

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Ashley, 2008 NSPC 11

Date: February 28, 2008

Docket: 1697678

Registry: Halifax

Her Majesty the Queen

v.

Deanna Dawn Ashley

DECISION

Judge: Jamie S. Campbell

Heard: November 22, 2007

Oral decision: February 28, 2008

Charges: *Criminal Code*; section 268

Counsel: Crown - Alison P. Brown
Defence - Lance Scaravelli

By the Court:

[1] Deanna Ashley stabbed Lisa Ashley twice. She used a kitchen knife. She is now being sentenced for having committed aggravated assault.

[2] People rarely fit into neat categories. When we try to make them fit we inevitably end up ignoring or glossing over some important features. Offences like aggravated assault are like that too. The offence covers a broad spectrum of violent behaviors. Each case is not defined by the label but by its own unique circumstances. Neither Deanna Ashley, nor what she did, can be fit into neat categories.

[3] The circumstances surrounding Deanna Ashley's stabbing of Lisa Ashley are strange at the very least. It is however difficult to imagine circumstances in which a stabbing could be described otherwise. There are no usual, normal or standard stabbings.

Facts of the Offence

[4] Despite sharing the same family name, Deanna Ashley and Lisa Ashley have no family relationship. They do know each other and their relationship has been one of bitter rancour. Deanna Ashley is 29 years old. She has for some time abused prescription drugs. That caused the victim in this matter, Lisa Ashley, to report her to the child protection authorities which eventually led to Deanna Ashley losing custody of her children.

[5] On October 13, 2006, Lisa Ashley traveled to where Deanna Ashley lived to make note of her civic street address so that she could apply for a peace bond against her. Lisa Ashley saw Deanna Ashley rummaging in her car. Deanna Ashley looked up and saw her. They exchanged a common rude hand gesture.

[6] Lisa Ashley backed her car up and drove into Deanna Ashley's yard. Deanna Ashley felt threatened by this and went into the house. There she grabbed a kitchen knife. Rather than staying in the house, she came out onto the steps. She stuck the knife into the wooden steps. More insults were exchanged. Lisa Ashley did not leave. Deanna Ashley came down off the step and stabbed Lisa Ashley once in the shoulder and once in the thigh.

[7] Lisa Ashley retreated and left to get medical attention.

[8] The stab wounds were each about 2 centimeters long. They were described as soft tissue injuries with no injury to underlying structures.

Deanna Ashley's Background

[9] Mr. Scaravelli described his client, Deanna Ashley, as a broken child. It would be difficult to disagree with that assessment. Her life, in many respects, is a real life insight into the factors that can contribute to making a young adult who is vulnerable to finding trouble without seeking it.

[10] Ms. Ashley's mother was 15 years old when she was born. Deanna Ashley was given up for adoption after two weeks. She was briefly reunited with her birth mother when she was about 19. That lasted for about three months. Ms. Ashley reported that her mother physically attacked her.

[11] She reported that her biological father is a crack dealer.

[12] Ms. Ashley was adopted when she was 14 days old. She has fond memories of her most early childhood. Then, when she was only 8 years old, her life began spinning out of control. Ms. Ashley claimed that there was violence in the home. She reported watching her mother being assaulted by her father. Ms. Ashley's mother confirmed the reports of violence in the home. By the time she was 11 she was smoking, drinking and stealing. She described herself as being out of control. Things did not get better from there.

[13] When she was 12 or 13 child protection agencies became involved with the family. She was removed from the home. She was placed in various foster homes, the Residential Resource Centre in Windsor and the Nova Scotia Hospital.

[14] By the age of 15 she described herself as being on her own. She was at that time vulnerable and victimized.

[15] When she was 17, Deanna Ashley gave birth to her first daughter. That child was apprehended by child protective services at the age of 6 months because of severe

neglect. The child was taken into permanent care.

[16] When she was 18 she gave birth to a second daughter. She gave that child up for adoption. She has two more children with whom she has had no contact for 8 to 12 months. There are Family Court matters pending. One child is in the care of the child's paternal grandparents and the other is being cared for by the child's father.

[17] Society demands that people take responsibility for their actions. That must be tempered with an understanding of the vastly different emotional and intellectual resources that people have available to them. Deanna Ashley's background is not one that equipped her to deal with stresses of life. She was, in some respects, sent out into life with almost an expectation that things would not turn out well.

Deanna Ashley's Current Circumstances

[18] Deanna Ashley has a Grade 6 education. She completed a 22 week employability skills training program and now hopes to attend the Starting Points Portfolio Development. That is a four month program to which Ms. Ashley has already been accepted.

