

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. Taylor*, 2018 NSPC 42

**Date:** 2018-10-01

**Docket:** 2930647

2930648/2930649

**Registry:** Amherst

**Between:**

Her Majesty the Queen

v.

Walter Francis Taylor

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**DECISION ON SENTENCE**

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**Judge:** The Honourable Judge Rosalind Michie

**Heard:** 1 October 2018, in Amherst, Nova Scotia

**Decision:** 1 October 2018 (oral)  
9 November 2018 (written)

**Charges:** Sections 5(1), 5(2) and 4(1) CDSA

**Counsel:** Mr. Douglas Shatford, for the Crown  
Mr. Robert Rideout, for the Defence

**By the Court:**

[1] I have received the crown's brief, and I have obviously scanned it in a very pre-emptory fashion, given that I just received it about two minutes ago, but in my look through it, there are no surprises in here. We are all familiar with *R. v. Oickle*, 2015 NSCA 87, and also obviously familiar with Judge Buckle's decision in *R. v. Rushton*, 2017 NSPC 2, which I guess put a wrinkle in these sorts of things in certain situations. But we are bound by Justice Scanlan in this province, and certainly he said there was a strong message of deterrence in these cases to be sent when it comes to the trafficking of Schedule I substances, and the benchmark essentially that our superior court has set is a period of two years incarceration.

[2] With this case, we are dealing with sentencing for three offences. The trafficking charge, with respect to the methamphetamine. I'm not going to get into the details of the facts. I have made my decision on the trial. But with respect to the meet behind Tim Horton's, the second charge as a result of the execution of the search warrant, the search of Mr. Taylor's residence, and the quantity of methamphetamine that was found at his residence. And also possession of a quantity of marijuana, which was originally, I believe, possession for the purposes

of trafficking, but that was then changed. He is now being sentenced on the lesser, included offence of possession of the marijuana.

[3] So I won't say too much. I guess I have to say a little bit in this day and age. But I think that Mr. Rideout hit the nail on the head in this case with respect to sentences and the position of the Court of Appeal with respect to sentence, that the benchmark and appropriate sentence, given the serious nature of Schedule I drugs, and the effect that they have on society, and their seriousness - that they warrant a minimum two year period of incarceration. The only time there has really been deviation from that, such as in the *Rushton* (supra) case, and I guess there's a split in what the courts say, whether there is a requirement for exceptional circumstances, but certainly I think that generally there have to be very exceptional circumstances to deviate from that. In each case, it requires looking at the facts specific to that particular matter.

[4] With respect to sentence, this is in essence a joint recommendation, acknowledging and understanding the position of our superior court in this matter, but it still bears reviewing aggravating and mitigating factors. With respect to aggravating factors, there are no aggravating factors present, except for the nature of the offence itself, and nature of the drug, that's a Schedule I drug under the

*Controlled Drugs and Substances Act*. That is seen by our courts as a grave offence, with a high degree of moral blameworthiness, and it requires emphasis on the principles of denunciation and general deterrence. Often rehabilitation is a primary factor, but in this case, denunciation and deterrence are the primary considerations, as per *R. v. Fifield*, 1978 CanLII 812 and reinforced in *Oickle* (supra) and subsequent cases.

[5] There are often things that can mitigate the circumstances. I'm thinking about *Rushton*, for example, where it was a first time, very youthful offender. He had very specific circumstances. There was a plea of guilty. There are different mitigating circumstances that a court can consider. Those circumstances are not present in this case.

[6] There is a pre-sentence report, and I have had an opportunity to review that in some detail. I think overall it is generally a positive pre-sentence report, but there aren't a great deal of mitigating factors here that are often present in some cases where a deviation from the two year period of incarceration would be warranted. Often it is a first time offender, which is not the case here, or someone who is a very youthful person. Not necessarily a young person, but a youthful person, which is also not the case in this case. Often people who traffic in

narcotics are doing so to finance their own habits, that sort of thing. Often, there is a lot of insight gained into a person's addictions. They have made great steps to deal with their addictions or deal with their personal circumstances. I don't see evidence of that here. I certainly see someone who is gainfully employed, who supports a partner, who seems to be otherwise living a fairly pro-social life, other than the situation with respect to the trafficking of the drugs.

[7] So in this case there is a joint recommendation of sorts for a two year period of incarceration, arrived at by experienced counsel. It certainly follows *Oickle* (supra) and the position of our courts in Nova Scotia with respect to sentencing for these matters. There must be a strong emphasis on the principles of denunciation and deterrence. In considering that need for denunciation and general deterrence as emphasized at the case law, specifically *Oickle*, (supra), when sentencing persons involved in trafficking Schedule I offences, or in possession of for the purposes of trafficking, and having considered the totality of the circumstances of the offence, Mr. Taylor, I am satisfied that the appropriate sentence in this case would be a two year period of incarceration, as suggested by counsel. I am abbreviating my comments because of the position of counsel.

**MR. RIDEOUT:** As I have indicated, there were no weapons here.

**THE COURT:** Absolutely.

**MR. RIDEOUT:** I've done a case where I did get a suspended sentence for methamphetamine trafficking, but it related to the individual's mental condition, that those were the exceptional circumstances, that just weren't present here.

[8] Exactly. And none of the circumstances, as you rightly pointed out, Mr. Rideout, which might allow for consideration of deviating below that two year period of incarceration are not present here. I don't find that they are present here. When I consider the personal circumstances of Mr. Taylor, I do not find that those circumstances are present.

[9] After having reviewed all of his personal circumstances, and the circumstances with respect to the commission of the offence itself, I have concluded the appropriate sentence would be a two year period of incarceration in this case. Again, it is a joint recommendation, so I wouldn't deviate from it in that case.

[10] In addition to that, I guess I will break it down as follows. There is no suggestion from counsel how the sentence might be broken down. I would suggest, with respect to the 5(1) of the *Controlled Drugs and Substances Act*, with

respect to trafficking methamphetamine, impose a 24 month, or two year period of incarceration. With respect to the 5(2), possession for the purposes of trafficking the methamphetamine, there will be a two year period of incarceration, to be served concurrent to count one. With respect to count three, section 5(2) of the *CDSA*, with respect to the possession for the purpose of trafficking the marijuana, the lesser included offence we're dealing with today under 4(1) of the *CDSA*, so the possession of the marijuana. There will be a six month concurrent period of incarceration.

[11] I will also grant the ancillary orders. There will be a weapons prohibition, mandatory weapons prohibition per section 109 of the *Criminal Code*. There will be a DNA order as well, and a forfeiture order to be prepared and provided by the crown at a future time. Victim fine surcharge, any discussion with that? There is a \$300 victim fine surcharge as well. How much time would your client need to pay that?

**MR. RIDEOUT**: Two years?

**THE COURT**: Two years? Is the crown content with...

**MR. SHATFORD**: Yes, that's fine.

**THE COURT:** ...two years? Okay, two years will be given to pay. Is there anything that you wish to say? Actually, you know what, I didn't ask him if he had anything to say, and I have just realized that. Mr. Rideout, did your client have anything he wished to say? That's something I forgot to ask.

**MR. RIDEOUT:** No, I had canvassed that with him.

**THE COURT:** Thank you, and I apologize for not asking Mr. Taylor about that before.

Rosaline Michie, JPC.