

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Prosper*, 2014 NSPC 103

Date: 2014-12-15

Docket: 2800236, 2800237

Registry: Pictou

Between:

Her Majesty the Queen

v.

Gordon Michael Prosper

SENTENCING DECISION

Judge: The Honourable Judge Del Atwood

Heard: December 15, 2014, in Pictou, Nova Scotia

Decision: December 15, 2014

Charge: Section 344(b)-463(a) Criminal Code of Canada
Section 137 Youth Criminal Justice Act

Counsel: Patrick Young for the Nova Scotia Public Prosecution
Service
Stephen Robertson for Gordon Michael Prosper

By the Court:

[1] The court has for sentencing Gordon Michael Prosper. Mr. Prosper elected to have his charges dealt with in this court and entered guilty pleas at a very early opportunity in relation to one charge of attempted robbery, as well as one charge of breaching a *YCJA* probation order. The attempted-robbery count is indictable. The breach is a summary-proceeding matter; although the order Mr. Prosper violated was made under the *YCJA*, Mr. Prosper was an adult at the time of the breach, so that he will be sentenced in Provincial Court.

[2] The positive or mitigating factors are that Mr. Prosper is just 19 years of age, and would appear to be a guardedly favourable candidate for a lenient sentence. Mr. Prosper is a member of the Pictou Landing First Nation. I have read the pre-sentence report and the Gladue report.

[3] The court applies the principles as set out by the Supreme Court of Canada in *R. v. Gladue*, [1999] 1 S.C.R. 433 and *R. v. Ipeelee*, [2012] 1 S.C.R. 433. The court must take into account the cultural, social, economic and political disadvantages that have been suffered by First Nations' communities over generations in Canada, and the justice system is not the least of those implicated in that injustice. It has resulted in forced relocation, economic poverty, educational

and social disadvantage, and an over-representation of members of First-Nations' communities in Canada's prison population.

[4] Ordinarily, a sentence for even attempted robbery of a pharmacy could fall within the range of three to five years, and I certainly take into account the significant level of appellant guidance that has been offered to sentencing courts out of our Court of Appeal.

[5] In this case, however, there is a joint submission before the court. I believe that the joint submission takes into account the mitigating factors, as well as Mr. Prosper's first-nations' status. The court recognizes, as well, that our Court of Appeal in *R. v. McIvor*, 2003 NSCA 60 stated that sentencing courts ought to depart from a joint submission only if the court were to be satisfied that the imposition of the joint submission would bring the administration of justice into disrepute, and I do not find that to be the case here. The joint submission is an eminently reasonable one.

- Therefore, Mr. Prosper, the court sentences you in relation to the attempt robbery charge to a sentence of two years plus a day in a federal institution.

- In relation to the Section 137 charge, the court sentences you to 30 days, but to be served concurrently.
- The court will also order and direct, pursuant to the provisions of Section 109 of the *Criminal Code*, that you be prohibited from possessing any firearm other than a prohibited firearm or restricted weapon and any cross-bow, restricted weapon, ammunition and explosive substance commencing today and ending ten years plus two years and one day after today's date. You are also ordered to be prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life. And that is in relation to the attempted robbery charge.
- The court will also order in relation to that charge as well, there will be a primary designated offence DNA collection order. I would assume, Mr. Young, it's still primary even though it's an attempt?
- **Mr. Young**: That's what I'm operating under.
- **The Court**: Very good, thank you. I think I would ... well it is still a 344-offence, so I'm satisfied that this is a primary designated offence. So, there will be a primary designated offence DNA Collection order. Yes, and actually it's covered off in paragraph (d) of that definition of primary

designated offence. “An attempt to commit or a conspiracy to commit an offence referred to in any of paragraphs (a) through to (c.01)”, so that covers it off.

- The court is also required to impose a victim surcharge amount in relation to the provisions of Section 737 of the *Criminal Code*. There will be a \$100-victim surcharge amount in relation to the 137 count, and a \$200-victim surcharge amount in relation to the s. 344-463 count, and Mr. Prosper you will have 36 months to pay those amounts.

- The court is also going to order and direct that there be a non-communication order under Section 743.21 endorsed on the warrant of committal. That will be in the name of the clerk at Poulain’s who received the note. I don’t believe I heard the name. No need to repeat it, but if the court reporter could be provided with that, we will include that non-communication order.

[6] Anything further in relation to Mr. Prosper, counsel?

[7] **Mr. Robertson:** Yes, Your Honour, just to remind the court: Mr. Prosper has another matter on January 20th with this court, and nobody had planned a get-

out order because he was out on bail at that time. So, I'm just advising the court that a get-out order will be needed for January 20th at 1:30.

[8] **Mr. Young**: January 20th. I thank my friend.

[9] **The Court**: So, Mr. Young, you'll be looking after that?

[10] **Mr. Young**: Yes.

[11] **The Court**: Thank you very much. So, Mr. Prosper, I'll have you accompany the sheriffs, please, sir. Thank you.

Atwood, JPC