

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Regina v Joel Reid  
**BEFORE:** E.M. Morgan J.  
**COUNSEL:** *Sam Siew*, for the Crown  
*Chris Rudnicki*, for the Defendant, Joel Reid  
**HEARD:** April 19, 2016

**SENTENCING JUDGMENT**

[1] Does a non-violent, small time drug dealer who is a repeat offender require a custodial sentence? This sentencing judgment requires that a combination of individual and societal concerns be brought to bear.

**I. The trafficking conviction**

[2] Joel Reid pleaded guilty to three counts of trafficking in crack cocaine and one count of possession of the proceeds of crime.

[3] The charges emerged as a result of a police “dial-a-dope” operation: see *R v Swan*, 2009 BCCA 142, and C. De Sa, “Entrapment: Clearly Misunderstood in the Dial-a-Dope Context”, (2005) 62 Criminal Law Quarterly 200. Following what has become standard investigative methodology, an undercover officer called Mr. Reid’s cell phone several times and arranged to buy small quantities of crack cocaine. A contested hearing was heard on an entrapment application brought by the defense, which was ultimately dismissed on the basis that the police provided the opportunity for the offense only after they had reasonable suspicion that Mr. Reid was otherwise engaged in criminal activity: *R v Reid*, 2016 ONSC 954.

[4] There is no suggestion by the Crown that Mr. Reid is a large or even medium size drug dealer. The amounts of crack cocaine that he sold were small. On the first occasion, an undercover officer acting on information from an unidentified informant called Mr. Reid and arranged to purchase \$60 worth, while on each of the second and third occasions the same undercover officer purchased \$100 worth. The total amount of crack sold by Mr. Reid in all three instances was 2.6 grams.

[5] Mr. Reid concedes that he has struggled with substance abuse for a number of years. He has previous convictions for simple possession and possession for the purpose of trafficking, as well as for breach of the terms of a recognizance. He attributes much of his drug problem to a difficult childhood punctuated by traumatic events. Although there is no suggestion that he has ever been involved in violence, he attended a Toronto area high school known for gang-related violence and unfortunately witnessed the murder of a young student while he was there. In addition, his best friend was killed in a shooting several years ago. These killings have taken their toll on Mr. Reid; he dropped out of school, has until recently found it difficult to maintain a steady job, and has experienced difficulty in managing his emotions.

[6] The amounts of crack cocaine sold by Mr. Reid, and the circumstances in which they were sold to an undercover officer who called him seeking one-time doses of the drug, are consistent with a low level dealer selling just enough to sustain his own habit. The officer testified that over the course of the three occasions, Mr. Reid appeared to sell her all of the crack that he had to sell.

[7] The Crown seeks a custodial sentence of 6 to 12 months. Crown counsel submits that this is the accepted range of incarceration for street level drug trafficking offences: *R v Woolcock*, [2002] OJ No 4927.

## **II. Aggravating and mitigating factors**

[8] The defense counters that there should be a conditional sentence order of two years less a day. Defense counsel submits that this is the appropriate sentence where the offender is in a stable relationship, there is little risk of his re-offending, and he is no danger to the community: *R v Imoror*, [2011] OJ No 996.

[9] The Pre-Sentence Report dated April 15, 2016 indicates that Mr. Reid has of his own initiative stopped taking drugs and has been drug-free for about a year. However, it is evident that he would benefit from substance abuse counselling, which he has never had the opportunity to experience.

[10] In terms of aggravating factors, Mr. Reid's criminal record must be taken into account. As Crown counsel points out, not only does he have prior convictions related to drugs and drug trafficking, but one of his previous offenses transpired while he was on bail for the offence here. He appears to be a consistent drug user and seller over a number of years of his life.

[11] Moreover, in August 2015 he was charged with breach of probation, mischief under \$5,000, and possession of a weapon for a purpose dangerous to the public peace. These charges relate to an altercation he had with his girlfriend, Sidanni Francis, and have not yet gone to trial. Counsel for the Crown cites *R v Angelillo*, [2006] 2 SCR 728, at para 27, for the proposition that

the objectives of sentencing cannot be fully achieved unless all the circumstances effecting the character of the accused are before the court, which includes the still outstanding charges. He submits that given this background, incarceration is the only way to send a sufficiently strong message and denounce Mr. Reid's conduct: *R v JC*, [2000] OJ No 5995 (SCJ).

