

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. MacInnis*, 2024 NSSC 143

Date: 20240514

Docket: CRS No. 525525

Registry: Sydney

Between:

His Majesty the King

v.

Connor Theodore MacInnis

SENTENCING DECISION

Judge: The Honourable Justice James L. Chipman

Heard: May 14, 2024, in Sydney, Nova Scotia

Written Decision: May 14, 2024

Counsel: Peter J. Harrison, for the Crown
Gregory MacNeil, for Mr. MacInnis

By the Court (orally):

INTRODUCTION

[1] This is my sentencing decision with respect to Connor Theodore MacInnis. On February 12, 2024, Mr. MacInnis pled guilty to these charges:

1. That he, on or about October 13, 2022, at or near Balls Creek, in the County of Cape Breton, Province of Nova Scotia, did intentionally or recklessly cause damage by fire to a business, Noelle's Country Market, situated at 1311 Keltic Drive, Balls Creek, Nova Scotia, contrary to Section 434 of the Criminal Code of Canada;
2. AND FURTHER, did commit mischief by willfully damaging without legal justification or excuse and without color of right, the property of Noelle's Country Market, to wit: smashed the window located at 1311 Keltic Drive, Balls Creek, the value of which did not exceed five thousand dollars contrary to Section 430(4) of the Criminal Code of Canada; and
3. AND FURTHER, having been named in an Undertaking on January 8, 2022, and being at large on that Undertaking, did fail without lawful excuse, to comply with a condition of that Undertaking, to wit: Abstain from alcohol and drugs unless prescribed by a medical doctor, contrary to Section 145(4)(a) of the Criminal Code of Canada.

[2] His sentencing was scheduled for today's date and in the lead up, the Court reviewed these filed materials:

- Agreed Statement of Facts (ASF);
- Crown's brief and authorities;
- Defence brief and authorities;
- Pre-Sentence Report dated February 26, 2024 prepared by Probation Officer Meggie M. Currie (PSR-1);
- Pre-Sentence Report dated March 6, 2024 prepared by Ms. Currie (PSR-2);
- JEIN report;

- Letters of support written by Michelle O'Brien and Kelsey O'Brien; and
- Proposed probation conditions submitted by the parties.

[3] Today the Court heard oral submissions from the parties. As well, Exhibit 1 was introduced, a request for restitution filed by the owner of the business damaged by the crimes. The owner of Noelle's Country Market, Michael Scott MacDonald, testified providing support for the \$1,479.66 claimed.

ASF / BACKGROUND

[4] The ASF provides the background and below I have reproduced it to provide context:

1. Connor Theodore MacInnis is a 21-year-old man born on January 2, 2023.
2. Mr. MacInnis is currently a resident of Glace Bay, NS. He spent the majority of his life living in the Sydney area of the Cape Breton Regional Municipality (CBRM) and also lived in Saskatchewan during his early childhood.
3. On February 12, 2024, Mr. MacInnis appeared in Nova Scotia Supreme Court and entered guilty pleas to counts under ss. 434, 430(4) and 145(4)(a) of the Criminal Code of Canada in relation to an incident dated October 13, 2022.
4. On October 14, 2022, at approximately 0002 hours, Constables Kelloway and Ellsworth of the Cape Breton Regional Police Service (CBRPS) attended to Noelle's Country Market at 1311 Keltic Drive, Balls Creek, NS in response to a dispatch call regarding a broken window.
5. Business owner Mike MacDonald was present and spoke to police. Mr. MacDonald permitted the police officers to review surveillance video footage of his business.
6. During their review of surveillance video footage, police officers observed two suspicious males. The first male, initially identified as Male 1 (M1), was observed wearing a brown jacket, black pants, grey hood, high boots, blue gloves and a black dirt bike helmet.
7. The second male, initially identified as Male 2 (M2), was observed wearing a blue hoodie with a yellow crest, red gloves, grey pants, dark footwear and a blue backpack.

