

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. McInnis*, 2015 NSPC 89

Date: 2015-12-24

Docket: 2871160, 2857072, 2848758,
2941782, 2941783, 2941784

Registry: Pictou

Between:

Her Majesty the Queen

v.

Lawrence John Leonard MacInnis

SENTENCING DECISION

Judge: The Honourable Judge Del W. Atwood

Heard: 24 December 2015 in Pictou, Nova Scotia

Charge: Paras. 145(1)(b) x 2, 270(1)(a), 334(b) and 354(1)(a) of the
Criminal Code of Canada

Counsel: T. William Gorman for the Nova Scotia Public Prosecution
Service
Stephen Robertson, Nova Scotia Legal Aid, for Lawrence
John Leonard MacInnis

By the Court:

[1] The court is sentencing Lawrence John Leonard MacInnis. Mr. MacInnis entered guilty pleas this morning to a number of charges. Three of them were transferred here from Dartmouth as permitted by s. 479 of the *Criminal Code*: there are two summary counts of being unlawfully at large by failing to report for an intermittent sentence of imprisonment, contrary to para. 145(1)(b) of the *Code*, and one summary count of assaulting a staff member at the Central Nova Scotia Correctional Facility. There are three indictable counts from Pictou County: one, a charge of shoplifting from a local merchant, and another, a charge of possessing property obtained by crime, involving stolen merchandise found by police when Mr. MacInnis was arrested for the theft; at the time of the commission of those offences, Mr. MacInnis was subject to probation order # 1795127, imposed 9 September 2015 when Mr. MacInnis was sentenced for a number of property and bail-violation charges, and so there is now an indictable probation-breach charge to which Mr. MacInnis has pleaded guilty. Although prosecuted indictably, the value of the merchandise did not exceed five thousand dollars, bringing the theft and possession counts within the absolute jurisdiction of this court under the provisions of sub-paras. 553(a)(i) and (iii) of the *Code*; indictable probation

breaches also fall within the absolute jurisdiction of this court under sub-para. 553(c)(ix) of the *Code*.

[2] Each of the summary counts from Dartmouth would attract a maximum term of imprisonment of six months in virtue of s. 787 of the *Code*. Each of the indicatable, absolute-jurisdiction charges would carry a maximum term of imprisonment of two years as set out in sub-paras. 334(b)(i), 355(b)(i) and para. 733.1(1)(a) of the *Code*.

[3] There is a joint recommendation before the court for a total term of imprisonment of two years and one day.

[4] A sentencing court should depart from a joint recommendation only if it were to find that such a sentence would bring the administration of justice into disrepute.¹

[5] In my view, the joint recommendation is reasonable. It takes into account that Mr. MacInnis is solely responsible for these offences, the assault on the prison staff member having been particularly serious. It takes into account Mr. MacInnis's lengthy prior record set out in sentencing Exhibit # 1. Finally, it factors in sentencing parity, as Mr. MacInnis's criminal history and current

¹ See *R. v. McIvor*, 2003 NSCA 60.

offences resemble closely the types of offenders the court dealt with in *R. v. McKenna*,² *R. v. Dean*,³ *R. v. Smith*,⁴ and *R. v. Pilgrim*,⁵ cases in which I imposed sentences of imprisonment ranging from eighteen months to slightly over two years.

[6] Given that the joint recommendation is not less than two years, a conditional sentence is not permissible legally, in virtue of s. 742.1 of the *Code*.

[7] Mr. MacInnis is not beyond the hope of rehabilitation. He has held down hard jobs in the past. And the court must not impose a sentence that would crush the prospect of rehabilitation. A bare-minimum federal sentence takes these positive factors into account.

[8] The sentence of the court will be as follows:

[9] Case number 2848758, assaulting the prison staff member, a starting-point sentence of 6-months' imprisonment.

[10] Case number 2857072, the first count of being AWOL, a 6-month term of imprisonment to be served consecutively.

² 2014 NSPC 99, aff'd 2015 NSCA 58.

³ 2011 NSPC 40.

⁴ 2013 NSPC 106.

⁵ 2013 NSPC 60.

[11] Case number 2871160, the second AWOL count, a 6-month term of imprisonment to be served concurrently.

[12] Case number 2941782, the shoplifting count, a 6-month term of term of imprisonment to be served consecutively.

[13] Case number 2941783, the possession count, a 6-month term of imprisonment to be served concurrently.

[14] Finally, case number 2941784, the probation-breach count, a sentence of imprisonment of six months and one day, to be served consecutively.

[15] This results in a total penitentiary term of two years plus one day. There will be fines of \$10.00 in relation to each count, along with mandatory victim-surcharge amounts of \$3.00 on each count, with thirty-six months to pay.

[16] Probation is not permissible as a result of para. 731(1)(b) of the *Code* as the sentence exceeds two years.

[17] Please accompany the sheriffs, Mr. MacInnis.

JPC