[19] When the Pre-Sentence Report was prepared Ms. Ashley was working as a cleaner for about 25 hours a week. She was described by her employer as being a very dependable, hard working employee who puts a tremendous amount of effort into her work.

[20] In the past, Ms. Ashley has been employed as a cashier/clerk, a hotel housekeeper, a Tim Horton's hostess, and a cook. Her employment has been for brief periods of one to three months and those ended when she either quit or was fired.

[21] Ms. Ashley suffers from bouts of depression and anxiety. She has been prescribed Effexor and Lorazepam. She has a history of anger management issues, suicide and self harm, dating from when she was 13 until very recently. She has accessed numerous counseling and mental health services.

[22] She has a long history of substance use and abuse. She was smoking and drinking before she was 10 years old. By the time she was 12, she was using marijuana and hash. By 15, she was using alcohol every weekend. Between the ages of 16 and 28, Ms. Ashley said that she used any drug she could get, including crack, cocaine and prescription drugs. She says that she now rarely uses alcohol and has restricted her drug use to marijuana. She maintains that her prescription drug use has been under control for the past year.

Deanna Ashley's Psychological Condition

[23] Ms. Ashley has been involved in sessions with a psychologist, Mike Hennessey with the Department of Mental Health Services of the Colchester East Hants Health Authority. He noted in his December 27, 2007 letter, that Ms. Ashley had been working with him and had also started sessions with the Central Nova Women's Resource Centre and Bridges. She seemed to be developing more insight into her

emotional responses, and better control of expressing her emotions.

[24] She started attending an anger management workshop at Bridges in late 2006. Ms. Jane Donovan at the Bridges program noted concerns about Ms. Ashley's continuing pattern of investing in therapy, then backing off. Mr. Hennessey noted that this pattern had been demonstrated in her interaction with him since they first met. He noted that she would attend appointments when things were not going well or when there were upcoming court proceedings. When things were going relatively well, there would be longer gaps between appointments. He noted a reluctance to deal with core issues, at least with him.

[25] Mr. Hennessey said, that to Ms. Ashley's credit, when confronted with this pattern she seemed to be receptive, but after hearing from her in June 2007, he did not hear from her again until September of that year.

[26] During the fall of 2007, Mr. Hennessey suggested that things seemed to be going relatively well. She was then in a relationship, was free of medications, although there was daily marijuana use, and she was making contact with the Elizabeth Frye Society. She had developed a better awareness of her emotional triggers.

[27] In summary, Ms. Ashley appears to have made some modest progress. She has gained some insights into what sets her off but is not entirely committed to treatment. She seeks treatment only when things have gone out of control. Otherwise, she has a

tendency to revert back to her old patterns of behaviour.

Deanna Ashley's Plea

[28] Ms. Ashley has pled guilty to the offence of aggravated assault contrary to section 268 of the Criminal Code. She has expressed remorse. When asked what she was thinking at the time, she said that she wanted the victim to feel some of the pain she felt for not having her children with her. That is something for which she blames Lisa Ashley.

[29] Ms. Ashley said that if she is incarcerated, "I will make sure I won't come out of there alive". That amounts to a manipulative threat to commit suicide if she is not given a community based disposition as requested. That statement, in itself, suggests that there is much work to be done if Ms. Ashley is to become a functioning adult. It leaves the impression that if a community based sentence is issued that the threat has worked. It might also leave the impression that if there is a period of incarceration, as requested by the Crown, that this too has been a response to the threat. It has been made. It has played no part in the making of this decision, other than to provide some insight into the addled state of Ms. Ashley's decision making process.

Availability of Conditional Sentences

[30] The issue is whether Ms. Ashley should serve a conditional sentence. Both counsel agree that a sentence of two years would be appropriate. The Crown maintains that the sentence should be one of two years incarceration. Mr. Scaravelli, on behalf

of Ms. Ashley, says that this is an appropriate case for a conditional sentence.

[31] The Criminal Code sets out in section 718 that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society. The sentences imposed have certain objectives. Often all of the objectives are not required to be met. A balancing is required. There is no mathematical formula that can be brought to bear on the issue.

[32] Those objectives include the denunciation of unlawful conduct. That means that a sentence may be a way to condemn or to stigmatize certain conduct. A sentence may have as its objective deterrence. That can be a way to show that society will not tolerate unlawful behaviour. Those who break the law will be punished and this serves as a warning to the offender and to others. At times sentences must separate the offender from society when it is necessary to do so. Sentences may have as their objective the rehabilitation of the offender. This recognizes that society's best interest can sometimes be served by providing the offender with the tools she needs to deal with the problems that may have contributed to bringing her into conflict with the law. A sentence can provide a way for the offender to pay back something to the victim and to the community. It can also promote a sense of responsibility in offenders and provide an acknowledgment of the harm they have done.

