

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Tanner, 2012 NSPC 13

Date: 20120117

Docket: 1474441, 1474444,
2335728, 2360093,
2360095, 2404114 .
2404116

Registry: Sydney

Between:

Her Majesty the Queen

Plaintiff

-and-

Melissa Marlene Tanner

Defendant

SENTENCING DECISION

Judge: The Honourable Judge Jean M. Whalen, J.P.C.

Heard: January 17, 2012

Charges: Sections 145(3) x 3, 264.1(1)(a), 266(b), 354, 733.1(1) *Criminal Code*

Counsel: Kathy Pentz, for the Crown
Doug MacKinlay, for the Defence

Introduction

[1.] This is the sentencing decision for Melissa Tanner. The facts that the court heard, in particular she changed her plea to six offences, two dating back to 2004 from Yarmouth, three were for breaching court orders in 2011, one is a property related matter and two offences are what we determine are offences against a person, particularly the 264.1(1)(a) and a 266.

[2.] I note that Ms. Tanner was not on probation for the July 20th, 2011 offence as it had been terminated early.

[3.] None of the offences are what the court would describe as the most egregious but there are some aggravating factors. Particularly the Section 354 possession was a breach of trust of a friend or an acquaintance and Ms. Tanner was on probation. The 264.1(1)(a) is domestic violence in nature. The 145 of August 1st, although contact was consensual, Ms. Tanner knew that she was on the order and she was hiding in the back seat, thus quite obviously knew she was not supposed to be having contact. And the 145 of September 10th where that particular offence put her in breach of two undertakings, one dated July 12th and one dated August 2nd. The most recent offences of January 1st, the assault and another breach.

[4.] Mitigating factors are the change of plea on all of these matters which prevented the complainants from having the testify, and there was no physical harm occasioned by anyone.

[5.] There are no victim impact statements provided, although I would note that Ms. Tanner's current partner and the complainant on the January 1st matter was present at the time and expressed her support.

[6.] With respect to the presentence report, it states Ms. Tanner is 29 years of age. Her upbringing was tumultuous with parents experiencing some mental health issues. I would note now that she has the support of her father.

[7.] Ms. Tanner herself struggles with mental health issues. I would note as well the previous relationship from which some of these charges arose, was abusive. Her current relationship seems to be positive, save and except for this January 1st matter.

[8.] Ms. Tanner has a limited education and has no future plans to go back to school. She is currently unemployed.

[9.] She acknowledges her use and abuse of alcohol and drugs.

[10.] She is remorseful and accepts responsibility.

[11.] I would note that she has responded positively in the past to community supervision.

[12.] Between 2002 and 2011 she has 32 convictions. I would note these criminal acts began later in life at approximately 20 years of age. Her record notes that 14 of these are breaches of recognizances, undertakings or probation orders. The others are threats or assaults or disturbances. She has received periods of probation, conditional sentences and jail time. I would note that during the conditional sentence that was imposed there were no breaches of that particular order.

[13.] With respect to the disposition, the Crown seeks a four to five month jail sentence, in particular straight time followed by probation with conditions and restitution.

[14.] Defence counsel seeks a period of conditional sentence to be served in the community in the range of six to seven months, or 90 days to be served intermittent.

[15.] Counsel reminded me that Ms. Tanner has served four to six days in jail on remand before being released on some of these charges.

[16.] What is an appropriate sentence for Ms. Tanner?

[17.] It is a basic theory of punishment that the sentence imposed bear a direct relationship to the offence committed. It must be a fit sentence proportionate to the seriousness of the offence. Only if this is so can the public be satisfied that the offender deserves the punishment received and feel confidence and fairness in the rationality of the system. To be just, the sentence imposed must also be commensurate with the moral blameworthiness of the offender. A sentence that is not just and appropriate produces only disrespect for the law. These common-law principles have been codified in sections 718, 718.1 and 718.2 of the *Criminal Code*.

[18.] Parliament has codified a number of other important values to help sentencing judges give effect to the fundamental principles of proportionality. The articulated principles however, are general in form, and moreover they provide no mechanism for resolving the inevitable conflicts that arise between these various principles in individual cases. Sentencing judges are simply told to weigh and balance the competing principles and fashion an appropriate sentence.

[19.] In crafting the appropriate sentence the Court must have regard to the factors set out in the *Code* as well as the nature of the offence committed and the personal circumstances of the offender. According to the Supreme Court of Canada, the appropriate sentence will also depend on the circumstances of the community in which the offence took place.

“It must be remembered that in many offences there are varying degrees of guilt and it remains the function of the sentencing process to adjust the punishment of each individual offender accordingly.

