PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Brown*, 2015 NSPC 21

Date: 2015-04-14
Docket: 2759837, 2805698, 2805699
Registry: Pictou

Between:

Her Majesty the Queen

v.

Timothy William Wesley Brown

SENTENCING DECISION

Judge:	The Honourable Judge Del Atwood,
Heard:	April 14, 2015, in Pictou, Nova Scotia
Decision:	April 14, 2015
Charge:	Section 264.1(1)(a) Criminal Code of Canada Section 145(5.1) Criminal Code of Canada Section 264.1(1) Criminal Code of Canada
Counsel:	Patrick Young for the Nova Scotia Public Prosecution Service Douglas Lloy, Q.C., Nova Scotia Legal Aid, for Timothy William Wesley Brown

By the Court:

[1] The court has for sentencing, Timothy William Wesley Brown. Mr. Brown is before the court to be sentenced in relation to one count of uttering threats from July 22nd, 2014; one count of uttering threats from November 22, 2014; and one count of breach of undertaking from November 22, 2014. All matters proceeded by summary process. The maximum term of imprisonment for each of the uttering- threats charges is 18 months, given that the matters proceeded summarily, and the maximum term of imprisonment for the breach of undertaking charge is six (6) months as it falls within the general penalty provisions in section 787 of the *Criminal Code.*

[2] The one mitigating factor is the guilty plea. Although, as I noted in the *R. v.H.C.*, 2015 NSPC 18 at para. 2, the court must attenuate the mitigating weight to be applied to Mr. Brown's guilty plea, given that the evidence against him was overwhelming. Police were presented with an audio recording of voice messages that had been left at the home of Alexander Gowan MacGregor by Mr. Brown; this evidence was incontrovertible. When police responded to Mr. Brown's own telephone call on 22 November 2014, they found him under the influence of alcohol in violation of his undertaking. As he was being escorted to the police

detachment by Cst. Harry, who was carrying out his duties under the law, Mr. Brown proceeded to lash out at the silent patrolman and make a number of threats against Cst. Harry – "going to beat him to the ground and strangle him". The threats that were left by Mr. Brown on Mr. MacGregor's message manager on the 22 July, 2014, were truly alarming. The included threatening to "break his God-damn fucking head off"; also referring to "seeing [Mr. MacGregor's] little boy down the street", and then finally threatening to "take him into the hole." These were terrifying threats. Mr. Brown might have been under the influence of alcohol at the time, but Mr. Brown's conduct was the result of the voluntary consumption of alcohol.

[3] I note, as well, that Mr. Brown has been sentenced twice in the past for offences involving Mr. MacGregor. He was placed on probation on 20 March, 2012, and one of the conditions of that probation order was that he stay away from the person, place of residence, place of business of Mr. MacGregor, and have no contact or communication with him.

[4] Similarly, on 19 April, 2011, Mr. Brown was placed on a period of probation for 15 months to have no contact or communication with Mr. MacGregor.

[5] Mr. MacGregor expressed to police what I consider to be his reasonable fear that Mr. Brown might, at some point in time, seek to carry out his threats. I believe that this fear is reasonable, as it is clear to the court that when Mr. Brown is under the influence of alcohol, his conduct is violent and unrestrained and that was certainly borne out in the aftermath of his arrest by Cst. Harry.

[6] Mr. Brown states that he recognizes his problem with the consumption of alcohol and is being proactive in having it remedied. In the pre-sentence report, it is significant that Mr. Brown advised the author of the pre-sentence report that he has continued to see Lorraine MacLean, a clinical therapist over the years. Perhaps not monthly, but in the last year he estimates "he has seen her eight (8) times." The author of the pre-sentence report spoke with Ms. MacLean. She stated that the last time that she saw Mr. Brown was in December of 2011. She notes that records at Addiction Services show that he has not been attending for counselling with another therapist.

[7] Mr. Brown professes to have the support of family, particularly his mother. That might, indeed, be the case; however, it is clear to the court, given Mr. Brown's mother's illness, that she is not aware of Mr. Brown's situation. Catherine Brown was interviewed for the pre-sentence report. Her recollection is that Mr. Brown's issues with alcohol did not begin until he was an adult. Mr.

Brown states in the report that he began consuming alcohol at age 15 or 16; began to drink more often toward the end of his relationship with a Valerie Rushton and was in an on-again, off-again relationship with a Ms. McNutt.

