

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. MacDonald, 2007 NSSC 364

**Date:** 20071123

**Docket:** CR. Am. 274222

**Registry:** Amherst

**Between:**

Her Majesty the Queen

v.

Craig Douglas MacDonald

**Judge:** The Honourable Justice J. E. Scanlan

**Heard:** 23 November 2007, in Amherst, Nova Scotia

**Written Decision:** 10 December 2007

**Counsel:** Mr. Bruce Baxter, for the crown  
Mr. Robert Gregan, for the defence

**By the Court:**

[1] Mr. MacDonald, on the 21<sup>st</sup> of September of this year I convicted you on a charge of theft over. As pointed out, there is a prior conviction which I am entitled to consider in terms of the over all circumstances, but as pointed out by defence counsel, and I noted it myself, you had not been convicted by the time this offence occurred. Having said that, I am entitled to rely on the fact that there were two theft overs that you have now been convicted of. For the first one you got a suspended sentence and 18 months probation.

[2] I read the pre-sentence report, both the update and the original one. You're now 36 years old, I believe, as opposed to 35 at the time of the first pre-sentence report. You're relying on Community Services monies to support you and your wife and now child, because of the fact that you were injured in that car accident which occurred, as pointed out by crown and defence, I believe, when you had wrongfully taken that car in the first place. You have a high school diploma and one year Corrections course and it seems to me, from the materials before me, not much else. A little bit of hope in terms of heavy equipment operations. You haven't been accepted for that yet. I have no idea what that may or may not result in. I don't hold it out as a positive or negative, just a comment in the report that that's what you hope to do.

[3] The probation officer notes in the report of October 25<sup>th</sup> that you have a recent significant desire to resolve the issues of concern. I'm often amazed at how significant one's desire becomes when you're facing a sentence before this or any other court. I wish for your sake that burning urge to improve yourself had occurred much earlier, because you probably wouldn't have stolen that first car, and you may not have been involved in the theft of this trailer.

[4] What amazes me, in terms of the offence for which you're convicted, is the audacity of the whole thing. The court often hears victims of break and enters coming to court to talk about how they never feel safe in their home again. They feel violated. We hear Mr. Metro, in the victim impact statement form, talk about the impact of this offence, as well as the theft of his other items I understand, because he didn't clearly delineate the theft of the trailer. He talked about how this trailer was a safe haven. It was the only real property he ever owned his entire life. As a Vietman war veteran, he came here to help bury some of the demons that he had. Now he has a whole bunch of new demons. I don't know how he or anybody

can separate how much of that newfound psychological difficulty arises from the theft of the tractor and the other equipment, versus the theft of the trailer. I referenced things like the victims we hear coming and talking about no longer feeling safe in their own homes after a break and enter. You weren't party to just a break and enter - you stole the whole bloody home. I know that you weren't in the truck that was attached to the trailer, driving it away, but you're every bit a part of it. You took the man's home. It was his cottage where he came to live in the summer. It just happened to be on wheels. It wasn't nailed down. I can relate Mr. Metro's anxieties as expressed in the victim impact statement to cases such as break and enters. Like I said, what impresses me in a negative way, from your perspective, is the audacity of it all. To think that anybody would be involved in going in and stealing the man's home, his cottage. What gives a person the right, whether they've got a broken neck and they're on hydromorphone or anything else, to think that they can just go and do something like this?

[5] When your counsel suggests that this is an offence that didn't involve weapons or violence or threats to other people, I don't know if it takes into account that in a case like this, if I impose a period of house arrest and a conditional sentence to be served in the community, I can't imagine that the victim in this case wouldn't have suffered more than you did. Is that the way it should be? At the end of the day, are we in the criminal justice system to say yes, we caught the man, or the men involved in the offence, they came to court and I'm sorry, but you the victim are to suffer the most? When we sentence people for offences, the idea is not to make them suffer more or less than the victim. I am sure when society looks at these sentences that courts impose, in cases that are so blatantly offensive to everything we know, society would ask who got the worst of this deal. The sentences we impose in cases like this must send the proper message or they will not deter people like you who are so embrazened as to participate in something like this thinking, whether you're getting five hundred dollars or some drugs or anything else, it's somehow worth it. If I get caught, I might get probation, I might even get a conditional sentence. Well, Mr. MacDonald, that just doesn't cut it with me. The message has to get to you and to others, if you're going to go around this province in these communities and do these types of things where, like I said, you'd go so far as to steal a man's home, you better be prepared to pay for it. People better know that they're going to do real time for a crime like this. I can't imagine the community would look at a conditional sentence in this case and say that it sends the proper message to have you continue staying at home where you've been staying for a fair length of time anyway because of your health

problems. The need for general deterrence in these type of offences is such that it requires a period of imprisonment. People have to understand that if you're going to do something that is this brazen, you're getting real time.

[6] I looked at the pre-sentence report. It's really not positive or negative. You've been under the radar in terms of doing little or nothing with your life, and only lately have this burning desire to improve yourself. I'm satisfied that for the offence that you've been involved in that you should be imprisoned. In saying that, I take into account all those things that I must take into account under section 718 of the *Criminal Code*, but it's your second offence. I know there is no prior conviction, but it's your second offence.

[7] Joey Fagan, I'm not suggesting that you're somehow a lesser person because any of the things that were enunciated in the *Chisholm* case. In fact, I don't know if there's any difference between you and Joey Fagan, in terms of all the things that they mentioned, and I certainly wouldn't discriminate against you. In addition, it wasn't me that sentenced Joey Fagan. He was sentenced in Provincial Court in relation to the theft of the tractor only, as I understand it. I'm not saying I would have imposed the same sentence on Joey Fagan if he were here, but the crime for which you were convicted and for which I am sentencing on, I am satisfied you should go to jail.

[8] You will be incarcerated for a period of five months. That will be followed by probation for a period of two years. You will, during the period of probation, keep the peace and be of good behaviour. You will report to adult probation services as and when they direct. It doesn't give me any comfort in knowing that there's that much backlog in adult probation services that it would take as long as it did for you to get into the system, through no fault of your own. It simply means it takes away from one more tool that we have in terms of sentencing, when we have to consider whether or not it's effective. You will have no contact, direct or indirect, with Mr. Richard Metro. You will not be within 50 metres of Mr. Metro's property. You will have no association with the Nima family, although I can't imagine you wanting to be too close to them. I suspect they're pretty upset with you for having helped participate in the scam, where they thought they were getting a trailer that you had the right to sell. The Nima family includes Wayne, Rodney and Lloyd. You will have no association with Joey Fagan. When I said to keep the peace and be of good behaviour, you're already prohibited from possessing or consuming any non-prescription drugs, but I'll put it in, just to make

sure you understand, there's no question in your mind that that's part of keeping the peace and being of good behaviour. In addition, during the period of probation you will participate in and co-operate in any counseling as directed by adult probation services. You will use your best efforts to upgrade your education or find employment, and you will provide written evidence of your efforts as and when directed. In terms of the counseling, I might specifically point out that counseling will include any addiction services counseling.

[9] Mr. MacDonald, I don't know if this sends the proper message to you or not, but I would hope for your sake you would never do anything so brazen as you've done in this case again. I hope the message gets to other people that they shouldn't either, because if they do they'll pay as well.

**J.**