[33] The sentence must also be proportionate to the gravity of the offense and the degree of responsibility of the offender.

[34] The Criminal Code, at section 718.2 sets out a number of principles to be taken into consideration in the balancing of those objectives. Sentences should be increased or decreased to account for aggravating or mitigating circumstances. For example, when an offence is motivated by bias or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or other similar factors, that will be considered an aggravating circumstance. The abuse of a spouse, common law partner or child, or taking advantage of a position of trust will also be aggravating factors. The involvement in organized crime and evidence that an offence was a terrorism offence will each amount to aggravating circumstances.

[35] The principles set out in section 718.2 go on to require that sentences should be similar to those imposed on similar offenders for similar offences in similar circumstances. When consecutive sentences are imposed, the combined length of those sentences should not be unduly long or harsh.

[36] Section 718.2(d) requires that the offender not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. Section 718.2(e) provides that all available sanctions, other than imprisonment, that are reasonable in the circumstances, should be considered.

[37] A conditional sentence is one of those sanctions for consideration. That is the case, according to s. 742.1, when the offence is not one for which there is no minimum term of imprisonment, where the sentence imposed is less than two years,

where serving the sentence in the community would not endanger the community and where it would be consistent with the purpose and principles of sentencing set out in section 718 to 718.2.

[38] The more specific issues here, are whether serving the sentence in the community would endanger the community and whether a conditional sentence would be consistent with the purpose and principles of sentencing.

[39] The necessity of deterrence when dealing with sentencing crimes of violence has been affirmed many times. Furthermore, in dealing with such crimes, rehabilitation and specific deterrence are less important than general deterrence. It is most important that others be shown that the law will deal sternly with those who use violence against others.

[40] That being said, there are many examples of individuals being sentenced to conditional sentences for crimes of violence. In *R. v. Proulx* [2001] 1 S.C.R. 61, Lamer C.J.C. stated that no offences are presumptively excluded from conditional sentencing. If the prerequisites for a conditional sentence are met, it remains open for consideration.

[41] In determining whether an offender poses a threat to the community, Chief Justice Lamer set forth two factors. The first is the risk of the offender re-offending. The second is the gravity of the damage that could ensue in the event of a re-offence. If there is a real risk of re-offending, incarceration should be imposed. If the risk of

re-offending is smaller, then consideration should be given to the potential harm that could be in the event of a re-offence. If there is a high probability, even with a lower impact, a conditional sentence should not be used. If there is a low probability with a high impact, the court must weigh just how low that probability is, in light of the potential impact.

Risk to Re-offend

[42] In dealing with the potential risk to re-offend, consideration must be given to the offender's criminal record and history of non-compliance with court orders. Here, Ms. Ashley has a criminal record that consists of one breach of a section 810 peace bond. That is of some concern given the circumstances here.

[43] There are allegations that she has breached the terms of her release on these matters. She has however not been charged with any breaches.

[44] In addition, in determining the likelihood of her re-offending, the court should consider the nature of the offence, the circumstances of the offence, the relationship of the offender with the victim, the profile of the offender, including her mental state, and her conduct following the offence.

[45] Here, the offence was certainly one of violence. It was however, not premeditated. Ms. Ashley did not seek out Lisa Ashley. In fact, Lisa Ashley came to her home. She did not precipitate the confrontation. Lisa Ashley drove into her yard

and got out of her car. Deanna Ashley's mistake was in not retreating into her house and staying there. Once she came outside with the knife, she did not immediately rush at Lisa Ashley. She planted the knife in the wood, more or less as a warning. Things then escalated beyond a mere confrontation.

[46] Ms. Ashley does not have a criminal record of violence. Her criminal record is minimal itself.

[47] Deanna Ashley does know Lisa Ashley. They are not related and nor are they close associates. Deanna Ashley's stabbing of Lisa Ashley was in the context of their personal feud. It was by no means a random attack. As noted earlier, it was not premeditated either. That suggests that Ms. Ashley is not someone who is prepared to act violently in a planned way. It also suggests that she is not necessarily someone who has a propensity toward violence in random situations. This incident was very context specific.

