

PROVINCIAL COURT OF NOVA SCOTIA

Citation *R v Oickle*, 2014 NSPC 104

Date: 2014-10-07

Docket: 2609508, 2609515, 2609516

Registry: Kentville

Between:

Her Majesty the Queen

v.

Casey Elias Oickle

DECISION

JUDGE: The Honourable Judge Claudine MacDonald

HEARD: October 7, 2014

CHARGE: Section 88(2)Criminal Code
Section 5(2)Controlled Drugs and Substances Act
Section 5(2)Controlled Drugs and Substances Act

COUNSEL: Bill Watts, Federal Crown Attorney
Ken Greer, Defence

By the Court: (Orally)

[1] Come forward. Mr. Oickle you come up here and have a seat. You can have a seat there behind your lawyer. All right.

[2] Mr. Oickle is before the Court here today being sentenced for three charges, three serious offences. He is being sentenced for possession of a weapon for a purpose dangerous to the public. He is also being sentenced for possessing morphine for the purpose of trafficking, as well as possessing cocaine for the purpose of trafficking.

[3] The facts were read into the record on the last day and I'll just summarize. Insofar, as the morphine goes, the quantity here is 23 pills, both 20 milligrams and 100 milligrams pills. Insofar as the cocaine goes, the cocaine... there were six grams of cocaine that was in individual bags for sale. As well, located in the vehicle were scales, score sheet and \$120 in cash.

[4] I should point as well there was another individual in the vehicle at the time, Mr. Trimper, as I understand the facts as read last date. He had on his person five grams of cocaine but Mr. Oickle indicated that, in fact, he had possession of that as well.

[5] The weapon was an imitation 45 calibre pistol located in the front seat of the vehicle between the front seat and the console. Also there was a baton on the floor of the vehicle and these items are clearly depicted in the photographs that were introduced into evidence at the sentence hearing.

[6] The recommendation of the Crown is that the Court impose a federal sentence here, a two year sentence and Defence is asking the Court to consider a community based sentence.

[7] The purpose and principles of sentencing are set out in the *Criminal Code* and what the *Criminal Code* says is that the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives. The objectives are set out and the objectives include deterrence, denunciation, rehabilitation and what have you.

[8] The *Criminal Code* also makes it clear that imprisonment is only to be used if there are no other reasonable alternatives. In other words, a person is not to go to jail unless there's.. or as a last resort, I'll put it that way.

[9] And, I should mention as well that the *Controlled Drugs and Substances Act*, sets out its own purpose for sentencing - that the fundamental purpose of any

sentence is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation and treatment in appropriate circumstances.

[10] A fundamental principle of sentencing is that the punishment has to fit the crime and how the *Criminal Code* says that is that any sentence that is imposed should be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[11] So, let's look at that in terms of what I am dealing with here today. Insofar as the seriousness of the offences go, I'll start by saying that the charges involving drugs, Schedule I drugs, carry maximum life sentence and I say that because that's a clear indicator of how seriously these sorts of offences are viewed.

[12] On the facts as presented the last day, I am satisfied that Mr. Oickle would be considered a petty retailer in terms of the *Fifield* categorization and I think it is very important to note that at the time he committed these offences he was really in the throes of a drug addiction and he was selling to feed his addiction. The addiction really had taken over his life.

[13] There are mitigating factors here. The mitigating factors, for example, clearly there is a guilty plea. It is also clear that Mr. Oickle accepts full

responsibility for what he did and he is extremely remorseful. He has no criminal record. The pre-sentence report is a positive pre-sentence report and a letter from Ms. Morrell, his sponsor in the recovery program, again, it puts Mr. Oickle in a positive light.

[14] Insofar as aggravating factors go, the Crown on the last day suggested that the presence of the weapon was an aggravating factor and that had Mr. Oickle been served with notice that, in fact, he would have been facing a minimum one year sentence for the weapons offence. I just want to make a couple of points about that. Well, first he's charged with that as a separate offence, possession of a weapon, but insofar as the aggravating factors go, there's nothing here to indicate that Mr. Oickle did, in the words of Section 10 of the *Controlled Drugs and Substances Act* "carried, used or threatened to use a weapon". I note that that section does not, for example, use the word "possess" because if that word were there then, yes, yes, it would be an aggravating factor in this case. But, as I see it, in other words, none of the aggravating factors as set out in the *CDSA* are present in this particular case.

