

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Hardiman*, 2022 NSSC 198

Date: 20220720

Docket: CRH 498473

Registry: Halifax

Between:

Her Majesty the Queen

v.

Wesley Todd Hardiman

SENTENCE DECISION

Judge: The Honourable Justice Jamie Campbell

Heard: June 29, 2022, in Halifax, Nova Scotia

Counsel: Rick Woodburn and Scott Morrison, for the Crown
Pavel Boubnov, for the Defence

By the Court (Orally):

[1] Wesley Hardiman is being sentenced for his part in the assault of Stephen Anderson at the Central Nova Scotia Correctional Facility in Burnside on December 2, 2019.

[2] After 2 trials 12 people were found guilty of aggravated assault and one of obstruction. The person found guilty of obstruction has been sentenced, *R. v. Nagendran*, 2022 NSSC 14. Four of the people found guilty of aggravated assault have been sentenced, *R. v. Ladelpha*, 2021 NSSC 352, *R. v. McIntosh*, 2021 NSSC 351, *R. v. Clarke-McNeil*, 2022 NSSC 63, and *R. v. Mitton*, 2022 NSSC 123. Mr. Ladelpha was sentenced to 6 years, Mr. McIntosh to 5½ years, Mr. Clarke-McNeil to 6 years, and Mr. Mitton to 6 years. Mr. Hardiman's sentence should not be set only in reference to those sentences, but the sentencing principle of parity must be applied. What Mr. Hardiman did was very similar to what Mr. Ladelpha, Mr. Clarke-McNeil, and Mr. Mitton did. While his personal circumstances may be different, fairness would require some explanation for why his sentence should be different when the circumstances of the offence are in every relevant way, the same.

[3] Mr. Hardiman is being sentenced as an individual. His personal circumstances matter.

Personal Background

[4] Wesley Hardiman is only 27 years old. He left school at 17, having completed Grade 9. After leaving school he worked for a year with a roofing company and then had some employment doing manual labour. When not working he has been dependant on his mother for financial support.

[5] Mr. Hardiman grew up in Lower Sackville. His parents separated when he was 4 years old, and he lived with his father with regular visits from his mother. When he was 10 years old his mother moved to Alberta. He remained in Nova Scotia with his father. He has had regular contact with both parents and his brother.

[6] Mr. Hardiman started a relationship with a girlfriend in 2019 and lived between her apartment and his father's home. He was placed on remand in November 2019 and has been in custody since then.

[7] Mr. Hardiman's father told the writer of the pre-sentence report that his son had a difficult childhood with the separation of his parents and his mother's move to Alberta. He said that Mr. Hardiman had trouble in school and believes that he still struggles with reading and writing. In 2019 he was depressed and unhappy and started drinking and partying with his friends. He went to Alberta to make a fresh start but that did not work out. When he came back to Nova Scotia, he got in trouble with the law and has been in jail since then. His mother says that she would welcome him back in Alberta, but he would have to take training and get permanent employment. She has offered to help him get that training and find a job, but she will not financially support him.

Criminal Record

[8] Mr. Hardiman has a criminal record though it is not extensive. In March 2017 he was sentenced for breathalyzer refusal and got a fine of \$1,000. The same day he was issued a \$300 fine for failing to attend court.

[9] On November 5, 2019, Mr. Hardiman was remanded to the Central Nova Scotia Correctional Facility on charges of possession of a prohibited or restricted firearm with ammunition and drug possession.

[10] The assault on Stephen Anderson that gave rise to this conviction for aggravated assault took place on December 2, 2019. So, Mr. Hardiman was on remand when this happened. He was moved to a federal penitentiary on December 6, 2019. On January 23, 2020, he was sentenced for the weapon and drug possession charges. He was sentenced to a two-year term of federal incarceration for the weapons charge and one day on the drug possession charge. His early release date on that sentence was May 23, 2021.

[11] Mr. Hardiman remained on remand with respect to this charge.

Case Law

[12] There have been other cases that have addressed sentencing in individual assaults within a prison. They can range from 3.5 years to 10 years in length. All stress the importance of deterrence. *R. v. McNeil*, 2020 ONCA 595, *R. v. Laverdiere*, 2020 ABCA 290, *R. v. Slade*, 2007 NBQB 415, and *R. v. Thompson*, 2017 NBQB 81.

[13] Setting a sentence for an offence of this kind does not involve simply finding cases that are the same in some respects and different in others. The offence of aggravated assault is a broad spectrum one. It covers a broad range of offences, from a relatively minor stab wound, to a case in which the victim is very close to death. It can happen in a broad range of circumstances, from bar fights to premediated gang beatings.

[14] Because sentencing is an individualized process, comparison with other cases can be difficult. There is no “standard” aggravated assault and each person who is sentenced receives a sentence that reflects their moral blameworthiness and their own circumstances.

