PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. H.C.*, 2015 NSPC 18

Date: 2015-02-12
Docket: 2766635, 2766636, 2794707
Registry: Pictou

Between:

Her Majesty the Queen

v.

H.C.

Judge:	The Honourable Judge Del Atwood,
Heard:	February 12, 2015, in Pictou, Nova Scotia
Decision	February 12, 2015
Charge:	Section 380(1)(b) Criminal Code of Canada Section 254(5) Criminal Code of Canada Section 4(1) Controlled Drugs and Substances Act
Counsel:	Bronwyn Duffy for the Public Prosecution Service of Canada Patrick Young, for the Nova Scotia Public Prosecution Service Douglas Lloy Q.C., Nova Scotia Legal Aid, for H.C.

By the Court:

[1] The court has for sentencing H.C. Mr. C. entered guilty pleas at a reasonably early opportunity in relation to charges of refusing a roadside screening demand, possession of a small quantity of a Schedule II *CDSA* contraband, and also a charge of defrauding the Atlantic Superstore.

[2] The positive or mitigating factors are Mr. C.'s guilty pleas, which I accept as an acknowledgment of responsibility; however, I do note that the evidence arrayed against Mr. C. was substantial, so that while a guilty plea is always a mitigating factor, the court assigns it a degree of weight that is appropriate.

[3] Mr. C. has, in his allocution before the court today, informed the court that he understands now that, in order to remain offence-free, he must remain away from illegal drugs or the non-medical use of prescription drugs. Mr. C. informs the court that if released, he has concrete plans to follow up with addictions counselling, and Mr. C. laments the fact that in the past, counselling has not been available to him.

[4] With respect to that last point, the evidence would suggest strongly to the contrary. Every single order involving community supervision that has been

imposed upon Mr. C. from 2003 coming forward has included mental- health-counselling conditions as well as substance-abuse-counselling conditions. Mr. C. has been the subject of an array of community-based orders, conditional sentence orders, as well as straight probation orders. Almost every one of those orders has wound up being violated.

[5] In fact, Mr. C. received a conditional sentence order away back in 2004, August of 2004 for a period of six months. In January 2005, Mr. C. was before the court for a conditional-sentence breach, and there was a 90-day committal that was ordered as a result of a breach hearing.

[6] Mr. C. received a further conditional-sentence order in July 2012 that was subject to a breach hearing in August of 2012; that hearing resulted in a partial collapse of that order.

[7] Mr. C. has a record that consists of approximately 27 property-related charges, an array of justice breach-related charges involving either breach of probation, failing to attend court, breach of undertaking and the like. His record discloses a significant number of warrants issuing out of courts simply to get Mr. C. into a court room in order to be dealt with according to law.

[8] Mr. C.'s record, in my view, is evidence of a substantial diversion of public policing and justice-related resources simply to keep other people's property safe or to get Mr. C. into court when he is required to be there.

[9] The principles of sentencing are set out in Section 718, 718.1 and 718.2 of the *Criminal Code*. The primary principle of sentencing is proportionality. A sentence should be proportionate to the gravity of the offence and the degree of responsibility of the offender. The objectives of sentencing are to denounce unlawful conduct, deter the offender and others from committing offences, separate offenders from society where necessary, assist and rehabilitate offenders, promote reparation for harm done to victims or to the community, and promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims and to the community.

[10] I recognize that the offences before the court did not involve bodily harm, but certainly with respect to the 254(5) refusal, Mr. C. was stopped by police heading in the wrong direction on Provost Street, a one-way street, which is the main thoroughfare through the downtown of New Glasgow. Mr. C. was found with a small quantity of narcotic in his possession at that time. Usually, that does not attract a significant sentence, but I agree with Ms. Duffy that a period of imprisonment should be considered by the court in relation to that *CDSA* count in

that the last time that Mr. C. was before the court to be sentenced on a *CDSA* matter in August of 2011, he received a 15-day concurrent sentence. I agree with Ms. Duffy as well that the presence of a controlled substance in a motor vehicle typically involves an elevated risk, either that the motorist will consume it while driving, or that the motorist is taking it somewhere for an illegal purpose.

[11] Although Mr. C. does not have a record for s. 255-related offences, in my view the court must consider Mr. C.'s entire record. Offences under the *Criminal Code* might be classified as offences against the person, offences against the administration of justice, offences involving property, fraudulent transactions and the like; however, the fact that an individual might not have a prior record for a particular category offence does not mean that the court should put blinders on when it takes into account the offender's entire prior record, and I agree with Ms. Duffy on that point. Furthermore, as Mr. Young pointed out, Beveridge J.A. in *R. v. Naugle* 2011 NSCA 33 at para. 47, a prior record may be a factor for the court to consider in determining whether an increased sentence might be needed. A prior record is not an aggravating factor in the sense that Mr. C. is not to be re-sentenced for offences committed in the past, but the existence of a lengthy prior record may require the court to place special emphasis on the need to deter the offender from committing offences, and to separate the offender from society where it is

necessary to protect the public from ongoing intermittent but almost continuous illegal behaviour.