[15] As I mentioned, the Crown was seeking a federal sentence and I'll start by saying that is a very reasonable recommendation. The Court of Appeal in this province has repeatedly said that there's going to be significant periods of custody

for people who are involved in trafficking in cocaine. It is as simple as that. In fact, there has become a benchmark or a flexible benchmark, I guess, would be the better way of saying it, that for offences involving possession for the purpose of trafficking in cocaine, for example, a person can expect to go to a prison at the starting point of two years. That's even if the person has plead guilty, even if the person has no record, and it's because of the dangers of the drug. That has been the law in Nova Scotia since back in the mid 80's, in the *Merlin* decision that was years ago and countless decisions after that. The same message has been repeated time and time again, because cocaine and morphine, as well - we are talking here about extremely dangerous drugs. They not only destroy the individual who is using them but, they cause such harm and such devastation in the communities. That's why, in terms of sentencing for offences such as this, our Court of Appeal has been clear that in terms of the objectives of sentencing, that what is to be emphasized is deterrence and denunciation. The sentence has to get the message through, not only to you Mr. Oickle, but to others who might be engaged in this sort of conduct, that they are going to have to pay a price for it and the sentence has to be served to denounce such an unlawful conduct.

[16] Having said that, I have to look at the whole picture here and the whole picture here includes of course, the pre-sentence report and I am going to just refer to portions of that pre-sentence report.

[17] Yes, as a starting point, Mr. Oickle today is 21 years of age. When he committed this offence, by my calculation, he would have been 19 years old and he had no criminal record. In many ways, as I read the report, he was a very typical teenager and then things changed and really his life just spiralled out of control and it was as a result of his addiction to cocaine. And then he tried to deal with it on his own and what happened was he ended up then taking morphine as a way to try and get off the cocaine, as I understand the pre-sentence report correctly.

[18] And, as I said, I am going to refer to the pre-sentence report in some more detail because it really does give a more complete picture of who Mr. Oickle is. It is clear that Mr. Oickle has a very supportive family. His mother sets out that there had been family issues that arose and these family issues would have happened shortly before Mr. Oickle became involved in using drugs. And according to your mother, what happened was that you started to make poor choices and there were ongoing family issues and in her words, "You lost your way and spiralled downward."

[19] In the recent past you have been working hard in your recovery. The plan is for you to remain in your home. There is some consideration about moving and what have you. In terms of school, indications are that you did well in school; that you weren't somebody who was getting into trouble in school. You had good grades. You were engaged in the school community according to the writer of the report. You had many friends. You would like in the future to pursue a business course and you really... well, what's been happening is you've been waiting for this sentencing to take place and then it was after that you were going to move forward with your life.

[20] The teacher at your high school, at New Germany Rural High, was contacted. The teacher advised that, yes, that he started to see changes in you the last couple of years while you were in school and he couldn't pinpoint the exact cause of those changes and the changes included... he referred specifically to, yes, included inconsistent moods. It was his opinion you were capable of furthering your studies.

[21] In terms of your employment, the probation officer spoke to Mr. DeLong who you worked for for three or four sessions, this is in the forestry industry. And what Mr. DeLong said was that in his words, he described, "that you had a sparkle in your eye and you were as sharp as a razor," when he first met you. That was

before you started using. And, he said you were a good worker but then he noticed a change and he saw, again, to quote from the pre-sentence report, “a big reduction in performance likely linked to your problem with drug use.” And, he said he wasn’t surprised when he heard about this because he’s basing that on what he saw himself, and that he would be willing to have you back but only if you were one hundred percent clean from drug use.

[22] Again, with respect to Health and Lifestyle, yes, you told the probation officer that you had been seeing Bronwyn Hobson, who is a clinical therapist at Addiction and Mental Health Services, and again you say that you started using cocaine when you were about 17 years of age. You quickly became entrenched in the drug culture, and then recognizing that you had a problem with cocaine, you started to use prescription pills to stop the cocaine use. You described yourself as being lost in that world very quickly and that you advised the probation officer that you came off the cocaine and morphine last year. You have been clean since that time, aside from occasional marihuana use.

