SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Holland*, 2017 NSSC 148

Date: 20170525
Docket: Cr. No. 446359
Registry: Halifax

Between:

Her Majesty the Queen

v.

Tyrell John Holland

Sentencing Decision

Judge:	The Honourable Justice Robert W. Wright
Heard:	May 25, 2017 in Halifax, Nova Scotia
Oral Decision:	May 25, 2017
Written Decision:	May 29, 2017
Counsel:	Mark R. Donohue for the Crown Geoffrey C. Newton for the Defence

Wright, J. (orally)

[1] On November 9, 2016 the accused Tyrell Holland entered a plea of guilty to one count of possession of cocaine for the purpose of trafficking, contrary to s.5(2) of the *Controlled Drug and Substances Act* (CDSA) and one count of possession of a prohibited or restricted firearm with ammunition, contrary s.95(1) of the Criminal Code. All the remaining counts in the indictment were dismissed upon this sentencing as part of a plea resolution.

[2] Sentencing was put over until today after two adjournments which allowed time for the preparation for an updated pre-sentence report. Crown and defence counsel have now confirmed their agreement to make a joint sentencing recommendation for a term of imprisonment of five years in total.

[3] A summary of the fact situation surrounding the commission of these offences was read into the record by the Crown and acknowledged by defence counsel. In brief, on October 23, 2014 the police executed a search warrant at Mr. Holland's apartment where they found, inter alia, 167 grams of cocaine, various drug trafficking paraphernalia, plus a sizeable quantity of cash. They also found a 9mm. handgun with ammunition. The seizure of these items form the basis of the charges to which Mr. Holland has pleaded guilty.

[4] The purpose and objectives of sentencing and the principles to be considered are set out in s.718 of the Criminal Code and s. 10 of the CDSA respectively. Those to be emphasized in this case are the denunciation of unlawful conduct, the deterrence of the offender and other persons from committing

offences, assistance in rehabilitating offenders and the promotion of a sense of responsibility in offenders.

[5] Section 718.1 contains the cardinal principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Also to be noted is s.718.2 which requires that the Court take into consideration whether a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. A similar provision is found in s.10 of the CDSA which identifies prior convictions of a designated substance offence as an aggravating factor.

[6] Before addressing these sentencing principles, I will first recap the highlights of the pre-sentence report prepared on April 3, 2017. It is, on balance, a generally positive report and provides some insight into Mr. Holland's personal background and circumstances.

[7] Mr. Holland is 36 years old and has one child for whom he pays child support. He comes from a broken family relationship (since age 4) and was raised at various stages of his life by his mother and grandmother and his aunt respectively. He also spent about one year in foster care.

[8] Mr. Holland has two years of university education at Dalhousie and is currently gainfully employed as co-owner of two businesses, namely, a bar/restaurant in Dartmouth and a music/entertainment business. He is also self-employed in the real estate sector in buying, selling and managing rental properties. These businesses in which he has now been engaged have provided him with a positive motivation to lead a productive life.

[9] Mr. Holland is not a user of alcohol or illicit drugs but has a history of selling the latter for financial gain. He has reportedly accepted responsibility for his unlawful conduct in these most recent charges.

[10] Mr. Holland also has a heart condition having been diagnosed with a sinus arrhythmia in respect of which it is recommended to the correctional authorities that he be given further assessment and treatment while incarcerated.

[11] Apart from this generally positive pre-sentence report, an important mitigating factor present here is Mr. Holland's guilty plea which demonstrates his acceptance of responsibility as he did in his pre-sentence report interview.

[12] As an aggravating factor, Mr. Holland has a criminal record which includes two prior drug convictions under s.5(2) of the CDSA and two prior firearm possession convictions under s.91(1) and 95(1) of the Code respectively. These all date back to the 2007-2009 timeframe which presents a five year gap with the present offences. Mr. Holland served approximately three years in jail in total for those offences.

[13] In the present case, Crown and defence counsel have presented to the court a joint sentencing recommendation of a term of imprisonment of five years in total, comprised of a sentence of five years on the s.95(1) charge and three and a half years concurrent on the s.5(2) charge. The court is informed that this is a true joint recommendation that was negotiated over several months leading up to trial.

