

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Sanford*, 2018 NSSC 336

Date: 20181217

Docket: CRBW 473232

Registry: Bridgewater

Between:

Her Majesty the Queen

v.

Robert Brian Sanford

Judge: The Honourable Justice Mona Lynch

Heard: December 17, 2018, in Bridgewater, Nova Scotia

Counsel: Sharon Goodwin, for the Provincial Crown
Joshua Bryson, for the Federal Crown
David R. Hirtle, for the accused

By the Court:

[1] The sentencing today is in relation to charges of robbery using an imitation firearm to commit the offence, Section 85(2)(b); breach of recognizance, two charges of that under Section 145(3) of the *Criminal Code*; for failing to keep the peace and be of good behaviour and for possession of weapons; and, finally, a charge of possession of hydromorphone under Section 4(1) of the *Controlled Drugs and Substances Act*.

Pre-Sentence Report

[2] I have reviewed the material that has been filed. The pre-sentence report indicates that Mr. Sanford is 48 years old. He does not have contact with his parents. He lived for a time with his father and did not see his mother. He is not close to either parent. He has some half siblings, some he has not met. One he had a close relationship, but they have grown apart.

[3] He was subject to physical, mental and sexual abuse growing up.

[4] He lived with his grandparents after living with his father and that was a positive and stable place.

[5] He moved out on his own at approximately 20 years old and at 21 he entered into a relationship which lasted 27 years and 25 of those married. He had three children in that relationship and he indicated he has a strong relationship with his children.

[6] He has more recently separated from his spouse and is in the process of divorcing.

[7] He has a Grade 8 formal education. He passed his GED and was enrolled in the Horticultural Program for 2018 but did not attend due to his incarceration in relation to these offences.

[8] He was a truck driver from 2013 to 2016 and he hopes to return to that occupation.

[9] While incarcerated he has been an off-unit cleaner at the Correctional Center.

[10] He was on income assistance prior to his incarceration.

[11] He has medical issues including arthritis and COPD and he was prescribed morphine for his COPD. He has some depression and has been prescribed anti-depressant medication. He does not have an issue with alcohol.

[12] He began using cocaine for five or six years in his late teens. He is currently dependent on the prescribed pain medication, which is morphine.

[13] He indicated, with regard, to the offence that he took responsibility for his actions. He woke up that day feeling suicidal and wanting pills to overdose on, and he decided to rob the Shoppers Drug Mart. It was not his intent to hurt anyone else.

[14] He indicated that he did well on remand.

[15] He has a very, very, dated prior record, which is unrelated.

[16] He has recognized the trauma that his actions have caused the people in the pharmacy.

[17] He has offered the background and his own dependency needs, but not as an excuse, but as an explanation. He knows that there is no excuse for his behaviour in robbing the pharmacy. It was inexcusable.

Victim Impact Statements

[18] The Victim Impact Statements are quite powerful, one of the victims indicates she was 18 years old, working her final shift before heading to university. Prior to that time, she saw the good in everyone and tried to connect with

customers. She thought she was safe. She had no worries. She lived in a good place surrounded by good people. She did not believe anybody would hurt her or put her in danger. She did not think anything like that would happen in New Germany. She now pays closer attention when people pull things out of their pockets and purses as she walks by. She looks at people with their face covered and wonders whether or not they are going to do something illegal or if it is just to protect from the cold.

[19] She is always second guessing herself and not feeling like she can trust people anymore. She did not ask to live in fear and she does not feel that she can be a cashier as a job again. She said:

“Waking up for my job that morning was just another regular day to me but now, it’s a memory that is going to last a lifetime whether I want it to or not. And you know what? That sucks.”

[20] Another employee says she is more alert when someone enters the store. She has fear of people wearing a hoodie. It has affected her work, her health. Her blood pressure has gone up and she has to have increased medication, caused by her stress. She is very nervous in malls and stores. She has needed therapy for a while. She doesn’t sleep as she thinks about being in the store and it being robbed. She can not be in the same room as a gun that is not in a cabinet. She is scared that when Mr. Sanford gets out, he will find her. It is always on her mind.

[21] Another employee said her life changed on the day of the robbery. She had no idea how it would affect her entire life. She lost her trust and safety in the world. She has panic attacks; does not sleep; has headaches; nightmares; flashbacks; mood swings; she is easily startled; difficulty concentrating. She lacks motivation, feels numb, depressed and miserable. She lost an interest in things that she used to enjoy. She can't do everyday things by herself for fear of something happening. She is withdrawn from friends and family. She is suspicious of vehicles in her neighbourhood and she will not go out at night.