The appropriate sentence for the specific offender and offence is therefore determined, having regard to the compendium of aggravating and mitigating factors present in the case. It is the weight attached to the aggravating and mitigating factors which shape and determine the sentence imposed and this is an individual process. In each case the court must impose a fit sentence for this offence in this community.

The nature and gravity of the offence is properly the central factor in sentencing. It is and must be the first rule that prompts the court. The concern behind this consideration is that there should be a just proportion between the offence committed and the sentence imposed. Our basic notion of fairness demands that every sentence be primarily and essentially appropriate to the offence committed having regard to the nature of the crime and the particular circumstances in which it was committed.”

[20.] Other common law principles of sentencing must also be appropriately applied. In the end, the punishment must be proportionate to the moral blameworthiness of the offender. The public must be satisfied that the offender deserved the punishment received and must feel a confidence and fairness and rationality of the sentence. This principle of proportionality is fundamentally connected to the general principle of criminal liability which holds that the criminal sanction may be imposed only on those who possess a moral culpable state of mind. The cardinal principle is that the punishment shall fit the crime.

[21.] The first part of the test for a conditional sentence is whether or not jail is appropriate in the circumstances, and if so, should it be two years less a day, which would make Ms. Tanner eligible for a conditional sentence. There is no minimum term requirement.

[22.] The second part of the test is that the court must be satisfied that serving a sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing as set out in the *Code*.

[23.] So the essence of a conditional sentence is that an offender who would otherwise serve up to two years in prison would instead remain in the community

for the entire duration of the sentence provided that he or she abides by the conditions of a conditional sentence order.

[24.] Safety of the community is primary and only if the court is satisfied that the safety of the community would not be endangered by a conditional sentence can the fundamental purposes and principles of sentencing be considered. The issue of safety is confined to concerns that are specific to the offender, and general deterrence must not be considered as a factor in determining safety.

[25.] The first part of the test, given the nature of the charges and Ms. Tanner's record, I find that a jail sentence is appropriate and that it should be for a period of less than two years. The second part of the test asks should this be served in the community. I would note that Ms. Tanner's last six offences appear to be connected to her last relationship which has ended. Prior to these, Ms. Tanner has had no offences since 2004, which appears to have involved the larger community. Although Ms. Tanner has breached an undertaking on two occasions, she has in the past responded positively to court supervision so much so that there was an early termination of her probation on April 13, 2011.

[26.] Although Ms. Tanner is known to the Cape Breton Regional Police because of domestic violence, they do not say that she is a concern to them within the larger community.

[27.] Ms. Tanner appears to be in a positive relationship and has the support of her new partner.

[28.] Given all of the above, the court is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purposes and principles of sentencing.

[29.] Therefore Ms. Tanner I am going to sentence you to a period of six months in jail, but that will be served as a conditional sentence in the community, to be followed by 22 months probation. There will be a firearms prohibition pursuant to Section 109. There will be no DNA order, and no victim fine surcharge.

[30.] With respect to the conditional sentence order, it will begin today for a period of six months. There will be the standard conditions and a positive residence requirement. You will report to a conditional sentence supervisor on or before January 19th, that is Thursday, by the close of business. There will be no alcohol, no drugs, no weapons. I have considered counsel Ms. Tanner's financial ability and I am not going to order a restitution as requested by the Crown, but Ms.

Pentz I will impose community service work upon Ms. Tanner. She will do 25 hours of community service work within the first 90 days of the conditional sentence. You shall attend for mental health assessment and counselling, substance abuse assessment and counselling, anger management and any other area of counselling that your supervisor deems appropriate. You shall not associate with or be in the company of Mary Luce except incidental to any educational or treatment program. You shall make reasonable efforts to locate and maintain employment. As well, because of your financial situation you cannot make restitution, you shall write a letter of apology within 30 days to the complainant of the theft out of Yarmouth. That letter will be given to your supervisor, who will then forward it to the gentleman in Yarmouth. You shall attend at the Elizabeth Frye Society offices by Friday, January 20th, no later than 4:30 pm and you shall apply and enrol in any programs that they deem appropriate and feel that you are eligible for.

[31.] You shall observe a period of house arrest for the full six months beginning tonight at 11:59 pm and it will end at 11:59 I believe on July 17th but Madam Clerk you can make the specific date. The only exceptions to the house arrest are: employment, education, a medical emergency, going to see your lawyer or your supervisor, or going to counselling, when performing the community service work,

or if you have permission from your supervisor, and you will be allowed out four hours per week for personal needs.

[32.] You shall prove compliance with the house arrest condition within three minutes should the police or your supervisor come knocking on the door.

[33.] The 22 months probation will begin once the conditional sentence order is expired. The same conditions with respect to counselling, assessment, etc., no drugs, no alcohol, no contact with the complainant, and you shall continue to attend for assessment and counselling as directed.

The Honourable Judge Jean M. Whalen, J.P.C.