administration of justice into disrepute or would be contrary to the public interest—*R. v. Anthony-Cook* 2016 SCC 43 at para. 32. The joint recommendation in this case is reasonable. It takes into account Mr. Fawcett's

young age. It takes into account the totality principle. It takes into account sentencing parity and I would refer specifically to the decision out of our Court of Appeal in *R. v. Oickle*, 2015 NSCA 87, which requires the Court to place emphasis on denunciation and deterrence when dealing with offences involving possession for the purpose of trafficking in cocaine and other dangerous schedule I substances.

[4] It is recommended jointly, first of all, that Mr. Fawcett's existing conditional sentence order be collapsed; that is order 1939873 made in this court just last 10 January 2017 after Mr. Fawcett was convicted of a possession-for-the-purpose-of-trafficking count and a number of other matters. In accordance with the provisions of section 742.6(9) of the *Criminal Code*, the court will order and direct pursuant to paragraph (b) that the conditional-sentence order be terminated and that Mr. Fawcett be committed to custody until the expiration of that sentence, the remanet being 499 days.

[5] In relation to each of the indictable counts, there will be the mandatory minimum victim-surcharge amounts of \$200.00 and in relation to the one summary count, there will be the mandatory minimum victim surcharge amount of \$100.00.

[6] In relation to the 5(2) count, the Court will order and direct that there be a secondary-designated-offence DNA collection order and in relation to that same count, the Court will order and direct that Mr. Fawcett be subject to a section 109 order prohibiting Mr. Fawcett from possessing any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition and explosive substance beginning today's date and expiring ten (10) years after Mr. Fawcett's release from custody. The Court will also order and direct that Mr. Fawcett be prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life. The prohibition and DNA collection orders are applicable to case #8069516.

[7] Thirty-six months will be allowed for the payment of the victim surcharge amounts and the Court will also order section 16 CDSA forfeiture of contraband in a form to be presented to the Court, in due course, by counsel.

[8] In relation to the sub-s. 5(2) count, the Court will put into effect the joint recommendation by ordering that Mr. Fawcett be committed to custody in a federal penitentiary for a period of two (2) years. That two (2) year sentence will run concurrently to any time being served as a result of the collapse of the conditional sentence order.

[9] In relation to the first sub-s. 4(1) count, 8069517, as amended, there will be a sentence of six (6) months, to be served concurrently to 8069516 and concurrently to the conditional sentence order collapse.

[10] Finally, in relation to the second sub-s. 4(1) count, case #8069518, there will be a sentence of ninety (90) days to be served concurrently to the other two sentences and concurrently to the conditional sentence order collapse.

[11] Any other submissions, counsel, in relation to Mr. Fawcett?

[12] As pointed out very helpfully by Ms. Duffy, DNA samples are sometimes rejected by the National DNA Data Bank when the order does not specify the contraband substance that was the subject matter of the charge that gave rise to the issuance of the collection order. The source of the problem seems to be the irregular issuance of secondary-designated-offence DNA collection orders in cases of trafficking or PPT involving Schedule II substances in a Schedule VII amount, or Schedule III or IV substances prosecuted summarily. Although cases of those classifications are authentic trafficking or PPT offences, they do not meet the definition of secondary-designated offence in s. 486.04 of the *Code*, as they are not offences for which the maximum term of imprisonment is five years or more.

[13] Accordingly, the order in this case is to be written up as a collection order under 487.04, “secondary designated offence”, paragraph b(i) and the DNA order will refer to the substance as “cocaine”. Anything further for Mr. Fawcett counsel?

[14] Ms. Duffy: Not from the Crown, Your Honour.

[15] Mr. Lloy: Not by defence, Your Honour.

[16] The Court: Thank you, and Mr. Fawcett, I’ll have you go with the Sheriffs please sir. Thank you very much.

Atwood, JPC