8. The males were observed driving a blue dirt bike travelling in a northeast direction from Frenchvale Road.
9. Male 2 is observed getting off of the dirt bike and urinating in the parking lot.
10. Male 2 then returns to the dirt bike and Male 1 is observed grabbing the backpack of Male 2.
11. Male 2 is observed picking up rocks, approaching the business and throwing rocks through the window of the store.
12. Male 2 is then observed running back to the bike where Male 1 was located. Male 2 observed falling off of the bike.
13. When Male 2 gets up, he approaches the business again and is observed throwing another rock at the window.
14. Male 2 is then observed approaching the gasoline pumps, removing the nozzle from the pump, pumping gasoline onto the ground, and then placing the nozzle into the spilled fuel on the ground.
15. Male 2 is then observed removing a lighter from his person and igniting the spilled fuel on the ground where the nozzle is also located.
16. Male 1 is observed watching Male 2 attempting to ignite the spilled fuel.
17. Male 1 and Male 2 are observed returning to the bike and driving away eastward on Keltic Drive.
18. Mr. MacDonald advised police that the males in the video had been at the business earlier in the day when he was working. Mr. MacDonald advised that he had seen the males by the mailboxes and that he had left work at approximately 1940 hours (7:40 pm).
19. Mr. MacDonald provide surveillance video from earlier in the day, and at approximately 1945 hours (7:45 pm) the two males were observed entering the business.
20. Cst. Kelloway took photographs of the surveillance footage showing the males suspects.
21. On October 18, 2022, Connor MacInnis attended the CBRPS Central Division office to identify himself as the suspect. He was cautioned by the police and stated that he understood.

22. Mr. MacInnis disclosed to the CBRPS that on October 13, 2022 he had consumed alcohol and had stopped by at Noelle's Country Market to get change for a \$20.00 bill. Mr. MacInnis stated that he continued drinking and does not remember much about what happened later. Mr. MacInnis identified himself as being Male 2 in the surveillance video.

POSITION OF THE PARTIES

Crown

[5] The Crown preposes the following sentence:

1. A custodial sentence of 24 months in a federal institution on the s. 434 charge;
2. A custodial sentence of 30 days on both the s. 430(4) and s. 145(4) charges to be served concurrently;
3. A probationary period of 36 months;
4. A discretionary DNA order pursuant to s. 487.04 of the *Criminal Code*;
5. A mandatory weapons prohibition pursuant to s. 109(1)(a) of the *Criminal Code*; and
6. A restitution order in the amount \$1,479.66.

Defence

[6] The Defence agrees with the ancillary orders and the probationary period. Their probation conditions differ somewhat from the Crown's proposal. The Defence resists an institutional sentence, instead proposing a sentence of custody to be served as part of a conditional sentence order of 24 months less one day.

JURISPRUDENCE

[7] In support of their competing positions, the parties have provided these cases:

Crown

1. *R. v. H.(K.)*, 1994 CarswellNB 211
2. *R. v. Hall*, 2002 BCPC 174
3. *R. v. Keber*, 2005 BCCA 543

4. *R. v. Clark*, 2018 Williston, JPC, unreported, transcript provided
5. *R. v. Turtle*, 2005 ABPC 176

Defence

1. *R. v. C.P.M.*, 2009 ABPC 58
2. *R. v. Woods*, [2021] BCJ No. 2742
3. *R. v. Popova*, [2023] OJ No. 3346
4. *R. v. Smith*, [2023 OJ No. 2809
5. *R. v. Stuard*, [2023] AJ No. 455
6. *R. v. Kwong*, [2013] BCJ No. 79
7. *R. v. Bauming*, [2007] AJ No. 938

PRINCIPLES AND PURPOSES OF SENTENCING

[8] Section 718 of the *Criminal Code* provides as follows:

Purpose

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.

Fundamental principle

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

Other Sentencing Principles

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 intimate partner or a member of the victim or the offender's family,
 - (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,
 - (iii.2) evidence that the offence was committed against a person who, in the performance of their duties and functions, was providing health services, including personal care services,
 - (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,
- (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, and
- (vii) evidence that the commission of the offence had the effect of impeding another person from obtaining health services, including personal care services,

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.

1995, c. 22, s. 6, 1997, c. 23, s. 17, 2000, c. 12, s. 95, 2001, c. 32, s. 44(F), c. 41, s. 20, 2005, c. 32, s. 25, 2012, c. 29, s. 2, 2015, c. 13, s. 24, c. 23, s. 16, 2017, c. 13, s. 4, 2019, c. 25, s. 293, 2021, c. 27, s. 25.

MITIGATING AND AGGRAVATING FACTORS

Mitigating

1. Mr. MacInnis pled guilty and takes responsibility, expresses remorse and his insight for his actions;
2. Mr. MacInnis turned himself in and cooperated with the police investigation;
3. Mr. MacInnis comes before the Court with no prior criminal record; and

4. Mr. MacInnis at age 21, is a youthful offender.

Aggravating

1. The arson was apparently motivated by anger and/or frustration. It is unclear why Mr. MacInnis' ire was directed toward Noelle's Country Market;
2. Noelle's Country Market is located in a residential area with homes in close proximity; and
3. Mr. MacInnis' choice of target for the arson showed indifference to the risk of significant property damage, injury, and death.

