PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Greencorn*, 2013 NSPC 112

Date: 20131120
Docket: 2569217, 2569218
2669220, 2591145
Registry: Pictou

Between:

Her Majesty the Queen

v.

Matthew David William Greencorn

SENTENCING DECISION

Revised Decision:	The text of the original decision has been corrected according to the attached erratum dated December 3, 2013.
Judge:	The Honourable Judge Del W. Atwood
Heard:	20 November 2013, in Pictou, Nova Scotia
Charge:	348(1)(b)CC, 145(1)(a)CC, 129(a)CC, 145(2)(b)CC
Counsel:	Patrick Young, for the Nova Scotia Public Prosecution Service Mr. Doug Lloy, Nova Scotia Legal Aid, for Matthew David William Greencorn

By the Court:

[1] This is the Court's sentencing decision in relation to charges of break and enter, escape lawful custody, resist arrest and fail to attend court.

[2] Mr. Greencorn entered guilty pleas to all charges except for the break-and-enter count. All charges other than the para. 348(1)(b) count–which is a straight indictable offence as it involved a dwelling–were prosecuted summarily. Mr. Greencorn elected trial in this Court and entered a not guilty-plea to the charge of break and enter; Mr. Greencorn was found guilty following a trial. All charges are before the Court today for sentencing.

[3] I have reviewed in detail the presentence report prepared 23 September 2013. I have reviewed, as well, a CPIC record before the Court, tendered as Exhibit #1; that record is pertinent in that it refers to YCJA sentences imposed upon Mr. Greencorn in the Province of Alberta between 2006 and 2008, and I am satisfied that this record is properly admissible in Court in accordance with the provisions of sub-s. 119(9) of the *Youth Criminal Justice Act*.

[4] I have also reviewed, in detail, the letter of Rev. Wendy Lee MacIntosh, Associate Pastor Shoreline Gathering Point.

[5] I have considered the submissions of counsel and I have considered, as well, Mr. Greencorn's address to the Court.

[6] The mitigating factors are that Mr. Greencorn entered guilty pleas to several of the charges. While there was a not guilt- plea entered to the break and enter count, Mr. Greencorn, in conducting his defence, did not seek to question materially or challenge the testimony of any of the prosecution witnesses; rather, Mr. Greencorn sought to advance defences that might have afforded him complete defences available to him under Canadian criminal law, specifically, the defences of colour of right and intoxication; the Court does not regard the not-guilty plea as anything other than a neutral factor, and certainly regards the guilty pleas and the nature in which Mr. Greencorn's defence was conducted as positive factors.

[7] Although Mr. Greencorn does have an adult record, it is not lengthy; that record arises from a single sentencing hearing conducted in Court on 15 September of 2011. It relates to charges of theft under $5000, possession of a

controlled substance, unauthorized possession of a firearm, and failing to comply with a sentence or a disposition.

[8] Mr. Greencorn is pursuing the upgrading of his education. He is also gainfully employed on a part-time basis, and while I agree that denunciation and deterrence must be emphasized in the imposition of sentences for break and enter related charges, rehabilitation is a factor that looms large, given Mr. Greencorn's young age.

[9] I observe, as well, that the break and enter offence was in some respects out of the ordinary, in that it was not done for profit or gain. Mr. Greencorn did not break into Mr. Cyr's home with a view to stealing or with a view to committing an assault. I do not accept the explanation that was provided by Mr. Greencorn to the Court because regarding his reasons for entering Mr. Cyr's home. This is because it was clear from Mr. Cyr's evidence that Mr. Greencorn's first utterance, when confronted by Mr. Cyr was that he was looking for someone who owed him money; however, I am satisfied that there is before the court no evidence that Mr. Greencorn was trying to carry out a theft or anything of that nature.

[10] A key aggravating factors is that, although the court obviously treats a youth record with a lesser degree of weight than a full adult record, Mr. Greencorn was sentenced in 2008 in the Province of Alberta in relation to two charges of break, enter and commit theft. In my view, one encounter with that provision of the criminal law should be enough for a lifetime.

[11] Furthermore, the Court is satisfied that, although at the lower end of the range of severity, this was indeed a home-invasion offence within the definition of section 348.1 of the *Criminal Code.* I say this because, after Mr. Greencorn went into Mr. Cyr's trailer the first time, he became fixed with the knowledge that the dwelling was occupied, and it is also clear to the Court that, at the very least, Mr. Greencorn was reckless as to whether the dwelling was occupied. Mr. Greencorn ultimately challenged Mr. Cyr to a fight and that would fulfill the requirement of the use of threats of violence in relation to person or property. Accordingly, I am satisfied that the aggravating circumstances in section 348.1 of the *Criminal Code* are made out.

[12] While I do recognize that this was not a typical break and enter and that it was not done either for material gain or for the purposes of revenge, the Court asks

itself, with respect to the factor of victim impact, what would have the greater impact upon a homeowner victimized by a break and enter offence? Which circumstance would result in the greater degree of victimization? An opportunist entering an unlocked home and quickly snatching a wallet or camera or some such and then sneaking out undetected; compare that with this case: an individual who basically barges in to an occupied residence, winds up kicking down the door and threatening the occupant or challenging the occupant to a fight? In my view, it is the latter that gives rise to the greater degree of victim impact.

