

Date: 20001201  
Docket: CRSBW 4913

IN THE SUPREME COURT OF NOVA SCOTIA  
Cite as: R. v. Saunders, 2000 NSSC 61

HER MAJESTY THE QUEEN

vs.

EDMUND R. SAUNDERS

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**SENTENCING DECISION**

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HEARD BEFORE: The Honourable Justice John M. Davison

PLACE HEARD: Bridgewater, N.S.

DATE HEARD: December 1, 2000

DECISION (Orally) December 1, 2000

WRITTEN RELEASE  
OF ORAL DECISION: December 5, 2000

COUNSEL: James H. Burrill, for the Crown  
Edmund Saunders, unrepresented

DAVISON, J.:

[1] This is the matter of the sentencing of Edmund Ralph Saunders. He was charged and convicted of theft, and specifically the indictment reads:

That between the 15th of September, A.D. 1997 and the 15th day of September, A.D. 1998, at or near Lunenburg in the County of Lunenburg, Province of Nova Scotia, did unlawfully steal monies from the Estate of Dorothy Belle Crouse of a value exceeding \$5,000.00, contrary to Section 334 of the *Criminal Code*.

[2] The facts were agreed by counsel for the parties. In brief, Edmund Saunders was appointed sole executor of the Last Will and Testament of Dorothy Bell Crouse of Lunenburg in the County of Lunenburg. Mr. Saunders took monies from the estate and directed payment of these funds to sheriff officers with a view to cancelling foreclosure proceedings against the property owned by Mr. Saunders and his wife and with respect to other properties owned by his daughter and son-in-law.

[3] The facts are extensively set forth in my written decision with respect to the conviction in this proceeding, and I will not deal extensively with them but would note the offender, in his capacity as executor, opened a bank account entitled the Estate of Dorothy Belle Crouse into which he transferred funds of the deceased. Mr. Saunders withdrew \$30,998.42 from that estate account on September 23, 1997 and on September 24, 1997 a sum of \$34,000. He

presented bank drafts totalling \$64,998.42 to a solicitor who was acting for a mortgagee of property in the name of Mr. Saunders' daughter and son-in-law which property was to be sold at foreclosure sale on September 25, 1997.

- [4] The agreement of facts also made reference to a withdrawal from the estate account of \$21,000 on January 26, 1998 which was used to settle a claim advanced against the offender by the estate of the father of Reverend Vincent Tobin.
- [5] Further, in April 1998 the accused withdrew \$30,000 from the estate account for use in a foreclosure action against the offender and his wife with a foreclosure sale scheduled for April 16, 1998.
- [6] I am aware of the authorities in this Province with respect to sentencing, including the oft quoted *R. v. Grady*. It is my view the accused was found guilty of a serious crime. He breached his position of trust. Until yesterday he had taken no steps to reimburse the beneficiaries of the estate and assumed the attitude he was not required to do so except in accordance with s. 70 of the *Probate Act*. It was my finding he stole money for his own purpose from the estate and against the interests of the beneficiaries of the estate.
- [7] The offender has been a practising barrister for over forty years. He belongs to a profession which holds their members out as trustworthy persons who

are skilled in protecting members of the public from circumstances which detrimentally affect their liberty, their rights and their interests including their financial interests. The public rely and ought to rely on lawyers to protect members of the public from matters of civil wrongs as well as matters which relate to unfair and inappropriate criminal prosecutions.

[8] In addition, the offender was named an executor by Dorothy Belle Crouse to prudently and properly effect her wishes to dispose of assets she accumulated over a lifetime in a manner set out in her last will and testament. A position which can only be described as one that embodies the utmost trust. Mr. Saunders breached that trust in a material way.

[9] There are aggravating factors in these proceedings. One need only read the victim impact statements to determine the extremely stressful circumstances advanced on the beneficiaries by the actions of Mr. Saunders. I am advised that yesterday, November 30, 2000 properties of the offender were sold and the beneficiaries will receive that which they are legally entitled to receive, but it has been a very stressful and expensive time for those beneficiaries.

[10] It was not only necessary for these people to take action and obtain a judgment against Mr. Saunders, but it was necessary for them to go to the expense of defending an action taken against them by the offender for

defamation of character. Lawyers had to be paid to defend this proceeding. The Crown prosecutor emphasized the grossly dishonest conduct effected by Mr. Saunders. I agree with this submission, as expressed in my written decision with respect to the conviction, but as I told Mr. Burrill, that is not the problem. The problem to be considered is the position of the offender who is 82 years of age and probably in need of medical attention in the near future. I do state that I have considered the impact statements in these proceedings, and it is clear to me the actions of the offender have had significant adverse effect on the authors of these statements.

- [11] I would expect those persons who have suffered because of the actions of the offender would expect a period of incarceration for Mr. Saunders. To me that reaction is understandable. However, one must be aware that a jail term is not necessarily the best solution particularly when you consider the offender's age of 82 years and his probable future need for competent medical care.
- [12] The basic purpose of sentencing has been set out in many Nova Scotia cases and the basic principle can be summarized in the need to protect the public and that has now been codified.
- [13] In 1996 the Parliament of Canada proclaimed significant amendments to sentencing laws which included a legislative direction which related to the

principles of sentencing. The new provisions as found in ss. 718, 718.1 and 718.2 of the *Criminal Code* indicated the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, respect for the law and the maintenance of a just, peaceful and safe society. The objectives are supposed to be accomplished by the imposition of just sanctions based on some combination of the list of objectives of denunciation, deterrence, separation from society, rehabilitation, reparation, the promotion of a sense of responsibility in offenders and by an acknowledgement by them of the harm they have caused.

