

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Planetta*, 2021 NSPC 30

Date: 2021-07-07

Docket: 8280579, 8280580

Registry: Sydney

Her Majesty the Queen

v.

Kristopher Karl Planetta

Judge:	The Honourable Judge A. Peter Ross
Heard:	23 June 2021, in Sydney, Nova Scotia
Decision	April 30, 2021
Charge:	s.266(b) of the Criminal Code of Canada
Counsel:	Alicia Kennedy, for the Public Prosecution Service David Bright Q.C., for the Defendant

Decision on Sentence

[1] Mr. Planetta has been found guilty of committing two assaults on his spouse, one on February 19, 2017, another on October 21, 2018. In the first he first grabbed the victim from behind and pulled her backwards to the floor so that she would not take the baby out of its crib. In the second he pushed her aside to clear a path into the house. Surrounding events are described in *R. v. Planetta*, 2021 NSPC 23.

[2] The Crown seeks a suspended sentence and 18 months probation. The Defence seeks a discharge, absolute or upon conditions. There are strong considerations on either side. This makes for a difficult decision.

[3] In the trial decision I said,

this was not a trial of the marriage, nor who was the better spouse, nor who is to blame for the breakdown of the relationship. What is before the court are two specific allegations of assault. This requires an examination of the conduct of the parties on two discrete occasions.

[4] I also noted that,

the occupation of the defendant has drawn some attention to this case, but for the purpose of trial the fact he was a police officer is irrelevant.

[5] At this stage, for the purpose of sentencing, a broader perspective is required. It is appropriate to attempt an understanding of the aggressive conduct of the accused in the broader context of his relationship with the victim, and it is necessary to consider the fact that this accused is a police officer when determining whether a discharge is contrary to the public interest. Still, however, there are limits to the sentencing function, and limitations inherent to this expanded view.

caselaw

[6] While counsel did not cite any cases specific to police officers who committed domestic assaults, I have located some previous decisions. Most of the cases I have located are somewhat dated. Public concern about intimate partner violence has grown in recent years. Expectations around police conduct and character have probably grown as well. There has always been and continues to be

concern about police officers who display in themselves the same sorts of behavior they are responsible for investigating in others.

[7] In *R. v. Gorman*, 2009 NSPC 55, a member of the RCMP who committed two thefts, the second while awaiting trial on the first, was denied a conditional discharge. Stroud, J. canvassed a number of cases of accused police officers and at par.27 distilled some “principles”, i.e. that cases involving prisoner assault involve an abuse of power and rarely result in discharges, that offences against the administration of justice merit a denunciatory sentence, that conversion of funds or theft from persons police come in contact with will rarely result in a discharge, and that “as a general proposition cases dealing with offences by officers outside the context of their policing duties hold that . . . (his or her) position in the community may mean that a discharge is contrary to the public interest”. However the judge acknowledges that discerning clear guidelines is difficult given that sentencing cases “dealing with requests by police officers for discharges are all over the map.” This comports with what other courts have said - that such decisions are very fact-specific.

[8] In *R. v. Wallator*, [1994] A.J. No.194, the facts are described at par.2:

1. Joanne and Douglas Wallator were married on June 9, 1981. They separated towards the end of 1983 and divorced in 1984.

2. Joanne and Douglas Wallator remarried on September 29, 1986.

3. Both Wallator marriages were stormy relationships, characterized by frequent arguments and physical confrontations. Many of the arguments and confrontations occurred when Douglas Wallator had been abusing alcohol.

4. The Wallators separated physically in April of 1993.

5. Around June 1, 1993, Douglas Wallator went to Joanne Wallator's home to pick up the children. Joanne and Douglas Wallator began arguing about house insurance. Douglas Wallator lost his temper and threw a set of keys at Joanne Wallator's face. Joanne Wallator turned her head but was struck in her right ear. The keys caught in Joanne Wallator's pierced earring and ripped it down through the earlobe. Douglas Wallator then left the house.

6. The fresh injury to Joanne Wallator's ear was observed that same evening by two friends. A scar on the ear was visible to Edmonton Police Service officers Sergeant Barnott and Staff Sergeant Hilton when they interviewed Joanne Wallator on July 1, 1993.

7. The Wallators are now in the process of divorcing.

[9] The accused was found guilty after trial. Crown requested a suspended sentence and three years probation. Defence requested a conditional discharge. The court noted the “profound problem” of domestic violence, that such assaults constitute an abuse of power and control, and that sentencing decisions are a court’s opportunity to denounce such conduct in clear terms.

