NOVA SCOTIA COURT OF APPEAL
Citation: ***R. v. Keizer***, 2007 NSCA 125

Date: 20071213
Docket: CAC 281746
Registry: Halifax

Between:

Glen Arthur Keizer

Appellant

v.

Her Majesty the Queen

Respondent

Judge(s):	MacDonald, C.J.N.S.; Bateman & Hamilton, JJ.A.
Appeal Heard:	November 19, 2007, in Halifax, Nova Scotia
Held:	Appeal on conviction dismissed; leave to appeal sentence denied, per reasons for judgment of Hamilton, J.A.; MacDonald, C.J.N.S. and Bateman, J.A. concurring
Counsel:	Glen Arthur Keizer, Self-represented appellant Mark Scott, for the respondent

Reasons for judgment:

[1] Glen Arthur Keizer, represented by counsel at trial but representing himself on appeal, appeals his conviction for assault with a weapon (s. 267(a)) and uttering a threat (s. 264.1(1)(a)). He also seeks leave to appeal and, if granted, appeals his two year sentence of federal incarceration for assault with a weapon.

[2] The facts are straightforward. Mr. Keizer and his then girlfriend, Kim Stevens, were staying with Cecil Taylor and his companion, Claudette Gail Collee, in premises rented by Mr. Taylor. All four used illegal drugs. Tensions mounted and on February 7, 2007 Ms. Collee asked Mr. Keizer and Ms. Stevens to move out. Mr. Keizer became upset. He pushed Ms. Collee onto a couch, pulled out what Ms. Collee described as a knife with a three inch blade and cut her neck. This caused a laceration on Ms. Collee's neck that can be seen in a photo entered into evidence at trial. While doing this Mr. Keizer said to Ms. Collee: "I'll kill you right now." Mr. Keizer also hit Ms. Collee causing bruising and cuts to her lip and right eye area as also seen in the photos introduced as an exhibit. Mr. Keizer then left the premises. Mr. Taylor called the police. The police found Mr. Keizer close to the premises in possession of an implement with a broken blade. The implement was described as a knife when it was introduced into evidence at trial. Mr. Keizer did not testify at trial but now describes this implement as a broken letter opener. The handle of the knife matched the description of that provided by Ms. Collee to the police.

[3] Mr. Keizer raised a number of grounds of appeal in his notice of appeal. He did not file a factum. At the hearing before us he focussed on four issues. He argued that he should not have been found guilty of assault **with a weapon** because the implement he had in his possession when he was found was not a weapon but only a decorative letter opener and a broken one at that. In addition he argued ineffective assistance of trial counsel, that the Crown's witnesses were unreliable and should not have been believed and that his sentence was too high.

[4] Mr. Keizer's argument that he should not have been found guilty of assault with a weapon because the implement found in his possession when he was arrested was a broken letter opener and not a weapon is without merit. The word "weapon" is defined in s. 2 of the **Criminal Code**, R.S., 1985, c. C-46:

> "weapon" means any thing used, designed to be used or intended for use
>
> (a) in causing death or injury to any person, or
>
> (b) for the purpose of threatening or intimidating any person and, without restricting the generality of the foregoing, includes a firearm;

[5] Thus, any thing used to cause injury to a person can be a weapon for the purpose of s. 267(a), including a letter opener, if that is a correct description of what was found in Mr. Keizer's possession when he was arrested.

[6] Mr. Keizer's argument that he should have a new trial because his trial counsel was ineffective is also without merit. He did not file an affidavit specifying how his counsel was ineffective or notify her of this argument so she could respond, the required procedure when arguing ineffective assistance of counsel; **R. v. G.R.S.** (1996), 148 N.S.R. (2d) 175; [1996] N.S.J. No. 69 (Q.L.)(C.A.). Taking into account the fact that he is self-represented and because the material before us allows us to fairly assess his argument, we did not require him to follow this procedure.

[7] This Court in **R. v. MacKenzie** [2007] N.S.J. No. 32 referred to the standard to be met when incompetence of trial counsel is argued:

> [8] An appellant who contends that his counsel has not conducted his defence with a reasonable degree of skill must establish: (a) counsel at the trial lacked competence; and (b) it is reasonably probable that but for such lack of competence, the result of the proceedings would have been different. (**R. v. G.R.S.**, supra at para. 15).
>
> [9] The standard for assessing counsel's competence was addressed by the Supreme Court of Canada in **R. v. G.D.B.**, [2000] 1 S.C.R. 520 where Major, J., for the Court, wrote:
>
> > 27 Incompetence is determined by a reasonableness standard. The analysis proceeds upon a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. The onus is on the appellant to establish the acts or omissions of counsel that are alleged not to have been the result of

> reasonable professional judgment. The wisdom of hindsight has no place in this assessment.
>
> 28 Miscarriages of justice may take many forms in this context. In some instances, counsel's performance may have resulted in procedural unfairness. In others, the reliability of the trial's result may have been compromised.
>
> 29 In those cases where it is apparent that no prejudice has occurred, it will usually be undesirable for appellate courts to consider the performance component of the analysis. The object of an ineffectiveness claim is not to grade counsel's performance or professional conduct. The latter is left to the profession's self-governing body. If it is appropriate to dispose of an ineffectiveness claim on the ground of no prejudice having occurred, that is the course to follow (Strickland, 466 U.S. 668, supra, at p. 697).

