IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. Griffin, 2010 NSPC 47

Date: July 23, 2010
Docket: 1945751
Registry: Halifax

Between:

Her Majesty the Queen

v.

Erica Marie Griffin

Judge:	The Honorable Judge Castor H. Williams
Decision:	July 23, 2010
Charge:	s. 344, Criminal Code
Counsel:	Christopher Harmes, counsel for the Crown Peter Dostal, counsel for the Defendant

Introduction

1 The accused, Erica Griffin, a twenty-one-year-old offender on monthly disability benefits and with a history of mental health afflictions and substance abuse addictions, has pleaded guilty to the offence of robbery. This offence was the first in time as she subsequently was convicted of three counts of "failure to comply with conditions." She now presents herself for sentencing. Even so, counsel have raised several evolving and interesting problems concerning a fit and proper sentence disposition.

Facts

2 On the facts disclosed and in summary, counsel agree that on September 3, 2008, at about 1650 hours, the accused wearing jeans, a black hoodie pulled over her head and sunglasses, entered a local gas station. She unfolded a knife that was fully ten inches long and tapped it on the counter. The attendant asked: "What do you want?" The accused replied: "Cash." The attendant opened the till and asked: "How much?" The accused responded: "All of it." When the attendant gave her a portion of the money leaving some still in the till, the accused stated: "The rest." The attendant gave her the balance of the cash that totaled about $700.00 and the accused fled the scene.

3 When the police arrived on the scene the attendant, who had followed the accused, was able to direct them to the general area where she had last seen her. The police found a similar knife in the area and upon further investigation and enquiries, at 1710 hours, located and arrested the accused. A consent search in the basement of the building, where the accused sojourned, uncovered a hidden dark hooded sweatshirt that contained a large sum of money.

4 The accused, when interviewed by the police, denied committing the offence. However, she disclosed that she was addicted to cocaine and alcohol which were an expensive habit to maintain. Additionally, her monthly disability income of $400.00 was spent and she had nothing left from her last payment. Furthermore, she avowed that her associates had no knowledge of the robbery. Nonetheless, she has entered a guilty plea to the offence.

Position of the Parties on Sentencing

(a) The Crown

5 The Crown, citing several authorities, and in particular **R. v. Lebar,** [2010] O.J. No. 1133, (Ont. C.A.), submitted that the offence of armed robbery was by its intrinsic nature an act of violence. Here, the accused had informed an associate that she wanted money and was going to rob someone. Therefore, her act was premeditating. Moreover, her conduct was violent as the use of the knife was instrumental to that threat of violence to induce the desired result of obtaining the money. As a result, her conduct was an attempted use of violence against the attendant that was likely to endanger her life or safety and inflict upon her severe psychological damage. Consequently, her crime was a serious personal injury offence that would make the imposition of a conditional sentence order, as advocated by the Defence, an illegal sentence.

6 In any event, the imposition of a conditional sentence order, in the set of circumstances, would be an inappropriate sentence disposition. This was because the aggravating factors of the

seriousness of the offence and its premeditation; the use of a weapon; the vulnerability of gas station attendants and the semi-concealment of her face, required that the interests of denunciation, specific and general deterrent be the paramount factors in this case.

7 Furthermore, there were no special or unique circumstances that would warrant a departure from the baseline punishment of three years for armed robbery. This, in the Crown's view, was because the accused has shown little indication to turn her life around in a community setting as demonstrated by her three subsequent convictions, after the index offence, for failure to abide by court orders. Additionally, she has made no progress in seeking assistance for her addictions. Thus, in all the circumstances, the Crown urged the Court to impose a sentence of three years imprisonment in a Federal penitentiary.

(b) the Defence

8 On the other hand, the Defence submitted that the accused suffered and continued to suffer from serious mental health afflictions and illicit drug addiction. Her formative years were difficult as on the passing of her father, when she was aged five years, she was placed under the care of Child Protection because her mother had a substance abuse problem. In her teen years, she lacked parental guidance and support. As a result, she completed only her Grade 6 education, fell into drug use and abuse, and was involved in the sex trade as an escort and an exotic dancer. At the time of the index offence she was off her regular medications, was on a drug and alcohol binge and was not sleeping for several days.

