

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Piercy*, 2014 NSPC 102

Date: 2014-12-09

Docket: 2649623, 2657767, 2649621

Registry: Pictou

Between:

Her Majesty the Queen

v.

Jayden Hugh Chandler Piercy

SENTENCING DECISION

Judge: The Honourable Judge Del Atwood

Heard: December 9, 2014, in Pictou, Nova Scotia

Decision: December 9, 2014

Charge: Section 344 Criminal Code of Canada
Section 334(b) Criminal Code of Canada
Section 354(1)(a) Criminal Code of Canada

Counsel: William Gorman, for the Nova Scotia Prosecution Service

James Violande for Jayden Hugh Chandler Piercy

By the Court:

[1] Jayden Hugh Chandler Piercy is before the court today to be sentenced for one count of theft of spirits from the Nova Scotia Liquor Corporation in Port Hawkesbury; one charge of robbery, but not involving the use of a firearm, which occurred at the Shoppers' Drug Mart on East River Road in New Glasgow; and finally, a count of possession of property obtained by crime, a charge that was transferred in from Bridgewater.

[2] The facts before the court are very straight-forward. On 8 September 2013, Mr. Piercy, along with an unknown individual, entered the Port Hawkesbury Liquor Corporation outlet and shop-lifted a bottle of rum. There is evidence of stealth, in that one of the individuals involved—either Mr. Piercy or his accomplice—attempted to defeat the closed-circuit-television loss-prevention equipment by obstructing the viewplane of the camera.

[3] Approximately two (2) weeks later, Mr. Piercy, along with his brother and a Ms. Ernst, pulled off the highway in Blue Acres. They parked in the old St. Gregory's church parking lot. Mr. Piercy and his brother then walked a short distance across Park Street, over to the Shoppers' Drug Mart. One of them whipped out an aerosol chemical irritant, and sprayed a customer who had just left

the store, blinding her. While the customer was immobilized, Mr. Piercy and his brother stole her purse . One item in the purse was a traceable cellphone.

[4] When police in Bridgewater caught up with Mr. Piercy for the robbery, thanks to the tracing of the phone, they found him with a truck that was displaying a Nova Scotia marker that had been stolen from another vehicle.

[5] The mitigating factors in this case are that Mr. Piercy is a young adult male who is not beyond the reach of rehabilitation. Mr. Piercy has entered guilty pleas, which the court treats as an authentic expression of responsibility and remorse.

[6] The court recognizes that it must not impose a sentence that would crush the prospect of rehabilitation.

[7] While Mr. Piercy has a criminal record, I am mindful of the fact that a criminal history is not an aggravating factor; Mr. Piercy is not to be re-punished for offences committed in the past. However, a record may signal whether an offender would be a good candidate for a lenient or rehabilitative sentence. I note that neither of Mr. Piercy's prior convictions was an offence relating to violence or the use of weapons.

[8] I refer to these as mitigating factors not in the sense that they lessen Mr. Piercy's degree of responsibility or the seriousness of the offences. They are

mitigating in the sense that they suggest to the court that Mr. Piercy would be a guardedly favourable candidate for a lenient sentence.

[9] Nevertheless, the court must apply the primary principle of sentencing. A sentence must reflect the degree of responsibility of the offender and the seriousness of the crimes. That is the fundamental principle of proportionality.

[10] These were serious crimes. The robbery, in particular, was especially brazen. Mr. Piercy utilized a chemical irritant to immobilize the victim. This was a weapon. It presented a real risk of the victim having severe reaction to a chemical irritant. The victim impact was significant. Her statement describes it poignantly:

I have always relied on walking as my main mode of transportation and until the incident, I have never been afraid of anyone or anything. I now experience nervousness, anxiety and fear while walking along the street which is increased when approached by other pedestrians. I often find myself looking around to see if I can spot anyone following me. This is something I have to face every time I leave my home. I no longer walk in or near the area of town where the incident took place. The incident often replays in my head. It has given me nightmares and it often effects my concentration throughout the day.

[11] Mr. Piercy's sentence will be a determinate sentence; that means it will have a starting point and a warrant-expiry endpoint date. But the impact upon the victim is likely to last for the rest of her life.

[12] A high level of victim impact is an aggravating factor statutorily under sub-para. 718.2(a)(iii.1) of the *Criminal Code*. In my view the robbery was opportunistic, planned and deliberate. It targeted a just-off-highway pharmacy, selected, no doubt, to afford the opportunity for a quick get-away. There was the use of a disguise, in that Mr. Piercy and his brother were unseasonably dressed. It was carried out far away from their home community to reduce the risk of identification.

