

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. Laffin, 2007 NSPC 45

**Date:** July 5, 2007  
**Docket:** 1634122,  
1634123, 1634124  
**Registry:** Halifax

Her Majesty the Queen

v.

Stephen Laffin

**DECISION**

**Judge:** Jamie S. Campbell  
**Heard:** June 29<sup>th</sup>, 2007  
**Oral decision:** July 5<sup>th</sup>, 2007  
**Charges:** Criminal Code Section 344  
**Counsel:** Crown - Susan MacKay  
Defence - John Black

**By the Court:**

[1] If there were such a thing as the stereotypical image of a robber, Stephen Laffin does not match it. He is, apparently, a soft spoken, and mild-mannered man. He is articulate and respectful. His appearance is very much that of a “gentleman,” with dignified carriage and carefully chosen business suits. He is a hard worker. At 32 years old he appears in every outward respect to be a person who should be looking forward to a bright future.

[2] Yet, through the twists and turns of fate, he found himself pleading guilty to attempted robbery and serving a lengthy conditional sentence. It is that sentence that he is now seeking to have varied.

[3] Mr. Laffin’s circumstances are significant both to the specific issue of whether the sentence should be varied and to a more general appreciation of the people who find themselves before the court. In other words, Mr. Laffin’s unfortunate circumstances show that it can happen to almost anyone.

[4] It cannot be denied that in some cases people are driven by base motives. Drug

addictions and mental health issues may help to explain the circumstances of some, though the roots of those problems are often deeper than they at first appear. For others a lapse of otherwise sound judgment or a momentary lapse of self control can result in a criminal conviction that has serious and lasting consequences.

[5] Stephen Laffin's story is a sad one. He had been employed at Casino Nova Scotia. He found work with a cruise line which meant that he spent considerable amounts of time at sea. His marriage broke down. The fault if any in that relationship is not an issue before the court. In any event, Mr. Laffin and his wife separated. He was called home from sea to sign divorce papers. To do that, apparently he had to leave his cruise line job. Upon his return he found that his wife had emptied out the family bank account. He was left with no marriage, no money and no job.

[6] He depended on friends for some time. Then, in a state of desperation, he did something that was outwardly an attempt to obtain money but was likely the result of a combination of motives which will never be fully understood. At 10pm one evening Mr. Laffin went into Point Pleasant Grocery just across the street from Point Pleasant Park. He was dressed entirely in black, wearing a black ski mask and black gloves and carrying a six-inch kitchen knife in his hand. This most unusual robber started out on

his tragic enterprise with an almost comic concern that he at least dress the part of the robber.

[7] When he went into the store Mr. Laffin showed the knife to the clerk, who asked if he wanted money. Mr. Laffin nodded his head to indicate “yes.” The victim of the robbery then confronted Mr. Laffin with a knife of his own and chased the fleeing Mr. Laffin out into the street.

[8] Mr. Laffin pled guilty to the charge of attempted robbery.

[9] At the sentencing in this matter the Crown recommended a conditional sentence of two years. Mr. Laffin’s counsel argued for a suspended sentence along with probation. She argued that a conditional sentence would, in effect, prevent Mr. Laffin from continuing his work with the cruise lines because he would be unable to report in person and a criminal record would make it almost impossible for him to obtain work in the gaming industry.

[10] Mr. Laffin was given a conditional sentence for an offence which often carries a sentence of significant incarceration. Despite the circumstances surrounding the

commission of the offence, in particular Mr. Laffin's entirely uncharacteristic behaviour, attempted robbery is a violent offence. His otherwise good character, which suggested that he was not a threat to public safety, is in many respects, what stood between him and time in jail.

Law:

[11] Mr. Laffin's application was brought under s.742.4 of the Criminal Code. Subsection 742.4(1) sets out the process by which an offender's supervisor may apply to change the optional conditions of a conditional sentence order. If there is no objection from the Crown or the offender, the change takes effect within the specified time. If either the Crown or the offender object to the change a hearing is held. At that hearing, contemplated by subsection 742.4(3) the court may approve or refuse to approve the change or may make other changes that the court deems appropriate.

[12] Subsection 742.4(5) provides that the offender or the prosecutor may also apply for such a variation. When an application is made by the Crown or by the offender, a hearing must be held.

[13] The Criminal Code does not set out the criteria to be applied by the court in

considering whether such applications should be granted. The only requirement, set out in subsection 742.4(1) and made applicable to subsection 742.4(5), is that there be a change in circumstances that makes a change in the optional conditions desirable.

