

BETWEEN: REGINA RESPONDENT AND: BRIAN ROBERT JEFFRIES APPELLANT A.

Bartram appearing for the Appellant C. Stolte appearing for the (Crown)

Vancouver Registry Court of Appeal for British Columbia

ORAL REASONS FOR JUDGMENT: Before:

The Honourable Mr. Justice Goldie January 25, 1996

The Honourable Mr. Justice Finch

The Honourable Madam Justice Ryan Vancouver, B.C.

Respondent BRYAN, J.A.: Brian Jeffries was convicted on November 8, 1993, by a jury in New Westminster of importing cocaine and possession of cocaine for the purpose of trafficking. The trial judge entered a conviction on the importing count and directed a conditional stay on the other.

On February 18, 1994 Mr. Jeffries was sentenced to 15 years incarceration.

2 Mr. Jeffries appealed his conviction to this Court. On July 31, 1995, his appeal was dismissed. He now seeks leave to appeal sentence.

3 Mr. Jeffries was arrested on January 21, 1992 after a search of his vehicle by Canada Customs officials at the Douglas Border Crossing. The search revealed six kilos of cocaine concealed along the top of his gas tank. The value of the drug is said to be \$250,000. At that time Mr. Jeffries was on parole from a sentence of 14 years imposed as a result of his conviction in 1979 for conspiracy to traffic. When these charges were laid on January 21, his parole was revoked and he was ordered detained in custody pursuant to s.515(6) of the Criminal Code. By the time of trial Mr. Jeffries had spent two years in jail serving the rest of his fourteen year sentence and awaiting trial on these charges. By virtue of his having been unlawfully at large in 1988 his warrant expiry date on the 1979 charges is sometime in 1996.

4 Mr. Jeffries' record consists of the 1979 conspiracy to traffic offence, obtaining a false passport for which he received time concurrent to the 14 years imposed in 1979, and, the offence we are dealing with today.

5 Mr. Jeffries was 47 at the time of sentencing. He is 49 years of age today. He was born in Pender Harbour. He left school at 15 years of age and led a productive working life until his involvement in the conspiracy offence in 1979.

6 While in prison Mr. Jeffries finished high school and took cooking and accounting courses. He was released on day parole in June of 1990. He was granted full parole in 1991. Apparently Mr. Jeffries was involved in some legitimate and enterprising business ventures before his arrest for importing cocaine in 1992.

7 At the sentencing hearing Mr. Jeffries filed a series of letters attesting to his energy and business ingenuity. He also called the evidence of Mr. William Lightbown, a former official with the United Native Nations Council. Mr. Lightbown met Mr. Jeffries in 1983 when Mr. Lightbown was president of the United Native Nations Council and Mr. Jeffries was in prison. Mr. Jeffries had a proposal to open a sawmill using an option he had on timber rights to trees lying at the bottom of Williston Lake. Mr. Lightbown said that the proposal was a serious and viable one. He met Mr. Jeffries about five times to discuss the details of the plan. Mr. Lightbown said that the plan had matured to development, but was cancelled at the last minute when he lost an election to a new president who changed the priorities of the organization. Mr. Lightbown spoke highly of Mr. Jeffries' abilities.

8 Today we were given a letter from an individual in California, Mr. Landry, who again attests to Mr. Jeffries' business ability, and suggesting he was a person of high quality in that area.

9 In sentencing Mr. Jeffries the trial judge noted that he is not addicted to cocaine. The trial judge found that Mr. Jeffries' role in the offence of importing was not as a mere courier, he appeared to be "someone with more than delivery responsibility". The trial judge concluded that Mr. Jeffries' only motive for involving himself in this offence was to earn a profit.

10 In sentencing Mr. Jeffries the trial judge said: I do not consider Mr. Jeffries to be the "worst" of offenders, but in my view he is approaching that end of the scale. He is involved purely for profit, he was on parole for a like offence at the time, and the quantity was large. General deterrence must be given the greater emphasis of these facts. I acknowledge the need to address personal rehabilitation in my sentence, but as indicated, it must take a back seat to the principle of general deterrence.

11 Counsel for Mr. Jeffries, Ms. Bartram says that this sentence is too high given the nature of the offence, Mr. Jeffries' rehabilitative chances and the totality principle. She points out that no money was seized in this case. She says that there is no suggestion that Mr. Jeffries was part of a larger conspiracy, but, on the other hand, it must be pointed out that there is no indication that Mr. Jeffries was anything but a principal in this case.

12 Ms. Bartram also suggests that the two years spent in prison awaiting trial should be considered in assessing the sentence. This time was served at Kent and during that time there were no programs available to Mr. Jeffries. Ms. Bartram suggests that 12 years concurrent or 10 years consecutive would be appropriate. Fifteen years she says is simply so high as to be unfit.

13 I cannot agree. Mr. Jeffries committed this offence while on parole, for the same type of offence for which he had received a sentence of 14 years imprisonment. This offence involved bringing a large quantity of cocaine across the border. Mr. Jeffries was not deterred by his last large sentence.

14 In spite of Ms. Bartram's very able submissions and the material before us which indicates that if he chose, Mr. Jeffries could lead a very successful and honest life, I cannot say that this sentence is unfit. In my view, the totality principle in this case has no application. Mr. Jeffries was almost finished his sentence when given a concurrent sentence for this second serious offence. Neither sentence has been demonstrated to be unfit. I am not persuaded by any of these submissions that the sentence was unfit.

I would grant leave but dismiss the appeal.

15 GOLDIE, J.A.: I agree.

16 FINCH, J.A.: I agree.

17 GOLDIE, J.A.: Leave to appeal is granted.

The appeal is dismissed.

"The Honourable Madam Justice Ryan" _____