[10] The accused was a traffic analyst with the Edmonton Police who had very positive performance evaluations and a high potential for advancement. The judgement notes,

13 From his records it can be seen that the accused has carried out his duties in a professional manner with diligence, competence, sensitivity and compassion--always with due regard and concern for individuals within our society. He has completed his assignments efficiently, effectively and expeditiously.

14 These achievements have come from sacrifice of personal time and expense, and at an unknown cost to the wife and children of the accused. Dedicated to his career, the accused has more than met his obligations of time and effort at work during normal shifts and in extra hours. The records note that his approach sometimes interfered with family obligations.

[11] The court observed that job-related stress and financial problems contributed to the situation and led to break-up of the marriage. It also made the following observation of the position of police officers in society,

18 Police officers have an important peace role to play in society. They are under constant public scrutiny with a public demand for exemplary behaviour. There is a public attitude that police officers are expected to live, and to reflect higher standards of attitude and conduct, not only in their professional lives but also in their private lives, which is much more than is required of private citizens. Police forces reinforce these views through internal discipline procedures and regular personal evaluation reports (which are reviewed by supervisors).

[12] Wallator’s assault was not an isolated event; there were frequent physical confrontations (see par.19). Hence while itself on the low end of the scale it “could not be considered a minor event.” The act was described as spontaneous and impulsive, borne of frustration. Wallator continued to exercise access to his child afterwards. The victim expressed the view that she did not want the accused to lose his job. The accused had pled guilty and sought counselling. He had no record.

[13] The court noted at par.27 that the accused would suffer more than a general member of the public. Presumably this alludes to the attendant publicity, and the observation that “His professional record as a police officer will be stained by his misbehaviour and will carry potential if not actual adverse consequences, not only for the present, but also for the future.” The court concluded that it was an exceptional case in which the public interest was best served by a conditional discharge and probation.

[14] In *R. v. D.E.D.*, 2007 ABQB 508, the accused was commanding officer of an RCMP detachment who pled guilty to an assault upon his daughter and a threat to another youth. The provincial court rejected a request for a discharge and imposed monetary penalties. On appeal, the sentence was vacated and a conditional discharge substituted for both. The victim and a friend had been involved in illegal drug use, had taken the accused’s car and had been arrested and put in lock-up. She had been struggling with drug abuse; the accused was concerned with her choice of companions. The accused visited the youths in the cells, “as her father”. He threatened to break the boyfriend’s neck. He then went to his daughter’s cell, once “cuffing” her on the face and later holding her to the bed by the neck while telling her he would “find her” if she ever ran away from home again. The accused pled guilty just prior to trial when all witnesses were present and the Crown was ready to proceed.

[15] I note that while the offence was motivated by private concerns, and the accused was not strictly “on duty” when it occurred, it none the less was committed while the victim was in police custody and thus is much closer to the many cases which consider assaults by police upon persons while discharging their responsibilities to the public as peace officers.

[16] At par. 23 the following words of the sentencing judge were cited with approval,

Police officers always have to remember that they do their work in public. Even if they are in private circumstances, there is a public focus on their activity. It is the same with prosecutors, the same with judges. We do not court that focus, but it comes naturally from the high standing of working in the administration of justice. One should not superimpose an impossible burden because we are all human but that is the role of the professional responsibility of ethic of principle. It allows us to control the emotion in personal - even personal tragedy in favour of a principle of the public world. That is what I am dealing with here.

[17] The accused had no record, a good work history, and the events arose from “considerable family stress.” The court adopted this Defence submission:

... often times the rationale ... for the conviction is so that the public will know about this individual and what he's done in this particular case, the public knows. His employer knows The public knows, the small community knows, the family knows, the people related to those involved know, his employer knows, and his employer will be dealing with him through internal proceedings

[18] The appeal court judge also noted at par.47,

being suspended from duties (December 5 - 23, 2003), subjected to an internal disciplinary hearing (for which, after sentencing, he was penalized pay), investigated and charged criminally by your colleagues, taking counselling, pleading guilty and being sentenced are all factors providing significant denunciation and general deterrence to other officers, even if a discharge is the ultimate disposition.

[19] At par. 70 the court said that while the importance of public confidence in its relationship with the police was an important factor,

I disagree that it should be a sole or over-emphasized factor. Furthermore, I find that if the Appellant were to receive an appropriately crafted conditional discharge, the public's ability to trust the police would not be compromised. A police officer who has been on the force for 23 years and has an exemplary record, but who loses his composure as a parent, hardly calls into question the ability of the public to trust the police.

