

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R v Livingstone*, 2018 NSPC 62

Date: 2018-12-11

Docket: 8079258

Registry: Pictou

Between:

Her Majesty the Queen

v.

Adam Phillip Livingstone

SENTENCING DECISION

Judge:	The Honourable Judge Del W. Atwood
Heard:	2018: 24 October, 11 December in Pictou, Nova Scotia
Summary oral decision rendered	2018: 11 December
Written decision released	2019: 16 April
Charge:	Subsection 5(2) <i>Controlled Drugs and Substances Act</i>
Counsel:	Bronwyn Duffy for the Public Prosecution Service of Canada Douglas J Lloy QC for Adam Phillip Livingstone

By the Court:

[1] Adam Phillip Livingstone elected trial in this court and pleaded guilty to a single count of possession of cocaine for the purpose of trafficking, contrary to sub-s 5(2) of the *Controlled Drugs and Substances Act (CDSA)*. I heard the sentencing hearing at the same time as *R v AL*, 2018 NSPC 61 (*AL*).

[2] There are some differences between Mr Livingston and *AL* as to the circumstances of their offences and their personal biographies; however, the seriousness of their offences and their levels of moral culpability are pretty much equivalent.

[3] I intend imposing the same sentence upon Mr Livingstone as I did in *AL* for the same reasons: petty retailing in small quantity of a Schedule I substance; full cooperation with police; no violence or weapons implicated in the offence; timely guilty plea; no record; good rehabilitative prospects; community-based sentence sufficiently deterrent and rehabilitative.

[4] I will provide some details about the offence and Mr Livingstone to provide context for my decision.

Circumstances of the offence

[5] On 22 February 2017, police obtained a warrant under sub-s 11(1) of the CDSA to search Mr Livingstone's home for cocaine. They carried out the search at 16h40. Mr Livingstone was at home at the time; police told him why they were there and arrested him. Mr Livingstone was fully cooperative; he admitted he had cocaine on site and revealed where police would find it. The search turned up thirty-six grams. It appears to have been kept where Mr Livingstone said it was; I assume police would not have taken his word for it. If anything was found that Mr Livingstone had not revealed, the court was not told about it.

[6] Mr Livingstone described himself to police as a "good guy in a bad time." He admitted to having been a cocaine user for a year, at the rate of about one-to-two g per week. Mr Livingstone stated that he "never sold drugs to a kid."

Circumstances of Mr Livingstone

[7] Almost all the biographical information about Mr Livingstone came from a presentence report dated 12 September 2018.

[8] Mr Livingstone is only 30 years old. He has no record, either as an adult or as a young person. His childhood and adolescence were unremarkable. He advanced through school to graduation tracking normal milestones, and he was a good student. He attended community college to upgrade his maths.

[9] He has two children of a now-ended relationship. The children are being raised by their mother; however, Mr Livingstone is described in the report as an active co-parent.

[10] Mr Livingstone moved out to western Canada for a year, but returned in 2014. He acknowledges that his lifestyle choices after that were not good ones. He would not be the first person to have returned from a western adventure saddled with problems.

[11] Mr Livingstone is employed as a janitor. He has held customer-service jobs. His career goal is to work with computers. He has some consumer debt and his income is limited.

[12] His health is good, although he experiences anxiety and is mindful of his mental health due to his family's history. He began drinking heavily in 2016, and started using cocaine around the same time; he also started selling it.

Submissions of counsel

[13] The prosecution relies on the authorities presented to the court in *AL* in support of a substantial term in a provincial prison; that would comprehend a sentence of less than two years in virtue of s 743.1 of the *Code*.

[14] The prosecutor, with characteristic fairness, described Mr Livingstone as a good parent, someone who has “staying power” at work. As the prosecutor observed, violence and weapons are not implicated in this case. Mr Livingstone refrained from trying to destroy evidence when the police arrived. One will encounter often the phenomenon of sprints to the toilet by those more practised with police searches. Indeed, no sniffer-dog assistance was needed as Mr. Livingstone told police where they would find the contraband. The prosecutor noted that Mr Livingstone has been bail compliant. The one hiccup is that he did not show up for his first presentence-report interview; however, that did not delay things very much.

[15] Defence counsel seeks a suspended sentence with a 3-year term of probation. This would be a legal sentence, in virtue of ¶ 731(1)(a) of the *Code*. Defence counsel relies on a recent line of authorities which I referred to in *AL*; in those cases, persons charged with low-level Schedule I trafficking-related offences—who fell in the petty-retailer category, with good antecedents and good prospects for rehabilitation—received community-based sentences.

[16] Counsel are *ad idem* on ancillary orders.

[17] Mr Livingstone made an allocution to the court in accordance with s 726 of the *Code*. He described his arrest as “a blessing in disguise.”

Conclusion

[18] I would observe that, unlike *AL*, there is no evidence of Mr. Livingstone being pressured into dealing by an intimate partner; further, Mr. Livingstone matches the more typical profile of a petty retailer: younger, middle aged male augmenting the habitual use of controlled substances through low-level dealing.

[19] Still, I see this case as strikingly similar to what I heard in *AL*:

- First-time offender;
- Petty-retail possession of small quantity of Schedule I contraband;
- Offence committed along with a substance-use habit;
- No record;
- No aggravating factors under the statute;
- Cooperation with police;
- Early guilty plea;
- Bail compliance;

- Good prospects for rehabilitation.

[20] Based on these findings of fact, and adopting the legal analysis in *AL*, I suspend the passing of sentence, and place Mr. Livingstone on probation for three years with these conditions:

- Keep the peace and be of good behaviour;
- Appear before the court when required;
- Notify the court or the probation officer, in advance, of any change of name, address, employment or occupation;
- Report to a probation officer at the community corrections office in New Glasgow no later than 4:00 p.m., 13 December 2018;
- Not possess, take or consume any controlled substance as defined in the *CDSA* except in accordance with a physician's prescription for you;
- Complete 100 hours of community-service work within the first 24 months of probation;
- Attend for substance use, assessment and counselling as directed by the probation officer;

- Attend for any other assessment, counselling or programming directed by the probation officer;
- Participate in and cooperate with any assessment, counselling or programming directed by the probation officer, and you must report immediately to the probation officer any missed assessment or counselling appointments;
- Comply immediately with any demand for urinalysis made of you by a peace officer or probation officer in accordance with the terms of ¶¶ 732.1(3)(c.1) and (c.2) of the *Code*;
- Sign immediately all consents for release of information required by your probation officer to arrange services;
- For the first six months, be subject to a daily 10:00 p.m. to 7:00 a.m. curfew and the court will allow exceptions set out in the checklist;

[21] The court imposes a s 16 *CDSA* order of forfeiture.

[22] There will be a secondary-designated offence DNA-collection order which shall refer to the specific charge and the specific substance.

[23] There will be a 10-year/lifetime s 109 order under the *Code*.

[24] The court imposes the mandatory-minimum victim surcharge amount of \$200 per charge and will allow six months for payment.

JPC