



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

Citation: *R. v. Mitchell*, 2017 NLCA 15

Date: February 21, 2017

Docket: 201701H0005

BETWEEN:

DARLA CATHERINE MITCHELL INTENDED APPELLANT

AND:

HER MAJESTY THE QUEEN IN
RIGHT OF CANADA INTENDED RESPONDENT

Coram: Welsh J.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador
Grand Bank

Application Heard: February 21, 2017

Decision Rendered: February 21, 2017 (Orally)

Memorandum of Disposition Filed: February 21, 2017

Counsel for the Intended Appellant: Donald A. MacBeath Q.C.

Counsel for the Intended Respondent: Elaine Reid

MEMORANDUM OF DISPOSITION

Welsh J.A.:

[1] At the hearing, I granted Darla Mitchell's application for leave to appeal against the sentence imposed upon her conviction for trafficking in oxycodone contrary to section 5 of the *Controlled Drugs and Substances Act*.

[2] Leave to appeal was required because this is an appeal as to sentence only (section 675(1)(b) of the *Criminal Code*). The test to be applied is whether the appeal is "frivolous in the sense of having no arguable basis or sufficient merit" (*R. v. Hillier*, 2016 NLCA 21, 377 Nfld. & P.E.I.R. 121, at paragraph 7).

[3] Ms. Mitchell's submissions are directed to the application of the appropriate range of sentence and her particular circumstances. Among other things, she seeks to have this Court reconsider the range of sentence in limited circumstances to include a suspended sentence with lengthy periods of probation. Further, she submits, the sentencing judge erred in applying a range of sentence different from that which has been endorsed by this Court.

[4] In the circumstances, I was satisfied that the appeal cannot be construed as having no arguable basis or sufficient merit, and granted leave to appeal.

[5] Ms. Mitchell requested that the appeal be heard at the earliest opportunity, recognizing the constraints faced by the Crown. For the purpose of accommodating this request, Crown counsel agreed to make every effort to file her factum no later than March 10, 2017, on the understanding that the hearing would be set for March 16, 2017 at 10:00 a.m. If it is not possible to meet the March 10th deadline, a tentative hearing date of March 23, 2017 was set.

[6] To summarize, leave to appeal was granted and the hearing of the appeal was set for March 16, 2017 at 10:00 a.m.

B. G. Welsh J.A.