Date: 2008 10 06
Docket: S-0001-CR-2008000059

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LISA ROSA BEAUPRE

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

Appeal from sentence imposed in the Territorial Court of the Northwest Territories on June 24, 2008.

Heard at Yellowknife, NT on September 15, 2008.

Reasons filed: October 6, 2008

REASONS FOR JUDGMENT OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU

Counsel for the Appellant: Daniel Rideout
Counsel for the Respondent: Shannon Smallwood

Beaupre v. *HMTQ*, 2008 NWTSC 75

Date: 2008 08 18
Docket: S-0001-DV-2007103827

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REASONS FOR JUDGMENT

I) INTRODUCTION

[1] Liza Beaupre appeals from a sentence imposed on June 24, 2008 on a charge of assault causing bodily harm. She was convicted of this offence after trial and sentenced to nine months imprisonment, followed by a period of Probation of one year. Ms. Beaupre argues that the Sentencing Judge erred in rejecting her request that any jail term imposed be served in the community under the scope of a Conditional Sentence Order.

II) BACKGROUND OF CASE

[2] The events forming the subject matter of the charge occurred in Yellowknife on May 26, 2007, in the home where Ms. Beaupre and her common law spouse, Glen Elder, resided. Ms. Beaupre, Mr. Elder, and two of Ms. Beaupre's sisters were in that residence and had consumed a considerable amount of alcohol. An argument erupted between Ms. Beaupre and Mr. Elder, which escalated to a physical fight, with the two of them pushing each other. At one point during this altercation Ms. Beaupre grabbed a knife and stabbed Mr. Elder in the chest. The wound bled profusely. Mr. Elder was taken to hospital. His injury required five stitches to close, but was not life threatening. In the Agreed Statement of Facts filed at the trial, it was described as a superficial laceration.

[3] Ms. Beaupre was charged with assault causing bodily harm as a result of this incident. A trial was held on April 2, 2008. She was found guilty. Sentencing was adjourned to allow for the preparation of a Pre-Sentence Report. The sentencing hearing proceeded on June 24, 2008.

[4] At the sentencing hearing, Ms. Beaupre's counsel argued that a conditional sentence would meet the sentencing goals of deterrence and denunciation, and would also assist her in her rehabilitation. The Crown argued that the paramount sentencing considerations were denunciation and deterrence. The Crown argued that if a conditional sentence was imposed, it should be for a period of twelve months and include meaningful conditions. The Crown also argued that if the Court was not inclined to grant Ms. Beaupre's request for a conditional sentence, a jail term in the range of six to nine months would be appropriate.

III) ANALYSIS

[5] The standard of review on sentence appeals is well established:

> Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit.
>
> *R.* v. *M. (C.A.)* (1996), 105 C.C.C. (3d) 327 (SCC), at para. 90.

[6] Ms. Beaupre does not argue that the sentence imposed is demonstrably unfit. Rather, she argues that appellate intervention is warranted because the Sentencing Judge made errors in principle in arriving at her decision. Ms. Beaupre argues that the Sentencing Judge did not give adequate consideration to her status as an aboriginal offender. She also argues that the Sentencing Judge erred in her assessment of mitigating factors and in her interpretation of the evidence about Ms. Beaupre's commitment to taking counseling. In oral argument, counsel emphasized primarily the lack of proper consideration given to Ms. Beaupre's status as an aboriginal offender.

1. Ms. Beaupre's status as an aboriginal offender

[7] Section 718.2(e) of the *Criminal Code* imposes a positive duty on sentencing judges to approach the sentencing of aboriginal offenders in a manner that is

different from the sentencing of offenders who are not aboriginal. Ms. Beaupre argues that the Sentencing Judge did not comply with this duty. She argues that the Reasons do not demonstrate that the Sentencing Judge approached this sentencing any differently than she would have had Ms. Beaupre not been an aboriginal offender. Ms. Beaupre argues that this error opens the door for this Court to depart from the usual deferential approach on sentence appeals. She asks this Court to examine the question of sentencing afresh.

[8] A number of years ago, the Supreme Court of Canada interpreted section 718.2(e) of the *Criminal Code* to be a remedial provision, designed, in part, to address the over-representation of aboriginal people in Canadian jails. The Court found that the provision imposed a duty on courts to approach the sentencing of aboriginal offenders with a different methodology, taking into account the distinct situation of aboriginal people:

> How are sentencing judges to play their remedial role? The words of section 718.2(e) instruct the sentencing judge to pay particular attention to the circumstances of aboriginal offenders, with the implication that those circumstances are significantly different from those of non-aboriginal offenders. The background considerations regarding the distinct situation of aboriginal peoples in Canada encompass a wide range of unique circumstances, including, most particularly:
>
> (A) The unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts; and
>
> (B) The types of sentencing procedures and sanctions that may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection.
>
> *R.* v. *Gladue* [1999] 1 S.C.R. 688, at para. 66.