[23] Insofar as addiction counselling goes, the writer of the pre-sentence report spoke to not only Ms. Hobson but also Lindsay Downey and when I read this... I had to read this a couple of times because it didn’t seem to fit in with the letter that was provided to the Court by Ms. Morrell, because what the pre-sentence report

says is that attendance was sporadic and after a couple of missed appointments your file was closed in November of 2013. This is with respect to Addiction Services. But, then you went back in April 2014 and started to get back in terms of counselling. Then I read further on in the report I see where, although the file was closed in November of 2013, that one month earlier, in fact, you were admitted to the Detox Unit in Lunenburg to deal with the opiate addiction. So you were, in essence, getting counselling throughout that time even though they had closed their file. Yes, it says you stayed in Detox Unit. You detoxed in a healthy manner and you were discharged under, they say, standard procedures and then you were followed by Doctor Martell at the methadone clinic in Bridgewater after the discharge. There were issues with respect to mental health and there was some follow-up appointments that were scheduled but according to the report you didn't attend and the file was closed.

[24] Okay, again in the Health and Lifestyle section of the pre-sentence report, indicates that, again, going back to when you were in high school, that you had many friends. As of now that is not the case and again, I think that is because you have been putting your life on hold waiting for this matter to be dealt with.

[25] The writer of the report describes you as having been co-operative; that your responses appeared genuine; that you were frequently emotional throughout the

interview; that you appeared very remorseful for your actions and that you told the probation officer that when you first became involved with using and selling drugs you didn't consider the seriousness of the actions and later you didn't care because you were so far gone in the lifestyle.

[26] In the conclusion of the report, the writer expresses the opinion that in conjunction with whatever sentencing options fall within the parameters of sentencing, "That you appear to be a suitable candidate for community supervision should the court so desire. He expresses his genuine desire to move forward in his life free from drugs and criminal activity."

[27] I am also going to refer to the letter which was introduced as an exhibit at sentencing on the last day. This is a letter from Jane Morrell who is your sponsor in the recovery program and, again, this letter sets out considerable information with respect to Mr. Oickle. She says that she's been a family friend since 2007 and in her letter she talks about the changes she saw in Casey Oickle and these changes, of course, include the time period when he would have been in the throes of the drug addiction. She described you as being a newly clean addict; that she didn't actually never saw you using drugs or selling drugs but she had seen you while under the influence of drugs and she talks about how shocked and saddened she was to see the change that it brought out in who you were as a person in terms

of your attitude, and then she speaks in terms of the steps that you were taking towards dealing with the addiction. And, this letter really paints a very full picture of who you are and what has been happening, in particular, in the recent past in terms of you making efforts and taking steps to deal with what is a very serious addiction problem.

[28] So, basically to sum up, Mr. Oickle was a person who had never been in Court. He had not record at all. When he was about 17 years of age he became involved in drug use and his life spiralled out of control and it only came back under his control, I will put it that way, within the recent past. In fact, he has been on conditions now since June of 2013 and he is 21 years of age now so that gives me some indication of the time frame that we are talking about here.

[29] It is clear that he is trying to make efforts to get his life back to what it was before he became addicted to cocaine. My concern here is that on the one hand deterrence and denunciation are to be emphasized when dealing with offences such as this, offences that really can wreak havoc on our communities and many times, as I mentioned earlier, many times offences such as this result in federal periods of imprisonment, that means a sentence of two years or more.

[30] On the other hand though, I'm concerned here that to incarcerate Mr. Oickle would re-introduce him into a criminal subculture; that it is going to jeopardize the gains that he has made since these charges were laid because, as I thought about this, in the final analysis the public is served best and indeed is better protected if Mr. Oickle continues with the drug counselling, if he attends for the mental health counselling and if he succeeds in his rehabilitation. There is a reasonable possibility, at least a reasonable possibility, that he is going to succeed in his rehabilitation. He has the full support of his family. He also has, obviously, the full support of his sponsor in a recovery program and all the indications in the pre-sentence report are that he's going to do everything he can to, I suppose, to deal with the substance abuse issues so that he never finds himself in this position again.

