

Examining Variability of Sentences – *R v. Johnson* and *R v. Proulx*

In *R v. Johnson*, the accused pled guilty to cocaine possession for the purpose of trafficking. The trial judge suspended the sentence and imposed 3 years of supervised probation. This case starts back in February of 2014, when Johnson was released on an undertaking regarding contact with the mother of his children. 10 months later police responded to a domestic disturbance call where Johnson was found to be in breach of his undertaking and arrested. During a search upon arrest, police found a baggie containing cocaine. Police re-entered the home after placing him in the police car and there was a bag of cocaine in plain sight on a nightstand within reach of his 4-year-old son which was then seized.¹ The above set of facts were admitted to by Johnson in 2018.

At trial the judge imposed a non-custodial sentence on the grounds of “exceptional circumstances.”² He first cited that Johnson was a daily user of cocaine at the time of the incident and was holding the drugs for his neighbour who was paying him in cocaine (lower moral culpability). He also found that Johnson had made significant life changes since his arrest, including attending a 10-week Alcoholics Anonymous program and maintaining a full-time job.³

The Crown appealed, proposing that the trial judge erred in finding the existence of “exceptional circumstances” that would allow for a non-custodial sentence.⁴

At the appeal level, the court must provide great deference in its review of sentencing decisions as sentencing is considered to be an “exercise of judicial discretion” and many factors requiring judgement calls come into play.⁵ On appeal, the court can only justifiably intervene

¹ *R v Johnson*, 2020 MBCA 10 at paras 4-5.

² *Ibid* at para 2.

³ *Ibid* at para 6.

⁴ *Ibid* at para 3.

⁵ *Ibid* at para 10.

where there has been a material error which impacted the sentence, or the sentence is demonstrably unfit.⁶ Richard J. Chartier C.J.M., writing for a unanimous court, states that since possession of cocaine for trafficking purposes has a maximum life sentence, the most important sentencing factors are general deterrence and denunciation. When these are paramount, the sentencing judge must focus more on the conduct regarding the offence itself, rather than the personal circumstances of the offender. The Manitoba Court of Appeal agreed with the Crown's submission and varied the sentence to impose a 30-month term of imprisonment (less time served).

Is it fair to impose a custodial punishment on an offender who was convicted of a first offence, which was non-violent, and who has also turned his life around? I would argue that to impose a term of imprisonment on Mr. Johnson, is contrary to the sentencing factor of rehabilitation. He has complied with all orders (no weapons, etc.), remained the sole provider for his children (and has custody of all 4), and is employed full-time.

R v. Proulx states that when "objectives of rehabilitation, reparation, and a promotion of a sense of responsibility may realistically be achieved ... a conditional sentence will likely be the appropriate sanction, subject to the denunciation and deterrence considerations."⁷ I am of the opinion that Johnson met the requirements that would generally lead to a conditional sentence. It is simply not just to impose imprisonment on those who would not benefit from it, and when there is no continuing risk to society.

Proulx is an example of a case where a conditional sentence could have been imposed, as per the Supreme Court of Canada, however it was within the trial judge's discretion to impose a

⁶ *Ibid* at para 9.

⁷ *R v Proulx*, 2000 SCC 5 at para 109.

sentence of imprisonment rather than a conditional sentence.⁸ Judges are afforded great deference in sentencing, as they are required to take into account many characteristics of offenders that may vary from case to case (such as mitigating and aggravating factors).⁹

It is easy for one to appreciate the difficult task being asked of judges in the Canadian court system, to attempt to balance all of these competing factors and issues in a non-biased and just way. It is reasonable that the intrinsic beliefs of judges will impact the sentence they hand out. Comparing *Proulx* with *Johnson* shows how while there is an overwhelming amount of discretion, there does tend to be a central area that judges remain close to. Both offenders with no previous criminal records, committing two very different crimes – one a non-violent drug offence, the other driving impaired leading to the death of one individual and serious injury to another. In the end, they both received terms of imprisonment. How is it that a conditional sentence was an option for an offence causing loss of life, yet for *Johnson*, as the offence of possession of cocaine for trafficking purposes carries a maximum life sentence, it was not.¹⁰

In contrasting the cases of *Johnson* and *Proulx*, it is apparent that the variability of sentences is an issue in the Canadian criminal justice system. The system is in need of reform, to ensure that each individual is treated fairly, and sentenced in a way that considers their unique circumstances, as well as the principles of sentencing established within the Criminal Code of Canada. Conditional sentences are a happy medium between non-custodial sentences and those of incarceration. As it is served in the community, it tends to be more effective in achieving the goal of rehabilitation, while still being a punitive sanction that achieves the sentencing objectives of deterrence and denunciation.¹¹

⁸ *Ibid* at para 130.

⁹ *Criminal Code*, RSC 1985, c C-46, s 718.2(a).

¹⁰ *Ibid* at s 742.1(c).

¹¹ *Supra* note 7 at para 22.

Table of Authorities

Legislation:

Criminal Code, RSC 1985, c C-46.

Jurisprudence:

R v Johnson, 2020 MBCA 10.

R v Proulx, 2000 SCC 5.