PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. Noiles, 2012 NSPC 113

Date: 20121121
Docket: 2513398/2513400
Registry: Amherst

Between:

Her Majesty the Queen

v.

Paul Noiles

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Judge Paul B. Scovil

Heard: 21 November 2012, in Amherst, Nova Scotia

Written decision: 19 December 2012

Charge: THAT HE, on or about the 7th day of October A.D. 2012 at, or near Springhill, Nova Scotia, did break and enter a certain place to wit a dwelling house, situate at 12 Lorne Street, Springhill, Nova Scotia with intent to commit an indictable offence therein, contrary to section 348(1)(a) of the Criminal Code;

AND FURTHERMORE on or about the 7th day of October in the year 2012 at the Town of Springhill in the Province of Nova Scotia, did in committing a sexual assault on V.M. cause bodily harm to her, contrary to section 272(2)(b) of the Criminal Code.

Counsel: Mr. Bruce Baxter, for the crown
Mr. Robert Gregan, for the defence

By the Court:

[1] One thing is clear, monsters live amongst us in our society. Thankfully, they are few and far between. Mr. Noiles is one of those monsters, and they are very real. He is before me for sentencing for break and enter and committing, into a dwelling house, as well as section 272, a sexual offence.

[2] I'll deal first with the facts. The victim in this matter lived alone in Springhill, Nova Scotia in the neighbourhood of the accused. On the evening of October the 6th, 2012, she was dropped off at her home. She watched TV. At 10:00 p.m. she went to bed, removing her hearing aid. As a result of that it was not surprising that she didn't hear the efforts of the accused to break into the house.

[3] At 4:00 a.m. she woke up thinking that at that point a dog had jumped on her bed, and in attempting to get what she thought was the dog off her bed, obviously being woken at that time, she was in a little bit of daze. She realized that it was an individual, that it was a male. That male, who was later identified as the accused, attacked her, ripped off the bed covers, ripped off her pajama bottoms. She was overpowered. She struggled. The accused, according to her, penetrated her. What's unclear from the medical evidence is the type and nature of that penetration, whether it was penile or digital. Suffice to say there was obvious redness and clear evidence of interference with her vaginal area, sufficient to certainly make out the charge in question. The attending physician could find no evidence of penetration by the accused. That can mean no physical evidence that the doctor could see. That doesn't necessarily mean she was penetrated or was not. And so from that standpoint it is unclear. However, it is clear that what happened to her was a very real sexual assault.

[4] The victim continued to fight the accused. At one point as the accused went to leave, she noticed his wallet had been poking out of his pants pocket in the back. She was able to remove that. The accused left. In doing so, he pulled out the phone cords because apparently she was trying to get help. She was herself,

thankfully, able to leave. She was in a distraught state. She went into her neighbourhood wearing just her housecoat. She was naked from the bottom down, which in itself is traumatic for anyone. She was able to get the attention of a neighbour, who let her in. She called the police, was taken to the hospital, underwent a rape kit test, which is further victimization in some sense of the word, in a real sense of the word.

[5] This victim was a widow whose husband had passed away several years ago. When the police were called, they employed the dog handler with a dog, who was able to pick up the scent of the accused and follow it to his home where he was living. In the dew there were still footprints clearly visible, which led into the accused's residence.

[6] As part of the investigation, the police were obviously reviewing the crime scene itself, were able to find and retrieve the wallet that was pulled out of the perpetrator's pocket, which clearly was the accused's wallet. The accused gave a partial admission in indicating that he had been there, but it was not a full admission of what had occurred. Suffice to say there's no question that the accused had broken in. Further evidence had indicated that there was a kicking out of a basement window and attempts to go in through another doorway, and that he attained access to the home through that method. He was intoxicated at the time and on substances of some type.

[7] The victim in this case is 85, having been born on [...] , 1927. She filed a victim impact statement form. It is typical of these types of things, and when I say that, it indicates someone who has been very much traumatized by this. She no longer feels she can go into her own home. She feels fearful to go there even to pick up her personal belongings. She is forced to reside at one of her children's home, which affects that home as well. She lost bladder control for a period of time. She has to continually test for sexually transmitted diseases. That obviously will be something that will affect her as a concern as well, understandably. She indicates she will be seeking professional counseling, and that's good. Poignant is her last comment in her victim impact statement: "I miss my own bedding, including my electric blanket". We tend to forget what basic things in life can mean so much to us, and what can be taken away from us in these type of offences. That is what the accused has done to this woman. He has violated her sexual

integrity. He has violated her home. And as I said before, he is a monster that lived amongst us.

[8] In relation to this, the accused has a very relevant record from the earliest times that he could even have a record. From 1983, on the 25th of April, he was convicted of break, enter and commit under section 306(1)(b), for which he received probation for one year. On the 14th of September 1985, he was convicted of break and enter and commit, a count of possession of stolen property under $200, for which he received six months on each charge. During that break and enter, he had stolen a shotgun. In 1985, on the 9th day of December, he was convicted of possession of stolen property for which he received two months consecutive. 1986, on the 4th day of March, he was convicted of break and enter with intent, and assault. In relation to that, that victim was elderly as well, a 62 year old woman in the local community. He received 17 months consecutive to a sentence, and a further six months consecutive on the assault in that matter.