[20] In D.E.D. it appears that the court was satisfied, upon evidence before it, that the accused's prospects for advancement within the RCMP would be “significantly curtailed if a criminal conviction were entered against him” (par.71). This is not so clear on the evidenced before me; as regards Mr. Planetta, I cannot formulate the same conclusion with such certainty. However these other comments appear to be *a propos*,

. . . unlike other citizens who might be in this situation, the impact on the Appellant is more serious than other citizens - he was (and they would not be) subject to a internal disciplinary hearing, his circumstances would have been learned by and he would have been the subject of embarrassment before his professional peers

[21] *Halifax Police Service v. Wilms*, [1999] N.S.J. No 247, was a judicial review of a Police Review Board decision reinstating a police officer who had been fired as a result of a domestic assault. He had been given a conditional discharge after

conviction in 1997, had been dismissed in 1998 but later that year had been reinstated by the Board. The Board's decision was not disturbed.

[22] In *R. v. Auclair*, [2006] Q.J. No. 8701, the accused is reported to be a Native Special Constable who pled guilty to an assault causing bodily harm to a former girlfriend. The prosecution argued that the societal role of a police officer and the high moral standards needed to occupy that position foreclosed the possibility of a discharge. The court noted that police officers were not barred from receiving discharges and concluded that general deterrence and denunciation did not always require a conviction. It acknowledged that Auclair had to go through a disciplinary process and that he had an unblemished past record, although he had a problem with alcohol and was intoxicated when he committed the offence. He subsequently undertook domestic violence counselling. Auclair received a conditional discharge. The court declined to impose a requested firearms prohibition, in part because he needed a firearm for work. Unlike Auclair, Mr. Planetta did not plead guilty to his charges. However, the charge Auclair pled guilty to, coupled with the observation that "the violence was far from trivial" indicate a more serious assault than committed by Mr. Planetta.

[23] In *R. v. D.W.*, 2014 BCPC 36, the accused is described as a high-ranking police officer, respected in his community. He pled guilty to assaulting his 11 year old daughter by slapping her in the face and striking her clothed buttocks with a belt, on two occasions. The victim suffered bruising and lasting emotional effects. The assaults were misguided disciplinary measures for theft, taking a knife to school and being ejected from a school sports team. The accused showed remorse, pled guilty, wrote apology letters and undertook numerous courses of his own volition. The victim wanted to maintain a relationship with the accused after non-contact restrictions were lifted. The court noted that it should not concern itself with the possible impact of a conviction on the accused's career, but nevertheless gave him a conditional discharge and 14 months' probation. As with Auclair, I regard the conduct of D.W. as more serious than Mr. Planetta's, but again note the fact that unlike Mr. Planetta D.W. pled guilty, which is a mitigating factor.

[24] In *R. v. J.R.G.*, [2018] P.E.I.J. No.47, an off-duty police officer received 30 days imprisonment for assaulting his son, however the facts are significantly more serious than in the case before me. In *R. v. P.R.* [2019] O.J. No. 3934 an OPP officer was given an absolute discharge for assaulting his young son a number of times with a belt pursuant to a joint submission.

impact on the victim

[25] Defence counsel, referring to the facts of the case, said that ‘no member of the public was harmed’. I take that to mean ‘no person encountering the accused in his public role as a police officer’, for Amanda MacDonald and other intimate partners are surely members of the public. Domestic violence may often occur behind closed doors, but no door is closed to criminal conduct.

[26] The victim, Amanda MacDonald, has filed an impact statement of some 1500 words, appended to the usual form utilized by Victims Services. The form invites the victim to describe “how the offence has affected you” in emotional, physical and financial terms. If a victim of a particular offence has also been made to suffer through a dysfunctional and unhappy marriage it will be difficult for her to parse out the effects of the offence from the effects of her partner’s general conduct. This makes it difficult to determine how much the assaults themselves contributed to the “impacts” described by Ms. MacDonald.

[27] In her statement the victim says “daily activities were disabled and anxiety ridden . . . I became shut down and guarded . . . my work was affected as I had taken much time off due to the hardships of the relationship . . . I fear police even though they had helped me in my time of most need.” She says, “stress has caused sleeping disturbances, anxiety, stomach ulcers, depression, fibromyalgia, prolonged headaches and a constant state of fight or flight.” She says “fear has never left me. I was and am still afraid . . . of what he might do to act out his aggressions . . . I fear every time we do exchanges with our son.”