[14] The Criminal Code itself does not limit the application of the section to technical matters. It is a broad exercise of reasonable discretion.

[15] The Crown cited the case *R. v. Kobsar (2004) 192 C.C.C. (3d) 224, 372 A.R. 194, 37 Alta. L.R. (4<sup>th</sup>) 132 (Q.B.)*. In that case, the offender was convicted of theft over \$5000. The victim was the employer for whom she had acted as a bookkeeper. She was sentenced to a two-year conditional sentence, with one year of strict house arrest. After eight months of house arrest the offender's supervisor applied to eliminate the remaining portion of the house arrest.

[16] The Court in that case, expressed considerable concern that applications made by supervisors under subsection 742.4(1) could result in variations being made, without a hearing because of inaction on the part of the "heavily taxed offices of the Crown." The Court set out four fundamental rules for supervisors, suggesting that they should review the decision of the sentencing judge, they should use the power

sparingly to deal with changes of circumstances, they should recommend technical and not substantive changes and they should not use subsection 742.4(1) when it is really the offender who is requesting the change and the supervisor feels that the change is “not a bad idea.”

[17] This application is not made under subsection 742.4(1). It has been made under subsection 742.4(5) to the judge who imposed the original sentence and who is aware of the balances and considerations that went into making that sentence. The Crown is involved and there is no risk of a change being made simply because the Crown has not responded. The limitations as suggested in *Kobsar* do not apply to applications brought under subsection 742.4(5).

[18] The Court in *Kobsar* went on however to state that the criteria for making an amendment should be the same as those that apply to the initial sentencing.

“However, the Court must also take into account the change in circumstances and the offender’s performance on the CSO, after determining whether the proposed change is technical or substantive.” *R. v. Kobsar* para. 35

[19] The court stated as well that two particular factors should be given little weight. The first is that the house arrest is inconveniencing the offender. Conditional sentences are intended to be punitive. They are intended as a restriction on liberty. The Court cited with approval the judgment of Martin J. in *R. v. Penner (2002)*, 318 A.R. 55, 2002 ABQB 478, 318 A.R. 55, 54 W.C.B. (2d) 291. In that case, the Court expressed a concern that except in exceptional circumstances, relaxation of a house arrest or curfew to a few hours each day would “make a mockery of such sentences.”

[20] The second factor which the court held should merit little weight is that the offender is complying with the conditional sentence order. “This is merely suggestive that the sentence is having it’s desired effect. It should not become a justification for further watering down of the sentence.” *R. v. Kobsar* para 37

[21] The Court concluded by summarizing that the offender simply wanted the house arrest to end early and preferred not to have it go on for the months ahead. The Court refused that request. The Court also denied a request for a later curfew which was advanced for no reason other than personal convenience. The Court was however willing to relax certain conditions to allow Ms. Kobsar more time with her grandchildren and ailing parents, during the period of the house arrest. Specifically



in recognition of her “ good behaviour during the sentence thus far,” the Court freed her from house arrest from December 24 to December 29<sup>th</sup>.

[22] The Alberta Court of Queen’s bench, while expressing considerable reservations and acknowledging the concern that sentences not be watered down , was prepared to make a number of changes to accommodate the needs or desires of the accused.

[23] In *R. v. Wehbe* [2001] O.J. No. 3755, 2991 O.T.C 710, 51 W.C.B. (2d) 137 the Ontario Superior Court of Justice allowed an application to vary brought by the offender. Mr. Wehbe applied to vary one mandatory statutory condition and one optional condition that were attached to his 18 month sentence. He was required to remain within the Province of Ontario unless he had written permission from his supervisor and was to obey a curfew. He had four months remaining on the order. His supervisor noted no concerns with the deletion of the curfew condition but maintained that travel outside the province should be for business opportunities only. The court approved the requested changes.

[24] Justice Hill acknowledged that a conditional sentence should include

meaningful restrictions of liberty, and went on to state:

“While a conditional sentence is not subject to reduction by parole, that is not to say that punitive aspects of the sentence cannot be ameliorated before expiry of the sentence. Graduated dispensation from onerous liberty restrictions, which were necessary at the outset of the term of punishment, may be justified where there are reasonable assurances the community will be protected and the good conduct of the offender secured. The court is obliged to consider such matters as the nature of the offence committed, views of the victim, compliance with the order’s conditions prior to application, and the purpose advanced for the variation. This is not of course an exclusive list of relevant factors. A filed consent by the Crown should generally be accorded significant weight in the review process.” *R. v. Wehbe* para. 14

[25] Justice Hill advocated the exercise of the broad discretion mandated by subsection 742.4 having regard to the full context including the circumstances of the offence, the offender and the application itself.

