IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. Robson, 2010 NSPC 76

Date: December 14, 2010
Docket: 2253053, 2253054,
2253057, 2253058
Registry: New Glasgow

Her Majesty the Queen

v.

Anthony Dimetri Robson

Judge: The Honourable Del Atwood

Heard: December 14, 2010

Decision: December 14, 2010

Charges: **Criminal Code**
Section 348 and 334

Youth Criminal Justice Act
Section 137 x 2

Counsel: Patrick Young for the Crown
Douglas Lloy for the Defence

[ORALLY]

The Court: I've received the written submissions from the Crown as well as your book of authorities, Mr. Young, and I also received, Mr. Lloy, your sentencing submissions and the authorities that accompanied your brief. Were there any further submissions that the parties wished to make to the Court. Mr. Young?

Mr. Young: There's nothing else the Crown can usefully add.

The Court: Very good. Mr. Lloy?

Mr. Lloy: Much the same as the Defence, Your Honour.

The Court: Thank you very much. The Court has for sentencing the matter of -- and I'm sorry Mr. Lloy, I should check -- is there anything that Mr. Robson wishes to say before sentence is imposed? You don't have to but if there is anything you wish to say now, Mr. Robson, the Court is prepared ---

Mr. Robson: I don't have nothing to say.

[1] **The Court**: Okay, thank you very much. The Court has for sentencing the case of Anthony Dimitri Robson who entered guilty pleas at a very early opportunity in relation to four charges. One is an indictable break and enter into a dwelling house, 342 Branch Street, New Glasgow, Pictou County, Nova Scotia, and committing the offence of theft contrary to Section 348(1)(b) of the **Criminal**

Code of Canada that occurred on November 13th, 2010. There is a summary breach of probation charge that accompanies that. In addition, Mr. Robson has pleaded guilty to an offence from the 21st of November, 2010, theft of a 3030 Winchester firearm, the property of Stephen Stacey of a value not exceeding $5000.00. That matter was prosecuted summarily and there is also a Section 137 YCJA count that accompanies the theft.

[2] The facts before the Court were that on November 13th, 2010, the homeowners, a mother and son, were home at the residence at 342 Branch Street, a dwelling in New Glasgow, Pictou County, Nova Scotia, when Mr. Robson, who apparently is unknown to the residents, entered through an unlocked patio door. The accused had been drinking and asked to use the phone. Entry into a dwelling, without permission, constitutes a break and enter as is defined in Sections 321, 348 and 330 of the **Criminal Code of Canada**.

[3] Mr. Robson was described as being under the influence of alcohol at the time. At one point, while Mr. Robson was in that residence without permission, he got up, walked around, grabbed a purse and fled out the front door. The homeowner and her son attended at the New Glasgow Police Service, and were presented with a Sophonow-compliant photo-pack lineup; they were able to

identify Mr. Robson as the individual who broke into their residence and committed the theft of the purse.

[4] On the 21st of November, 2010, Mr. Stephen Stacey telephoned police to report a vehicle break-in and that two firearms: a .22 and a .30-30 calibre firearm had been stolen from his vehicle. According to Mr. Stacey, as of the previous Saturday night, both firearms had been in that vehicle. There was no evidence put before the court as to whether those firearms were stored in accordance with governing regulations under the **Firearms Act**, and the court makes no findings on that point. As I understand it, the accused admits to taking the .30-30, but does not admit to taking the 22; however, the Court is satisfied that even the taking of the .30-30 supports the charge under Section 334 of the **Criminal Code**.

[5] Based on the eye-witness identification, the accused was arrested for the break and enter; after being taken into custody, Mr. Robson told the police that he was responsible for the firearm theft and the police, as I understand it, were able to recover the .30-30 firearm.

[6] The accused has a significant prior record. 38 prior findings of guilt under the **Youth Criminal Justice Act** including 13 breach-related offences and 19 property-related offences. This is the accused's first sentencing hearing before the

Court as an adult and that is obviously a mitigating factor. Nevertheless, the Court does consider the prior record as a youth, not for the purposes of aggravation, but for the purposes of determining whether the accused would be an appropriate candidate for a non-custodial, rehabilitative sentence. In the Court's view, the accused's significant prior record supports the proposition that denunciation and deterrence will be appropriately emphasized in the imposition of the sentence here. In addition, in the Court's view, this is one of those rare cases when, in order to sufficiently protect the public, promote a sense of responsibility in Mr. Robson, and provide reparation for harm done to victims and the community, the Court must consider a sentence that will separate the offender from society; in this particular case, it is necessary in order to accomplish the core objectives of sentencing, particularly the objectives of denouncing unlawful conduct and protecting the public, given the gravity of the offences and the high degree of Mr. Robson's personal responsibility.

