

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Fraser*, 2012 NSCA 118

Date: 20121123

Docket: CAC 373847

Registry: Halifax

Between:

Jamie Truman Fraser

Appellant

v.

Her Majesty the Queen

Respondent

Judges: Saunders, Hamilton, and Farrar, JJ.A.

Appeal Heard: November 23, 2012, in Halifax, Nova Scotia

Written Judgment: November 27, 2012

Held: Leave to appeal is granted and the appeal is dismissed, per oral reasons for judgment of Hamilton, J.A.; Saunders and Farrar, JJ.A. concurring.

Counsel: Rob Sutherland, for the appellant
James A. Gumpert, Q.C. and Patrick Young, for the respondent

Reasons for judgment: (Orally)

[1] The appellant, Jamie Truman Fraser, seeks leave to appeal, and if granted, appeals the three-year custodial sentence imposed on him by The Honourable Judge Del W. Atwood on December 19, 2011 following his guilty plea to one count of being unlawfully in a dwelling house with intent to commit an indictable offence (s. 349). The judge's decision is not reported.

[2] At the time of the offences giving rise to the sentences under appeal, the appellant was already subject to a conditional sentence order to stay away from the victim, his former girlfriend, imposed ten days earlier for threats, criminal harassment and failure to comply with undertakings.

[3] On December 10, 2011, in violation of his conditional sentence, the appellant entered the victim's home in her absence and without her permission. Upon the victim's return, at 3 o'clock in the morning, she found him sitting shirtless at her kitchen table, drinking a beer. As she looked around the room, it appeared to her that the appellant had disabled all of her telephones by removing the batteries. He became enraged, hollered at her while he looked at the contact list on her cell phone and asked her about the males listed therein. He flipped over her living room coffee table, breaking one of its legs. As the complainant chased the appellant from her home, he took the victim's computer with him. She managed to flag down a taxi and the driver was able to call the police. The appellant later told the police: "She's a sketchy bitch. She's lucky I didn't kill her." Later still, he explained: "I took the fucking thing because she was fucking around. That's why I smashed her cell phone."

[4] With the facts before him, the judge considered the mitigating factors, the appellant's young age and early guilty plea; and the aggravating factors, his lengthy criminal record including convictions for threats and criminal harassment, and the proximity between these offences and the crime for which he was bound by a conditional sentence order. He noted that the offences involved a person with whom the appellant had been intimate and that he had used intimidation and threats against her. He stated that the appellant's actions were close to a home invasion and a full break and enter, but was very careful in instructing himself that he was not to sentence the appellant for such offences. He considered the appropriate principles of sentencing, including the prospect of rehabilitation.

[5] Recognizing the deference paid to trial judges when it comes to sentencing, this Court will not interfere absent an error in principle, failure to consider a relevant factor or an overemphasis of the appropriate factors, or unless the sentence is demonstrably unfit, **R. v. Nasogaluak**, 2010 SCC 6, ¶ 46. Having read the materials filed, reviewed the judge's careful and complete analysis, heard oral arguments and considered the standard of review, we see no such error.

[6] While the sentence is substantial, we are not persuaded that in these circumstances it is outside an acceptable range. We hereby grant leave, but dismiss the appeal.

Hamilton, J.A.

Concurred in:

Saunders, J.A.

Farrar, J.A.