[15] Case law does make it clear that assaults that take place within jails and prisons must be regarded seriously. When people are congregated against their will in a custodial environment, and some but by no means all of those people have a disposition toward the use of violence, there must be a level of control to protect some against others. People who are convicted of crimes and sentenced to a term of imprisonment are not left to fend for themselves within a prison culture of violence and intimidation.

Sentencing Principles

[16] Deterrence and denunciation must be the primary purposes of the sentence in crimes of violence. An assault within a jail takes the aggravated assault to another level. Serious injuries take it further. Coordinated activity resulting in a gang assault take it even further. Open defiance of the authorities seeking to intervene, as part of the coordinated effort take this case to a level more serious than the other prison assaults provided as examples.

[17] In any sentencing several factors remain in tension with each other. They are not necessarily contradictory, but they can pull in different directions. They are not merely a checklist of factors. Courts must consider the potential for rehabilitation. That may suggest a shorter sentence of incarceration. But the crime may be one that requires denunciation and deterrence, which cries out for a substantial punitive jail sentence. Similarly situated offenders should be treated similarly. But no two offenders commit the exact same offence, in the exact same way, with the same personal circumstances. A person may have a long criminal record, but it may be, in part, a function of the condition of that person’s mental health. A person may be a member of a racialized group and the history of racism and marginalization of those groups as well as their overrepresentation in jails is a factor. Another person

may not be a member of a racialized group but may come from an economically disadvantaged family. Parity in sentencing exists in tension with those considerations.

[18] A person should be sentenced in a way that is proportional to their degree of moral blameworthiness. Deterrence may be a factor in crafting an appropriate sentence, but it should never descend to the point of making an example of a person.

[19] Courts must keep all those tensions in mind. A list of sentencing factors may make it easier to explain what is being considered but it loses some of the nuance. Each factor exists in tension with all or some of the others and it is not possible to assign a percentage weight to each of them. Sentencing is not done by algorithm.

The Sentence

[20] Wesley Hardiman is a young man with a Grade 9 education who has not been able to address his educational deficits. He has done time in a federal penitentiary on a weapons charge. He has spent much of the last two years in penitentiary. His criminal record should not be used to punish him twice, but it does indicate that Mr. Hardiman is not a person who just made one tragic mistake in an otherwise prosocial life. But he is also a person for whom rehabilitation is very much a reasonable prospect.

[21] Mr. Hardiman's involvement in the assault on Stephen Anderson was direct. He was one of the people who had been in Cell 28, where the assault was planned. He waited outside Stephen Anderson's cell. He rushed into the cell with the others. He was not hesitant or tentative. There is no evidence to indicate that he was the person with a weapon or even that he knew that a weapon was going to be used. But he knew, when he entered the cell with several others that Stephen Anderson was going to be assaulted in a way that would cause him physical harm.

[22] This was a planned and coordinated attack within a jail. The inmates involved ganged up on and assaulted Stephen Anderson and did that in a way designed to prevent correctional officers from intervening. That is a serious matter.

[23] Wesley Hardiman's struggles have only just begun. The time when a young man would in other circumstances start to settle down, form positive relationships, perhaps start a family, and begin a career, is for him, being spent in a penal institution. It seems like such a wasted opportunity.

[24] But what Mr. Hardiman did in becoming involved in the assault on Stephen Anderson requires a serious response. Mr. Hardiman may not have appreciated that someone was going to bring a weapon or that Mr. Anderson would be wounded to the extent that he was. Mr. Hardiman may have felt pressure within the jail to become involved. He may well wish now that he had never agreed to do that. But he did. And there are consequences for that.

[25] For an assault of this kind, within the highly structured and regulated environment of a jail, serious consequences involve a significant period of incarceration. Mr. Hardiman's behaviour was not different in any real way from that of the other individuals who went into Stephen Anderson's cell. His personal circumstances are somewhat different. His criminal record is brief, but it involves doing federal time for the weapons charge. The distinction between Mr. Hardiman and the others who went into Stephen Anderson's cell as part of the assault on him, are not of a kind that would justify differentiating him from Mr. Ladelpha, Mr. Clarke-McNeil and Mr. Mitton, each of whom have received sentences of 6 years.

[26] When this offence was committed Mr. Hardiman was on remand with respect to the firearms charge for which he was later sentenced. That sentence expired on May 23, 2021, and Mr. Hardiman would begin to earn remand credit as of that date. Remand credit is given at a rate of one and a half days for each day served. That is the same rate of credit that has been applied to each person sentenced in this matter.

[27] Wesley Hardiman is sentenced to 6 years. That would be 2,190 days without regard to leap years. He has been in custody on this charge from May 23, 2021 to July 20, 2022, which is a total of 424 days. Credit for remand should be given at one and a half days for each day served, which is a total of 636 days. To complete a 6 year term of imprisonment the calculation would be 2,190 days, less remand credit of 636, for a total of 1,554 days, so the go forward sentence is 4 years and 94 days.

[28] The s. 109 firearms prohibition and DNA order will be signed.

Campbell, J.