[28] In her accompanying letter she refers to being mocked and ridiculed, how she had to learn “to nurture the kids discreetly for fear of him getting angry and physical, which he had on more than one occasion.” She refers to ongoing veiled threats. She says “I was abandoned many times, it did not matter the time nor the place.” She says she would be forced to call off work to care for the children. She mentions “every word he would yell, every cold glance, every silent treatment, every threat.” She says she felt no happiness, just failure and guilt. She says her body reacts in the same way still, “even to the slightest discomforts.” She speaks of her eldest son’s reactions, and to the behaviors of the youngest which she claims mirror the vulgarity of the accused. She believes that leaving the accused was “the

best that has happened for us” but that it is “only the beginning of the long road of healing ahead.”

[29] There are many other alleged impacts, carefully articulated in the victim’s statement. But it seems clear that these have been inspired by the general behavior of Mr. Planetta as her spouse and father to her children. In effect, Ms. MacDonald has taken the opportunity to claim that the assaults are but examples of a broader pattern of behavior which, taken in its totality, has had profound effects on her well being. Assuming her statement is a fair and accurate pronouncement on his behavior and her suffering, is the accused now to be punished for all of this? How does her statement inform the proper sentence for the actual offences?

[30] This leads to a second complication. Not only is it well-nigh impossible to distill out the impact of the particular assaults from the alleged related behaviors of the accused, it is impossible for this court to know whether her depictions of these are fair. The phrase *audi alteram partem* is often invoked to describe a basic principle of law, and indeed a basic principle of common fairness. It means “let the other side be heard.” It means that no party should be judged without being given a fair opportunity to give evidence on their own behalf. Mr. Planetta is given no opportunity to answer these broad and serious allegations.

character of the accused

[31] In as much as the character of the accused is a consideration in whether to grant a discharge, the victim’s statements are relevant, but also suffer from being unsupported on the record before me. Sometimes a crime is of such a nature that it is fair to infer that it emerges from a broader course of conduct. Sometimes the evidence at trial covers such a wide swath that it is possible to identify ongoing patterns of behavior. However such is not the case here.

[32] The Defence filed three letters, all from fellow police officers, in support of the accused. All speak of his work ethic and professionalism as a police officer. Two worked with the accused as front-line patrol officers and all stated that he never used excessive force on the job. In situations involving weapons and violence they say he maintained a calm demeanour and de-escalated situations without use of force. They describe someone who treated people with respect and empathy. Two of the three alluded to his marital situation and seem to have adopted the accused’s perspective on the marriage. They have no direct knowledge of these matters and these comments are given no weight.

[33] A sergeant to whom the accused reported for a number of years confirmed that Mr. Planetta was a good worker who never missed time and always put forth an effort. He described the accused as “opinionated”. He says he never received a complaint about him and offered that “he was a good police officer; I would take him back tomorrow.”

[34] The accused is involved in a new relationship. In an interview with the probation officer, his current partner stated that she has never experienced aggressive behavior and cannot believe he committed the offences – “it is just not his character.”

[35] Comparing the person described in their reference letters with the person described in the victim impact statement, one could be forgiven for thinking that they refer to two different people. I am mindful that these fellow officers are undoubtedly sympathetic to the accused’s predicament and that this may affect their evaluation of his character.

ancillary proceedings

[36] This case is bracketed by two other legal proceedings: (a) an action in Family Division which is on-going, and (b) disciplinary proceedings, which are on pause pending the outcome of this case.

[37] The proceeding under the Police Act, I am told, arises from the very same matter as this trial. This appears to be the first time a complaint has been made against him. The accused requested a return to active front-line work but has been kept on administrative duties while the criminal charges were dealt with.

[38] Both Crown and Defence agree that the impact of the sentence on Mr. Planetta’s disciplinary hearings cannot be known or predicted. In the sentence decision in *R. v. Basso*, 2020 NSPC 16, the court said, similarly, that “I do not know what repercussions, if any, will follow Mr. Basso post-sentencing in terms of his employment, in terms of the application for a discharge.” Defence is justifiably worried about the impact of a criminal record on Mr. Planetta’s career, but the sentence of this court does not dictate the outcome of the disciplinary proceedings. What occurred, as best I could determine, is described in my earlier reasons for decision. Other tribunals have access to that as much as to the sentence order I am about to make.

presentence report

[39] The accused's presentence report is quite positive and favourable. He had an unremarkable childhood except that he alleges abuse by a male relative in his early teens. He says he disclosed this and had the support of his parents. Charges were never laid but the individual was evidently found guilty of similar crimes committed on other victims. He continues to have the support of his parents, one of whom said that he was never angry or violent, but rather a "patient and loving father."

[40] After attending Police Academy Mr. Planetta found employment in Stellarton. He was hired by the Cape Breton Regional Police in 2010 and considers himself a hard-working police officer. There is little question he is very dedicated to his career, strives to do his job well and takes pride in his work.