[48] While there are suggestions that Ms. Ashley can be less than diligent in attending to dealing with her mental health issues, there has been some hope offered. She has been seeking assistance. Mr. Hennessey's report is particularly helpful because it presents what appears to be a frank and unvarnished assessment of the situation. He does not minimize the issues that are of concern. She has begun to show some insight into her emotional and behavioral reactions.

[49] Ms. Ashley's attitudes toward her need for ongoing help, her responsibility for

this crime and her responsibility for her actions generally are ambivalent. She has accepted treatment, but complies only for as long as things remain in a crisis. She accepts responsibility for the crime, but her comment about making Lisa Ashley feel some of the pain she had felt in not having her children with her, is a not so veiled statement that she believes that Lisa Ashley got what she deserved. She has dealt, to some extent, with her drug problems but persists in smoking marijuana, despite the difficulty that obviously presents in becoming drug free.

[50] Ms. Ashley's techniques for dealing with these problems, saying what has to be said and complying with treatment only when faced with a crisis, are not surprising. Her attempt to influence the decision regarding a conditional sentence with her comment about suicide is another example of an attempt to manipulate. Rather than dealing with problems head on, she tries to secure the outcome she seeks by using techniques that she may see as subtle. While she has some responsibility to deal with these issues, it would be hopelessly simplistic to lose sight of the fact that Deanna Ashley is using the only strategies she knows for dealing with life's problems.

[51] It would in my view, be unfair, to lose sight of the fact as well, that progress has been made. Deanna Ashley has begun to show some insight into her emotional and behavioral reactions. She has shown that she will remain committed to treatment at least while under some outside pressure to do so. While undergoing treatment the risk that she will re-offend is reduced even more.

[52] Those circumstances suggest that Ms. Ashley is at a low risk to re-offend. It is

not a minimal or virtually non-extant risk. Her failure to comply with the terms of the peace bond and her less than sparkling record dealing with her own problems, show that some risk remains. If she is subject to a court order, backed by more serious consequences, the risk is not what could be considered a “real risk” to re-offend.

[53] In the event that she did re-offend, the issue is then the potential damage to be done. While this assault is a serious matter and could have been potentially lethal, the injury that was in fact done, was fairly superficial. Ms. Ashley did not, to use Mr. Scarvelli’s turn of phrase, “plunge the knife” into her victim. Anytime a knife is used as a weapon there is cause for grave concern. In this situation the use of the knife, in a spur of the moment matter, does not suggest that Ms. Ashley is a person who, even under stress, is inclined to use deadly force or who would intentionally inflict lethal injury.

[54] Both the offence and it’s relative severity arose from circumstances that are unlikely to present themselves again, particularly if proper measures are taken. Ms. Ashley, if serving a conditional sentence with appropriate conditions, would not present a danger to the community. That is the case, even though the risk to re-offend is small but not non-extant.

Appropriateness of a Conditional Sentence

[55] The next issue is whether Ms. Ashley’s serving the sentence in the community would be consistent with the purpose and principles of sentencing set out in sections

718 to 718.2 of the Criminal Code.

[56] Chief Justice Lamer, again in *R. v. Proulx*, said that the passing of the 1995 amendments to the Criminal Code providing for conditional sentencing, was a message to all Canadian judges that “too many people are being sent to prison”.

[57] Conditional sentences are intended to have both punitive and rehabilitative aspects. In that way, they are different from probation. Conditional sentences should include punitive conditions that restrict the offender’s liberty. Conditions such as house arrest should be the norm and not the exception.

[58] A conditional sentence need not be of equivalent duration to the sentence of incarceration that would otherwise be imposed. In many cases, the term of a conditional sentence is in fact longer than the term of incarceration that might otherwise have been imposed.

[59] Chief Justice Lamer specifically stated that a conditional sentence can provide significant denunciation and deterrence. There are cases however, where the only proper way to express society’s condemnation of the offender’s conduct and to deter similar conduct, is through incarceration.

[60] A conditional sentence may be imposed even where there are aggravating circumstances, even though the need for denunciation and deterrence are increased.

[61] As with the purposes and principles of sentencing, there is no formula that can be used to determine whether in the circumstances of a case a conditional sentence would be appropriate. At best, a judge can consider all of the relevant evidence and assess the aggravating and mitigating circumstances. If the judge is satisfied that the safety of the community would not be endangered and the other preconditions are met, a conditional sentence may be considered. In deciding whether a conditional sentence will be ordered, the judge must consider whether the situation is one where only a period of incarceration would address the concerns for denunciation and deterrence. If not, the other principles and purposes of sentencing must be considered, including the principle that sanctions short of incarceration should be considered.

