PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Sack*, 2014 NSPC 107

Date: 2014-12-22
Docket: Case Numbers 2695790, 2655166, 2668470, 2716602, 2716592, 2716599, 2740556, 2738590, 2738592, 2734305, 2734306, 2734307, 2786966, 2785984, 2785985

Registry: Pictou

Between:

Her Majesty the Queen

v.

Valerie Claudette Sack

SENTENCING DECISION

Judge: The Honourable Judge Del Atwood,

Heard: 22 December 2014 in Pictou, Nova Scotia

Decision: 22 December 2014

Charge: 145(3)(a) of the Criminal Code of Canada
145(3)(b) of the Criminal Code of Canada
145(5) of the Criminal Code of Canada
334 of the Criminal Code of Canada
334(b) x 8 of the Criminal Code of Canada
354(1)(a) x 2 of the Criminal Code of Canada
355(b) of the Criminal Code of Canada

Counsel: Patrick Young for the Nova Scotia Public Prosecution Service
Rob Sutherland for Valerie Claudette Sack

By the Court:

[1] Valerie Claudette Sack is before the court to be sentenced in relation to a number of property-related and bail-violation charges, spanning from 6 August 2013 right up until 3 October 2014. They occurred in Pictou County, HRM, Antigonish and down in the Valley.

[2] One mitigating factor is that Ms. Sack has entered guilty pleas to all of the charges before the court. The court has the benefit of a *Gladue* report, as well as a pre-sentence report; these reports inform the court very thoroughly of Ms. Sack's history, the support that she has in the community, as well as her cultural and social background.

[3] The court heard today from Mr. Gerry Sack and Ms. Catherine Paul, both of whom are extremely supportive of Ms. Sack and who wish to see her rid of her addiction to the non-medical use of dilaudid, and see her start out on a life that will allow her to return to her community, healed and well.

[4] The court applies the principles set out by the Supreme Court of Canada in *R. v. Ipeelee*, [2012] 1S.C.R. 433, as well as *R. v. Gladue*, [1999] 1 S.C.R. 688.

[5] It is clear to the court that Ms. Sack is well connected to the Indian Brook First Nation. She was raised there and has spent most of her life there. It is clear to the court as well in reviewing the pre-sentence report, as well as the *Gladue* report prepared by the Mi'kmaq Legal Support Network, that Ms. Sack's life in the Indian Brook Community reflects, in many respects, the cultural, political, and social repression that First Nations' communities have endured throughout Canada for generations. That has included historical obscenities, such as forced relocation, cultural repression that included linguistic repression, cultural assimilation, economic and educational disadvantages that have combined to produce in many First-Nations' communities a high prevalence of alcohol and drug abuse, family breakdown, high drop-out rates from school, the abuse of alcohol and illegal drugs. In many respects Ms. Sack's life is a result of that tragic past. Because of the offences that have been committed against First-Nations' communities throughout Canada—and those offences have implicated the justice system of this province and other provinces, which was underscored by the Marshall Inquiry Report twenty-five years ago[1]; it was chronicled also in great detail in that seminal work

[1] Nova Scotia, Royal Commission on the Donald Marshall, Jr., Prosecution, *Commissioners' Report: Findings and Recommendations 1989*, vol. 1 (Halifax: The Commission, 1989) at 148-192.

by Daniel Paul, *We Were Not the Savages*[2] --members of those communities, such as Ms. Sack, find themselves confronted with overwhelming social, familial, and health and wellness-related tensions, and have been deprived unjustly of the resources needed to cope with them.

[6] I accept that both Mr. Gerry Sack and Ms. Catherine Paul are strong supporters of Valerie Sack. I am satisfied that they have supported her in the past. They continue to support Ms. Sack. The difficulty is that notwithstanding those supports, Ms. Sack's dire addiction to the illegal use of prescription drugs such as dilaudid has led her to commit many criminal offences that have brought Ms. Sack into continual conflict with the law the over the past four years. And so, far from things dropping off in frequency, they seem actually to be increasing.

[7] I note that Ms. Sack had the benefit of community-based probation back in 1990, 2005, 2006, 2007, and 2010—also, probation in 2011; unfortunately those community-based interventions have not been sufficient to pull Ms. Sack out of the gravity well of illegal drug use.

[8] Taking into account the number of offences before the court as well as the geographic range of them—all of which satisfy me that Ms. Sack was involved in a

[2] Daniel N. Paul, *We Were Not the Savages*, 3d. (Halifax: Fernwood Publishing, 2006) at 281-319.

fairly extensive enterprise that involved her hitting retail merchants in this county, down in the Valley and at various locations throughout Halifax and Antigonish—I believe that high degrees of planning and premeditation were involved here . Additionally, these were high-dollar-value thefts, not merely the snatching of dollar-store novelties, and these were all intended to support a deep-seated drug habit that I believe will take a considerable degree of effort on Ms. Sack's part to overcome.

