

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Piercy*, 2014 NSPC 94

Date: 2014-11-12

Docket: 2649630

Registry: Pictou

Between:

Her Majesty the Queen

v.

Justin Arthur Piercy

SENTENCING DECISION

Judge: The Honourable Judge Del Atwood,
Heard: November 12, 2014, in Pictou, Nova Scotia
Charge: Section 344 Criminal Code of Canada
Counsel: William Gorman for the Nova Scotia Public Prosecution
Service
Peter Planetta for Justin Arthur Piercy

By the Court:

[1] The court has for sentencing Justin Arthur Piercy. Mr. Piercy is charged as follows:

On or about, the 23rd of September, 2013, did steal from Christina May MacGregor, while armed with an offensive weapon, namely: dog spray, contrary to Section 344 of the *Criminal Code*.

[2] Paragraphs (a) and (a.1) of subsection 344(1) of the *Criminal Code* deal with offences that involve the use of a firearm, or robberies committed for the benefit of a criminal organization; neither one of those aggravating factors is applicable here. Accordingly, the general penalty under para. 344(1)(b) is applicable in this case. It provides:

Every person who commits robbery is guilty to of an indictable offence and liable in any other case to imprisonment for life.

[3] The positive or mitigating factors are:

- Mr. Piercy's guilty plea which I treat as a full admission of responsibility;
- Mr. Piercy is 31 years of age, and is not beyond the reach of rehabilitation;

- Mr. Piercy does have a prior record; however, it is not extensive.

There is one prior finding of guilt as a youth under Section 151 of the *Criminal Code* as well as prior findings of guilt under Section 129 and 86(1) of the *Criminal Code*. However, none of Mr. Piercy's prior convictions involves robbery, although I certainly do note that offences involving resisting a peace officer, and, particularly, sexual interference typically involve some level of violence or violating the personal integrity of another person.

- Mr. Piercy has accepted responsibility through counsel. He has made an allocution before the court here today in which he apologizes to the court, and I treat that as an apology, essentially, to Christina May MacGregor, who was the authentic victim of a serious robbery offence in this case.

[4] I refer to these as being mitigating factors. They are factors that suggest to the court that Mr. Piercy is a guardedly favourable candidate for a rehabilitative sentence. Obviously, these are not mitigating factors in the sense of rendering less serious Mr. Piercy's crime or his high degree of responsibility. This was a serious crime involving the use of an aerosolized chemical irritant against an innocent member of the public who had left a local pharmacy after having made a purchase.

[5] Mr. Piercy describes himself, through counsel, as having been a prescription-drug abuser at the time. It is certainly well known to the court that Blitzkrieg, off-highway robberies of this sort involving pharmacies or customers outside of pharmacies are frequently resorted to by persons with prescription-drug habits. Often customers leaving pharmacies will have retrieved prescriptions or will carry cash or credit cards and the like; the connection between these sorts of violent robberies and prescription-drug abuse is very clear to the court.

[6] There was a weapon used in this case, an offensive weapon, namely: aerosolized dog spray which is a chemical irritant. I have read in detail Ms. MacGregor's victim-impact statement. She described the physical injuries that she suffered as a result of this robbery. She wrote this harrowing account:

The irritant I was sprayed with caused extreme burning pain and irritation to both eyes as well as the skin on my face, neck and left arm. I had a bruise on my left arm, pulled muscles and a sore right hip which lasted a few days. I had painful inflammation, swelling and sensitivity of the eyes/eye area which improved slowly over a few weeks. I was unable to wear my contact lenses at all for 2-3 weeks and I've experienced increased sensitivity and dryness of the eyes since the incident. There was also a very foul, chemical tasting mucous which slowly drained from my sinus cavities over the course of a few weeks. I missed one full week of work after the incident.

[7] Ms. MacGregor went on to describe the psychological impact and her loss of sense of safety. These are impacts that the court sees typically in offences of this nature. When I describe this sort of victim impact as typical, I do not suggest for

one second that it is mundane or ordinary. It is indeed outrageous that Ms. MacGregor was subjected to this, and although Mr. Piercy will have a sentence imposed upon him today that will have a commencement date today and a warrant-expiry date, the consequences of Ms. MacGregor's victimization will be continuing and long lasting. She described this very poignantly:

I have always relied on walking as my main mode of transportation and until the incident, I have never been afraid of anyone or anything. I now experience nervousness, anxiety and fear while walking along the street which is increased when approached by other pedestrians. I often find myself looking around to see if I can spot anyone following me. This is something I have to face every time I leave my home. I no longer walk in or near the area of town where the incident took place. The incident often replays in my head. It has given me nightmares and it often effects my concentration throughout the day.

[8] When I described a moment ago of the offence as being outrageous, I do not mean to appeal to sentimentality or emotion. I use the term "outrage" in the sense that the offence committed against Ms. MacGregor was a serious and fundamental violation of her personal right to safety; her right to the integrity and safety of her person and the security of her property.

[9] Offences of this nature, unfortunately, are not unheard of in Pictou County, and the Blue Acres area has certainly been a focal point of many robberies recently.

[10] I accept that Mr. Piercy describes his conduct as “stupid”. Indeed, it shows a lack of judgment. However, I do not equate stupidity with a lack of planning or premeditation. The circumstances of the offence satisfy me that this was well thought out. It involved a degree of disguise with intent. It involved the use of a chemical irritant to subdue and overcome resistance from the victim, and in my view, demonstrates certainly a material degree of planning and premeditation.