9 While acknowledging that the benchmark punishment for robbery was three years and that the primary focus was on the principles of deterrence and denunciation, the Defence posited, citing **R.v. Bratzer,** 2001 NSCA 166 that a degree of leniency was permitted to allow a sentence to fall within the range of a conditional sentence order. He also referred to several unreported cases of conditional sentences for robbery in the Provincial Courts of Nova Scotia. Of particular import was the case of **R.v. Hendsbee**, 2009 NSPC 50, that had a similar fact situation as the case at bar.

10 In considering whether the accused committed a "serious personal injury offence," the Defence avers that, on the facts of this case, the accused only displayed a knife and tapped it on the cashier's counter. She did no other physical action. Likewise, she uttered no words that could be interpreted as threats or as words of intimidation.

11 He further posited that there was a difference between threats of violence and intimidation. A threat of violence was conduct that the probable result was imminent bodily harm. On the other hand, intimidation was conduct that had the potential for serious consequences but that the outcome was unclear. Although all conduct which involved threats of violence would include intimidation, an act of intimidation does not necessarily involve a threat of violence. The display of a weapon, without more, when demanding money while it could be perceived as threatening, did not rise necessarily to the level of a threat of violence.

12 At its core, here the act of intimidation was the possession of the knife. Thus, it was an act that, by the enactment of s.343(d), fell within the statutory definition of robbery as, theft while in possession of a weapon. Moreover, the interaction between the accused and the attendant was critical. With that in mind, on the facts, there was no violence. Therefore, the accused conduct did not endanger the attendant's life or her safety and it did not inflict upon her any severe psychological damage.

13 Further acknowledging that the possession of a weapon and the vulnerability of the victim were aggravating factors, the Defence points out that this is balanced by the youthfulness of the offender; no prior record of violence; her guilty plea; her remorse and that the offence was out of character. Additionally, although she does not meet the Axis 1 diagnosis, her mental health practitioners recommended counseling of one sort or another to address her mental health and related substance abuse issues. She was a person spiraling out of control but now her circumstances have changed and she reports to be agreeable to accepting and to undergo counseling and wants to get away from her prior unhealthy habits.

14 Likewise, she is not a danger to the community. She is in a positive personal relationship that demands strict abstinence from drug and alcohol. Further, she has dissociated herself from her past negative influences and has developed a strong relationship with her mother who is now ill and who relies upon her for mutual support. In all the circumstances, the Defence recommends a conditional sentence order of two years less one day with house arrest with strict conditions followed by a period of probation.

Pre-Sentence Report and related Documentary Reports

15 The Pre-Sentence Report discloses that the offender is a twenty-one-year-old female, with a Grade 6 education and living common law. She has no prior adult criminal record, was not on probation when charged and, currently, is not on probation. She has had a difficult upbringing having been placed in foster care at age five years old on the passing of her natural father because her mother had a substance abuse problem. She dropped out of school in Grade 7 and became involved in the illicit drug subculture, sex trade and became addicted to alcohol and cocaine.

16 Nonetheless, she is currently in a positive personal relationship that demands abstinence from the use of drugs and alcohol and she is dealing with overcoming her past negative influences and habits. Additionally, she has the support of her mother who suffers from a serious illness. Further, she has been diagnosed with an anxiety disorder and also the condition Hallucinogen Persisting Perception Disorder and is under active mental health treatment and medications. Since the index offence, she has participated in but not completed a detox program.

17 Likewise, she has expressed remorse, and, collateral sources report that, "she seems to have her life together now." Further, according to the author of the Report, she has "acknowledged that she has a substance abuse problems and has expressed a willingness to recommence counselling in this area."

18 The Defence also submitted several medical and psychological and psychiatric reports that related to her mental heath afflictions. Essentially, they disclose that in the five-year period between 2004 and 2009 the offender has had thirty-four hospital admittances or attendances for mental health interventions, treatments and/or assessments. Also, they disclose her complex history, chaotic early life with early substance abuse and dependence that were primarily alcohol and cocaine. Although she does not fit an Axis l disorder, her presentation was "in keeping with a primary Axis ll pathology in the way of borderline personality organization." Significantly, from a psychological viewpoint on the offender's self-explanation of her conduct, the index offence was described as an atypical behaviour. It was also posited that she would "require extensive individual psychotherapy to assist her to work through the turmoil of her past."