[9] I recognize, as well, as the Supreme Court of Canada stated in *R. v. Ipeelee*, at para. 84, that as the seriousness and the frequency of crime committed by a First-Nations' offender increase, the sentences a court must consider are those that approximate much more closely those that would be imposed upon a non-aboriginal offender.

[10] I take into account the step principle and I certainly take into account as well the period of time that Ms. Sack has spent in custody in accordance with the provisions of s. 719 of the *Criminal Code*. I do intend to give Ms. Sack credit that is appropriate. By my reckoning, she has spent 81 days on remand. Applying the principles set out by Supreme Court of Canada in the *R. v. Carvery*, 2014 SCC 27, I intend to give Ms. Sack credit for time and a half.

[11] I do not believe that a conditional sentence order is permissible here. It is excluded statutorily under s. 742.1 of the *Code*, as I believe that the sentence that the court ought to impose exceeds two years. However, even if that were not the case, I would not feel that Ms. Sack would be eligible for a conditional sentence simply because of her very high risk of reoffending. The court must not gamble with public safety, and public safety includes the right of the public to be safe from property-related crimes. I am concerned also about Ms. Sack's safety, too, as her relapses into serious drug abuse have carried high risks of lethality.

[12] I recognize that the sentence imposed by the court ought not to crush the prospect of rehabilitation and should be the least restrictive sanction applicable in the circumstances.

[13] Taking into account all of those principles, the sentence of the court is as follows: in relation to case number 2695790, which is the August 6th, 2013theft from Atlantic Superstore, a sentence of two months' imprisonment; in relation to case number 2655166, which is the October 1st, 2013 theft from Wal-Mart, a sentence of three months' imprisonment to be served consecutively; in relation to case number 2668470, the October 4th, 2013 theft from Atlantic Superstore, a

sentence of three months' imprisonment to be served consecutively; in relation to case number 2716602, the fail to appear from November 13th, 2013, a sentence of three months' imprisonment to be served consecutively; in relation to case number 2716592, the theft from Wal-Mart, a sentence of three months' imprisonment to be served consecutively; in relation to case number 2716599, the possession of stolen property from Cleves, a sentence of three months' imprisonment to be served consecutively; in relation to case number 2740556, the court would have contemplated a sentence of four months' imprisonment; however taking into account the *R. v. Adams* principle of totality, the court imposes a sentence of two months' imprisonment to be served consecutively; in relation to case number 2738590, the May 6th theft, again the court would have contemplated a four months' sentence, but I will reduce that to two months to be served consecutively given the principle of totality; in relation to 2738592, the 12th of May theft, there will be a two month sentence, but to be served concurrently; in relation to case number 2734305, the further count of theft, I would have considered a four months' sentence, but taking into account the principle of totality, a two month sentence to be served consecutively; in relation to case number 2734306 two months concurrent; in relation to case number 2734307 two months concurrent; in relation to case number 2786966, that is the indictable possession charge from

Pictou County, the court would have imposed a sentence of six months' imprisonment; however taking into account the period of time that Ms. Sack has spent in custody, I will deduct four months from that sentence so that it will be two months' imprisonment to be served consecutively. The court will order and direct that the Warrant of Committal as well as the information containing case number 2786966 be endorsed in accordance with the provisions of Section 719(3.3) of the *Criminal Code*, the *Truth in Sentencing Act*, but for the remand time, the sentence for that count would have been six months. However, the final sentence taking into account the remand time for case number 2786966 is two months consecutive. In relation to case number 2785984, there will be two months concurrent; and case number 2785985 two months concurrent. So, by my reckoning that should work out to 25 months.

[14] In relation to the charges from the 6th of August of 2013, the 1st of October of 2013, and the 4th of October of 2013, all of those pre-date the coming into force of the amendments to Section 737 of the *Criminal Code*. In relation to those charges, the court finds that imposition of victim surcharge amounts would work an undue hardship; therefore, the court declines to impose any victim surcharge amounts.

[15] In relation to the remaining counts that are before the court, the court is going to impose a $1.00 fine in relation to each of the charges before the court and there will be a $0.30 victim surcharge amounts in relation to all of those charges.

[16] So, the victim surcharge amounts will apply to each count with exception of information number 690968, 684962 and 686802. In relation to all those informations, victim surcharge amounts are waived. In relation to all the other counts, there will be a $1.00 fine in relation to each charge, and a $0.30 victim surcharge amount in relation to each charge. Ms. Sack will have 48 months to pay those fine and victim surcharge amounts.

JPC