[12] In my view, the prospects for rehabilitation are extremely bleak. I have heard Mr. C.'s assurances, but based on Mr. C.'s track record, it is very difficult for the court to place any weight on Mr. C.'s assurance that he finally gets it. I accept that Mr. C. was the victim of an extremely serious offence as a youth. The predatory behaviour or former youth worker Cesar Lalo has been well chronicled in legal proceedings in this province and what Mr. C. had to endure was undoubtedly traumatic and horrific. But it is not acceptable for Mr. C. to use his victimization to make victims of an array of others, including the community at large. That, in my view, is simply not a supportable principle.

[13] The provincial prosecutor has requested that the court consider a period of custody in relation to the Section 380 case in the range of four to six months. First of all, I note that there is no joint submission before the court. While a four-to-six-month sentence might have been something that the court would have been prepared to consider, had the matter proceeded summarily, that count proceeded by indictment, and under the provisions of Section 380 of the *Criminal Code*, the maximum potential penalty is a period of two-years' imprisonment. Taking into account Mr. C.'s significant prior record, including offences involving this very

type of crime involving defrauding merchants, given the significant diversion of resources that have been required to be expended by private businesses assisting in police investigations, the public expense to policing services carrying out those investigations, and court services having to deal with Mr. C.'s justice-related issues, I feel that the more appropriate sentence in relation to the para. 380(1)(b) count is a sentence of nine-months' imprisonment.

[14] In relation to the Section 254(5) count, given the significant public risk that was represented by Mr. C. travelling in the wrong direction on Provost Street, taking into account that surrounding circumstance, taking into account, as well, that essentially what Mr. C. engaged in with police on 13 July was a charade of failing to provide a sample of his breath, in my view, the appropriate sentence in relation to that case is one month to be served consecutively.

[15] And in relation to the *CDSA* count, there will be a sentence of one month, but to be served concurrently, in accordance with Ms. Duffy's very fair recommendation based on totality.

[16] In relation to the 254(5) count, I decline to impose any additional fine because, in my view, the sentence of 30 days consecutive is sufficient. In relation to each of the charges before the court, there will be victim surcharge amounts: on

the 254(5) count, a victim surcharge amount of $100. On the *CDSA* count, a victim fine surcharge of $100, and in relation to the Section 380 count that proceeded indictably, there will be a victim surcharge amount, the mandatory amount being $200.

[17] In *R. v. Cromwell*, 2005 NSCA 137 at para. 41, our Court of Appeal decided that that failing to appear in court for a sentencing hearing may, indeed, be an aggravating factor. I find that, based on the period Mr. C. was AWOL, although none of the offences before the court is excluded from the conditional sentencing regime, a community-based sentence is simply not supportable here because of Mr. C.'s track record.

[18] Furthermore, applying the principles set out in *R. v. LeBlanc* 2011 NSCA 60 at para. 22 , Mr. C.'s remand time arose simply because of Mr. C.'s decision to commit the offence of not appearing in court when required to do so. In my view, no one should benefit or derive a benefit from a criminal offence; therefore, the court declines to give Mr. C. credit in relation to the remand time.

[19] I decline to impose any period of probation because, in my view, the prospects of probation succeeding here have been exhausted. Mr. C. is going to have to accomplish his rehabilitation on his own. His future has always been in his

hands, and in my view, a probation order would simply be setting up the prospects for a breach.

[20] Mr. C. is remanded until that April date in relation to the Section 362 matter. And, in relation to the offences before the court today, it's nine months plus one month consecutive plus one month concurrent.

[21] Anything further for Mr. C., counsel?

[22] **Mr. Young**: Did the court order a driving prohibition?

[23] **The Court**: Oh, and that's correct. Thank you Mr. Young. So, there will be a one-year driving prohibition in relation to the Section 254(5) count, and I will order a delay of the interlock program for a period of six months. I will point out that, in imposing the sentence that I did in relation to that 254 matter, I did consider the fact that Mr. C. was a revoked driver at the point in time that he was stopped. Anything further in relation to Mr. C., counsel?

[24] **Mr. Young**: No, Your Honour.

[25] **Ms. Duffy:** No, Your Honour.

[26] **Mr. Lloy**: Not by defence, Your Honour.

[27] **The Court**: We'll give Mr. C. 24 months to pay those victim surcharge amounts.

[28] I'll have you accompany the sheriffs, please, Mr. C.. Thank you.

Atwood, JPC