[31] As I said, in the final analysis the public is best served and better protected if Mr. Oickle continues along the path that he is going and it is clear, as well, that his motivation for doing so is genuine and, as I said just a few moments ago, there is a reasonable possibility that it will succeed.

[32] If you could stand please. Here is how I am going to deal with the offences. Look, Mr. Oickle, you have a lot of people who want everything to work out for you. They want you to go back to the way you were before you were 17, I will put

it that way, before you used drugs. This drug use and this drug subculture that you were involved in, well, it came close I'd say to destroying your life. It went on for a couple of years. You have been away from it now certainly since these charges were laid. You were on conditions and you were on strict conditions since June of 2013 and the indications are, I'll put it this way, there's no indication that you have broken any of those conditions. You have followed those conditions. You were taking steps to get your life back on track.

[33] It is clear from the report that the person who you were when you were not using drugs and the person who you are when you are using drugs are two completely entirely different people and if you are under the influence of drugs you put the community at risk. It is a clear as that. You stay away from them, you rehabilitate yourself, then that protects the public. It is as simple as that. It enables you to live a productive contributing life and, as I have said, the public is best protected if you keep going on the steps that you are taking towards rehabilitation.

[34] So here is how I am going to deal with these charges. The sentence is going to be a conditional sentence order. So, it's two years less a day conditional sentence order, and I am looking at this in terms of the global sentence. I know that there is a separate charge with respect to the morphine, a separate charge with respect to the cocaine, and a separate charge with respect to the weapon.

[35] So, the break down is going to be as follows: insofar as the weapon goes, the sentence is going to be two years less a day to be served in the community. I am satisfied that the criteria as set out in the *Code* are met here, that enabling you to serve the sentence in the community doesn't put the community at risk. So, it is a two years less a day and that is going to be followed by probation for two years. In my view, it is important that you have lots of supervision in order that you stay on the right track that you have been taking now since roughly a year and a half.

[36] I will get into the conditions here in just a moment. Insofar as the other charges, how I am going to deal with those matters is by way of a suspended sentence and a probation order and the probation order is going to be for a period of two years and that is going to be running at the same time as the probation order for the weapons offence. What it means is that you are going to be under the supervision of Correctional Services for four years. It is a long time but it has to be that way because these are really serious charges.

[37] The only reason why you are not going to a federal penitentiary today is, well, it is your age. It is the fact that you are an addict. You weren't doing this to make money. You weren't doing this out of greed. You weren't doing this for any reason like that. You were doing this to feed your addiction and when I read the comments of the people who were describing you when you were in the throes of

the addiction compared to what you are like when you weren't under the influence of drugs, I have to say it was compelling. It really was compelling.

[38] You have tremendous support from your family. It is clear that you are sincere about carrying through with respect to your counselling and rehabilitation. It is clear from the letter that your sponsor wrote on your behalf and your lawyer made comments about that on the last day and I agreed with what your lawyer said about that. For somebody to come forward and say we are in this program, I'm sponsoring him in this program, because I will tell you I have sentenced people without a record, who plead guilty, to a federal period of time in custody for offences very similar to this. But each case is different and in this particular case I am satisfied that this sentence will serve the objectives of the sentencing process as they are set out in both the *Criminal Code* and the *CDSA* itself.

[39] So, it is going to be, as I said, two years less a day conditional sentence order for weapons offence, suspended sentence and probation two years for the drug charges. There is also going to be other orders and I am going to now deal with what the conditions are going to be for the conditional sentence order as well as the probation order.

[40] For the conditional sentence order, here are the conditions. Listen carefully because you are going to have to follow every single one of these conditions. I will tell you now, you will be told later, but I'll tell you now, you break any condition of this conditional sentence order and you could find yourself serving the sentence in jail, not in the community because it is a period of imprisonment but to be served in the community. So, as I said, it is for two years less a day. You are to keep the peace and be of good behavior; appear before the Court when required to do so by the Court; you are to report to a supervisor today and after that as directed; you are to remain in the Province of Nova Scotia unless written permission is obtained to be outside of the Province; and you are to notify the supervisor promptly of any change of your name, address or employment. In addition, you shall not possess, take or consume alcohol or other intoxicating substances; not possess, take or consume drugs except in accordance with a medical prescription; not own, possess or carry a weapon, ammunition or explosive substance; further you are to attend any mental health assessment and counselling as directed by your supervisor; attend for substance abuse assessment and counselling as directed by your supervisor; you are to attend for assessment, counselling or a program as directed by your supervisor; you are to participate in and co-operate with any assessment, counselling or program directed by your

supervisor; you are to submit for urinalysis or other alcohol or controlled substance screening as directed by your supervisor; you are not to associate with or be in the company of anyone with a criminal record, youth record, or drug related record except incidental contact in an education or treatment program or while at work.