Aggravating Factors

19 Here, on the facts presented, I find the aggravating factors to be:

(a) possession of an offensive weapon - a knife;

(b) seriousness of the offence - liable to life imprisonment;

(c) vulnerable victim - gas station attendant.

Mitigating Factors

20 Similarly, I find the mitigating factors to be:

(a) the youthful age of the offender -age 21 - and a complex and difficult upbringing;

(b) no prior or any criminal record of violence - first offence in time;

(c) a guilty plea;

(d) expression of remorse; accepting responsibility for her conduct and a willingness to upgrade her education and to recommence counselling;

(e) the offence was out of character - an atypical offence;

The Relevant Legislation

21 The **Criminal Code** s.343 states:

Every one commits robbery who

(a) steals, and for the purpose of extorting whatever is stolen or to

> prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;
>
> • • •
>
> (d) steals from any person while armed with an offensive weapon or imitation thereof.

22 Section 344 is the specific sentencing provision and it states:

> 344(1) Every person who commits robbery is guilty of an indictable offence and liable
>
> • • •
>
> (b) in any other case [i.e. where a firearm is not used], to imprisonment for life.

23 In considering whether a conditional sentence would apply, the following provisions of the **Code** are relevant. Section 742.1 provides as follows:

> If a person is convicted of an offence, other than a serious personal injury offence as defined in section 752, . . . the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's compliance with the conditions imposed under section 742.3.

24 Section 752 defines a "serious personal injury offence," in part, as follows:

> (a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving
>
> (i) the use or attempted use of violence against another person, or
>
> (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting

> or likely to inflict severe psychological damage upon another person,
>
> and for which the offender may be sentenced to imprisonment for ten years or more ...

Issues

25 In my opinion, this sentencing has raised two significant evolving principles:

(a) Was the offence, by its mode of execution, one that is captured by the provisions of the **Criminal Code**, s.752 as a "serious personal injury offence" so as to deny, if deemed warranted, the imposition of a conditional sentence order pursuant to Criminal Code s.742.1?

(b) In the set of circumstances presented, is the imposition of a conditional sentence order a fit and proper sentence?

Analysis

(a) *Was the offence a serious personal injury offence?*

26 I start with the recognition by both counsel that the recent amendment to the **Code** concerning a "serious personal injury offence" and its modification to the conditional sentence regime is the paramount issue for consideration. They both appear to rely, in different ways, on two pertinent cases that have addressed this developing sentencing concept.

27 In **Lebar**, *supra.*, the accused entered an LCBO store in Thunder Bay. Approaching the cashier from behind, he touched her on her shoulder, produced a five-inch knife and, holding it close to her declared, "this is a robbery." The cashier gave him a sum of money. (Para. 9). The trial judge found that the accused conduct involved violence "whether implied or real." but went on to hold that "the violence was not sufficiently egregious to amount to a serious personal injury offence." (Para.28.) It is instructive and important to note that the appeal panel found that once a finding of fact was made that the conduct constituted an act of violence "there is no obligation to go further and measure the degree of violence." (Para.67.) There was no statutory distinction between "crimes of serious violence and less serious violence." (Para. 69.) As a result, the imposition of a conditional sentence was ruled an illegal sentence.

28 In **R. v. Hendsbee**, 2009 Carswell NS 548, 2009 NSPC 50, 284 N.S.R. (2d) 57 901 A.P.R. 57, a nineteen-year-old male entered a local gas station and told the clerk, upon enquiry, "This is a

robbery." The clerk replied: 'Are you serious?" The accused opened the palm of his hand toward the clerk that exposed to view a knife with a 3 ½ inch blade tucked up his sleeves. Thereupon, the clerk opened the till and backed away. The accused helped himself to the money, apologized to the clerk explaining that he was homeless and needed the money to purchase food.

29 In his analysis, and citing several authorities, Tufts. PCJ., concluded that although the term "uses violence or threats of violence" could be interpreted to reach a result that would constitute violence, the section should not be so broadly interpreted. For the reasons below, I would agree. In the result, he found that despite the fact that the accused conduct may have been an implied threat he neither brandished nor directed the knife toward the clerk. Also, as the accused uttered no threatening words or gestures, his conduct was not violent. Furthermore, in the set of circumstances the accused conduct did not endanger " . . . the clerk, his life or safety or the safety of others or was likely to do so." (Para. 30.)

