

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. MacLean*, 2015 NSPC 16

Date: 2015-03-31

Docket: 2815645, 2815646, 2825633
2825625, 2825626, 2825627

Registry: Pictou

Between:

Her Majesty the Queen

v.

Mark Robert MacLean

Judge: The Honourable Judge Del Atwood,

Heard: March 31, 2015, in Pictou, Nova Scotia

Decision: March 31, 2015

Charge: Section 5(2) Controlled Drugs and Substances Act
Section 5(2) Controlled Drugs and Substances Act
Section 5(1) Controlled Drugs and Substances Act
Section 129(a) Criminal Code of Canada,
Section 368(1)(b) Criminal Code of Canada
Section 354(1)(a) Criminal Code of Canada

Counsel: Bronwyn Duffy, for the Public Prosecution Service of Canada
Jody McNeill, for the Nova Scotia Public Prosecution Service
Edward Patterson, for Mark Robert MacLean

By the Court:

[1] The court has for sentencing Mark Robert MacLean. Mr. MacLean has elected, where required, to have his matters dealt with in this court, and has pleaded guilty to an array of drug and property and resist-related charges. The drug matters proceeded by indictment. The resist and property-related charges proceeded summarily.

[2] The mitigating factors are that ... do I have it right, Mr. MacLean, that you are 41 years of age?

[3] **Mr. MacLean**: 40.

[4] **The Court** 40. 40 years of age. Mr. MacLean is not beyond the hope of rehabilitation; however, Mr. MacLean's record demonstrates to the court very clearly that, at the present time, Mr. MacLean finds himself trapped in the gravity well of drug dealing. I agree completely with Ms. Duffy that that is a crime that often plays out in communities in the form of gang-related violence, one dealer trying to rip off another dealer; deals falling through, and people get hurt and injured and bystanders and innocent members of the public are often caught in the middle.

[5] There is a joint recommendation before the court for a five-year federal term that is a reasonable one. While it might seem to be at the lower end of the spectrum, given this offender's record for designated drug offences, Ms. Duffy reviewed with the court the considerations that went into the working out of the joint submission. While I recognize that there might be certain factors the court ought not know about, Ms. Duffy's practice of providing the court with an appropriate level of background information is a highly commendable one, as it allows the court to assure itself that the joint submission would be in the interests of justice.

[6] First of all, the court is going to order a primary designated offence DNA collection order. I hope I have that ... do I have that right, Ms. Duffy? It's a primary

[7] **Ms. Duffy**: Actually, I believe it's a secondary designated offence.

[8] **The Court**: Oh, I see. It is secondary. You're absolutely correct And was there a DNA ... there was a DNA order being sought?

[9] **Ms. Duffy**; Yes.

[10] **The Court**: Yes. So, a secondary designated offence DNA collection order in relation to case nos. 2815645 and 2815646 relating to possession for the purpose

of trafficking cocaine and hydromorphone, and I would ask that the DNA order refer to those specific substances, please.

[11] In addition, in relation to all of the Section 5 *CDSA* matters, the court prohibits Mr. MacLean 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 as there was a previous order against Mr. MacLean under that provision, that will run for life; furthermore, Mr. MacLean is prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

[12] In relation to each of the summary-offence charges, there will be \$100 victim surcharge amounts, and Mr. MacLean will have six (6) years to pay those victim surcharge amounts.

[13] In relation to each of the indictable matters, there will be \$200 victim surcharge amounts and Mr. MacLean will have six (6) years to pay those victim surcharge amounts.

[14] The sentence of the court will be as follows:

- In relation to case #2815645, possession of hydromorphone for the purpose of trafficking, there will be a sentence of one and a half years. That will be the starting point.
- In relation to the 5(2), the possession of cocaine for the purpose of trafficking, the sentence of the court will be one and a half years. That will run consecutively to the first count.
- And then in relation to the trafficking in cannabis, the court imposes a sentence of one year, to be served consecutively to the first two sentences.
- And finally in relation to the charges under the *Criminal Code*, there will be a four (4) month sentence in relation to the resist to be served consecutively.
- Four (4) months in relation to the use of a forged document to run consecutively.
- And four (4) months for the possession of property obtained by crime to be served consecutively.
- This works out to a total of five (5) years imprisonment in a penitentiary.

[15] Any further submissions, counsel, in relation to Mr. MacLean?

[16] **Ms. Duffy**: Your Honour, is the court prepared to order forfeiture?

[17] **The Court**: Oh yes, and there will be the Section 16 forfeiture ordered as well. And I regret not having mentioned that. Thank you very much, Ms. Duffy.

[18] Anything further for Mr. MacLean, counsel?

[19] **Mr. Patterson**: No, Your Honour.

[20] **Ms. Duffy**: No, thank you, Your Honour.

[21] **The Court**: Thank you. That's all for Mr. MacLean, sheriff. Thank you very much. And thank you Ms. Duffy for pointing out the things I'd missed.

Atwood, JPC