

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Butt, 2009 NSSC 350

Date: 20091117

Docket: CRH 300747

Registry: Halifax

Between:

Her Majesty the Queen

v.

Robert James Butt

LIBRARY HEADING

Judge: The Honourable Justice Gerald R. P. Moir

Heard: November 17, 2009, in Halifax

Written Decision: Oral decision transcribed, edited, and signed on November 18, 2009

Subject: Sentencing; Possession of cocaine for the purpose of trafficking

Summary: A thirty seven year old had fallen into cocaine addiction. To support his habit, he provided an address at which a large amount of cocaine was delivered by a high level trafficker in Vancouver to a distributor in Halifax. Mr. Butt had a long criminal record, including one drug offence. He is regularly employed, has family support, has plans to improve his education, and succeeded at turning himself around. He has cancer. The Crown recommended four to five years. Mr. Butt suggested a conditional sentence.

Issue: Length of sentence

Result: The criminal record and involvement in the drug trade at a middle level precluded an exceptional sentence under two years. The Crown's range was reasonable, but the illness and turn-around indicated a measure of leniency. Three and one-half years.

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SENTENCING DECISION

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Counsel: Timothy Andrew McLaughlin, for the Crown
Robert James Butt, for himself

Moir, J. (Orally):

[1] Mr. Butt pleaded guilty to possession of cocaine for the purposes of trafficking.

[2] Two well-packaged shipments of compressed cocaine were delivered to his apartment. Each contained a one kilogram block of compressed cocaine of considerable purity. These are large amounts, indicative of levels in the drug trade much higher than the street level.

[3] He also had in his apartment a plastic container containing 196 grams of powdered, or partly powdered, cocaine.

[4] Mr. Butt tells me that working in the bar business as a bouncer lead him into cocaine use. This “spun way out of control”. He provided an address for deliveries, but had “nothing else to do with it”. He said “they gave me drugs” in exchange for his services. I believe everything Mr. Butt said to me today.

[5] Mr. Butt’s description of his involvement is consistent with the very balanced submission made by Mr. McLaughlin, which was based on the circumstantial

evidence gathered by the police. Mr. Butt acted as a cog in the cocaine trade, and he acted in a trusted capacity. We cannot say, and based on the information Mr. Butt provided today we should not conclude, that he was directly involved in distribution or in the retail trade. However, he was a cog between the higher echelons and distributors to street level traders. As such, he insulated both levels from detection, and he facilitated the transportation and distribution of cocaine. He bears the responsibility of the middle man in this evil enterprise that has done great harm to many poor souls.

[6] Mr. Butt has a long record of property offences. He has a previous drug conviction involving trafficking in cannabis, for which he received a conditional sentence.

[7] Mr. Butt spoke for himself today, and he did so honestly and competently. I was also assisted by a thorough brief prepared by his former lawyer, Mr. Serbu.

[8] I also have a pre-sentence report that indicates Mr. Butt suffers from non-hodgkins lymphoma and receives chemotherapy for a tumour in his chest.

[9] The report indicates, and based on Mr. Butt's presentation this morning I accept, that Mr. Butt is regularly employed, has practical plans to advance his education in the marine industry, and has solid support from his father. I accept also that Mr. Butt had a drug problem, is now drug free, and is taking practical measures to turn his life around. He is thirty seven years of age, and it is high time he changes his behaviour.

[10] Mr. Butt proposes a conditional sentence. His employment, plans for education, and positive response to these charges in overcoming addictions might well suggest a conditional sentence if the sentence in this case could be under two years.

[11] I am sorry to have to say to you, Mr. Butt, that, on my assessment, the sentence has to be more than two years, and therefore a conditional sentence is not available.

[12] The courts in this province have long recognized that trafficking in cocaine requires sentences that emphasize deterrence and denunciation. The Court of Appeal has repeatedly stated that sentences under two years should be exceptional.

[13] Mr. Butt's health and his efforts toward rehabilitation might, in some circumstances, go toward a sentence under two years, but not in these circumstances. The criminal record, the quantity of drugs, and the position held by Mr. Butt in the middle of the cocaine business call for a much more serious penalty.

[14] I see good grounds for imposing a four to five year sentence as submitted by the Crown. Mr. Butt's illnesses and his turn-around under the duress of the charges against him incline the court toward a slightly shorter sentence that might see Mr. Butt's return more quickly to employment, containing his addiction or his tendency to it, and getting into the marine field or some other more productive line of work.

[15] Mr. Butt, it is my unfortunate duty to sentence you to three and one half years of incarceration. I will recommend that Corrections officials place you where your illnesses can best be treated and that they provide any programs or other supports that may be available toward enhancing your employment when you do get out.

[16] There will be an Order for a lifetime prohibition on firearms and there will be an Order for a sample of DNA.

J.