

Sentencing and Corrections: Sentencing Theory Meets Practice

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Introduction

- Popular belief
- Purpose and objectives
- Sentences imposed prior to 1996: denunciation, deterrence and rehabilitation
 - Marihuana production
 - Trafficking in crack
 - Possession of a loaded firearm
- Conclusions

The main purpose of sentences

- "...to respect for the law and the maintenance of a just, peaceful and safe society..." (s. 718 Cr.c.)
- "Parliament wishes the Courts to ensure a safe Canadian society"
 - Renaud, The Sentencing Code of Canada, p. 3.

Denunciation

- 718 Cr.c.: "to denounce unlawful conduct"
- 718.01 Cr.c. (children)
- 718.02 Cr.c. (peace officers)
- 743.6 Cr.c. (delay parole)

Denunciation: definition

- "...In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values "
- "A sentence which expresses denunciation is simply the means by which these values are communicated."
 M.(C.A.), [1996] 1 S.C.R. 500, para. 81.

Denunciation: definition

- "Denunciation is the communication of society's condemnation of the offender's conduct "
 R. v. Proulx, 2005 SCC 5, para. 102.

Denunciation: effects

- Historically, the more severe the sentence the greater the effect on denunciation (Proulx, para. 102)
- Denunciation and deterrence

Deterrence

- 718 Cr.c.: "to deter the offender and other persons from committing offences"
- 718.01 Cr.c.
- 718.02 Cr.c.
- 743.6 Cr.c.

Deterrence: definition

- "Deterrence, as a principle of sentencing, refers to the imposition of a sanction for the purpose of discouraging the offender and others from engaging in criminal conduct." (B.W.P., 2006 SCC 27, para. 2)

Specific deterrence

- "As stated earlier, specific deterrence is directed at the offender before the court. As a principle of sentence, it refers to the goal of preventing the offender from committing another criminal offence." (B.W.P., para. 39)

General deterrence

- "...General deterrence is intended to work in this way: potential criminals will not engage in criminal activity because of the example provided by the punishment imposed on the offender. " (B.W.P., par. 2)

Deterrence: effects and critics

- Critics: inefficient to deter
- Deterrence leads to harsher sentences

Rehabilitation

- 718 Cr.c.: "to assist in rehabilitating offenders"
- 718.2d) Cr.c.: less restrictive sanctions
- 718.2e) C.cr.: alternatives to imprisonment

Rehabilitation: definition

- Dictionary: Restore, reinstate into society

Rehabilitation: effects and critics

- Critics: rehabilitation and sentences?
- Less severe sentences

Pre-1996...Post 1996

- Marihuana production
- Trafficking crack cocaine
- Possession of a loaded firearm

Marihuana production

- 6 NA, maximum of seven years
- 7 CDSA, maximum of seven years

The 80's

- Fines and short periods of imprisonment in cases of enormous quantities
- Denunciation and deterrence less present in the discussion
 - Ex: Nadin-Davis and Sproule, Canadian Sentencing Digest, 1980-1984
 - Ex: Wittenberg, 2200 pounds, 1 year. (Nadin-Davis, 1984)

The beginning of the 90's

- Fines and short periods of imprisonment
 - Ex: Arnold, 1990 CarswellBC 1580 (C.A.), 1 tonne, sentence reduced to 1 year ("the operation was one of the largest of its kind to come before the Courts in recent years" para. 16)
 - Ex: Ralph, 1991 CarswellBC 1676 (C.A.), 1000\$ fine for the accommodating owner.

The end of the 90's

- The beginning of constant imprisonment and reference to denunciation and deterrence as primary objectives
 - Occasional gardener, range 5-6 months, 7 months in the case of Rose, 1995 CarswellBC 503, because of the importance of the operation
 - Occasional gardener, 6 months in Bade (1998), 216 A.R. 29. (C.A.)

2000

- Imprisonment even for those with minor involvement
- Denunciation and deterrence
- Conditional sentences and rehabilitation in rare cases
- "Cannabis is a social scourge", Tardif j. in R. v. Kimmel, 2009 QCCS 261, para.18.

2000

- Occasional gardener and accommodating owner: more than 12 months
 - Ex: Daudelin-Lacroix, 2009 OCCQ 10477, Boubreau, 2005 Canlii 1247, Buge, 2007 OCCQ, 5111, St-Antoine, 2006 OCCQ 5211.

Marihuana production: Conclusions

- Sentences far more severe
- The changes in the Criminal Code used to adapt to the social problem
- The profits, regionalisation, importance of operations and proliferation led to harsher sentences
- Denunciation and deterrence: longer imprisonment

Traffic of crack cocaine

- Popular belief: reduction of sentences
- Denunciation, deterrence and severity
- The Quebec example
 - From Dorvilus to the daily case
 - Sentences dramatically reduced even with emphasis on denunciation and deterrence

The 1990's and the beginning of 2000

- Dorvilus, 1990 Canlii 3063 (C.A.Q.): traffic 4 rocks, no prior, 2 years less a day:
 - "*Les tribunaux ont le devoir de se montrer sévères et non complaisants en matière de trafic de crack.*"
- See also: Blagrove, 1996 Canlii 5793 (C.A.Q.), Guillaume 1996 Canlii 5829 (C.A.Q.), Stanislaus, 1998 Canlii 13284 (C.A.Q.), Ganley, 2001 Canlii, 14283 (C.A.Q.)

Present sentences

- Reported cases: reduction
- Daily cases in the district of Montreal: sentences of 2-3 months for a case similar to Dorvilus

Explanations for the change

- Denunciation and deterrence?
- The effects of changes to the Criminal Code in 1996?
- Trivialization?
- The effects of plea bargaining?

Possession of a loaded firearm

- 95 Cr.c. (in force 1 December 1998)
 - Minimum 1 year, maximum 10 years
 - Since 2008, minimum 3 years, second or subsequent offence 5 years, maximum 10 years.

Minimum: why?

- "I think the answer lies in our history and in our values. This is not a society like some others that tolerates guns." (O'Toole, 2003 BCSC 747, para. 5 (Williamson, j.))

Minimum: why?

- "*(le législateur)...il souhaitait par le fait même que le contrevenant soit astreint à une peine plus sévère qui pourrait avoir un effet dissuasif sur quiconque serait tenté de commettre un tel crime. Ce faisant le législateur souhaitait assurer de façon plus efficace la sécurité de tous les citoyens canadiens.*" (Thiffault, 2002 Canlii 8959, para. 15. (Lévesque, j. (C.S.))

Sentences from 1998 to 2008

- Rare minimum
- Range: 18 months to 5 years

2008 amendments: critics and effects

- Critics: minimum
- Increases the period of imprisonment but not far from existing case law
- Positive effects: recent arrests

Conclusions

- Changes of 1996
 - Effects: varies
 - Denunciation and deterrence: varies
 - Adapt