[8] I note that among the orders that have been imposed by the court in the past, there was a probation order in 2006 that prohibited Mr. Brown from having contact with Ms. McNutt and that arose from a conviction for breach of probation and criminal harassment. I note, as well, that in 2005, Mr. Brown was sentenced for a breach of probation, uttering threats and breach of undertaking charges; the sentencing court ordered at that time, among other things, that Mr. Brown remain away from the premises of a Constable Blair Gorman. And, it is clear to the court that Mr. Brown's pattern of behaviour of consuming alcohol and becoming violent or threatening is, indeed, a pattern of longstanding and continuing conduct.

[9] I note as well that, of the probation orders made by the court since Mr. Brown has been subject to the superintendence of the court because of his criminal activity, seven of those orders have either prohibited Mr. Brown from possessing alcohol or have included conditions requiring Mr. Brown to accept counselling.

[10] The last time that Mr. Brown received a sentence before the court, there was a warrant of committal of 175 days imposed by the court in relation to a charge of breach of probation, uttering threats and assaulting a peace officer.

[11] Although I certainly do take into account the sentencing recommendation made by Mr. Lloy, it is my view that a conditional sentence order would not appropriate here for several reasons. First of all, the court has little confidence in Mr. Brown's ability to remain sober and violence-free. Mr. Brown poses a threat, particularly to Alexander Gowan MacGregor, and to members of his family. The court has little confidence in Mr. Brown's ability to remain substance-free, particularly because of Mr. Brown's deceitfulness in self-reporting his clinical therapy over the past year. That level of deceit was, indeed, breathtaking because it was almost inevitable that the author of the pre-sentence report would detect the fraud.

[12] Finally, the court concludes that a sentence of less than two years is not appropriate here. This, indeed, falls within the range of *R. v. Dean*, 2011 NSPC 40. Although I certainly take into account the sentencing recommendation made by the prosecutor, in my view, a much more substantial sentence is warranted here in order to specifically deter Mr. Brown. I am taking into account the principle of totality, the seriousness of these offences, particularly, the threats, as well as the

fact that the threat made to Cst. Harry occurred at a time that Mr. Brown was on an undertaking. Violations of undertakings and other terms of bail admission must be treated extremely seriously. The Supreme Court of Canada in *R. v. Pearson*, [1992] 3 S.C.R. 665 stated that the objectives of bail fail when persons who are admitted to bail commit further criminal offences or offences against the administration of justice while on bail. Mr. Brown's prior record for similar offences is substantial and alarming as is the nature of the threatening conduct.

[13] In my view, the appropriate sentence, taking into account the principle of totality is as follows:

- In relation to the threat from the 22nd of July, 2014, there will be a sentence of twelve (12) months' imprisonment

- In relation to the breach of undertaking charge, I would have considered a sentence in the range of five (5) months; however, taking into account the principle of totality, there will be a sentence of four (4) months, to be served consecutively.

- In relation to the uttering threats charge against Cst. Harry, the court would have considered a further term of twelve (12) months; however, taking into account the principle of totality as set out in *R. v. Adams*, 2010

NSCA 42, the court imposes a sentence of eight (8) months plus one (1) day consecutive service for a total sentence of two (2) years plus (1) day.

- The court will order, as well, pursuant to the provisions of Section 743.21 of the *Criminal Code*, that while in custody, Mr. Brown is to have no contact or communication, either directly or indirectly, with Alexander Gowan MacGregor or any member of his family.

- The court will make a secondary designated offence DNA collection order in relation to the two (2) uttering threats charges, and again, in relation to the two (2) uttering threats charges, the court will make a ten year plus two years plus a day Section 110 Order in relation to those two uttering threats charges.

- There will be victim surcharge amounts of $100 in relation to each of the charges before the court and those victim surcharge amounts are to be paid within a period of 48 months.

[14] Anything further for Mr. Brown, counsel?

[15] **Mr. Young**: Maybe I missed it. Did the court order a DNA order?

[16] **The Court**: Yes, a DNA collection … that was ordered, yes it was.

[17] **Mr. Young**: Thank you.

[18] **The Court**: The DNA collection order was made. Anything further for Mr. Brown, counsel?

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

[20] **Mr. Lloy**: Not from defence.

[21] **The Court**: Thank you. Mr. Brown, I'll have you go with the sheriffs, please, sir. Thank you very much.

Atwood, JPC