[26] In British Columbia, the Provincial Court dealt with the matter in *R. v. Andrews*

[2001] B.C.J. No. 1358, 2001 BCPC. 147. There the application as made for relief from house arrest and to have the provision prohibiting contact with any female under 16 years of age lifted. The offender had been sentenced to two years less one day for two counts of rape.

[27] Judge Doherty was very troubled by the extent to which Mr. Andrews had been granted personal liberty while under the conditional sentence. “It is so far from the sentence I intended to impose that I am quite frankly astonished.” *R. v. Andrews* para.13 “Work” had achieved a broad definition when, as Judge Doherty noted, it had been intended to be quite narrow.

[28] The offender sought to have the conditions relaxed partially because the offences had taken place thirty years before. That was a consideration which was of no relevance whatsoever. The offender also found the sentence to be inconvenient.

[29] Judge Doherty said, “I have news for the defendant: It as intended to be inconvenient. It was intended to be difficult. It was intended to be punitive.” *R. v. Andrews* para. 27

[30] The application, almost needless to say, was not granted.

[31] In *R. v. Williams* [2002] O.J. No 4691 the offender sought to change the terms of her conditional sentence to allow her to go shopping and to attend an exercise program. She had been sentenced to an 18 month conditional sentence for theft of over \$107,000 from her employer.

[32] The Ontario Superior Court of Justice held that the interest in general and specific deterrence would be greatly reduced by such a change and denied the application.

[33] Similarly in *R. v. Hopkins* [2003] O.J. No. 5417 the Ontario Superior Court of Justice denied an application by the offender to permit him to travel to England to attend an engagement party. He was serving a conditional sentence for theft over \$5000. Mr. Hopkins had previously been given some dispensation for employment purposes. The reasons for the variation in this case did not invite compassion. The Court suggested that the decision might have been different had there been true compassionate grounds, such as illness or death or perhaps for some business purpose.

[34] On an application brought by the offender under subsection 742.4(5) the Court has a broad discretion. The Criminal Code itself in section 742.4 imposes no limits on the manner in which that discretion should be exercised, other than that there should be a change in circumstances and that the amendment be “desirable.” Such a variation must not change the sentence to the extent to which it no longer reflects the principles and purposes of sentencing as set out from sections 718 to 718.2 of the Criminal Code. Any amendment must also reflect the law pertaining to conditional sentences set out in section 742.1 and the principles set out in *R. v. Proulx* [2000] 1 S.C.R. 61, 140 C.C.C. (3d) 449, 30 C.R.(5th) 1. While it is a broad discretion it is not boundless.

[35] When the court is called upon to make a decision that involves a consideration of the broader context, lists of factors can provide some guidance but can also fetter the discretion by limiting the scope of the inquiry. Examples can also be helpful but can result in one factor taking a predominant role that was never intended. While the reason for the request may be particularly relevant in some cases, it may be less important than the nature of the offence in others. While the offender’s compliance with the conditional sentence order may be of minimal relevance in some cases, there may be circumstances in which it will be significant in assessing the whole of the offender’s transformation and rehabilitation over the period of the sentence. While

inconvenience may not be important there may well be times when the level of inconvenience, in view of the current circumstances is greater than the sentencing judge had contemplated.

[36] A court should of course consider the fact that an offender is seeking a variation of a sentence which may have been the subject of a joint recommendation and having received the benefit of the “bargain” the offender is now seeking to renege with regard to his part of the deal.

[37] In summary, the court in dealing with an application under section 742.4(5), must undertake a mindful exercise of a broad discretion. It must first determine whether a change in circumstances has taken place. It must then be satisfied that the change as recommended is both desirable and respects the purposes and principles of sentencing in general. The change must also comply with the principles respecting conditional sentences set out in both section 742 and by the Supreme Court of Canada in *R. v. Proulx*. The court should consider and weigh the circumstances of the offence and the broadly defined circumstances of the offender. The Criminal Code does not circumscribe the discretion any more than that. The attempt to make generally applicable rules from specific cases, in this situation at least, may accommodate the

need for certainty or perhaps for intellectual tidiness but imposes limits that fetter a discretion intended to respond to unique individual circumstances.

Analysis:

[38] Mr. Laffin has served somewhat more than one year of his two-year conditional sentence. He is seeking to have the terms of his house arrest varied to provide for more flexibility.