[9] Section 718.2(e), therefore, places a duty on sentencing judges to approach the sentencing of aboriginal offenders using a methodology that is different from the one used when sentencing non-aboriginal offenders. The failure to comply with this duty is an error of law. *R.* v. *Kakekagamik* [2006] O.J. No.3346, at para 31.

[10] The Crown acknowledges that the Sentencing Judge did not refer to section 718.2(e) in her Reasons for Sentence, nor to the Supreme Court of Canada

decisions that have interpreted that provision. The Crown points out, however, that the Sentencing Judge had the benefit of a lot of information about Ms. Beaupre's background, and of submissions about how her aboriginal status should impact on the determination of her sentence. The Crown argues that the Sentencing Judge can be presumed to have been cognizant of the law and to have taken those circumstances into consideration in arriving at her decision.

[11] There is no statutory requirement for a Sentencing Judge to give reasons explaining how he or she has applied section 718.2(e). Of course, where an issue arises as to whether the sentencing judge discharged his or her duty pursuant to section 718.2(e), reasons, even brief ones, are of great assistance to the reviewing court:

> (...) although s. 718.2(e) does not impose a statutory duty upon the sentencing judge to provide reasons, it will be much easier for a reviewing court to determine whether and how attention was paid to the circumstances of the offender as an aboriginal person if at least brief reasons are given
>
> *R.* v. *Gladue* [1999] 1 S.C.R. 688, at para. 85.

[12] This is consistent with the general duty of judges to provide reasons that allow meaningful appellate review. *R.* v. *Sheppard* [2002] 1 S.C.R. 869.

[13] However, the assessment of the Sentencing Judge's Reasons must be a contextual one, that is, one that takes into account the overall circumstances of the case, the evidence presented, and the submissions of counsel.

[14] One aspect of this context is that unlike most other jurisdictions in Canada, in the Northwest Territories, a significant proportion of the population is aboriginal. Because of this, section 718.2(e) is engaged routinely in sentencing hearings that proceed in the Territorial Court and in this Court. That is not to say that the duty placed on sentencing judges by section 718.2(e) is different in the Northwest Territories from what it is in other jurisdictions in Canada: the failure to approach the sentencing of aboriginal offenders with the methodology outlined in *R.* v. *Gladue, supra*, is as much an error of law in the Northwest Territories as it is in any other jurisdiction. But the fact that this issue is engaged in a majority of the cases that come before the courts in the Northwest Territories is a factor to consider in examining the Sentencing Judge's Reasons for Sentence.

[15] The evidence presented and the submissions of counsel are also contextual aspects that must considered. In this case, the Pre-Sentence Report was thorough and provided a lot of information about the circumstances of Ms. Beaupre's upbringing in a traditional aboriginal setting. It also set out some of the difficulties and tragedies that had occurred in her life.

[16] In his submissions at the sentencing hearing, Ms. Beaupre's counsel referred to these circumstances and made specific reference to the principles engaged by Ms. Beaupre's aboriginal status:

> Your Honour, I also feel I must underscore that Ms. Beaupre is someone of Dene descent who has lived a very traditional upbringing and has been - - was not exposed to the same kind of lifestyle that many in conventional life would be exposed to. Her closest family and support reside in Yellowknife, and she has profound and troubling problems in her past which must also be addressed and are definitely relevant to the issue of sentencing. This includes, your Honour, exposure to alcohol and physical abuse, being victimized in a rape in the past. She continues to grieve the loss of a brother who died when he was younger en route on a traditional trip from Snare Lake to Behchoko, and also, more recently, the death of her own son at age nine who was, as I understand, struck by a vehicle outside between Rae and Edzo in the Behchoko area.
>
> These are considerable grief issues that I would submit are much more complex for me to put my head around, but they certainly are something that have impacted greatly on Ms. Beaupre, and she does get quite emotional when discussing them in meetings. These are important considerations and the others in the pre-sentence report with respect to section 718.2(e) of the *Criminal Code* with respect to the sentencing of aboriginal offenders, not only because she is a woman of Dene descent, but also because she - - there is evidence that she has lived a very traditional lifestyle and suffered from some impact - - been impacted greatly by some things that she has been exposed to in her past and particularly the physical and alcohol abuse that she was exposed to in the small community where she lived.
>
> Submissions on Sentence, p.37 line 11 to p.38, line 21.

[17] It is clear, then, that unlike what transpired at the original sentencing hearing in *R.* v. *Kakekagamik*, *supra*, this was not a case where no reference was made to Ms. Beaupre's aboriginal status at the sentencing hearing.