[12] Counsel for the defense submits that Mr. Reid's ongoing troubles with the law are all a result of his drug problems, and that what he needs is counselling and treatment, not punishment. In terms of the outstanding charges, defense counsel cites *R v Pelletier* (1989), 52 CCC (3d) 340, at 346 (Que CA), for the proposition that, "...the sentencing process must not become the occasion for indirectly punishing the accused for offences which have not been established by the normal means of proof and procedure, or that one did not wish to bring."

[13] As for mitigating factors, the defense points out that Mr. Reid has been drug free for the past year. He pleaded guilty to the substantive charges here, thereby sparing the court the time and expense of a full trial. Further, he has produced a certificate evidencing his recent completion of an anger management program. His probation officer, who was interviewed for the Pre-Sentence Report, indicates that he has been cooperative and polite throughout his recent probation. In that respect, he appears to have benefitted from the program that he attended.

[14] Defense counsel also indicates that Mr. Reid has a supportive family; indeed, I note that his mother and, significantly, his girlfriend, Ms. Francis, were in attendance at the sentencing hearing. That is a good sign, and speaks well for his support network and his prospects for rehabilitation. The Pre-Sentence Report also observes that Mr. Reid has plans to continue his education and to thereby improve his employment prospects.

### **III. Sentencing objectives**

[15] In *R v M (C)*, [1996] 1 SCR 500, at 566, Lamer CJC articulated the objectives of sentencing in an instructive way:

The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of the community.

[16] Sentencing thus inevitably entails an analysis that has one eye on the individual offender and another on the community in which that individual lives and in which his offence was committed.

[17] Crack cocaine is, of course, a destructive drug whose trafficking should be policed. Society would certainly be better off without it. That said, Mr. Reid's offenses, though repeated

here three times, were each time quite small. Generally speaking, sentencing must be proportionate to the gravity of the offense, taking into account mitigating factors. While the drugs sold by Mr. Reid are harmful, he is more a victim of those harms than a beneficiary of the trafficking.

[18] Mr. Reid takes responsibility for his offences. He blames his own emotional management issues and not anyone else for his lapses. However, his selling of small quantities of drugs to support his own habit cries out for rehabilitation and not just deterrence and denunciation. As the Supreme Court said in *R v Proulx*, [2000] 1 SCR 61, at para 110, “It is well known that sentencing an offender to a term of incarceration for an offence related to a drug addiction, without addressing the addiction, will probably not lead to the rehabilitation of the offender.”

[19] Counsel for the Crown relies on *R v Robinson*, 2011 ONSC 4587, a case that, like this one, involved the sale of a small amount of drugs by a person that had made some strides in turning his life around, where another Superior Court judge observed that despite the mitigating factors a sentence without a term of incarceration would not send the right message of denunciation and deterrence. The court observed, at para 59, that, “If [the offender] is sincere about rehabilitation and changing his life to the good, I do not consider that a period of incarceration will serve to interrupt the positive course that [the offender] has set for himself to be a productive member of society.”

[20] The circumstances in *Robinson* may have warranted those considerations in the trial judge’s view. But it is equally plausible that in many cases incarceration will equate to the person attending what the Supreme Court of Canada has called “a finishing school for criminals”: *Proulx*, at para 16.

#### **IV. Individual and societal considerations**

[21] I am impressed by Mr. Reid’s self-awareness and his desire to improve his lot. In the Pre-Sentence Report, he states, tellingly: “I am a young man who has made poor choices for himself but I am making changes to better myself. I do not want to be that 30 year old black man who is a lost cause as I have potential to do something with my life.” He thereby raises not only a point about himself, but about the need to ameliorate the overincarceration of young men in the African Canadian community.

[22] At least since the publication of Stephen Lewis’ *Report on Race Relations in Ontario* (1992), it has been evident that more attention needs to be focused on the impact of the criminal justice system on this community. The Office of the Correctional Investigator has found that, “Black inmates are one of the fastest growing sub-populations in federal corrections. Over the last 10 years, the number of federally incarcerated Black inmates has increased by 80% from 778 to 1,403. Black inmates now account for 9.8% of the total prison population (up from 6.3% in

2003-04) while representing just 2.9% of the general Canadian population”: Office of the Correctional Investigator, *Annual Report 2012-2013* (Ottawa, June 2013) at 6-7.

[23] The Supreme Court of Canada has noted that, unfortunately, “African Canadians and Aboriginal people are overrepresented in the criminal justice system”: *R v Golden*, [2001] 3 SCR 689, at para 83. For the Black community, as with aboriginal Canadians, “overincarceration is a long-standing problem that has been many times publicly acknowledged but never addressed in a systematic manner by Parliament”: *R v Gladue*, [1999] 1 SCR 688, at para 57.

