

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Ruddick*, 2009 NSCA 126

Date: 20091209
Docket: CAC 305756
Registry: Halifax

Between:

Revere Ernest Ruddick

Appellant

v.

Her Majesty the Queen

Respondent

Judges:

Roscoe, Bateman and Oland, JJ.A.

Appeal Heard:

December 4, 2009, in Halifax, Nova Scotia

Held:

Leave to appeal is granted but the appeal is dismissed per reasons for judgment of Bateman, J.A.; Roscoe and Oland, JJ.A. concurring.

Counsel:

Pavel Boubnov, for the appellant
Peter Rosinski, for the respondent

Reasons for judgment:

[1] Revere Ernest Ruddick entered guilty pleas to charges of aggravated assault (**Criminal Code of Canada**, R.S.C. 1985, c. C-46, s. 268(2)); production of marihuana (**Controlled Drugs and Substances Act**, S.C. 1996, c. 19 as am., s. 7(1) (“**CDSA**”)) and two counts of breach of an undertaking (**Criminal Code**, s. 145). Various additional charges were withdrawn.

[2] Mr. Ruddick’s trial counsel and the Federal and Provincial Crown attorneys jointly recommended the sentences. For the aggravated assault, he was to receive a seven year sentence less double credit for time served, which amounted to 398 days actual credit. For the **CDSA** offence the recommendation was one year to be served concurrently to the seven year sentence. The sentence for each breach was to be 90 days, also to be served concurrently with the seven year sentence. The judge accepted the joint recommendation and imposed the sentences sought by counsel.

[3] Mr. Ruddick now seeks leave to appeal, claiming the seven year sentence for the aggravated assault is excessive.

[4] The standard applicable to a sentence review is a deferential one.

[5] In claiming that the sentence is excessive Mr. Ruddick is, in effect, saying that it does not fall within an appropriate range. Mr. Ruddick was represented by experienced counsel who worked with the two Crown attorneys in crafting this recommendation. There is no allegation of ineffective assistance of counsel.

[6] Aggravated assault carries a potential maximum sentence of fourteen years imprisonment. In determining the range we must consider the context of the offence committed and Mr. Ruddick’s circumstances (**R. v. Cromwell**, 2005 NSCA 137 (C.A.) at para 26, [2005] N.S.J. No. 428 (Q.L.)). While Mr. Ruddick has isolated the sentence on the aggravated assault for appeal, where an offender is sentenced for a collection of offences, the court’s overriding concern is whether the total sentence is a fit one. The division of the sentences among the offences, while not arbitrary, is somewhat secondary.

[7] Mr. Ruddick is a mature offender with a list of criminal convictions dating back to 1972. Those offences run the gamut from theft to drugs to sexual touching and include prior crimes of violence.

[8] Here Mr. Ruddick had apparently had a prior disagreement with the victim. They were both in a drinking establishment but not sitting together. After some time had passed since their dispute, Mr. Ruddick broke two beer bottles and approached the victim from behind. He inflicted deep, life threatening cuts with the bottles on both sides of the victim's neck. The tendons in one of the victim's hands was severed, as well. Fortunately he survived his injuries.

[9] As the respondent points out, Mr. Ruddick's moral blameworthiness for this aggravated assault is very high. The mitigating effect of the guilty plea is limited in that Mr. Ruddick committed the assault in full view of the bar's patrons. There is no suggestion that he could have raised a valid defence. Whether the offence was driven by substance abuse or anger issues, the assault was a premeditated and chilling act which could have cost the victim his life. Mr. Ruddick presents as a dangerous person from whom the public needs protection. Both specific and general deterrence are required.

[10] Both counsel for Mr. Ruddick and for the Crown have cited a number of cases in support of each position. None provide sufficient detail about the crime and the offender so as to persuade me that the total sentence here is excessive. I would find that the seven year sentence is within the range for this crime committed by this offender (see, for example, **R. v. McLean**, 2009 NSCA 1, [2009] N.S.J. No. 5 (Q.L.)(C.A.); **R. v. N.H.N.**, 2005 MBQB 129, [2005] M.J. No. 200 (Q.L.)(Q.B.)).

[11] While the seven year sentence is not excessive for the assault alone, when considered as a disposition for the collection of offences here, it is clearly within the range. Mr. Ruddick might well have received a consecutive sentence in excess of one year for the commercial grow op. Instead he benefited from concurrency for both the drug offence and the two breaches.

[12] Despite the vigorous and able submissions of counsel for Mr. Ruddick, I would grant leave but dismiss the appeal.

Bateman, J.A.

Concurred in:

Roscoe, J.A.

Oland, J.A.