[22] Ten months after the robbery she realized she lost control and was no longer the person she was. She has been diagnosed with PTSD and put off work. She now takes anti-depressants, anxiety medication and sleep aids. She is in therapy. She is not sure if she will ever be herself again. She has panic attacks when she is near a pharmacy. She worked at Shoppers Drug Mart in New Germany for 18 years and she cannot even drive by it anymore. She does not know if she will ever get her life back to normal.

[23] Another person indicates work is not the same. She stops when someone comes in the door. She is worried when she refuses an early refill on a narcotic that there will be retaliation. She has high stress. Her blood pressure has gone up

and medication for that. She has fear, both at work and at home. She makes sure the doors are locked.

[24] So, the overall victims, Mr. Sanford, indicate that they have a loss of sense of security and well being and that you took that from them, and these people are terrified.

[25] Mr. Sanford, do you have anything you want to say before I sentence you?

Accused's comments

[26] No, Your Honour, just that I'm sorry for what I've done.

[27] Okay. Thank you. Alright, you can sit down.

Facts

[28] The facts, as indicated in the briefs are:

On August 28th 2017, at 11:12 am a male wearing a mask was inside the store brandishing a handgun, demanding cash and pills. He got two plastic zip lock bags containing five bottles of 1mg and 2mg hydromorphone opioids and \$215 in cash.

[29] There was a search warrant at Mr. Sanford's home locating the clothing, the black replica gun, a 303 rifle, two zip lock bags containing five bottles of 1mg and 2mg hydromorphone opioids. Only one of the hydromorphone were recovered of the over the 400 taken.

[30] He was subject to a Recognizance to keep the peace and be of good behaviour and not possess a firearm.

Aggravating Factors

[31] If I look aggravating factors it was the robbery at the pharmacy. He was masked. It was an imitation handgun, but the victims were not aware that it was not real. Opioids were taken. Only one pill recovered. The imitation firearm was brandished at employees. The vulnerability of a small pharmacy in a rural community. There was no regard given to the well-being of the people working in the pharmacy. It was planned.

Mitigating Factors

[32] The mitigating factors are the lack of a criminal record. A guilty plea before the trial and that the victims did not have to testify at the trial and for the Charter motion and there is a recognition of the trauma that was caused to the victims and remorse for that.

Crown and Defence Joint Recommendation

[33] The Crown and Defence have made a joint recommendation of two years imprisonment and ancillary orders. In the *R. v. Anthony Cook* 2016 SCC 43, case

from the Supreme Court of Canada the court reviewed the law regarding a joint recommendation and provided guidance for trial judge and they set out the proper test for a trial judge is the public interest test, para. 32.

32. Under that test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest...

When discussing the meaning of the test the court referred to two cases from the Newfoundland Court of Appeal, para. 33.

33. ...the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system”. And, when assessing a joint submission, trial judges should “avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts”.

At para 34 they say:

34. ...Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

The Court noted at para 35:

35 Guilty pleas in exchange for joint submissions on sentence are a “proper and necessary part of the administration of criminal justice”...

And a guilty plea indicates an accused’s acknowledgment of responsibilities.

They must have a high degree of confidence that joint recommendations will be accepted.

Principles of Sentencing

[34] So, the purpose and principles of sentencing that I am to look at are in Section 718, 718.1 and 718.2.

718 The fundamental purpose of sentencing is to protect society and 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 and the harm done to victims or to the community that is caused by 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 or to the community.

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

R.S., 1985, c. 27 (1st Supp.), s. 156;

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 gender identity or expression, or on any other similar factor,

- (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
- (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
- (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
- (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
- (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
- (v) evidence that the offence was a terrorism offence, or
- (vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act*

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 and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[35] I have to look at the significant impact on the victims, including their health, which is a consideration here.

[36] The maximum sentence for these offences is life in imprisonment. The minimum sentence for the firearms offence is one year imprisonment. Both

Crown and Defence have provided me with many cases that show the range of sentencing. Certainly, the three years that they are suggesting, two years on the robbery one year consecutive on the firearms offence, are within the range of sentence as set out in the caselaw.

[37] There is an agreement then for two years on a go forward basis. Ms.

Goodwin I am having a little bit of trouble with the math.

