

1992

C. Y. 6738

IN THE COUNTY COURT OF DISTRICT NUMBER THREE

**HER MAJESTY THE QUEEN**

Informant

- versus -

**ROSS ANTHONY HURLBURT**

Defendant

**BEFORE:** The Honourable Judge Charles E. Haliburton,  
J.C.C.

**CHARGE:** Section 348 (1)(a) of the Criminal Code.

**SENTENCE:** January 22nd, 1993.

**COUNSEL:** Robert M.J. Prince, Esq., Crown Attorney  
Dell C. Wickens, Esq., Defence Attorney

S E N T E N C I N G

**HALIBURTON, J.C.C.**

This is the sentencing of two men, Mr. Shannon Eugene Williams and Mr. Ross Anthony Hurlburt who are co-accused in relation to an offence of break, enter and theft contrary to Section 348 (1)(a) of the Criminal Code, the specifics of which were that they did break and enter a certain place, to wit: Dayton Foodmaster at Dayton, Yarmouth County with intent to commit the indictable offence of theft therein.

There are Pre-Sentence Reports before the Court with respect to each of these men and I have the comments of Counsel and their own comments with respect to the manner in which the Court might appropriately deal with sentencing.

Break and entry is obviously a serious offence. It carries with it a substantial period of incarceration in the appropriate circumstances. In the normal course an event which is charged under these Sections, could and very often does, perhaps most often does, carry with it a term of incarceration in the Federal Institution which obviously means the sentence is greater than two years.

The circumstances of this offence perhaps require a little review in that it was an unsuccessful attempt on the part of these two men to commit the intended offence of theft. As Mr. Wickens, representing Mr. Hurlburt, has pointed out, at the conclusion of the trial in the matter, I

2.

was satisfied that there had, in fact, been some penetration of the building in some form or other. There was, however, no evidence that either of these men had actually entered the building physically themselves. What had happened was that there was an alarm that was triggered when the door was pushed ajar. Whether one of the bodies actually went into the building after it was pushed ajar or whether it didn't, was not essential to a finding of guilt.

So it is in that sense akin to an attempted break and enter. Certainly, if the intent, as presumed, was one of theft, it was only an attempt in that sense. Having said that, one must observe that an attempt is not very far removed from the accomplished fact. The only real difference is that the extent of loss or the extent of injury to the victim is varied on that account. It continues to be a serious matter and merchants or others in the area who may be threatened with such break and enters must still have the same fears as if the whole object of the exercise had been successful.

As Crown Counsel has outlined, a threshold was set in the Zong case, where three years for breaking and entering. In that case, however, as he has recognized, there was a lengthy record on the part of Mr. Zong, many of which were for similar offences and Mr. Zong, in fact, had spent

3.

many years in jail as a result of the offences that he committed.

These men are both young. The offence was committed in January of 1991. Two years have now passed since the offences were committed and we have had an opportunity to consider the activities of each of them since that incident.

On the one hand, Mr. Hurlburt, after the offence, chose to go to Ontario where he obtained employment with a roofer and renovator, or contractor. The firm is called a roofing firm and according to the Probation Officer who has written the Pre-Sentence Report, he received glowing comments from his employer who at this time continues to hold open or continues to have a job. The job is held open for Mr. Hurlburt upon his return there. That certainly is a very positive factor and one which I must take into account in determining what to do with him.

On the otehr hand, Mr. Williams... Perhaps I should just finish with Mr. Hurlburt because there is, as one Counsel has pointed out, a negative side to Mr. Hurlburt's situation and that is that he had in May of 1989 and in July of 1990 been convicted of offences exactly the same as this offence for which he had received on the first instance, a suspended sentence and was ordered to make restitution of \$800.00 and in the second instance had received a sentence of

90 days to be served intermittently. Those sentences were very modest in terms of what the Crown has cited to be the normal penalty for breaking and entering. I suppose I might conjecture that the Judge dealing with those matters considered the particular offences weren't all that serious or that Mr. Hurlburt was for some reason salvagable.

Mr. Williams, on the other hand, before this incident had a record which consisted of four convictions under the **Narcotic Control Act**, simple possession, possession for the purpose and trafficking, all of which had occurred in '87, '88 and '89. After this incident, starting in July of '92, he ran into substantial problems abiding by the law in his driving habits and drinking habits. After this incident, he has recorded three convictions under the **Breathalyzer section of the Criminal Code** and two for driving while prohibited under the **Criminal Code**. He is presently serving a sentence of one year in relation to three of the offences and I presume leaves unpaid fines in excess of \$3,000.00 with respect to some of the others. In any case, there were fines imposed in excess of \$3,000.00.

Those subsequent convictions and his refusal to abide by the law in terms of drinking and driving is a serious concern with respect to Mr. Williams' attitude which has been referred to by his own Counsel this morning with respect to

5.

whether or not he may have a job when he is finished with this process. I have observed Mr. Williams carefully while he has been in Court. I have observed him today. I considered what the Probation Officer has to say with respect to his attitude. I accept that he accurately assessed Mr. Williams' behaviour and personality traits when he observed that the offender displayed a "negative attitude toward the judicial system". My hunch is that Mr. Williams displays a negative attitude towards all authority and that gives me some concern in sentencing Mr. Williams.