[7] The Court has reviewed the sentencing authorities that have been submitted by the Crown and Defence. Those authorities provide additional judicial interpretation to the decision out of what was then the Nova Scotia Supreme Court Appeal Division in ***R. v. Zong*** (1986), 72 N.S.R. (2d) 432. The decision of the

Court was rendered by former Chief Justice Lorne O. Clarke, and it has been the subject of continuous judicial application in Nova Scotia and elsewhere. The Court would note that as recently as this past spring, the ***Zong*** decision was referred to by the Nova Scotia Court of Appeal in the opinion of the Honourable Justice Nancy Bateman in the decision of ***R. v. Adams***, 2010 NSCA 42. In the ***Adams*** decision, Justice Bateman, in dealing with a Crown appeal from sentence involving an individual with an array of very serious property-related offences, applied at paragraph 42 of her opinion the principles applicable to break and enter sentencing based on the ***Zong*** case. Justice Bateman noted that, " the absence of a record might warrant a reduction from the benchmark which according to ***Zong*** is three years, down to two years."

[8] The three-year benchmark is well recognized in the Province of Nova Scotia, and I would refer as well to the ***Keans*** decision of the Nova Scotia Supreme Court Appeal Division. That decision is reported at 1991 NSJ 21. In rendering the judgment of the Court, Mr. Justice Malachi Jones was dealing with a 19-year old male who had entered pleas of guilty to ten counts in an indictment containing eleven counts. The sentence that had been imposed in the County Court by Judge Cacchione of the County Court Judge's Criminal Court, as he then was, totaled

five years. The Court, in considering that five-year sentence, determined that the three-year term imposed by Judge Cacchione for the residential break and enter, in which Mr. Keans was implicated, was appropriate. Justice Jones noted that, notwithstanding the fact that Mr. Keans had no prior adult record, he had a previous record as a young offender with 26 findings of guilt. The Court was concerned particularly with the property damage and loss of property that arose in the course of that residential break and enter and, therefore, the Appeal Division, although it granted leave to appeal, upheld the three-year jail sentence which was part of the overall sentence of five years imposed in the County Court.

[9] In this particular case, the Court applies the principles of sentencing set out in Sections 718 and 718.1 and 718.2 of the **Criminal Code**, and gives credit to Mr. Robson for his early guilty pleas; the Court recognizes the fact that he is a young adult before the Provincial Court for the first time, although with a significant YCJA record. However, the court is mindful of the fact that residential break and enter is an offence that typically has a profound impact upon victims. Although there was no victim-impact statement submitted in this particular case, it is within the common knowledge of the Court that people who are victimized by break-in offences, lose the sense of security that they are entitled to have when they are in

their own homes; in all likelihood, the two residents of that home entered by Mr. Robson will wonder for the rest of their lives, whenever they hear a sound, a creak, a rustle, a door opening or closing, “who is it this time?”.

[10] In the Court’s view, applying the principles of sentencing enunciated in ***Zong*** and applied in ***Keans*** and ***Adams*** and other cases, the appropriate sentence for the break and enter into the residence at 342 Branch Street is a period of two-years’ incarceration in a federal institution and that will be the sentence of the Court. In relation to the breach of probation charge that accompanies the B&E, in the Court’s view, concurrency does not apply. The fact that the accused was subject to a probation order at the time he committed the break and enter is an additional aggravating factor that compels the Court to consider the application of consecutive sentencing and there will be a three-month period of custody to follow consecutive to the two years. In relation to the theft of the .30-30 Winchester firearm, the theft of any firearm is a serious matter. When firearms wind up being removed from the care and control of the people who are responsible for them and taken by persons who are not entitled to possess them, the risk to the public is immediate and apparent. In the Court’s view, a significant degree of denunciation and deterrence is warranted in relation to that charge and there will be a three-

month consecutive term of imprisonment imposed in relation to the theft of the firearm, consecutive, that is, to the B&E and the breach..

[11] In relation to the Section 137, the Court would have imposed a sentence of approximately a month. However, taking into account the fact that the accused has been in custody on remand for, as I understand it, 25 days, in applying the one-to-one principle set out in the **Truth in Sentencing Act**, sub-s. 719(3) of the **Code**, although the Court would have imposed a 25-day consecutive sentence for that particular charge, the Court is going to impose a sentence of one day, served by Mr. Robson's appearance in Court.

[12] Given the fact that Mr. Robson will be subject to a significant federal term of imprisonment of two years and six months, the Court is of the view that the imposition of victim fine surcharges would not be appropriate here. It would work an undue hardship.

[13] I am satisfied that the Section 348 charge involves a dwelling house, and, is therefore a primary designated offence under s. 487.04; accordingly, the Court will be making a primary-designated-offence DNA collection order in relation to the 348 charge, pursuant to s. 487.051. So, the total sentence of the Court will be two years and six months, plus the DNA order. Anything further for Mr. Robson?

Mr. Young: No, Your Honour.

The Court: That's all for Mr. Robson, sheriff. Thank you.