

Date: 20061220
Docket: 1710407,1710408,1714043,1714047
Registry: Amherst

IN THE PROVINCIAL COURT
Citation: R. v. Lawless, 2007 NSPC 37

Between:

Her Majesty the Queen

versus

Justin Millard Lawless

DECISION
(Sentence)

Heard Before: The Honourable Judge Carole A. Beaton

Place Heard: Amherst, Nova Scotia

Date Heard: December 20, 2006

Written Release
of Oral Decision: February 14, 2007

Counsel: Mr. Donald A. Fairbanks, Q.C., Crown Attorney
Mr. Douglas Shatford, Q.C., Defence Attorney

[1] Mr. Lawless is before the court for disposition in relation to two counts of uttering threats; uttering a threat to his spouse to burn real property and also uttering a threat to his spouse to cause death to her, both of which occurred on November 20th, 2006 and Mr. Lawless is also before the court in relation to pointing a firearm contrary to s. 87 of the Criminal Code and breach of an undertaking contrary to s. 145(3), specifically with respect to the possession of weapons, and those two offences occurred on November 28th.

[2] The mitigating factors are that Mr. Lawless has entered guilty pleas at an early opportunity and he has spared the victims and the court in terms of the time it would take to deal with these matters.

[3] The aggravating factors, as I see them, are three. Mr. Lawless has a prior record for possession of a weapon for a purpose dangerous, that's a s. 88 offence, and he is now before the court for a s. 87 offence. So, he has a prior history with respect to weapons. In addition, Mr. Lawless, at the time that the s. 87 offence and the s. 145(3) offence occurred was already the subject of release conditions from this court and when people are released on conditions it is the court's intention that

they are going to comply with those conditions because released on conditions is an alternative to being locked up and being deprived of one's liberty while awaiting due process. So, the court considers that violations and further involvement in criminal activity while on release is most certainly aggravating and speaks very directly to the attitude of the individual involved with respect to their regard for court orders. Finally, the threat matters involving Mr. Lawless's spouse, in that sense the court has to be concerned about Mr. Lawless's approach during this time of marital discord and breakup. Mr. Fairbanks has referred to what unfortunately often happens in these kinds of situations where people get involved with weapons, specifically guns, and they don't think they are loaded and disasters happen and likewise the court can appreciate the breakup of a marriage is a very difficult thing for anyone to experience and it is rife with high emotions but it doesn't give people the right to start threatening their partner and the property of their partner. I am not surprised to hear the victim's sense of safety has been compromised as a result.

[4] The crown and defence have made a joint recommendation for a period of intermittent custody followed by probation. I have considered the submissions of counsel, I've considered the contents of the Capital Health s. 672.11 report dated

December 8th and I've considered the circumstances of the offences themselves. Bearing in mind the principles discussed by the Nova Scotia Court of Appeal in the 1997 decision of *R v. Porter* and again later in the 2003 decision of *R v. McIvor*, I'm certainly prepared to accept the recommendation counsel have made. The question is not whether it is what the court would have done but rather whether it is a recommendation that properly addresses the purposes and principles of sentencing for this particular offender under these particular circumstances and I am certainly satisfied that the recommendation does that and accordingly I am prepared to accept it.

[5] **MR. FAIRBANKS:** Your Honour, there's one thing I didn't bring to the court's attention, I should have, is the fact that the court must consider a discretionary prohibition order. It doesn't say you must do anything about it but you must consider it, if I understand the law correctly, under s. 110. The court has to turn its mind to that and I didn't want this opportunity to go by so that you dismiss that if I hadn't brought it to your attention because I had quite frankly forgot about it.

[6] **THE COURT:** Okay, and what do you say about that Mr. Shatford?

[7] **MR. SHATFORD:** That's fine.

[8] **THE COURT:** Okay, any thoughts counsel on the length of time of such a prohibition?

[9] **MR. SHATFORD:** No, Your Honour, whatever the court feels is appropriate.

[10] Alright, thank you. Okay in relation to the offence contrary to s. 264.1(1)(b) of the Criminal Code, count number one on information 520357, it is the order of the court that Mr. Lawless serve a period of forty days custody intermittent.

[11] In relation to the second count on the same information, also an offence contrary to s. 264.1(1)(a) of the Criminal Code, it is the order of the court that Mr. Lawless serve a period of forty days intermittent custody concurrent to the sentence I just imposed.

[12] In relation to the offence contrary to s. 87, occurring on November 28th, count number one on information number 521011, it is the order of the court that Mr. Lawless serve a period of forty days intermittent custody concurrent to all other sentences imposed this date.

[13] In relation to the offence contrary to s. 145(3) on the same information, count number 5, it is the order of the court that Mr. Lawless serve a period of forty days intermittent custody concurrent to other sentences imposed this date.

[14] In imposing forty days, I bear in mind that Mr. Lawless had already served the equivalent of six weeks on remand time.

[15] The custodial sentence, because it is intermittent, will be required to be served each Friday beginning at 7:00 p.m. through to Sunday at 2:00 p.m. beginning December 22, 2006 and thereafter on every consecutive Friday through Sunday period until the sentence is completed in full.

[16] During the week when Mr. Lawless is not in custody and for six months following the expiration of the custodial sentence, Mr. Lawless will be required to abide by a period of probation. The terms of the probation order are:

You will keep the peace and be of good behaviour and appear before the court when and if directed to do so.

You will report to Probation Services at 30 Church St., Amherst, Nova Scotia before 4:30 today and thereafter at such times and in such manner as Probation Services may direct you to do from time to time.

You will advise your Probation Officer within 48 hours of any change in your name, address, employment circumstances or telephone number.

You will maintain a residence in the Province of Nova Scotia and not live outside the province unless you have the permission of your Probation Officer in writing received in advance.

You will abstain from the use or possession of any firearms, weapons, ammunition or explosive substances as those items may be defined in the Criminal Code.

You will abide by a curfew daily in your usual and ordinary place of residence from 7:00 p.m. through to 7:00 a.m. the following day, seven days a week. The only exceptions to the curfew are when you are attending at a counselling program or a treatment appointment as instructed by your Probation Officer and of which your Probation Officer is aware in advance and travel to and from by the most direct route; or when you are attending a medical emergency involving you or a member of your household and travel to and from by the most direct route; or when you are engaged in regular employment of which your Probation Officer is aware of in advance and travel to and from by the most direct route.

You will have no contact or communication whatsoever, directly or indirectly, of any nature or kind with Zelda Colleen Lawless except through legal counsel and you will not be on or within 10 meters of any residence known to you to be occupied by Zelda Colleen Lawless and you will not be within 5 meters of any place of her employment or vehicle owned or occupied by her.

You will have no contact or communication, directly or indirectly, with Michael Wiles or Margaret Wiles.

You will attend for and participate in any and all counselling, assessment, treatment or programming that might be recommended to you by your Probation Officer from time to time.

You will abstain from the use or possession of any drugs as defined in the Controlled Drugs and Substances Act unless you have a physician's prescription or a legal authorization to do so.

[17] Do you understand the terms of the probation order, sir?

[18] **MR. LAWLESS:** Yes.

[19] You should understand as well that if you fail to abide by them, you may be subject to another charge.

[20] In addition, considering the nature of the offences and the record of Mr. Lawless and the provisions of s. 110 of the Criminal Code, I choose to exercise my

discretion to prohibit Mr. Lawless from possession of any firearms, weapons, ammunition or explosive substances as those items are specifically enumerated in s. 110 of the Criminal Code for a period of two years.