30 Nonetheless, in my view, both cases are instructive on the approach adopted toward statutory interpretation. It seems to me that **Lebar,** *supra***.,** searched for the legislative intent as a reminder that we live in a system of parliamentary democracy that conditions our interpretation of laws. See also; **Rizzo v. Rizzo Shoes Ltd.**, [1998] 1 S.C.R.27., paras. 21-22. However, it recognizes, and I agree, that the legislative intent was to remove a degree of judicial discretion in the use of conditional sentences. Importantly, as well, it points out that the legislation did not remove judicial discretion in the interpretation of the factual situation as to whether or not a particular conduct constituted the use of violence or the attempted use of violence in any given case. I also agree.

31 Even so, I think that **Hendsbee**, *supra*., appears to take the approach that given the definition of robbery in s. 343(d), too broad an interpretation of "violence" would violate important, legally recognized norms. Thus, I think and it also appears that in carrying out the policy analysis it applied the presumptions that reflect the particular values and norms that there should be a strict construction of an exemption to the general law of who could receive a conditional sentence. This conclusion, as could be interpreted, appears to rest on the exception as found in **Lebar,** *supra*., that fact finding is in the discretion of the trier of the facts.

32 Thus, both approaches, in my view, are rational distinctions. They are both legislatively permissible and are reconcilable with each other. In essence, they are coherent, and neither do each defeat the purpose of the legislation. Additionally, one does not either undermine the efficient administration of justice or violate important norms of justice or fairness.

33 Therefore, I agree with counsels' submissions that robbery can be committed in many ways. Likewise, not all robberies include the use of violence or a threat of violence to a person. Similarly, this view was articulated by Epstein J.A., MacPherson and Armstrong J.J.A., concurring in **Lebar,** *supra.* at para. 33:

> 33 I agree with the respondent that robbery can be committed in many ways, not all including the use or attempted use of violence. Section 343(a) applies to a robbery committed with violence. It is categorically a crime of violence - violence is an essential element of an offence under that section. The same cannot be said about s. 343(d). From the wording of that section it is clear that the use or attempted use of violence is not an essential element. For a finding of guilt, the section merely requires that the Crown prove that the accused stole something while armed with an offensive weapon. If violence is found to have been involved, it is merely one of the circumstances under which the robbery was committed. Such is the nature of the trial judge's finding here, that the robbery was accompanied by violence.

34 Further, in considering the meaning of "violence" in the context of the Criminal Code, s.752, Epstein J.A., opined in **Lebar**, *ibid*., at paras. 49 and 50:

> 49 In my view, the meaning of "violence" in this definition must be informed by the entirety of the definition of a serious personal injury offence. A serious personal injury offence is defined, in part, either as an offence involving the use or attempted use of violence against another person, or "conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person." Taken together, and especially taking into account the far-reaching meaning of the word "safety", these two clauses point to the legislature's intention to cover a very expansive range of dangerous behaviour with the term "serious personal injury offence".
>
> 50 A finding that violence was used remains a matter of factual determination for the trial judge. Whether the criminal conduct amounted to the use or attempted use of violence is a matter relating to the circumstances under which the crime was committed. This is not tantamount to an objective assessment of the seriousness of the violence; rather it is a question of determining whether the evidence proves that violence was actually used. [Emphasis added]

35 Consistent with this line of reasoning and bearing in mind the enactment of s.343(d), I think that there is a dichotomous divide between threats of violence and acts of intimidation. In my opinion, and in the context of s 343, a threat of violence would be any conduct or a declaration of intention that was immediately and objectively discernible and which outcome would most likely result in bodily harm or injury to a person or property. On the other hand, an act of intimidation would be conduct that subjectively had the potential for serious consequences but which outcome was unclear. As such, it is conduct that inspires fear in order to influence a desired outcome. Although all conduct that involved threats of violence would include the perception of intimidation, an act of intimidation, by itself, however, does not necessarily involve threats of violence. A finding of violence or threat of violence is determined on the facts.