- [14] The legislation requires the court to ensure that a sentence is proportionate to the gravity of the offence and the degree of the responsibility of the offender. Section 718.2 of the *Code* set out various sentencing principles which a court must consider in imposing sentences. One of the changes was to create a new sentence referred to as a “conditional sentence of imprisonment” which is described in the *Criminal Code* in ss. 742 to 742.7 inclusive. Such a sentence can be imposed where the court determines that a sentence of imprisonment should occur but that the determined sentence should be less than two years of imprisonment and the court is satisfied that the offender serving the conditional sentence would not endanger the safety of the public.

Such a sentence requires the court to state that the serving of the imprisonment shall be in the community and not in a prison facility. The *Code* also provides that an offender serving a conditional sentence of imprisonment be subject to certain compulsory or mandatory conditions which are listed in s. 742.3(1) of the *Code*.

[15] I have read *R. v. Proulx*, [2000] 1 S.C.R. 61 which is a definitive review of conditional sentences set out by the Supreme Court of Canada. I have also read *R. v. Longaphy*, 2000 N.S.C.A. 136, a decision of the Nova Scotia Court of Appeal dated November 24, 2000, only a week ago, where the court applies the principles laid out in *R. v. Proulx*. I would say the four criteria I must consider are:

- (1) the offender must be convicted of an offence that is not punishable by a minimum term of imprisonment;
- (2) the court must impose a term of imprisonment of less than two years;
- (3) the safety of the community would not be endangered by the offender serving the sentence in the community; and
- (4) a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[16] Before imposing any sentence of a conditional nature, I must impose a sentence which must be less than two years. There is no question that I will impose such a sentence. The Crown seeks nine months confinement in a penitentiary.

[17] I must consider a penitentiary term and possible probationary measures having regard to the principle set out in ss. 718, 718.1 and 718.2

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and

- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. 1995, c. 22, s. 6.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
  - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor,
  - (ii) evidence that the offender, in committing the offence, abused the offender's spouse or child,
  - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim, or
  - (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization

shall be deemed to be aggravating circumstances;

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[18] The directions set out in s. 718.2(d) and (e) are two principles, but I must keep in mind the fundamental principle set out in s. 718.1 that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[19] The courts have considered convictions of lawyers for fraud and theft. In *R. v. Morrison* (1975), 13 N.S.R. (2d) 98 a 30 year old lawyer received a sentence of two years imprisonment for three counts of fraud and the Nova Scotia Court of Appeal stated a lawyer has a special duty to avoid criminal conduct. That court made similar comments in *R. v. Simms* (1983), 54 N.S.R. (2d) 4.

- [20] In *R. v. MacIsaac* (1988), 84 N.S.R. (2d) 173 a sentence of one year imprisonment was imposed on a 42 year old lawyer for one count of fraud and four counts of forgery and uttering forged documents.
- [21] I must consider what is termed the safety decision which is, would the serving of the sentence of imprisonment endanger the safety of the community if it were to be served in the community. I find that the offender is not a danger to the community and the objectives sought through incarceration can be adequately addressed by control within the community. It must be remembered that a conditional sentence is only to be considered where the incarceration is the only fit sentence and it is not to be considered as less of a sanction than actual imprisonment.
- [22] The Crown seeks a nine month sentence in prison. In my view, the sentence should be twelve months served in the community. With respect, I disagree with the Crown and say those twelve months are to be house arrest, and I will stipulate the exceptions to house arrest. The Supreme Court of Canada and other courts determine house arrest has a sanction similar to imprisonment. If the offender breaches the terms of the conditional sentence, application can be made to the court to serve the remainder of the sentence in prison. A conditional sentence is the only practical sentence.

[23] I have considered the ultimate goal is the protection of the public through maintaining a safe and secure society, and the elements of general deterrence of those similarly disposed and specifically addressed to the offender are to be considered. Also to be considered is rehabilitation and denunciation.

[24] Mr. Saunders, please stand up. I sentence you to a term of imprisonment of twelve months to be served in the community in which you now live which I understand to be Bridgewater in the Province of Nova Scotia. I refer to the conditions which I will place on you, some of which are compulsory conditions set out in s. 742.3 of the *Code*:

- (1) Keep the peace and be of good behaviour;
- (2) Appear before the court when required to do so by the court;
- (3) Report to a supervisor in your area on or before December 8, 2000 and thereafter as required by the supervisor
- (4) Remain within the province of Nova Scotia unless written permission to go outside is obtained from the court or the supervisor; and
- (5) Notify the court or the supervisor in advance of any change of address.

[25] In addition to those conditions, I attach further conditions which are:

- (1) Comply with any counselling advice the supervisor may recommend;
- (2) Perform up to 80 hours of community service work over the period of the twelve months as directed by your supervisor;
- (3) Remain in or on the property of your residence except to attend medical appointments, meeting with your supervisor or that which would be required in performing your community service. You may attend medical facilities if there should occur emergencies relating to the health of you or a member of your immediate family;
- (4) Carry a copy of the conditional sentence order with you and produce it on request for identification by a police officer.
- (5) Twice a week, for periods not to exceed two hours each, attendances may be made to purchase groceries and other basic necessities for you or your wife. You shall work out a schedule with your supervisor to accommodate this exception;
- (6) If other exceptions are required, you must obtain the express permission of your supervisor. In considering such requests, the supervisor should understand that the intention of the offender's detention in his residence is that it is to operate as a house arrest, and permission for other exceptions should not be given lightly.

[26] I will summarize for you situations involving conditional sentences, some of which are detailed in s. 742.6 of the *Criminal Code*, and I direct that you be given a copy of the order and confirm that there are procedures in place for arrangements to have this order changed. I further confirm that should it be determined that, on the balance of probabilities, you have breached the order you can be ordered to serve the remainder of your sentence in prison.

J.