[18] At the very beginning of her Reasons for Sentence, the Sentencing Judge referred to the fact that Ms. Beaupre was an aboriginal person. This suggests that she did not overlook the relevance of that factor.

[19] The Sentencing Judge also made reference to some of the issues and struggles that Ms. Beaupre had experienced:

> Ms. Beaupre, I accept and recognize and certainly sympathize with you that you have a lot of issues in your life, you have had struggles in your life, and perhaps you still have issues to deal with.
>
> (...)
>
> I do recognize that rehabilitation has to be considered, that you may need help in dealing with issues, but I cannot force you, Ms. Beaupre, to get help.
>
> Reasons for Sentence, p.4, lines 18-22 and p. 6, lines 3-4.

[20] There was no evidence, nor any indication in the Pre-Sentence Report or in the submissions, that a sanction other than imprisonment would be more appropriate for Ms. Beaupre because of her cultural heritage, or more in line with her cultural beliefs.

[21] In addition, the conditions suggested to be included as part of the conditional sentence order did not have a particular link or component related to Ms. Beaupre's aboriginal heritage. Conditions involving house arrest, community service work, and the requirement to take counselling are among those also routinely sought when dealing with offenders who are not aboriginal. It cannot be said, therefore, that the proposed alternative to incarceration was crafted to meet specific elements arising from Ms. Beaupre's aboriginal status.

[22] It is also clear that the Sentencing Judge viewed the offence committed by Ms. Beaupre as a very serious one. The more serious or violent the offence, the less likely there is to be a difference between a sentence imposed to a non aboriginal offender and a sentence imposed to an aboriginal offender. *R.* v. *Gladue, supra*, at para 79; *R.* v. *Wells* [2000] 1 S.C.R. 207, at para. 42.

[23] The Sentencing Judge also made reference to the prevalence of this type of offence in this jurisdiction and the high level of blameworthiness that is involved in

introducing a potentially lethal weapon into a fight. These are factors, combined with the seriousness of the offence, that usually lead courts to place more emphasis on denunciation and deterrence than on rehabilitation. They also often lead to the conclusion that there is no reasonable alternative to incarceration, even when dealing with an aboriginal offender.

[24] In my view, it can be inferred from the Reasons for Sentence that the Sentencing Judge concluded that notwithstanding Ms. Beaupre's aboriginal status, the sentencing objectives of deterrence and denunciation mandated the imposition of a term of incarceration in a correctional facility, as opposed to one that could be served in the community. I do not find that the record of these proceedings supports the suggestion that the Sentencing Judge did not take into consideration Ms. Beaupre's status as an aboriginal offender, and the obligations that flowed from this pursuant to section 718.2(e) of the *Criminal Code*. While it would have been preferable for the Sentencing Judge to address these factors in a more specific manner, her failure to do so does not, in my view, amount to an error in principle.

[25] If I am mistaken, and the Sentencing Judge's failure to provide specific reasons addressing Ms. Beaupre's aboriginal status amounts to an error in principle, I would still not interfere with the sentence imposed.

[26] Taking an offender's aboriginal heritage into consideration when determining the fit sentence for a crime does not mean that aboriginal offenders must always be sentenced in a manner that gives the greatest weight to principles of restorative justice and less weight to deterrence, denunciation and separation:

> It is unreasonable to assume that aboriginal peoples themselves do not believe in the importance of [deterrence, denunciation and separation], and even if they do not, that such goals must not predominate in appropriate cases. Clearly there are some serious offenses and some offenders for which and for whom separation, denunciation and deterrence are fundamentally relevant.
>
> *R.* v. *Gladue, supra*, at para. 78.

[27] While section 718.2(e) requires a different methodology for assessing what a fit sentence is for an aboriginal offender, it does not mandate, necessarily, a different result. *R.* v. *Wells, supra,* at para. 44.

[28] As I already stated at Paragraph 22 of these Reasons, it will generally be the case that particularly violent or serious offenses will result in imprisonment for aboriginal offenders as often as for non-aboriginal offenders.

[29] This Court has consistently held that the level of blameworthiness of a person who arms themselves with a knife during an argument and stabs another is high:

> In my view, stabbing someone in the chest with a knife, even if it happens in the context of where there has been arguing and fighting leading up to it, is conduct that falls at the high end of moral culpability and moral blameworthiness. (...)
>
> Stabbing someone through the chest is almost certain to cause serious harm or death to the person. When it does not, when it is an inch to the right or an inch to the left or the knife hits a bone and the victim ends up with a few stitches, that is the result of pure luck. It has nothing to do with the seriousness of the act.