36 Consequently, on the facts, as presented and agreed upon, I conclude and find, on the above analysis, that the conduct of the accused did not constitute an act of violence or the threat of violence. Here, she merely tapped the knife on the counter without any further acts or gestures. She neither directed the knife toward the attendant nor held it to her body to prevent any resistance while she took the money. See for example: **R. v. Trudel** (1984), 12 C.C.C. (3d) 342 (Que. C.A.) Likewise, she did not say any words that contextually could be construed as threatening violence. The attendant's statement of the encounter to the police is sparse in details. There is no evidence that the attendant felt threatened and that she had reasonable and probable grounds for her fear or that physical injury may be reasonably apprehended. See for example: **R v. Sayers and McCoy** (1983), 8 C.C.C. (3d) 572 (Ont. C.A.) Moreover, she has filed no victim impact statement and her interaction with the accused, as could be gleaned from her statement, revealed no hint of severe psychological impact or fear of her life or safety. Thus, on the facts as presented and agreed upon, I would interpret the accused conduct as an act of intimidation. I find that she stole money from the attendant while she was armed with an offence weapon - the knife. **Criminal Code** s.343(d). See also for example: **Tremblay v. Quebec (Attorney General)** (1984), 43 C.R. (3d) 92 (Que. C.A.).

37 I have found that, here, it has not been proved that either actual violence or threats of violence were used. Further, as it is not clear, from the presented and accepted facts, what contextually could have been the likely outcome if other possibilities had arisen, in my opinion it is not possible, here, to sustain a finding, beyond a reasonable doubt, that the attendant's life and safety or that of any other person was endangered. Similarly, in my opinion, it is not possible to sustain a finding, beyond a reasonable doubt, that the accused conduct inflicted or was likely to inflict severe psychological damage upon the attendant or any other person. Thus, I conclude and find that the accused conduct, on the facts before me and on the above analysis, does not constitute a serious personal injury offence.

(b) *Is a conditional sentence an appropriate disposition?*

38 My starting point on this discussion is that two guiding principles of sentencing as enacted by s.718.2 are:

> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders . . .

39 To this end, I think that Parliament has endorsed the conditional sentence regime which, in my view, has a significant impact on the process of formulating a fit and proper sentence. See: **R. v. Longaphy** (2000), 189 N.S.R. (2d) 102 (N.S.C.A.), at para. 30. Furthermore, although the ultimate objective in sentencing the offender is the protection of the public, this goal also involves the exercise of the judge's discretion in designing a sentence. **R. v. Parker** (1997), 159 N.S.R. (2d) 166 (N.S.C.A.), at para 45., **R. v. Bratzer** 2001 NSCA 166, at para.15.

40 The Supreme Court of Canada in **R. v. Proulx**, [2000] 1 S.C.R.61, has detailed the procedure that a judge must follow when considering a conditional sentence. Additionally, **R. v. Johnson**, 2007 NSCA 102, has abridged this guidance as follows:

> 12 At the first stage, the judge, must conclude that neither probationary measures nor a penitentiary term would be suitable taking into account the circumstances of the offender and the offence before the court. In other words, the judge must be satisfied that the appropriate sentence is a custodial one of less than two years (Proulx, paras. 58 and 59; s. 742.1(a)).
>
> 13 Even should the sentence meet the above criteria, the judge may not impose a conditional sentence unless satisfied that having the offender serve the sentence in the community would not endanger its safety (Proulx, para. 63; s. 742.1(b)). Only if so satisfied may the judge go on to consider whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 (Proulx, para. 65; s. 742.1(b)).
>
> 14 "Safety of the community" refers to the specific threat posed by the offender before the court (Proulx, para. 68). This requires an assessment of both the risk of the offender re-offending and the gravity of the damage that could ensue on re-offence (Proulx, para. 69).

> 15 In Proulx, the Court rejects the proposition that certain offences are presumptively excluded from the conditional sentencing regime. However, neither is there a presumption in favour of a conditional sentence once the prerequisites are met. The particular circumstances of the offence and the offender must be considered in each case (Proulx, para. 85).

41 Therefore, on these principles, the offence of robbery could attract a sentence of a term of less than two years imprisonment. Even so, our courts have considered armed robbery as a very serious offence that merited severe sanctions with a starting point of not less than two years, for a first offence. **Longaphy**, *supra*., paras.27-29. Nonetheless, as evidenced by the decision in **Bratze**r, *supra.*, the starting point is not absolute from which a sentencing judge cannot depart.