[24] The Court of Appeal long ago observed that when it comes to sentencing, courts must maintain “a constant appreciation that the matter concerns not merely the Court and the offender but also the public and society as a going concern”: *R v Willaert* (1953), 105 CCC 172, 176. I must therefore consider not only Mr. Reid’s personal circumstances, but the societal circumstances which serve to contextualize his actions.

[25] There are a number of sociological causes for the overrepresentation of African Canadians in prisons and the justice system. As Code J. observed in *R v Nur*, 2011 ONSC 4874, at para 79 (appeal allowed on other grounds, [2015] 1 SCR 773), “it is not difficult to establish that anti-black discrimination undoubtedly contributes to many of these underlying societal causes.”

[26] The racial disparities in imprisonment are especially problematic with respect to street level drug dealing such as that for which Mr. Reid has been convicted. This has been a central focus of debate over sentence reform in the United States. The U.S. Congress has long taken note of “the flood of young minority males serving draconian sentences for nonviolent low-level crack offenses”: *Congressional Record – Senate*, vol. 145, November 10, 1999, at 29341.

[27] While this court is not in a position to remedy the societal issues, it can and should take the societal context into account in fashioning an appropriate sentence for an individual offender. Under section 742.1 of the *Criminal Code*, where an offender is not guilty of an offence punishable by a minimum term of imprisonment, where the court imposes a sentence of less than two years, and where public safety is not endangered by the offender serving his sentence in the community, a conditional sentence is available.

## **V. Conditional sentence order**

[28] Taking into account Mr. Reid’s personal history and the societal context in which he lives, there does not appear to be a substantial likelihood of him putting the community at risk if he were to serve his sentence in the community. In my view, a sentence to be served in the community on condition of, *inter alia*, attendance at an appropriate rehabilitative program,

appears consistent with the fundamental purpose and principles of sentencing: *Proulx*, at paras 46-47. It denounces the offense at the same time as it strives to rehabilitate the offender.

[29] In comparing a conditional sentence to one that entails a period of incarceration, the Supreme Court of Canada pointed out in *Gladue*, at para 72, and reiterated in *Proulx*, at para 41, that, “a sentence focused on restorative justice is not necessarily a ‘lighter’ punishment.” Rather, with the imposition of a serious set of conditions, it is designed to accomplish the multiple objectives of criminal punishment.

[30] Under the circumstances, I am satisfied that a sentence served in the community with strictly adhered-to conditions would recognize the important goals of denunciation and deterrence, while it would at the same time allow Mr. Reid to continue with his efforts to avoid becoming, in his own words, a “lost cause”.

## **VI. Sentence**

[31] I hereby sentence Mr. Reid to a sentence of two years less a day, to be served in the community on the following conditions:

- a) that he keep the peace and be of good behaviour;
- b) that he appear before the court when required to do so;
- c) that he report to a supervisor within two working days, and thereafter as required by the supervisor in the manner as directed by him or her;
- d) that he remain within the jurisdiction of the Province of Ontario, unless written permission is obtained from the court or from his supervisor;
- e) that he notify the court or the supervisor of any change of address, change of employment or of occupation;
- f) that for the duration of his sentence he is to be subject to house arrest, and is not to leave his place of residence except to attend a drug treatment or counselling program as specified below, or to attend work and/or school, medical emergencies for himself or his immediate family, to meet with his lawyer or to attend legal proceedings as required, or as may be exempted by his supervisor, with the exception of Sundays from 12:00 p.m. to 4:00 p.m. when Mr. Reid may attend to personal matters;

- g) that he attend and complete a drug treatment and/or counselling program as recommended by his supervisor;
- h) that he not associate with anyone known to have a criminal record, except as may be exempted by his supervisor;
- i) that he not associate with anyone known to be involved with illegal drugs, whether that person has a criminal record or not;
- j) that he abstain from having in his possession or consume any substances or drugs listed in the schedule to the *Controlled Drugs and Substances Act*, except as may be prescribed for medical purposes; and
- k) that he attend school or actively seek and maintain full-time employment.

[32] In addition to all of the orders and conditions that I have just set out, there will be an order under section 109 of the *Criminal Code* for Mr. Reid not to have in his possession any firearm, ammunition or explosive material for a period of 10 years.

[33] As well, there will be an order of forfeiture in favour of the Crown for all of the monies seized in respect of this matter.

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Morgan J.

**Date:** May 25, 2016