[13] The Court is certainly conscious of the fact that it must not engage in heuristic reasoning. It must not impose a sentence based on hypothetical circumstances. However, it is not hypothetical to state that there is a real and substantial risk to public safety when young males under the influence of alcohol barge into other people's homes. The risk to the public of this sort of conduct is substantial. What if this particular home had been occupied by a senior citizen or single mom at home with children. or a child at home alone while the parents were out? Certainly, these are not the facts that are before the Court but these are risks which, in the Court's view, the Court must attend to in being alive to the nature of

the risk that arises when people under the influence of alcohol seek to barge their way into the homes of others because of their alcohol impairment.

[14] Although classified under Part IX of the *Criminal Code* as an offence against property, break and enter has a profound impact upon people. The Court has not been presented with victim impact evidence and I certainly infer from Mr. Cyr's demeanour that he was not greatly bothered by Mr. Greencorn's actions; it was also clear to the Court that Mr. Cyr had a very thick skin and would certainly have been able to protect himself if Mr. Greencorn's challenge to fight had developed into anything further. However, I certainly adopt specifically the remarks of Beveridge J., then of the Nova Scotia Supreme Court, in paragraph 7 of his judgment in *R. v. Stewart*, 2009 NSSC 7, in which he stated:

> I accept without reservation the Crown's suggestion that homeowners do feel violated by the Commission of this kind of offence. To call it a mere property offence is a mis-description. If a property is impacted, it impacts on the feelings of security of not just these particular people but by others in the community who hear about this and they do hear about it from them.

[15] Similarly, the fact that the residence in question in this case was a mobile home that was obviously in need of repair is, in my view, an irrelevant

consideration. I apply the principles set out by Ferguson J. of the New Brunswick Court of Queen's Bench in *R. v. Nolan*, 2009 NBQB 117 in which it was underscored that what is germane is the vulnerability of the residence or the place broken into. The Court does not believe that it would be appropriate, in essence, to impose a means test in classifying the degree of victimization. Accordingly, the Court is indifferent to the issue of whether a dwelling is a palace or an outbuilding. What is to be protected is the right of people to safety and security in their homes regardless of the assessed value of that home. In my view, the value of the property is immaterial.

[16] I do believe that it is important that the Court apply the principles of B&E sentencing laid out by our Court of Appeal going back to *R. v. Lever*, [1986] N.S.J. No. 324 and *R. v. Zong,* [1986] N.S.J. No. 207. I observe, as well, that in the recent decision of *R. v. Adams*, 2010 NSCA 42, Bateman JA reinforced the benchmark set by the Court in the following terms:

> The absence of a prior record may warrant a reduction from the benchmark to two years.

[17] I recognize that appellate level authority on the issue of starting-point or benchmark sentences generally does not deprive completely sentencing courts in the exercise of discretion in dispensing leniency in particular cases.

[18] In determining an appropriate sentence here, I disregard entirely the fact that Mr. Greencorn has charges pending before the Court. In my view, that does not factor into the Court's sentencing decision at all, in any way, shape or form, because Mr. Greencorn comes before the Court presumed innocent of those charges.

[19] I recognize that break and enter continues to be a significant crime in Pictou County, and I state that based on the Court's knowledge of sentencing decisions imposed in this Court; I am satisfied that the Court is able to take judicial notice of the prevalence and incidence of crimes for which sentences have been imposed in this judicial centre. On that point, I apply the principles set out by the British Columbia Court of Appeal in *R. v. Prasad*, 2006 BCCA 487 at para. 12 and *R. v. Gibbon*, 2006 BCCA 219 at para. 21 to 26.

[20] The sentence of the Court shall be as follows:

> In relation to the break and enter into a dwelling, the Court imposes a sentence of three (3) years imprisonment;
>
> In relation to the charge of escape lawful custody, taking into account the principle of totality and the fact that this was essentially one transaction, the Court imposes a sentence of three (3) months but to be served concurrently;
>
> In relation to the 129(a) charge, a sentence of three (3) months but to be served concurrently;
>
> And finally, in relation to the 145(2)(b) charge, a sentence of one (1) month but to be served concurrently.

[21] Given the nature of the sentence, the Court declines to impose a victim-surcharge amount, as I find that the imposition of a victim-surcharge amount would work an undue hardship.

[22] The Court is satisfied that the 129(a) offence does, indeed, constitute an offence that would be captured by section 110 of the *Criminal Code* and the Court shall make a five (5)-year prohibition order in relation to that offence.

[23] In relation to the 348(1)(b) charge, that is a primary designated offence, and shall be a primary-designated-offence DNA collection order in relation to that charge.

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J.P.C.

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SENTENCING DECISION–ERRATUM

Judge:	The Honourable Judge Del W. Atwood
Heard:	20 November 2013, in Pictou, Nova Scotia
Erratum released:	3 December 2013
Charge:	348(1)(b)CC, 145(1)(a)CC, 129(a)CC, 145(2)(b)CC

Counsel:	Patrick Young, for the Nova Scotia Public Prosecution Service Mr. Doug Lloy, Nova Scotia Legal Aid, for Matthew David William Greencorn

By the Court:

[24] In paragraph 16 of my sentencing decision in this case, the quoted abstract from *R. v. Adams,* 2010 NSCA 42 is corrected to replace "of" with "to", such that it read as follows:

> The absence of a prior record may warrant a reduction from the benchmark to two years.

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J.P.C.