[41] The writer of the presentence report says, "it appears the offender's actions may have been brought on by his inability to manage stress and express emotions." Although the accused continues to deny committing the offences, records confirm that he did complete a Respectful Relationship program with a local agency, was noted to be an active and engaged member, and "made regular connections between the program material and his personal life and intimate relationships."

conclusion

[42] There is no evidence that having a criminal record will *ipso facto* block Mr. Planetta's ability to work as a police officer, but in many cases the court has heard that a criminal record can have negative effects on a person's present and future employment prospects. It is surely the case that anyone seeking to keep or find a job would be better off without one.

[43] The accused has been on "administrative leave" for the past three years during which he has received personal counselling and therapy from various professionals, both for his current difficulties and for his earlier experiences. Records confirm that he attended these sessions regularly. He has maintained compliance with court-ordered conditions since charged with these offences in October of 2018. He has no prior convictions of any kind.

[44] One of the references said that the accused never used excessive force in executing his duties – "Kris was, as police say, 'switched on' . . . meaning Kris maintained a professional conduct and was aware of his surroundings while in extremely stressful situations." If he is capable of this degree of self-control at

work, he ought to be capable of maintaining his composure during stressful domestic situations.

[45] It is quite possible that the accused vented the anger and stress he built up on the job when he was at home with his wife. That is no excuse but he has, of his own accord, undertaken relationship counselling since these incidents. He and Ms. MacDonald have been involved in Supreme Court Family Division proceedings and it appears that custody and access are working out satisfactorily even though the parties remain suspicious of one other.

[46] Other bodies are better positioned than this court to evaluate the accused's conduct – the assaults he has been found to have committed – in the broader context of his career, and to decide what additional measures, if any, ought to be taken. Another court is better positioned than this one to examine how Mr. Planetta's offending behavior fits into the broader context of his marital relationship and decide what implications this may have for custody, access and support.

[47] Given:

- (a) the relatively minor nature of the two assaults,
- (b) the lack of any prior criminal record or employment-related complaints,
- (c) the efforts made by the accused to develop healthier relationships by undertaking various forms of counselling,
- (d) the consequences already suffered as a result of his wrongdoing, which include removal from police duties for three years and the imposition of court-ordered conditions during that time,

I do not think that it is contrary to the public interest to grant the accused a conditional discharge coupled with probation for one year. Should he commit another offence or breach the terms of probation, his sentence can be revisited by the court and a conviction substituted for the discharge.

[48] Terms of probation will include (1) the usual reporting clause, (2) a requirement to undertake such personal or domestic violence counselling as may be recommended, and (3) a prohibition against direct or indirect contact with the victim Amanda MacDonald and from attending at her residence or place of

employment, except (i) through legal counsel, (ii) with her express prior consent, which she may withdraw at any time, or (iii) as may be authorized by an order of the Supreme Court Family Division or permitted under any court program.

ancillary orders

[49] Crown has also asked for an order under s.487.051 that the accused provide a DNA sample for inclusion in the national databank. Such orders were recently considered by our Court of Appeal in *R. v. Desmond*, [2020] N.S.J. No.9, where the law is set out.

[50] For ‘primary designated offences’ a DNA order will almost invariably be made. The charges here are ‘secondary designated offences’ where the Crown has an onus to show that forced provision of a sample is in the best interests of the administration of justice.

[51] The Supreme Court has pointed out that the DNA data bank should deter potential repeat offenders, detect when serial offenders are at work, assist in solving cold crimes, streamline investigations, promote community safety and assist the innocent by early exclusion from investigations. DNA orders are not an aspect of punishment *per se* – *R. v. Murrins*, 2002 NSCA 12, at par.35.

[52] While offenders have a reduced expectation of privacy, provision of this form of intimate personal data is still an intrusion on a constitutionally protected right. While justified in most cases, even for most ‘secondary designated’ offences, I do not think the circumstances here support the issuance of such an order against Mr. Planetta. Considering the nature of the offences, the fact that these were not ‘random’ occurrences, the absence of any attempt to hide his identity, the lack of any prior record, the absence of any indication that Mr. Planetta is likely to be a repeat offender, and the fact that I am imposing a discharge, I am not making the requested s.487.051 order.

[53] I also decline to impose a firearms prohibition under s.110. There was no actual or threatened use of a firearm here, nor any indication that the accused is prone to resort to the use of firearms while on duty. Such a prohibition would be a *de facto* bar to him resuming regular work. It would fetter the discretion others should possess when they evaluate his employment prospects.

Dated at Sydney, NS, this 7th day of July, 2021

A. Peter Ross, PCJ