OFFENDER PROFILE

[9] Mr. MacInnis (dob January 2, 2003) is 21 years of age. PSR-1 and PSR-2 detail his difficult upbringing. As the Defence summarized in their brief:

2. Mr. MacInnis is 21 years old. He resides with his mother, Angel Robinson, in Glace Bay, NS. He reported having a close relationship with his mother and his father.
3. Mr. MacInnis's father, Jamie MacInnis, passed away from a heart attack at the age of 39 years. At this time, Connor MacInnis was just 13 years of age. It has been stated in the PSR by Mr. MacInnis himself, as well as by friends and family members, that Mr. MacInnis has struggled greatly in dealing with the grief caused by his father's passing.
4. It was noted in the PSR that Jamie MacInnis struggled with substance abuse issues, and at the time of his passing he was participating in the opiate recovery program. It was also noted in the PSR that Connor MacInnis began associating with older and more negative peer influences after his father's passing. Mr. MacInnis began getting involved in physical altercations and use of illicit substances.
5. It was noted in the PSR that Mr. MacInnis moved frequently as a child. This affected his ability to maintain childhood friendships and to maintain structure and continuity with his schooling.

[10] Mr. MacInnis does not have much in the way of assets or disposable income. He is financially reliant on his mother. Mr. MacInnis is in good physical health, albeit recovering from fairly recent back surgery.

[11] The PSRs confirm that Mr. MacInnis is open to counselling. With regard to the charges, Mr. MacInnis expresses remorse and takes responsibility. The letters of support confirm Mr. MacInnis's challenging upbringing; both authors confirm their willingness to be supportive.

[12] Mr. MacInnis presents to the Court as a young man with no criminal record. He is dealing with substance abuse issues as well as grief related to the passing of his father. Mr. MacInnis has family support, including that of his mother, with whom he resides, as well as extended family members.

CIRCUMSTANCES OF THE OFFENCES

[13] The circumstances of the offences cause the Court concern. There are significant potential risks with the lighting of fuel in any area, let alone by gas pumps. Here, we are dealing with a business in proximity to other businesses and a residential area. The danger to the public due to the risk of an uncontrolled fire is palpable.

[14] According to the ASF, Mr. MacInnis was under the influence of alcohol at the time. It is obvious to the Court that when Mr. MacInnis is under the influence of alcohol that his behavior can pose a real and substantial risk to the public.

[15] For the purpose of sentencing, the Court must focus on the protection and safety of the public, not losing sight of the need for rehabilitation and the need to focus on the least restrictive penalty that would be consistent with the fundamental purposes and principles of sentencing.

[16] Once again, the Court is conscious of the fact that any arson of this nature exposes the public to risk. That would include owners and occupants of nearby dwellings and first responders.

[17] This is Mr. MacInnis's first serious encounter with the criminal law, and I recognize that Mr. MacInnis is before the Court as a first time offender. Nevertheless, he is before the Court as a first time offender having plead guilty to an extremely serious offence. Further, the Court must be alive to the issue of risk to the public. This is a principle of sentencing that has been outlined in many cases including *R. v. McVeigh*, [1985] OJ 207 (CA).

ANALYSIS AND DISPOSITION

[18] I am alive to the caselaw submitted by the parties and draw from the New Brunswick Court of Appeal's decision in *R. v. H (K)*. Justice Hoyt held the following at para. 6:

6 By any yardstick, arson is a serious offence. An adult is liable to imprisonment for fourteen years. Fire, no matter how well planned, is often erratic and unpredictable and gives rise to unforeseen consequences. For sentencing purposes, arsonists are sometimes divided into four types: pyromaniacs or persons who are mentally disturbed, those who burn for no special reason or a grudge, vandals and those who burn for financial gain. K.H. and his two companions fall into the latter category, which is generally considered to be the most blameworthy type of arson, thus attracting the most severe punishment, although there are ranges within each category.

[19] Here, from the ASF it is clear that Mr. MacInnis committed arson for no special reason.

[20] The parties did not refer the Court to reported Nova Scotia caselaw. There are, of course, relevant reported Nova Scotia authorities including from our Court of Appeal. In *R. v. Veinot*, 2011 NSCA 120, Chief Justice MacDonald (as he then was) considered an appeal of a three-year sentence for arson. The facts are described at para. 2:

2 One Timothy Robar set fire to the Shelburne home of one Keith Jacklin, a stranger. Robar admitted this to the police and in fact provided a detailed video re-enactment. In his confession, Robar told the police that Veinot hired him to set the fire. He said that Veinot helped him scout out the location and drove him to the scene to carry out the crime. Apparently, Veinot had a score to settle with Jacklin flowing from a recent court case.

