

COURT OF APPEAL OF
NEW BRUNSWICK



COUR D'APPEL DU
NOUVEAU-BRUNSWICK

101-23-CA

CLAYTON TOWNES

CLAYTON TOWNES

APPELLANT

APPELANT

- and -

- et -

HIS MAJESTY THE KING

SA MAJESTÉ LE ROI

RESPONDENT

INTIMÉ

Townes v. R., 2024 NBCA 139

Townes c. R., 2024 NBCA 139

CORAM:

The Honourable Chief Justice Richard
The Honourable Justice Green
The Honourable Justice LeBlanc

CORAM :

l'honorable juge en chef Richard
l'honorable juge Green
l'honorable juge LeBlanc

Appeal from a decision of the Provincial Court:
August 21, 2023 (conviction)
le 10 octobre 2023 (sentencing)

Appel d'une décision de la Cour provinciale :
le 21 août 2023 (déclaration de culpabilité)
le 10 octobre 2023 (détermination de la peine)

History of Case:

Historique de la cause :

Decision under appeal:
Unreported

Décision frappée d'appel :
inédite

Preliminary or incidental proceedings:
N/A

Procédures préliminaires ou accessoires :
s.o.

Appeal heard:
December 5, 2024

Appel entendu :
le 5 décembre 2024

Judgment rendered:
December 5, 2024

Jugement rendu :
le 5 décembre 2024

Counsel at hearing:

Avocats à l'audience :

For the appellant:
Adrian R. Forsythe

Pour l'appelant :
Adrian R. Forsythe

For the respondent:
Patrick McGuinty

Pour l'intimé :
Patrick McGuinty

THE COURT

The appeal is allowed, the guilty pleas and the convictions are set aside, and a new trial is ordered.

LA COUR

L'appel est accueilli, les plaidoyers de culpabilité et les condamnations sont annulés et un nouveau procès est ordonné.

The following is the judgment delivered by

THE COURT

(Orally)

- [1] On August 21, 2023, in the Provincial Court, Clayton Townes pled guilty to numerous offences, the list of which is attached as Appendix A, reproduced verbatim from the sentencing decision. On October 10, 2023, he was sentenced to imprisonment for a total of 9.5 years less credit for pre-sentencing custody and subjected to several ancillary orders, the details of which are also set out in Appendix A. Mr. Townes appealed his conviction primarily on the ground of ineffective counsel.
- [2] Before the appeal was heard, Counsel for the Attorney General informed the Court that information came to light after Mr. Townes' conviction and sentence that required disclosure of the type contemplated in *R. v. McNeil*, 2009 SCC 3, [2009] 1 S.C.R. 66. To be clear, this information was unknown when Mr. Townes pled guilty and was sentenced.
- [3] Because of this new information, Counsel for the Attorney General conceded that Mr. Townes' appeal should be allowed, and a new trial ordered. Counsel for Mr. Townes' agreed with this disposition.
- [4] As a result, on the ground of disclosure of information of events discovered subsequent to Mr. Townes's conviction and sentence, the appeal is allowed, the guilty pleas and the convictions are set aside, and a new trial is ordered.

Le jugement suivant a été rendu par

LA COUR
(oralement)

- [1] Le 21 août 2023, devant la Cour provinciale, Clayton Townes a plaidé coupable à plusieurs infractions, dont la liste figure à l'annexe A, puisé directement de la décision imposant la peine. Le 10 octobre 2023, il a été condamné à une peine d'emprisonnement d'une durée totale de 9,5 ans, moins le crédit accordé pour la détention présentencielle, et a fait l'objet de plusieurs ordonnances accessoires, dont les détails figurent également à l'annexe A. M. Townes a fait appel de sa condamnation en invoquant principalement l'inefficacité de son avocat.
- [2] Avant l'audition de l'appel, le substitut du procureur général a informé la Cour que des informations de nature nécessitant une divulgation du type envisagé dans l'affaire R. c. McNeil, 2009 CSC 3, [2009] 1 R.C.S. 66, ont été révélées après la condamnation de M. Townes et l'imposition de la peine. Pour être clair, ces informations étaient inconnues lorsque M. Townes a plaidé coupable et a été condamné.
- [3] En raison de ces nouvelles informations, le substitut du procureur général propose que l'appel de M. Townes soit accueilli et qu'un nouveau procès soit ordonné. L'avocat de M. Townes se dit d'accord avec cette disposition.
- [4] En conséquence, pour le motif lié à la divulgation d'informations sur des événements découverts après la condamnation de M. Townes et l'imposition de la peine, l'appel est accueilli, les plaidoyers de culpabilité et les condamnations sont annulés et un nouveau procès est ordonné.