R. v. *Emile* 2008 NWTSC 50, at pages 12-13.

[30] The prevalence of this type of crime in this jurisdiction cannot be overstated. Many homicides cases in recent years in this jurisdiction involved stabbings. As only some of those examples, see: *R.* v. *Emile*, *supra*; *R.* v. *S.J.I.* [2005] N.W.T.J. No.94; *R.* v. *D.N.K.* [2004] N.W.T.J. No. 86; *R.* v. *Kierstead* [2003] N.W.T.J. No.90; *R.* v. *Sangris* [2003] N.W.T.J. No.68; *R.* v. *Raddi* [2001] N.W.T.J. No.54. There are also numerous examples of cases involving stabbings where, fortunately, the injuries inflicted were not fatal. *R.* v. *Magrum* 2007 NWTSC 26, referred to at the sentencing hearing, is one example of such a case, but there are several more. There is no reason to think that aboriginal people are any less concerned than non-aboriginal people about the prevalence of these types of crimes in their communities.

[31] In the present case, even though the injury was not life threatening, Ms. Beaupre stabbed the victim in the chest. The assault occurred in a spousal context, which is an aggravating factor.

[32] For those reasons, even making allowances for Ms. Beaupre's aboriginal heritage and for the difficult circumstances that she faced in her life, a sentence of actual imprisonment was required to achieve the purposes and goals of sentencing.

2. Other alleged errors

[33] Ms. Beaupre argues that the Sentencing Judge made other errors. She argues that the Sentencing Judge erred in finding that there were no mitigating factors, as well as in her treatment of the evidence about Ms. Beaupre's efforts to take counseling in the months following the offence.

[34] I find no error in the Sentencing Judge's comments about the absence of mitigating factors. The Sentencing Judge found that Ms. Beaupre's expressions of remorse were somewhat equivocal. The Sentencing Judge's finding was not that Ms. Beaupre was not remorseful at all, but simply that she may not have yet fully accepted responsibility for her actions. This finding was based on the Sentencing Judge's appreciation of the evidence, and is entitled to deference. It also was not an unreasonable finding, given some of the comments made in the Pre-Sentence Report.

[35] The same can be said for the Sentencing Judge's concerns with respect to Ms. Beaupre's commitment to address her alcohol and other issues through counseling. Ms. Beaupre's motivation to address those issues was relevant to the issue of whether allowing her to serve her jail term in the community would endanger the safety of the community. The risk of re-offence is one of the considerations in the evaluation of whether allowing an offender to remain at large would endanger the safety of the community. Evaluating that risk requires taking into account a number of factors, including the offender's conduct following the commission of the offence. *R.* v. *Proulx* [2000] 1 S.C.R. 61, at para. 70.

[36] After having considered the Pre-Sentence Report and the submissions of counsel, the Sentencing Judge concluded that Ms. Beaupre may not yet fully appreciate the depth of the issues that had led her to commit this offence. Those were not unreasonable conclusions to draw. In some parts of the Pre-Sentence Report, Ms. Beaupre was reported to acknowledge responsibility for the offence and to realize she had issues. Other parts of the Report made her level of insight into her behaviour more questionable. One example is the following excerpt, which appears at page 3 of the Report:

> The writer asked [the accused] if there are any emotional concerns or issues of anger that may have contributed to this offence. Liza does not believe that she has problems or issues controlling her emotions.

[37] This comment, considering the events that led to her conviction, as well as the fact that she had been before the Court in 2004 for having uttered threats to her previous spouse, could reasonably lead the Sentencing Judge to have some concerns about Ms. Beaupre's own understanding of the depth of her issues.

[38] Ms. Beaupre told the author of the Pre-Sentence Report that she needed and wanted counseling. Her counsel referred to the steps that she had taken, since the offence, to take counseling. It was in this context that the Sentencing Judge expressed reservations about Ms. Beaupre's commitment to counseling, given that she had apparently attended four appointments shortly after being charged, but in the following several months, had only attended one. The Sentencing Judge was entitled to take this into account, especially since Ms. Beaupre's efforts towards her rehabilitation were being put forward as one of the reasons why a conditional sentence should be imposed.

[39] I conclude, therefore, that the Sentencing Judge did not commit any reversible error in dealing with those issues.

IV) CONCLUSION

[40] For these reasons, I conclude that the Sentencing Judge did not make any errors in principle in dealing with this matter. Even if such errors were made, and this Court should examine the matter anew, I would conclude, in all circumstances, that a conditional sentence would not be consistent with the fundamental purpose and principles of sentencing, including the principles set out at section 718.2(e).

[41] The sentence appeal is dismissed.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
6th day of October 2008

Counsel for the Appellant: Daniel Rideout
Counsel for the Respondent: Shannon Smallwood

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