[41] Further, and here's how this is going to work. For the first 12 months of the conditional sentence order it's going to be house arrest and the condition is going to require that you are to remain in your residence at all times and to be available for telephone calls at a number that you are going to give us for the first 12 months of the conditional sentence order.

[42] For the following six months of the conditional sentence order there is going to be a curfew. The curfew is going to require that you are to remain in your residence from 10 p.m. until 6 a.m. the following day seven days a week.

[43] There are going to be exceptions to both the house arrest as well as the curfew condition and the exceptions are going to be as follows:

Except when you are at regularly scheduled employment which your supervisor knows about and travelling to and from that employment by a direct route; if you are attending a regularly scheduled education program which your supervisor knows about or at a school or educational activity supervised by a principal or a

teacher and travelling to and from the education program or the activity by a direct route; you're dealing with a medical emergency or attending a medical appointment involving you or a member of your household and travelling to and from it by a direct route; if you are attending a scheduled appointment with your lawyer, your supervisor or probation officer and travelling to and from the appointment by a direct route; when you are attending court at a scheduled appearance or under subpoena and travelling to and from court by a direct route; when you are attending a counselling appointment or treatment program or a meeting of AA or NA at the direction of or with the permission of your supervisor and travelling to and from that appointment, program or meeting by a direct route. And further, for not more than five hours per week approved in advance by your sentence supervisor for the purpose of attending to personal needs; you are to prove compliance with the curfew or house arrest condition by presenting yourself at the entrance of your residence should a peace officer attend there to check with compliance. So, those are the exceptions.

[44] Insofar as the probation order goes, the probation order is going to have the following conditions:

You are to keep the peace and be of good behavior; you are to report to and be under the supervision of the probation officer; you are to refrain absolutely from

the use, consumption or possession of non-medically prescribed drugs and you are to take prescription drugs as they are described; you are to attend for any substance abuse assessment counselling or treatment as directed by the probation officer; you are to attend for any counselling of a personal nature as may be recommended by the probation officer; you are not to have in your possession any weapons; you are not to associate with any people having a criminal record, youth record, or drug record except for contact as would be incidental to education, employment or counselling and there is also other orders that are going to be signed here today. First there is going to be a forfeiture order under section 491. This is in relation to the section 88 charge. So, that replica handgun is forfeited.

[45] Insofar as the drug charges go, there is going to be a forfeiture order and this will relate to both drug charges, under section 16 and what's going to happen is any offence related property that was taken from you is forfeited.

[46] Further, I am going to grant the DNA order. I realize that it is a secondary designated offence but these offences are all serious and I am satisfied that it is, indeed, appropriate that you be required to provide a sample of a bodily substance for purposes of the DNA Databank and for record keeping that is going to be in relation to the 5(2) charge, the section 5 *CDSA* charges.

[47] In addition, insofar as both the *CDSA* charges are concerned, there is a mandatory firearms prohibition order and this is under section 109 of the *Criminal Code*, and I will be signing that order when it is prepared by the Crown. Basically what that order does, it says that for a period, and the period of time is going to be for a period of 12 years, you are prohibited from having in your possession, it will be firearms, ammunition, explosive substances and other such items, you understand. And if you are in the situation where you are in possession of any of those items, then you should let your lawyer know because the order can have a grace period giving you 30 days to lawfully disclose of such items. I am assuming that's a non-issue here. All right. So, I will be signing that firearms prohibition order under section 109 of the *Code* when it is prepared.

[48] I'm going to check in terms of when these matters arose in terms the changes to the victim fine surcharge. No, these charges were before the legislation changed.

Claudine MacDonald, JPC