[62] In this case, the offence took place in circumstances that suggest that Ms. Ashley reacted to both an immediate perceived threat and a long standing grievance. She was at the time heavily involved in the abuse of various forms of drugs. She was not emotionally or psychologically equipped to deal appropriately with the conflict, either in the short term or the long term. She does not have a history of violence. The violence here was context specific. Ms. Ashley attacked Lisa Ashley in circumstances that are not likely to be repeated, and are very unlikely to be repeated with anyone else. They are also circumstances that can be avoided with appropriate restrictions on Ms. Ashley's liberty.

[63] Ms. Ashley's personal history is a complicated and troubling one. She has sought help for those problems and it is critical that she accept the importance of dealing with the issues that have confronted her for a long time. The availability of

services and Ms. Ashley's serious attention to those issues will address the issue of community safety in the longer term more effectively than the period of incarceration that would be contemplated here. If Ms. Ashley does not commit seriously to participating in her own treatment in a meaningful way, some significant part of the justification for a conditional sentence would have been lost.

[64] A conditional sentence does have significant aspects of denunciation and deterrence. The granting of such a sentence is not seen as minimizing the significance of the crime. It is a form of custody. The breach of the terms of a conditional sentence will result very likely in the sentence being converted to a sentence of incarceration. It is not an equivalent to a period of probation.

[65] In considering whether a conditional sentence is appropriate, it is relevant to consider what terms might be imposed that would be effective and realistic. If Ms. Ashley is confined to her house in a form of house arrest, that deals to some considerable extent with the issue of denunciation and deterrence. That is particularly the case if she is required to submit to electronic monitoring. The nature of the offence and the offender here are not such that a period of incarceration is required to serve those purposes.

[66] The addition of a strict no contact provision with respect to Lisa Ashley will reduce any risk of Ms. Ashley's re-offending to a point where the safety of the public, or that of Lisa Ashley specifically, are not at risk. The requirement that Ms. Ashley participate in various counseling programs will contribute to both the longer term

improvement of her prospects in life and to the safety of the public.

[67] Similarly, the requirement that she abstain absolutely from the use of drugs and alcohol will mean that she must adopt a totally drug free lifestyle for the first time since she was a very young child. Regular drug testing will make compliance more likely. If Ms. Ashley decides to not participate or fully cooperate with those treatment efforts, or if she does continue to use alcohol or drugs, she will be in breach. That would be a signal that she may be increasing her risk to re-offend.

[68] I am satisfied that Ms. Ashley should serve a sentence of two years less one day. That sentence is to be served in the community as a conditional sentence.

[69] The length of the sentence is longer than might have been ordered had the sentence be one of incarceration. That is one feature of the deterrent aspect of the sentence.

[70] I am satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing. The conditions will be that she:

Keep the peace and be of good behaviour.

Appear before the Court when required to do so by the Court.

Report to a supervisor at Shubenacadie within 5 days, and as required and in the manner directed by the supervisor.

Remain within the jurisdiction of the Province of Nova Scotia unless permission to reside elsewhere is obtained from the court.

Be subject to electronic monitoring if required to do so by the supervisor.

Abstain absolutely from the use or consumption of alcohol or drugs as defined by the Controlled Drugs and Substances Act, unless a medical exemption for the use of marijuana has been obtained, and except those drugs prescribed by a physician in which case the drugs must be taken in accordance with the physician's prescription.

Be subject to periodic drug testing, including urinalysis, as directed by the supervisor.

Attend for assessment and counseling as directed by the supervisor, including mental health and substance abuse counseling.

Participate and cooperate in any treatment program as directed by the supervisor.

Have no contact, direct or indirect, with Lisa Ashley.

Not to own, possess or carry ammunition or explosive substances or any weapon as defined by the Criminal Code.

Be subject to house arrest, to remain in her house at 102 Garden Road, Belnan, Hants County Nova Scotia at all times, 24 hours a day subject to the following exceptions:

1. Medical appointments for herself, of which her supervisor is aware, or medical emergencies involving herself or a member of her household;
2. Attending court when required by the court or when under subpoena;

3. Attending meetings with her lawyer, of which her supervisor is aware;
4. Attending assessment, treatment or counseling programs as approved by her supervisor;
5. Attending an educational or training program as approved by her supervisor;
6. Attending employment, or job interviews, at places of employment and at such hours as are approved in advance by her supervisor;
7. All attendance, noted in paragraphs 2 to 6, must be by a direct route; and
8. Three hours each week, at a time as approved by your supervisor, for the purpose of attending to personal needs.

Judge Jamie S. Campbell

Judge of the Provincial Court