[8] The record indicates Mr. Keizer had no recollection of the events of the night in question due to his use of illegal drugs. Faced with this Mr. Keizer would have been of little help to his counsel in preparing for trial. The only course open to her was to try to attack the credibility and reliability of the Crown witnesses as she did during cross-examination.

[9] A review of the record does not support Mr. Keizer's argument that his counsel did not have enough time to prepare for trial and did not capably advance his position. What it does indicate is that his counsel conducted his trial appropriately and did nothing that prejudiced it.

[10] Mr. Keizer complains, as well, that his counsel did not call his companion, Ms. Smith, to testify. There is, however, nothing before us to suggest that Ms. Smith would have recalled the details of that day or that her evidence would have assisted Mr. Keizer.

[11] As for Mr. Keizer's argument that the Crown's witnesses were unreliable and should not have been believed, it is clear from reading the decision that the judge was aware that Ms. Collee and Mr. Taylor used illegal drugs and considered this in assessing their credibility and reliability. He stated in his decision:

> . . . I have got to examine the evidence which I have before me to determine whether the Crown has proven their case beyond a reasonable doubt; mindful of the purported condition of the alleged witnesses at this time and the purported condition of the witnesses at the time that this whole incident . . . took place.
>
> . . . I am mindful of [Ms. Collee's] testimony and the frailty that she might exhibit. I am mindful of the onus which is on the Crown to prove their case beyond a reasonable doubt. Quite frankly, I accept Ms. Collee, despite some of her histrionics before the Court today . . .

[12] The judge had the advantage of seeing the Crown witnesses testify and is in the best position to make a determination as to whether their testimony was credible and reliable. Nothing in the record suggests he erred in his assessment.

[13] The final argument advanced by Mr. Keizer at the hearing was that we should reduce his sentence because it is too high. This Court may only vary a sentence if the judge erred in principle, failed to consider a relevant factor, overemphasized the appropriate factors or imposed a sentence that is demonstrably unfit; **R. v. M.(C.A.)**, [1996] 1 S.C.R. 500, ¶ 90. Mr. Keizer's argument is that the judge's sentence is demonstrably unfit.

[14] For a crime of violence such as this the primary factors to be considered are the need for denunciation, deterrence and protection of the public; **R. v. Sweet**, [2007] N.S.J. No. 106 at ¶ 17. The range of sentence available for assault with a weapon is wide depending on the particular circumstances of the offender and the offence. The Crown pointed to cases where the sentence imposed ranged from a 6 month sentence for a first offender, **R. v. Morash**, [1989] N.S.J. No. 371 (C.A.) at p. 3, to 6 and one-half years for a person with a lengthy criminal record on probation at the time he broke into a friend's home in the middle of the night and assaulted his wife and a friend, **R. v. Anderson**, [1998] N.S.J. No. 271 (S.C.) at p. 14.

[15] Mr. Keizer is 50 years old and has a long criminal record. The following offences were highlighted by the Crown at the sentencing hearing: (1974) assault causing bodily harm and break and enter; (1975) common assault; (1977) armed robbery; (1979) assaulting a police officer; (1983) wounding with intent and break and enter; (1993) assaulting a police officer and dangerous operation of a vehicle; (1995) assault and (1999) assaulting a police officer. In addition the record indicates Mr. Keizer was convicted of break and enter in 1993, theft in 1993 and

1996, fraud in 1995, possession of stolen goods and two thefts in 2000, trafficking in cocaine in 2000 and possession of cocaine in 2003 along with multiple convictions for breaching conditions and motor vehicle offences of driving without a licence and without insurance. While some of these offences are dated, they indicate a long history of violent offences by Mr. Keizer and disrespect for the law.

[16] Given the purposes, objectives and principles of sentencing, the circumstances of this violent offence and the circumstances of Mr. Keizer including his age and lengthy violent criminal record, nothing indicates a sentence of two years federal incarceration is demonstrably unfit.

[17] I will not deal with the other grounds of appeal set out in Mr. Keizer's notice of appeal other than to say nothing in the record or arguments satisfy me they have any merit.

[18] Having reviewed the record and heard the arguments, for the reasons stated above I would dismiss Mr. Keizer's appeal on conviction and deny leave to appeal his sentence.

Hamilton, J.A.

Concurred in:

MacDonald, C.J.N.S.

Bateman, J.A.