[39] The offence itself was an act of violence. Attempted robbery is an offence in respect of the sentencing of which there is and should be a considerable element of general and specific deterrence. Mr. Laffin was sentenced to a lengthy conditional sentence of house arrest because that was the appropriate sentence for one who had committed that crime as a first offence. House arrest is a critical punitive component, although not the only punitive aspect of a conditional sentence.

[40] Any amendment must retain the punitive elements of denunciation and deterrence. There must continue to be significant restrictions on his liberty in order to fulfill those purposes.

[41] During the time that he has been subject to the conditional sentence Mr. Laffin has not only complied with the order in every respect, but has not made unreasonable demands on his supervisor for relaxation of the terms. The interpretation of the order in this case has not been stretched. I accept that compliance with the terms of the order is not a factor that should be given great weight. I accept that there is no “parole” offered with respect to conditional sentences. While those considerations are not deserving of considerable weight, they do form part of the context of this matter.

[42] Mr. Laffin has felt the consequences of the sentence in some very profound ways. He lost his opportunity to work in the cruise ship industry over the period of the sentence and his career in gaming has been perhaps irreparably harmed. Unlike some who can simply return to their jobs while serving such a sentence, Mr. Laffin’s opportunities have been severely limited by it. Those implications were known at the time of sentencing and while forming part of the context should not be given great weight.

[43] Beyond simply complying with the order, which he was and is legally obliged to do in any event, Mr. Laffin has made a concerted effort to become reintegrated into



the community. He began work at the Forest Hills Tim Horton's. He works more than regular hours. He has been promoted to a supervisory position. He has money saved and is paying off his debts. Apparently he has not lost his work ethic. He could have taken a very different approach.

[44] While the order does contemplate his working, Mr. Laffin has gone beyond just working. He has apparently, through work and dedication, committed himself to reestablishing his life. It is in society's best interest that he be encouraged in that endeavor while balancing that with the need to continue with the denunciatory and deterrent purposes of the sentence.

[45] His busy work schedule and the work of his sister, Corinna Nunn and brother-in-law, Stanley Nunn, make it difficult for him to be out with them as permitted. His brother in law, who is in the navy, is frequently at sea. His sister works and is often working when he is at home. The sentence had contemplated a degree of freedom that would come from being able to be at large to attend to personal needs for eight hours each week, while in the company of Corinna Nunn or Stanley Nunn. That degree of freedom has been restricted by the working hours that Mr. Laffin has undertaken. He should not be penalized for that.

[46] Mr. Laffin is seeking some more flexibility. The Crown, fairly and reasonably, agreed that Mr. Laffin could be out with any other person approved by his supervisor or that a specific third person be added to the list of those who could accompany Mr. Laffin. That would indeed allow for a level of flexibility.

[47] Removal of the house arrest provision and its replacement with a curfew would allow for considerably more flexibility but that amendment would change the sentence to the point where the denunciatory and deterrent aspects would be diminished to an unacceptable extent. Mr. Laffin is a man whose circumstances evoke considerable sympathy. He has already paid dearly for his actions. He must nevertheless serve the full sentence. The problem that he has raised however is one that can and should be addressed. That amendment should deal with the change of circumstances that Mr. Laffin has identified and not simply provide relief from the discomforts of the conditional sentence.

[48] Mr. Laffin should be permitted out of his residence to attend to personal needs for a period of not more than 12 hours each week, approved in advance by his sentence supervisor and in the company of any person approved in advance by his sentence supervisor. Effective November 1, 2007, Mr. Laffin may be out of his residence to

attend for personal needs for 12 hours each week, approved in advance by his sentence supervisor without the requirement that he be in the company of another person.

[49] This gives Mr. Laffin an additional four hours each week, to reflect in some modest way his progress while retaining the punitive aspects of the sentence. It permits his supervisor to approve any other person to accompany him and deals in that way with the specific concern that Mr. Laffin has raised. It also provides Mr. Laffin with a gradual lessening of the restrictions during the last six months of the sentence as a recognition of his own efforts and as an incentive to continue with them.

[50] Note: At the request of counsel for clarification of the wording of the amended conditional sentence order, the order was changed to provide that Mr. Laffin would be permitted out of his residence to attend to personal needs for a period of not more than 12 hours each week, between the hours of 7am and 10pm, with advance notification to his sentence supervisor. In addition, he would be permitted out of his residence with the prior approval of his supervisor, while in the company of Corinna Nunn, Stanley Nunn or any other person approved by his sentence supervisor.

Judge Jamie S. Campbell

Judge of the Provincial Court