42 Additionally, our Court of Appeal, in **Johnson**, *supra*., and **Bratzer**, *supra*., has cited with approval the following words of Thorson J.A., in **R. v. Quesnel** (1984), 14 C.C.C.(3d) 254 (Ont.C.A.), at p.255:

> There can, of course, be no quarrel with the proposition that from time to time a judge sentencing a convicted person, particularly a youthful one as in this case, should indeed "take a chance" on such person by exercising leniency in circumstances where leniency might not otherwise appear to be called for. In our opinion, however, there must be some factor present in the case before the sentencing judge that is sufficient to warrant a reasonable belief on his part, going beyond a mere hope, that the leniency proposed to be extended holds some prospect of succeeding where other dispositions available to him may fail.
>
> Whether the factor present is an indication of remorse, a glimpsed change in attitude on the part of the convicted person, or some other sign or signal that the convicted person may have learned something beneficial from his or her past and present encounters with the criminal justice system, there must be something positive weighing in his or her favour which can be looked to support the judge's chosen course of action.

43 In considering the sentencing options available, and, given the above noted authorities, in this case, and in my view, it includes the consideration of a conditional sentence order. On the documentary evidence before me and on the submissions of counsel, I am satisfied that, here, neither a term of probation nor a penitentiary term, given the circumstances of the offender would be a suitable sentence disposition. In these set of circumstances, which I will expand upon, I believe that

the ends of justice and the principles and purposes of sentencing as enumerated in ss.718-718.2, can be satisfied with the imposition of a custodial sentence of two years less one day.

44 In my opinion, the offender is not a risk to the safety of the community. This was an isolated offence that medical collateral sources determined was atypical to her character. I think that the offence was committed by a desperate young woman who suffered from mental health issues and substance abuse afflictions and who was spiraling out of control. The robbery was a wake-up call. Collateral sources described her "as an outgoing caring person whose partying has stopped and who seems to have her life together now." She has a number of supports that were not present before. Since the offence, her circumstances have changed for the better and for more than twelve months she has had no breaches.

45 Therefore, I think that given her expression of remorse; her strong positive support in the community; her dissociation with past negative influences; her willingness to recommence counselling to overcome her acknowledged substance problem; her plans to upgrade her education and expressed career desires despite her difficult upbringing have made her encounter with the criminal justice system a lesson well learned and one that, if punishment is properly structured, could have a positive effect upon her and a benefit to the community. Given these factors, in my view, her serving her sentence in the community would not endanger its safety.

46 She has satisfied me that she will comply with a court order. However, would the imposition of a conditional sentence order be consistent with the fundamental purposes and principles of sentencing? Protecting the public, denunciation, deterrence and rehabilitation are fundamental principles of sentencing. **R.v. Parker** (1997), 159 N.S.R. (2d)166 (N.S.C.A.) Likewise, deterrence and denunciation should be balanced with rehabilitation particularly for a first time offender. **R.v. Wismayer** (1997), 115 C.C.C.(3d) 18 (Ont.C.A.). A conditional sentence can be more effective than incarceration to achieve the restorative objectives of rehabilitation, protection of the public, deterrence and denunciation. **Proulx**., *supra*.

47 I do not minimize the fact that the offence of robbery is very serious. Also, I am mindful of the principle of deterrence both specific and general and the need to protect the public. However, several authorities suggest that the value of a lengthy term of imprisonment as a deterrent can be overemphasized. See for example: **Bratzer**., *supra.*

48 Thus, in considering the principle of proportionality and the gravity of the offence, I find that the evidence discloses that the accused has a long history of self-loathing and self-abusive behaviour that "is in keeping with an Axis II pathology in the way of borderline personality organization." (Dr. Theriault's report 2010-Feb-18). According to her Mental Health Court Assessment, the robbery was unplanned, "a blur," inexplicable and atypical behaviour. The incident occurred when she as off her medication and was on a drug and alcohol binge. It happened in the late afternoon in a populated area

and there were no threats uttered and neither was there violence nor the attempted use of violence. She, however, was semi-disguised. Further, there were no physical or psychological harm done to the attendant and her conduct, given her complex history, can be judged as an act of desperation in the set of circumstances in which she found herself. Given all these factors, in my opinion, the gravity and the seriousness of the offence should not unduly distort the consideration of an appropriate just penalty given her moral blameworthiness, as described. See: **R.v. M.(C.A)**, [1996] 1 S.C.R. 500.