[13] It is also aggravating, in my view, that the motivation was to support a drug habit. I recognize that chemical dependency may result in addicts experiencing overwhelming urges or cravings for drugs. I note that the accomplice who provided a statement to police referred to the Piercys using crushed hydromorphone through insufflation. Presumably, unless Mr. Piercy had a prescription for hydromorphone, it was acquired illegally. It is clear from cases I have dealt with in that past that there is a strong connection between illegal-prescription-drug use and the occurrence of crimes of violence in the community. I referred to this in *R. v. MacPherson* 2014 NSPC 13 at para. 23 as a basis for imposing a sentence that reflected the need to emphasise denunciation and deterrence. I find that that principle is applicable here.

[14] There is before the court a joint submission that I impose a penitentiary term of two years plus a day for the robbery on a go-forward basis. Counsel agree that Mr. Piercy should receive a 30-day sentence for each of the other two charges; they disagree whether those terms should be served consecutively.

[15] In my view, the joint submission is in line with sentencing authorities in this province, and it would certainly be in line with the sentence that I imposed recently in a decision involving this offender's brother, *R. v. Piercey* 2014 NSPC 94.

[16] Our Court of Appeal in *R. v MacIvor*, 2003 NSCA 60, stated that a sentencing court ought to defer to a joint submission unless the court were to be satisfied that the joint submission would bring the administration of justice into disrepute. I am conscious of the fact that this was largely a circumstantial case, and I recognize that great deference ought to be accorded an authentic *quid pro quo* joint recommendation negotiated by counsel who are in a far better position than the court to evaluate the strengths and weaknesses of the case.

[17] I note that Mr. Piercy has been on remand for 78 days. Applying the principles set out in the case of *R. v Carvery*, 2014 SCC 27, I intend to give Mr. Piercy time and a half credit of 117 days. That has been factored by counsel into

the joint submission regarding the robbery. Therefore, the sentence of the court will be as follows:

- First of all, in relation to case 2649623 which is the robbery count, the court will impose a sentence of two (2) years plus a day;
- The court will order and direct that the information and the warrant of committal be endorsed in accordance with the *Truth in Sentencing Act* that but for the remand time, the sentence of the court would have been an additional 117 days;
- There will also be a \$200-victim surcharge amount with 36 months to pay.
- A primary designated offence DNA collection order.
- A Section 109 order to run as follows: The court prohibits Mr. Piercy from possessing any firearm other than a prohibited firearm or restricted weapon and any cross-bow, restricted weapon, ammunition and explosive substance for a period of 20 years, and also that Mr. Piercy be prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

- The court will also order and direct that the warrant of committal be endorsed in accordance with the provisions of Section 743.21 of the *Criminal Code*: While in custody, Mr. Piercy is to have no contact or communication, either directly or indirectly, with the victim.

[18] It has been urged upon the court with respect to the remaining offences that the court consider the imposition of concurrent time. Pursuant to the provisions of Section 718.3 of the *Criminal Code*, I am mindful of the fact that a court that sentences an accused may direct that the terms of imprisonment be served consecutively when the accused is found guilty or convicted of more than one. This allows the court to exercise a discretion. Applying the principles set out by Scaravelli J. in *R. v McKenna*, 2014 NSSC 92, I am satisfied that these offences are sufficiently disconnected in time and circumstance as to warrant the imposition of consecutive sentences. In my view there is no connection between the possession of the plate and the robbery other than the fact that the plate apparently was on the truck that was used as the getaway vehicle. In my view, that is not a nexus that requires the court to consider concurrency.

[19] Furthermore, the shop-lifting from the liquor store occurred two weeks prior to the robbery and, again, there is not a sufficient nexus between that offence and the robbery offence as to call into play the principle of concurrency.

- Therefore, in relation to the theft from the liquor store, there will be a sentence of 30 days to be served consecutively to the robbery sentence.

There will be a \$100-victim surcharge amount with 36 months to pay. There will also be a stand-alone Section 738 restitution order requiring Mr. Piercy to pay restitution in the amount of \$28.49 in favour of the Nova Scotia Liquor Corporation in Port Hawkesbury.

- In relation to the possession charge, case 2649621, there will be a further period of 30 days to be served consecutively to all other sentences, and there will be a \$100-victim surcharge amount with 36 months to pay.

[20] The total sentence is two years plus a day for the robbery; 30 days consecutive for the theft; 30 days consecutive for the possession; \$200-victim surcharge amount for the robbery; \$100-victim surcharge amount for the theft; \$100-victim surcharge amount for the possession; 36 months to pay the victim surcharge amounts. Again, a primary-designated-offence DNA collection order in relation to the robbery. A 109 order for 20 years/life for the robbery. A non-communication order in the warrant of committal and a restitution order in relation to the theft.

[21] Anything further for Mr. Piercy, counsel?

[22] **Mr. Gorman**: I think that covers it, Your Honour.

[23] **Mr. Violande**: No, Your Honour.

[24] **The Court**: Thank you. Mr. Piercy, I'll have you go with the sheriffs, please, sir. Thank you very much.

Atwood, JPC