

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R v Morrison*, 2021 NSPC 39

Date: 20210910

Docket: 8437915

Registry: Pictou

Between:

Her Majesty the Queen

v

Terrance John Morrison

SENTENCING DECISION

Judge:	The Honourable Judge Del W Atwood
Heard:	2021: 10 September in Pictou, Nova Scotia
Charge:	Paragraph 145(4)(a) <i>Criminal Code of Canada</i>
Counsel:	Terri Lipton for the Nova Scotia Public Prosecution Service Hector J MacIsaac for Terrance John Morrison

By the Court:

Summary

[1] Terrance John Morrison pleaded guilty to a single summary count of violating an undertaking given to a peace officer (case 8437915) contrary to ¶ 145(4)(a) of the *Criminal Code*; the violation involved consuming beverage alcohol contrary to a prohibition in the undertaking. The prosecution seeks a conditional discharge with a 12-month term of probation. Defence counsel seeks an absolute discharge.

[2] For the reasons that follow, the court discharges Mr Morrison absolutely.

Procedural history

[3] On 28 September 2019, police arrested Mr Morrison for assault, and placed him on an undertaking given to a peace officer, as authorized in ¶ 498(1)(c) of the *Code*. The undertaking was registered in JEIN as order 2231187; it included a condition which prohibited Mr Morrison from “consuming alcohol or other intoxicating substances”.

[4] On 31 January 2020, Mr Morrison was observed by police consuming beverage alcohol. Police arrested Mr Morrison and charged him with the offence before

the court; the prosecution elected to proceed summarily, and Mr Morrison pleaded guilty on 7 June 2021.

[5] The assault charge that was the legal basis for the undertaking was withdrawn by the prosecution on 19 October 2020.

Legally relevant facts

[6] While subject to an undertaking given to a peace officer which prohibited the consumption of alcohol, Mr Morrison was observed by police on 31 January 2020 at a licensed establishment consuming beverage alcohol. Mr Morrison was arrested, and released later on another peace-officer undertaking.

[7] Mr Morrison pleaded guilty as charged to a single, summary count of breach of undertaking.

[8] Mr Morrison has no criminal record.

[9] The court received a presentence report for Mr Morrison, dated 1 September 2021. The report informs the court that Mr Morrison lost his job as a result of being charged. He has grieved his loss of employment under the terms of a collective agreement; the adjudication of that grievance is pending completion.

[10] Mr Morrison has experienced chronic anxiety and depression since 2018.

This coincided with Mr Morrison's consumption of alcohol to a toxic level.

Mr Morrison informed the author of the presentence report that he had stopped consuming alcohol in April 2020; he sought professional counselling in June 2020, and completed a recovery program in October 2020. His counsellor described Mr Morrison as doing well and having met his treatment goals.

Core legal questions

[11] Should the court impose a conditional discharge, or should Mr Morrison be discharged absolutely?

Specific legal rules and provisions

[12] There is no controversy between counsel as to the basic principles of sentencing. The only issue is the discrete application of § 730(1) of the *Code*:

Where an accused . . . pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for fourteen years or for life, the court before which the accused appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be *discharged absolutely or on the conditions prescribed in a probation order made under subsection 731(2)* (emphasis added).

[13] There is no minimum punishment for a charge under ¶ 145(4)(a) of the *Code*; the maximum penalty under the general-penalty provisions of § 787(1) of

the *Code* is a term of imprisonment of two years less a day; accordingly, a discharge would be a legal sentence.

[14] What about fitness? In *R v KJC*, 2021 NSCA 5 at ¶ 84-85, the Court reviewed the governing criteria for the granting of a discharge under the terms of the statute; counsel agree that Mr Morrison meets these criteria.

[15] There is no controversy between counsel that Mr Morrison should be discharged; the sole issue is whether the discharge be absolute, or include conditions in a term of probation.

[16] Section 730 does not offer explicit guidance to sentencing courts when to go with one or the other. However, as the imposition of a conditional discharge requires a probation order, it would seem that a discharge ought to be a conditional one only when a term of probation would be necessary in order to fulfil the purposes and principles of sentencing set out in the *Code*. That was the interpretive approach taken by the court in *R v Beck*, [2016] CanLII 22556 at ¶ 22 (NLPC), and I concur in it.

[17] As has been adjudicated authoritatively, probation-based conditions should be imposed by sentencing courts only when reasonably required to protect society and to promote the reintegration into the community of the person being

sentenced: *R v Shocker*, 2006 SCC 44 at ¶ 13; see also *R v Rushton*, 2017 NSPC 2 at ¶ 97. Implicit in *R v Proulx*, 2000 SCC 5 at ¶ 23, is the judgment that probation-based conditions ought to be rehabilitative rather than punitive or deterrent: *R v Hardestine*, 2008 BCCA 474 at ¶ 7.

[18] The charge before the court did not involve violence or the threat of violence; consequently, I do not believe that society requires protection from Mr Morrison.

[19] What of the need for rehabilitative conditions?

[20] As set out in the presentence report, Mr Morrison has already completed clinically appropriate counselling, and he did it successfully. No other interventions seem to be indicated.

[21] In my view, there is no need for a probation order.

[22] As probation is not required for Mr Morrison, an absolute discharge is the appropriate sentence in this case.

[23] I am reinforced in this view, in that a charge need not have been laid against Mr Morrison at all. This is because the *Code* was amended in 2019 to add a new provision, § 496, which states:

If a peace officer has reasonable grounds to believe that a person has failed to comply with a summons, appearance notice, undertaking or release order or to attend court as required and that the failure did not cause a victim physical or emotional harm, property damage or economic loss, the *peace officer may, without laying a charge*, issue an appearance notice to the person to appear at a judicial referral hearing under section 523.1 (emphasis added).

[24] This, the codification of restraint in § 493.1, and the introduction of the judicial-referral-hearing provision in § 523.1, came into force almost two years ago, 18 Dec 2019, in virtue of SC 2019, c 25, § 212 and 407. As found in *R v Zora*, 2020 SCC 14 at ¶ 27, these revisions to Part XVI of the *Code* were intended to address the over-criminalization of minor bail breaches. Since § 496 came into force, I have not encountered even one case in Pictou County of policing services making use of it. I would note coincidentally that, not long after the amendment came into effect, I was informed in court that the Nova Scotia PPS office in Pictou would not be making applications for referral hearings under § 523.1. At the time this was stated, it was not clear whether it was a one-off, case-specific comment, or a statement of policy; given that provincial prosecutors have not applied for any referral hearings before me since that one case, I would suspect that latter. To be sure, decisions not to make use of § 493.1 or 523.1 are matters of prosecutorial and police discretion, not subject to review by this court.

[25] However, it is unfortunate that these provisions, which would help to reduce the numbers of minor cases getting added to already burgeoning dockets, are being under-used. Or not used at all.

[26] Mr Morrison is discharged absolutely. There will be the mandatory \$100 victim-surcharge amount, with six months to make payment.

JPC