49 I note that all the reports that have been generated and presented recommend that the accused would benefit from counselling to address her mental health and polysubstance abuse and dependence and that this would reduce her chances for future conflicts with the law. I am satisfied that she offended because of a series of events in her life that presented many challenges and with which she found difficulty in coping. She, however, has learned from this experience and there is a real potential for her to turn her life around if she is given the opportunity to do so. She has accepted responsibility for her conduct and is remorseful. This was her first offence and she has no history of violence. She now has a positive plan for her life. Thus, in my view, considering the aggravating and mitigating factors, a conditional sentence order would benefit her while at the same time deliver and achieve the objectives of protecting the public, denunciation, deterrence and rehabilitation.

50 Consequently, I think that the public interest can be served by crafting a sentence that provides significant elements of deterrence and denunciation. Also, I think that this can be achieved by her serving her sentence in the community with conditions that are both punitive and restorative. Likewise, I think that the robbery committed was an aberration in her life that would not be repeated if she is allowed to continue to develop her coping mechanisms within the community under strict conditions. Thus, in my view, a conditional sentence order, in the set of circumstances as outlined, would be consistent with the purposes, principles and objectives of sentencing.

Disposition

51 As a result, I will impose a term of imprisonment to be served in the community of two years less one day under the terms and conditions set out below:

> The court sentences you to imprisonment for 2 years, less 1 day and is satisfied that your serving the sentence in the community will not endanger its safety and is consistent with the fundamental purpose and principles of sentencing. You shall serve this sentence in the community under the following conditions:
>
> (a) Keep the peace and be of good behaviour;
>
> (b) Appear before the court when required to do so by the Court;
>
> (c) Report to a supervisor at Halifax on or before July 26, 2010 and as directed;
>
> (d) Remain in the Province of Nova Scotia unless written permission obtained;
>
> (e) Notify promptly of any change of name, address, employment or occupation.

And in addition you shall:

(a) not take or consume alcohol or other intoxicating substances;

(b) not take or consume a controlled substance as defined in the *Controlled Drugs and Substances Act* except in accordance with a medical prescription;

(c) not own, possess or carry a weapon, ammunition or explosive substance;

(d) complete 20 hours of community service work by July 23, 2011 as directed by your supervisor;

(e) attend for mental health assessment and counselling as directed by your supervisor;

(f) attend for substance abuse assessment and counselling as directed by your supervisor;

(g) submit for urinalysis or other alcohol or controlled substance screening as directed by your supervisor;

(h) attend for assessment, counselling or a program as directed by your supervisor;

(i) participate in and co-operate with any assessment, counselling or program directed by your supervisor;

(j) not associate with or be in the company of the following persons:

(i) any person known to you to have a youth court or criminal record except incidental contact in an education or treatment program or while at work;

(k) have no direct or indirect contact or communication with Adrienne Benoit

(l) do not be on or withing 50 metres of the premises known as Ken Butler's Ultramar at 6482 Chebucto Road; and

(m) make reasonable efforts to locate and maintain employment or an education program as directed by your sentence supervisor.

House Arrest:

To remain in your residence at all times beginning at 2300 hours (11:00 p.m.) on July 23, 2010 and ending at 11:59 p.m. on January 23, 2012 (18 months) except as indicated below:

(a) when at regularly scheduled employment, which your supervisor knows about, and travelling to and from that employment by a direct route;

(b) when attending a regularly scheduled education program, which your supervisor knows about, or at a school or educational activity supervised by a principal or teacher, and travelling to and from the education program or the activity by a direct route;

(c) when dealing with a medical emergency or medical appointment involving you or a member of your household and travelling to and from it by a direct route;

(d) when attending a scheduled appointment with your lawyer, your supervisor or a probation officer, and travelling to and from the appointment by a direct route;

(e) when attending court at a scheduled appearance or under subpoena, and travelling to and from court by a direct route;

(f) when attending a counselling appointment, a treatment program or a meeting of Alcoholics Anonymous or Narcotics Anonymous, at the direction of or with the permission of your supervisor, and travelling to and from that appointment, program or meeting, by a direct route;

(g) when attending a regularly scheduled religious service with the permission of your supervisor;

(h) when making application for employment or attending job interviews, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.;

(i) when in a residential treatment program if your supervisor is told, in advance, where you will be and you agree that the facility can tell your supervisor if you are there, should your supervisor inquire;

(j) for not more than 4 hours per week, approved in advance by your sentence supervisor, for the purpose of attending to personal needs;

(k) you will be subjected to electronic monitoring as recommended by your supervisor;

(l) when not in your residence you will have a copy of this order which you will produce on demand by a peace officer.