[21] The Court went on to assess the fitness of the trial judge's sentence concluding as follows at paras. 32 – 34:

The Fitness of the Sentence

32 Veinot asserts that the sentence was too steep but, before us, does no more than repeat his submissions to the trial judge. Of course, it is not for us to second guess the trial judge short of a sentence that is manifestly unfit or one that reflects an error in principle. Neither circumstance applies here. Indeed, the sentence is well within an appropriate range for such a serious arson. I acknowledge that, fortunately for all involved, the fire was caught early with little damage. Even more fortunately, no one was home. That said, to invade someone's home in order to set it on fire (with the added risk of injury or even death) is an extremely serious offence. It is all the more serious when, as here, it is motivated by revenge.

33 Furthermore, the Crown, in its factum, is right to suggest that this sentence falls squarely within the range for this type of crime:

90 All of the above factors were supported by the jurisprudence provided to the trial Judge. [*R. v. Meer*, 2011 ABQB 46, at paras. 18-22, 26-27 (A.B., vol.I, at pp. 72-80); *R. v. Mirzakhali*, 2009 ONCA 905, at paras.3, 5-6, 9-10 (A.B., vol. I, at pp. 68-71).] Moreover, in *R. v. Sandouga*, 2002 ABCA 196 (tab 29), [although distinct on its facts], the Court observed:

33 The case law suggests that planned, revenge-based acts of destruction of another person's property generally attract a substantial sentence. For example, in *R. v. Etmanski* (2001), 294 A.R. 344 (Prov. Ct.), the offender, to "get back" at her boyfriend's former girlfriend, threw Molotov cocktails through a window of the girlfriend's residence, creating a small fire that was rapidly extinguished. There was little damage and no injury. The accused was 19, pled guilty and had been encouraged by her boyfriend to commit the arson. She had a criminal record, mostly in youth court, with 4 months' closed custody as her longest previous sentence. Etmanski was sentenced to 27 months, in addition to 4 months' pretrial custody. See also *R. v. Wattenberger* (1984), 56 A.R. 238 (C.A.) (grain elevator employee angered by employer's refusal to allow him time off set fire to grain elevator; sentence of three years); *R. v. Sillars* (18 April 1990), Edmonton 9003-0237A6 (C.A.) (lumber company employee whose employment was terminated set fire to lumber company both for revenge and to conceal his theft of \$240; guilty plea; effective sentence of three years, with credit for pretrial custody); and *R. v. Allard*, [1999] B.C.J. No. 1912, (B.C.J.) (C.A.) (offender set fire to residence after he was told to leave by his cohabitant; effective sentence of four years, with credit for pretrial custody). [at para. 33.]

34 With no error in principle even asserted, and with this sentence being within the appropriate range, there is no merit to this ground of appeal.

[22] The Court of Appeal upheld the sentence of three years' incarceration. While the circumstances here are less severe than in *Veinot*, I am nonetheless persuaded in all of the circumstances that jail time is appropriate. Given the ASF, guiding cases and all of what is before the Court, I hereby sentence Mr. MacInnis to what the Crown has proposed. Accordingly, the Court imposes the following:

1. A custodial sentence of 24 months in a federal institution on the s. 434 charge;

2. A custodial sentence of 30 days on both the s. 430(4) and s. 145(4) charges to be served concurrently;
3. A probationary period of 36 months – the conditions of which are as follows:
 1. Keep the peace and be of good behavior.
 2. Attend Court as and when directed.
 3. Notify the Court or your probation officer of any change of name, address, employment, or occupation.
 4. Remain within Nova Scotia.
 5. Report to the Glace Bay office of Probation Services within five days from the date of your release from custody and thereafter as directed.
 6. Do not take or consume alcohol or other intoxicating substances.
 7. Do not attend anywhere alcohol is sold or distributed as a principal product.
 8. Do not be within 300 metres of Noelle's Country Market located at 1311 Keltic Drive, Balls Creek, Nova Scotia.
 9. Make reasonable efforts to locate and maintain employment or participate in an educational program as directed by your probation officer.
 10. Seek, accept, and complete any counselling, assessments, or programs as directed by your probation officer including, but not limited to, mental health counselling, anger management counselling, and substance abuse counselling.
 11. Participate in and cooperate with any assessments, counselling, or programs directed by your probation officer;
4. A discretionary DNA order pursuant to s. 487.04 of the *Criminal Code*;

5. A mandatory weapons prohibition pursuant to s. 109(1)(a) of the *Criminal Code*; and
6. A stand-alone restitution order for \$1,479.66.

[23] This was a completely random act which could have resulted in far more serious consequences. It is difficult to understand why Mr. MacInnis carried out the crimes. It is hoped and encouraged that the custodial time will involve counselling and support along the lines recommended in the PSRs.

Chipman, J.