SCHEDULE A – ANNEXE A

OFFENCE	NATURE	SENTENCE	ANCILLARY ORDERS
<p>Section 5(3)(a) Indictable</p> <p>Possession for the Purpose/Trafficking Schedule I Drug Methamphetamine</p>	<p>Indictable</p>	<p>4 years and 6 months less 941 days pre-trial custody</p>	<p>Section 16 of the <i>Controlled Drugs and Substances Act</i></p> <p>Forfeiture to His Majesty the King in right of Canada of items related to the CDSA charges (drugs and paraphernalia)</p> <p>Section 109 of the Criminal Code of Canada Firearms Prohibition for life</p> <p>Section 487.051 Secondary Designated Offence Forensic DNA</p>
<p>Section 5(3)(a) CDSA Indictable</p> <p>Possession for the Purpose/Trafficking Schedule I Drug Cocaine</p>	<p>Indictable</p>	<p>1 year concurrent</p>	
<p>Section 5(3)(a) Indictable</p> <p>Possession for the Purpose/Trafficking Schedule I Drug Hydromorphone</p>	<p>Indictable</p>	<p>2 years concurrent</p>	
<p>Section 5(3)(a) Indictable</p> <p>Possession for the Purpose/Trafficking Schedule I Drug MDMA</p>	<p>Indictable</p>	<p>1 year concurrent</p>	
<p>Section 95(2)(a)(i) Possession of a</p>	<p>Indictable</p>	<p>2 years consecutive</p>	<p>Section 491 weapon forfeiture order for all</p>

loaded prohibited firearm (.22 calibre handgun) not being the holder of an authorization or license			firearms, ammunition and other weapons seized to His Majesty the King in right of New Brunswick
Section 449 Did make Counterfeit money	Indictable	1 year consecutive	Section 462.37 proceeds of crime forfeiture order for all items related to the counterfeiting offences and property related offences other than those items returned to their lawful owner to His Majesty the King in right of New Brunswick
Section 117.01(3)(a) Possession of firearms while prohibited from doing so	Indictable	1 year consecutive	
Section 355(a)(i) Indictable Possession of Property Obtained by Crime over \$5000-2008 Chevrolet Silverado	Indictable	1 year consecutive	
Section 458 – Possession of instruments and materials intended for use in making counterfeit money	Indictable	1 year concurrent	
Section 86(3)(a) Storage of firearms in contravention of regulations	Indictable	1 year concurrent	
Section 91(3)(a)	Indictable	2 years concurrent	

Possession of firearm (3 rifles, a shotgun, and a handgun) not being the holder of an authorization or license			
Section 91(3)(a) Possession of a prohibited firearm (homemade) not being the holder of a registration certificate	Indictable	2 years concurrent	
Section 129(a) Willfully resisting a peace officer	Indictable	6 months concurrent	
Section 355(a)(i) Indictable Possession of Property Obtained by Crime over \$5000-2015 Nissan Pathfinder	Indictable	1 year concurrent	
Section 355(b)(i) Indictable Possession of Property Obtained by Crime Under \$5000- Dewalt Toolkit	Indictable	6 months concurrent	
Section 86(3)(a) Storage of a firearm in a careless manner	Indictable	6 months concurrent	
Section 88(2)(a) Possession of weapons for a purpose dangerous to the public peace	Indictable	6 months concurrent	
Section 92(3)	Indictable	1 year	

Possession of firearm (3 rifles, a shotgun, 2 handguns, 1 shotgun and 1 revolver) knowing he was not the holder of a license or registration certificate for a prohibited or restricted firearm		concurrent	
Section 96(2)(a) Possession of firearm (3 rifles, a shotgun, 2 handguns, 1 shotgun and 1 revolver) knowing they were obtained by Crime	Indictable	1 year concurrent	
Section 355(b)(i) Indictable Possession of property Obtained by Crime Under \$5000-2008 Yamaha ATV	Indictable	6 months concurrent	
Section 355(b)(i) Indictable Possession of Property Obtained by Crime Under \$5000-2009 Kawasaki EX250	Indictable	6 months concurrent	
Section 353.1(4)(a) Indictable Removal of VIN-2009 Kawasaki KLX-250H	Indictable	6 months concurrent	
Section 353.1(4)(a)	Indictable	6 months	

Indictable Removal of VIN-2016 Polaris Sportsman ATV		concurrent	
Section 353.1(4)(a) Indictable Removal of VIN-2002 Honda CBR600	Indictable	6 months concurrent	
Section 353.1(4)(a) Indictable Removal of VIN-2008 Chevrolet Silverado	Indictable	6 months concurrent	
Section 353.1(4)(a) Indictable Removal of VIN-2002 Kawasaki KLX250	Indictable	6 months concurrent	
Section 450 Did possess Counterfeit money	Indictable	1 year concurrent	
Section 355(a)(i) Indictable Possession of Property Obtained by Crime over \$5000-2016 Polaris Sportsman	Indictable	1 year concurrent	
Section 355(b)(i) Indictable Possession of Property Obtained by Crime Under \$5000-2002 Red Honda	Indictable	6 months concurrent	
Section 355(b)(i) Indictable	Indictable	6 months concurrent	

Possession of Property Obtained by Crime Under \$5000-2009 Kawasaki KLX250			
Section 355(b)(i) Indictable Possession of Property Obtained by Crime Under \$5000-2008 Yamaha WR450F	Indictable	6 months concurrent	
Section 355(b)(i) Indictable Possession of Property Obtained by Crime Under \$5000-License plate	Indictable	6 months concurrent	
Section 353.1(1) Indictable Removal of VIN-	Indictable	6 months concurrent	