Curfew:

Remain in your residence from 2300 hours (11:00 p.m.) until 0600 hours (6:00 a.m.) the following day, seven days a week beginning on January 24, 2012 and ending at 0600 hours (6:00 a.m.) on July 20, 2012 except as indicated below:

(a) when at regularly scheduled employment, which your supervisor knows about, and travelling to and from that employment by a direct route;

(b) when attending a regularly scheduled education program, which your supervisor knows about, or at a school or educational activity supervised by a principal or teacher, and travelling to and from the education program or the activity by a direct route;

(c) when dealing with a medical emergency or medical appointment involving you or a member of your household and travelling to and from it by a direct route;

(d) when attending a scheduled appointment with your lawyer, your supervisor or a probation officer, and travelling to and from the appointment by a direct route;

(e) when attending court at a scheduled appearance or under subpoena, and travelling to and from court by a direct route;

(f) when attending a counselling appointment, a treatment program or a meeting of Alcoholics Anonymous or Narcotics Anonymous, at the direction of or with the permission of your supervisor, and travelling to and from that appointment, program or meeting, by a direct route;

(g) when attending a regularly scheduled religious service with the permission of your supervisor;

(h) when making application for employment or attending job interviews, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.;

(i) when in a residential treatment program if your supervisor is told, in advance, where you will be and you agree that the facility can tell your supervisor if you are there, should your supervisor inquire;

(j) for not more than 4 hours per week, approved in advance by your sentence supervisor, for the purpose of attending to personal needs;

(k) you will be subjected to electronic monitoring as recommended by your supervisor;

(l) when not in your residence you will have a copy of this order which you will produce on demand by a peace officer.

Compliance:

Prove compliance with the curfew/house arrest condition by presenting yourself at the entrance of your residence should your supervisor or a peace officer attend there to check compliance.

52 This will be followed by a period of probation of two years on the terms and conditions set out below:

Upon expiration of the sentence of imprisonment imposed on your pursuant to **straight time custody** or a **Conditional Sentence Order** for the period of 24 months.

Comply with the following terms and conditions:

(a) Keep the peace and be of good behaviour;

(b) Appear before the court when required to do so by the Court;

(c) Notify the court, probation officer or supervisor, in advance, of any change of name, address, employment or occupation.

And in addition:

(a) report to a probation officer at Halifax, within 2 days from today or of the date of expiration of your sentence of imprisonment, and when required, as directed by your probation officer or supervisor;

(b) remain within the Province of Nova Scotia unless you receive written permission from your probation officer;

(c) not to take or consume alcohol or other intoxicating substances;

(d) not to take or consume controlled substances as defined in the ***Controlled Drugs and Substances Act*** except in accordance with a medical prescription;

(e) not to own, possess or carry a weapon, ammunition or explosive substance;

(f) have no direct or indirect contact or communication with Adrienne Benoit;

(g) do not be on or withing 50 metres of the premises known as Ken Butler's Ultramar at 6482 Chebucto Road;

(h) make reasonable efforts to locate and maintain employment or an education program as directed by your probation officer;

(i) attend for mental health assessment and counselling as directed by your probation officer;

(j) attend for substance abuse assessment and counselling as directed by your probation officer;

(k) attend for assessment, counselling or a program directed by your probation officer;

(l) participate in and co-operate with any assessment, counselling or program directed by the probation officer;

(m) not to associate with or be in the company of the following persons:

(i) any person known to you to have a youth court or criminal record except incidental contact in an education or treatment program or while at work;

Curfew:

Remain in your residence from 2300 hours (11:00 p.m.) until 0600 hours (6:00 a.m.)

the following day, seven days a week, except as indicated below:

(a) when at regularly scheduled employment and travelling to and from that employment by a direct route; and

(b) when dealing with a medical emergency or medical appointment involving your or a member of your household and travelling to and from it by a direct route.

Compliance:

Prove compliance with the curfew/house arrest condition by presenting yourself at the entrance of your residence should a probation officer or a peace officer attend there to check compliance.

_____

Judge Castor H. Williams