Miss Goodwin

Yes, I did look at the math. Because of the distinction between using thirty days, or a month, or a year it's not going to work out properly and in fact I was going to be off a couple decimal points even using the month because of the rounding up and the rounding down of different time periods. To, perhaps what we could do, and I'm not sure if this is, it's, it's, for the system, the JEIN system. I suspect that the breakdown has to happen. I'm not sure if it's possible to put the, I can give the two years going forward and then just a reference to time served as opposed to minutely break down each point. Which I think we're both prepared, myself and Federal Crown, is probably prepared to do, subject to Mr. Hurtles' input, that could be a relatively easy exercise. If, if, it's requiring to account for every portion of the remand on every charge. With the JEIN system it will take a little bit longer to do the math.

Mr. Bryson

Yes, My Lady, if, it may help because your Warrant of Committal is simply, as all sentences are, your sentencing on a go forward basis.

The Court

Right.

Mr. Bryson

The only numbers you need from us the go forward numbers.

The Court

Right

Mr. Bryson

So, anything in the range of, well, the two year number for the Robbery and then if everything else is concurrent, I, I...

Ms. Goodwin

The 85 can't be concurrent, it has to be consecutive...

The Court

Right

Ms. Goodwin

Based on the pro-, provision of the Criminal Code, but we could make the Robbery 1 year and then the 85 1 year Consecutive and then everything else concurrent.

The Court

Okay, alright.

Mr. Hirtle

I think that's a really good idea, Your Honour, and that way it avoids, as I mentioned earlier, the possibility that the math gets wrong and he gets one month below, so I'm, I think that's something we should go with.

Sentence

[38] Okay, I, was trying to figure out the math and it was not working for me, so. Alright then the sentence then, I do find that it is, the sentence, when I look at the remand time is within the range of sentences that would be, be given. The, Mr. Sanford has been on remand for 477 days and then would

have a credit of approximately 715 days at a 1.5 to 1 day ratio for that calculation. So, I am taking into account the time that he has spent in custody and giving him credit for approximately 715 days. That leaves me with a sentence on a go forward basis of 1 year on the Robbery charge and 1 year consecutive on the Section 85 charge, the firearms charge. Two breaches of Recognizance 30 days each concurrent to each other and to the current sentence and three months concurrent on the possession of the hydromorphone charge.

[39] Alright, there will be a Forfeiture Order with regard to the Pill bottles, the ammunition, the air pistol, the rifle, the clothing that he was wearing, the cash. Did I miss anything?

Ms. Goodwin

The 109 Order and the DNA order.

The Court

No, No, I know, I mean in the Forfeiture Order.

Ms. Goodwin

Oh, yes, yes, that's everything. Thank you.

Mr. Bryson

She said the cargo pants and stuff.

Ms. Goodwin

She said the clothing.

[40] Alright, and then there is a primary offence, so a DNA Order is to be provided and there is a Firearms Prohibition under Section 109, for life.

Alright, so that is the sentence. Does anybody have any questions?

Ms. Goodwin

The remaining charges will be, the crown's, I'm going to, obviously, offer no evidence and I suspect Mr. Hirtle will...

Mr. Hirtle

I would move for the dismissal, My Lady.

The Court

[41] Okay. Alright so in relation to the Section 88 of the *Criminal Code*.

Carrying an imitation weapon for, a hand gun, for the purpose of committing an offence, contrary to Section 88 of the *Criminal Code* the Crown has offered no evidence and that charge is dismissed.

[42] In relation to the charge, Breach of Recognizance to Not possess or consume a controlled substance under Section 145(3) of the *Criminal Code* the Crown has offered no evidence on that charge, and it is dismissed.

[43] In relation to a Breach of Recognizance charge to remain in his residence, without lawful excuse, failing to comply with that under Section 145(3) of the *Criminal Code* the crown has offered no evidence and that charge is dismissed

[44] With regard to a charge of Breach of his Recognizance, another charge for failing to remain in his residence the Crown has offered no evidence on that charge, and that is dismissed. So, counts 3, 5, 7 and 8 of the Indictment the Crown has offered no evidence and those are dismissed.

[45] Alright, do we have anything else?

Mr. Bryson

Just, I see the Publication Ban notice is still there, but I'm not aware of anything that would ban the publication of anything that occurred today.

The Court

Okay, no. That would have been still from the, probably from the Preliminary.

[46] Mr. Sanford, I am hoping the good reports from the how you have been doing at the Correctional Centre continue and that you are able to put the right foot forward when you are released. So, good luck to you sir.

Lynch, J.