The sentence I intend to impose, I hope, will assist him or assist in convincing him that it is going to be much easier to comply with the rules and regulations that are laid down for him and for others. The laws that we have to comply with aren't there just to cause problems for him. They cause problems for all of us. To deliberately flout those law, to drink and drive in contravention of the law, and thereby create grave danger for other people who are lawfully going about their business, is a concern to the whole community, Mr. Williams.

I must in imposing sentence take into account not only the circumstances of the offence itself as well as the needs of society to be protected from such incidents. This brings into play the need for "general deterrence". The obligation

6.

I have to the community is to demonstrate that breaking and entry is a serious offence and that nobody can expect to walk away from such a conviction without suffering some penalty. I have to temper that with what I perceive to be the possibilities of reformation and rehabilitation of a particular accused. In that sense, I have to take into account what I have been told about the personalities and the potentials of you two men. I have to consider whether or not what I say or what I do may persuade you to change your ways. You have heard the lawyers talking about these two particular cases that Mr. Wickens has cited and provided copies. I refer to R. v. Schrader and R. v. Bursey. In one case it appears that the Judge was lenient because the fellow who was before him had really changed his life around. There was really hope that he wasn't going to see him back in Court again. In the other case, as I read it, the fellow who was before the Court had real problems, including psychiatric problems and the Judge in that case took a chance on what the fellow might be able to do with the help of a psychiatrist and with the help of his family.

I have heard what Counsel have had to say. I am not able to say which of you was the ring leader in this matter. I am not really able to distinguish, it seems to me, between the sentences that I impose on one of you or the other. The

7.

sentences which I impose on each of you must be reasonably consistent, one with the other. I take into account your personal circumstances. I take into account that there has been a lot of water under the bridge since this incident occurred. I suppose I have to take into account and frankly, I do take into account, the fact that the sentence that I impose on Mr. Williams will not, in one respect, have much effect on how long he remains incarcerated.

Bearing all of these things in mind, I find that a fit and proper sentence, Mr. Hurlburt, in your case, would be a period of incarceration of three months, after which you will be released to go about your business. You can get back to Ontario and rejoin your family. Hopefully with the assurance that you are going to be free after no longer than three months' your job will be open to you when you get back there. Your employer seems to be favourably impressed with you and wants you back there. My recommendation to you would be that you work hard, as your employer says you have done; don't miss any days at work; make sure you keep your job because there are thousands of other people in Canada who would like to have it; and I wouldn't be in too big a rush to come back here were you obviously are known in the community, known to the police and where you are going to be under suspicion all the time. You can sit down.



Mr. Williams, with respect to you, I, as I have said, I have a different view of you. Maybe I'm wrong. The sentence with respect to you, likewise, is that you serve a period of incarceration of three months which will be served concurrently with the sentence you are presently serving. In addition to that, I am going to impose a period of probation of two years. You are going to have to come to terms with authority, starting with your Probation Officer. You are going to have to follow the instructions of the Probation Officer to the letter.

The terms of your probation are going to be that you report to the Drug Dependency Centre at the Yarmouth Hospital; that you have an assessment there of what your drug or alcohol dependency situation may be; that you continue to attend there for counselling as may be recommended by the professionals there and as ordered by your Probation Officer, including an in-house program if that's available to you and if it's offered to you and if it's considered necessary, obviously, by the professionals.

In view of the obvious record you have for dependency on alcohol, perhaps the extent of the convictions with respect to alcohol means you may have forgotten about the illicit drugs for the time being. I am going to impose as an addition term that you refrain absolutely from the use of

alcohol and drugs during that period of time. And I should advise you that if you are apprehended and if it proves to be that you are impaired by either alcohol or a drug or have possession of drugs or something like that, then that would involve a separate penalty on that account, I want you to understand that, as a breach of probation.

You and since I am preaching or lecturing, I suggest to you that you have a good talk with yourself and perhaps with your father about your attitude to authority and perhaps it's news to you that people see you as having an attitude problem, I don't know, but if you are going to work some day or if you are going somewhere someday and you are feeling cross and you feel like lashing out, instead of doing what you are asked to do or smiling at people, then you had better become an actor and start acting as if you did enjoy life and as if you did enjoy your job when you are there working.

So you will be required to sign a Probation Order which will be provided to you in due course and part of your sentence is that you sign that Probation Order. The victim fine surcharges will be waived.

10.

DATED at Yarmouth, in the County of Yarmouth and  
Province of Nova Scotia this 22nd day of January, A.D., 1993.



---

CHARLES E. HALIBURTON  
JUDGE OF THE COUNTY COURT  
OF DISTRICT NUMBER THREE

TO: Mrs. Diane E. Hamilton  
Clerk of the County Court  
P.O. Box 188  
YARMOUTH, Nova Scotia  
B5A 4B2