[11] The prosecutor has referred properly to *R. v. Izzard* [1999] N.S.J. No. 18 (C.A.) and *R. v. Johnson* 2007 NSCA 102. There is also *R. v. Benoit* 2007 NSCA 123. These decisions underscore the importance of emphasizing denunciation and deterrence in cases involving robbery, either with violence, or with the use of a weapon. In *Benoit*, in particular, Hamilton J.A. underscored this important point:

13 Considering the importance of denunciation and deterrence when imposing a sentence for robbery and considering this robbery at knife point on a public bus at supertime by an 18 year old with a substantial and serious criminal record described hereafter in para. 14 I am satisfied the appropriate range of available sentences is a penitentiary term of 2 to 3 years; *R. v. Izzard* (B.W.) (1999), 175 N.S.R. (2d) 288; 534 A.P.R. 288, para. 17 and *R. v. Longaphy*, [2000] N.S.J. No. 376, 2000 NSCA 136, para. 27, 28 and 29.

[12] I apply the principles of sentencing set out in Section 718, 718.1 and 718.2 of the *Criminal Code*. I do believe that there is a statutory aggravating principle in play here, as there is ample evidence before the court that the offence has had a significant impact upon the victim, considering the victim’s personal

circumstances including her health, and I take that into account under sub-para. 718.2(a)(iii.1) of the *Criminal Code*. Robbery is an offence excluded from the conditional-sentencing regime in virtue of para. 742.1(c) of the *Code*; this, in my view, reflects a Parliamentary intent to ensure that sentences for robbery carry a high degree of denunciation and deterrence.

[13] There is a joint submission before the Court. Our Court of Appeal in *R. v. MacIvor* 2003 NSCA 60 stated very clearly the sentencing courts ought to depart from joint recommendations only if the court were to conclude that the imposition of the recommended penalty would bring the administration of justice into disrepute.

[14] I recognize that this is not necessarily one of the clearest of cases. The recital of evidence presented to the court in accordance with the provisions of sections 723 and 724 of the *Criminal Code* satisfy the court that there is a substantial body of circumstantial evidence implicating Mr. Piercy but not a great deal of direct evidence; therefore, I am satisfied that the joint submission negotiated by the experienced counsel as an authentic *quid pro quo* is an appropriate one.

[15] Accordingly, Mr. Piercy, the court sentences you to a period of two years plus a day in relation to the charge before the court which is a bare federal sentence.

[16] The court is also going to make an order, under the provisions of Section 743.21 of the *Criminal Code*, that while in custody, you are to have no contact or communication, either directly or indirectly, with Christina May MacGregor.

[17] This is a primary designated offence under the provisions of Section 487.051 of the *Criminal Code*; therefore, there will be a primary designated offence DNA Collection Order.

[18] This is an offence that falls under the provisions of Section 109 of the *Criminal Code*, namely, an indictable offence and the commission of which violence against a person was used, threatened or attempted, and for which the person may be sentenced to imprisonment for ten (10) years or more. Accordingly, the court will make an order that you be prohibited from possessing any firearm, other than a prohibited firearm, restricted firearm, any cross-bow, restricted weapon, ammunition and explosive substance beginning today's date and running for a period of 20 years. And you shall also be prohibited from possessing any

prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

[19] With respect to the issue of victim-surcharge amount, I observe that Mr. Piercy is a young man, will be a young man at the time of his warrant-expiry date. Mr. Piercy has been gainfully employed in the past as a fisher. That is a responsible occupation that requires hard work, and also provides a reasonable level of employment income. There is no reason for the court to believe that, upon Mr. Piercy's completion of his federal sentence, he would not be able to find gainful employment that would allow him to pay a victim-surcharge amount within a reasonable time to be fixed by the court. I believe that, in the circumstances of this case, a victim-surcharge amount in excess of the mandatory minimum ought to be paid, given the circumstances of the offence and given Mr. Piercy's young age and ability to pay an appropriate victim-surcharge amount. Therefore, the court is going to order that Mr. Piercy pay a \$1000.00-victim surcharge amount, and Mr. Piercy will have 48 months to pay that victim- surcharge amount.

[20] Anything further in relation to Mr. Piercy, counsel?

[21] **Mr. Gorman**: I guess for clarity, the only thing you didn't mention is the *Truth in Sentencing Act* and this is net of ... and just so that is covered off ...

[22] **The Court**: Yes. And that's a good point. In accordance with the *Truth in Sentencing Act*, taking into account the principles set out in *R. v. Carvery* 2014 SCC 27, the court orders and directs that the information and warrant of committal be endorsed to record that but for the remand time, the court would have imposed an additional nine (9) months of sentence. That gives Mr. Piercy roughly one and a half times credit for the remand time. The warrant on a go-forward basis is two years plus a day, that is, two years plus a day starting today and going forward. Anything further for Mr. Piercy, counsel?

[23] **Mr. Planetta**: No, Your Honour. Thank you.

[24] **Mr. Gorman**: No, Your Honour.

[25] **The Court**: Mr. Piercy, I'll have you go with the sheriffs please, sir. Thank you very much.