[9] He was paroled in 1987, on the 25th of March, and on the 7th of September 1988 he was convicted of break and enter with intent, for which he received three years, in very, very similar circumstances. The victim was 88 in that case. He was released on mandatory supervision on the 19th of September 1990. 1991, on the 10th day of the 10th month he was found to be a violator of mandatory supervision, was recommitted. He was released again in 1991. In 1996 he was convicted of an assault under section 266, and mischief. The age of the victim in that case was 14. He received four months on each charge. And in 1999, on the 19th of April in Springhill, he had break and enter and commit and a sexual assault on someone, a victim again who was age 17 who was apparently in a relationship with him. He received one year, and two years probation in relation to that.

[10] In 2001, on the 2nd of January he was convicted of causing a disturbance, mischief over $5000, assaults under section 266, and failure to comply with a probation order, in relation to an occurrence with another male. It apparently is distinct from these offences. He received six months on each charge concurrent, for a total of six months.

[11] Importantly again, when one looks at the provisions, or the written sentencing decision of Justice Wright in this case, it was on the 22nd of April of 2002, the accused, in very, very similar circumstances, was convicted of break and

enter with intent, and a sexual assault on a victim, again age 71, for which he received eight years in total on those.

[12] In relation to this, before me is a joint recommendation for the maximum period of incarceration. Joint recommendations come in varying degrees, often low for good reasons, sometimes right on, and occasionally high. This ordinarily would be considered a high sentence. However, taking into account the explanation given by counsel, and the fact that a dangerous offender application is not being pursued, which is a real possibility in this case, the sentence is appropriate. It is one that would fit within the parameters of section 718 of the *Code*. 718 codifies, in our society, the principles of sentencing. It indicates that in sentencing an accused, the sentence must:

> ...contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (a) to denounce unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;
>
> (c) to separate offenders from society, where necessary;
>
> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[13] Specific to this, the sentence of the maximum for the sexual assault and the life for the break and enter does denounce the unlawful conduct, obviously. It

would deter similar people in the community from committing these types of offences. It is clear that this offender needs to be separated from society as long as possible, while at the same time assisting in the rehabilitation of the offender. When I say as long as possible, that's taking into account whether he can be rehabilitated, and when and if he can be released.

[14] It is to provide reparation for harm done. I don't know how one can provide reparation to a victim in this circumstance, but this is as close as society can come in these circumstances. It should also promote a sense of responsibility and acknowledgment of the harm, to the accused.

[15] The sentence as well, under 718.1:

> ...must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[16] This is clearly a heinous offence. It is, again, a sexual offence committed on one of the most vulnerable people of our society, and the aged individuals and older people should feel safe in their home, and it is extremely grave when that safety is violated, as this accused did. He is clearly responsible, as seen from the facts.

[17] As well:

> 718.2(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

Whether it was motivated by certain things under (i) which don't apply here.

> (ii) evidence that the offender...abused...(a)...spouse or common-law...

Which is not in play here. And in fact none of those are really aggravating or mitigating factors here.

It should be:

> (b) ...similar to sentences imposed on similar offenders for similar offences...
>
> (c) ...sentences...should not be unduly long or harsh;
>
> (d) (he should)...not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (e) (it should be)...reasonable...considered for all offenders, with particular attention to the circumstances of aboriginal offenders...

Which again is not in play here.

[18] In relation to this, proportionality and gravity is very much in play here. This accused has a record for similar offences. Life in relation to the break and enter is a long sentence, and it's probably one of the higher ones in these types of things. As I said, it is a joint recommendation. Life is the maximum. It will be 14 years for the sexual offences, certainly in line with what one would think, without looking at the life sentence.

[19] Crown has pointed out and provided to the court the case of *R. v. L.M.*, [2008] 2 S.C.R. 163, which deals with sentencing. Prior to that case, often judges wrestled with, is this the maximum sentence, as to whether this is the worst of the worst, and that case clearly says that is not the benchmark. The benchmark is whether it's a fit and proper sentence. Even if the test had been if the crime was worst of the worst, this probably would have qualified for that, and would have made sense in that case. But the maximum in relation to the 272 is in line. I will impose a 14 year sentence on that.

[20] In relation to the break and enter with intention to commit, again the maximum is life. As indicated, it is a high sentence for this, but taking into account that the crown...well these are two very senior counsel. They have had long and obvious frank discussions on this. The crown has indicated they are not

pursuing a dangerous offender application. I am mindful of that. I am mindful of all the factors in this, and I will impose a life sentence in relation to this.

[21] Also before me is the request that the accused be denied parole for ten years, under 743 of the *Code*. That is appropriate in this case, and I will impose that in these circumstances, and again, taking into account all of the factors that have been put before me by the crown and defence.

[22] In relation to the ancillary orders, under section 272, I will grant that DNA order under that. I will grant a SOIRA order for life, and the 109 lifetime ban on weapons, which I think he's already under, as is the DNA, but are appropriate in any event in these circumstances.

PCJ