[14] The scourge of cocaine in our communities and the devastation it inflicts in the lives of individuals has been recognized and commented on by our courts on countless occasions. Involvement in the cocaine trade, at any level, attracts

substantial penalties which will vary according to the amount of drugs involved and the classification of traffickers, from petty retailers to large scale retailers and commercial wholesalers (see, for example, **R. v. Knickle,** 2009 NSCA 59 and **R. v. Butt,** 2010 NSCA 56 and the cases therein cited, including **R. v. Fifield** [1998] NSJ No. 42).

[15] The volume of cocaine here found in Mr. Holland's possession was 167 grams which is not a large amount, but neither is it insignificant. What exacerbates the situation for Mr. Holland is his two prior convictions for the same offence, albeit with a five year gap, the most recent being in 2009 when a two year sentence was imposed.

[16] As for the s.95(1) offence, again our courts have repeated condemned the rampant use of guns in our communities and the grave danger they pose to public safety. I need not repeat those condemnations here other than to refer to the instructive findings and comments of the Nova Scotia Court of Appeal in the recent case of **R. v. Phinn**, 2015 NSCA 27.

[17] I have also been referred by Crown counsel to the two companion cases recently decided by the Supreme Court of Canada, cited as **R. v. Nur**, 2015 SCC 15. Those are the well known cases where there was a constitutional challenge to the minimum mandatory sentences imposed by s.95(2), namely, three years for a first offence and five years in the case of a second or subsequent offence. Without going into any unnecessary detail, the Supreme Court of Canada ruled that the minimum mandatory sentences were unconstitutional and contrary to s.12 of the Charter, but nonetheless found that the sentences imposed were appropriate in the

circumstances of those cases. I find those companion cases to be instructive as well.

[18] The legal test to be applied with respect to a joint sentencing recommendation was recently clarified by the Supreme Court of Canada in **R. v. Anthony-Cook** [2016] SCJ No. 43. There, the court recognized that joint sentencing submissions are vital to an efficient justice system, stating (at para. 1):

> Resolution discussions between Crown and defence counsel are not only commonplace in the criminal justice system, they are essential. Properly conducted, they permit the system to function smoothly and efficiently.

[19] To that end, Justice Moldaver identified the test to be applied, in deciding whether to depart from a joint submission on sentencing, by stating that a sentencing judge may do so only when the proposed sentence would bring the administration of justice into disrepute or is otherwise against the public interest. This test is to be applied through the lens of reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions. Such is the high threshold to be met before a sentencing judge may depart from a joint sentencing recommendation.

[20] In the present case, I am satisfied that the joint sentencing recommendation of five years' imprisonment comprised of five years for the s.95(1) charge and three and a half years concurrent for the s.5(2) charge would not bring the administration of justice into disrepute, nor is it otherwise against the public interest. That sentence is hereby imposed on Mr. Holland accordingly.

[21] I would add that this sentence is generally consistent with the sentencing decisions in the aforesaid cases of **Nur**, **Phinn**, **Knickle** and **Butt** respectively. Support for making these sentences concurrent is found in the decision of the Nova Scotia Court of Appeal in **R. v. Banfield**, 2012 NSCA 98.

[22] As part of the joint sentencing recommendation, Crown and defence counsel have informed the court that Mr. Holland has already served 42 days of pre-trial custody in respect of which it is proposed that he receive a credit based on a factor of 1.5. This produces a pre-trial custody credit for Mr. Holland of 63 days which is to be subtracted from his five year sentence on a go forward basis.

[23] Counsel acknowledge that the following ancillary orders are to be issued as well:

(1) A forfeiture order in respect of the several items listed in the schedule attached, which of course pertain to the commission of the subject offences, pursuant to s.16 of the CDSA;

(2) An order for the taking of DNA samples pursuant to s.487.051 and 487.052 of the Code; and

(3) A firearms prohibition order for life pursuant to s.109(3) of the Code.

[24] Lastly, a victim fine surcharge is required to be imposed in the amount of $400 ($200 for each conviction) which is to be payable within one year after the expiration of the sentence of imprisonment.

J.