

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. MacLeod, 2012 NSPC 71

Date: August 2, 2012

Docket: 2435749, 2435185, 2435186, 2435187, 2435188
2436010, 2436020, 2436022, 2435166, 2435167
2435168, 2418222, 2458677, 2435748, 2435738
2435741, 2435474, 2435475, 2435476, 2435477
2435478, 2435480, 2435482, 2435483, 2435485
2435486, 2435488, 2435489, 2435491, 2435492
2435494, 2435495, 2435497, 2435498, 2435500
2435501, 2435503, 2435504, 2435506, 2435507, 2435509

Registry: Pictou

Between:

Her Majesty the Queen

v.

Steven James MacLeod

Judge: The Honourable Judge Del Atwood

Heard: August 2, 2012, Pictou, Nova Scotia

Written decision: August 3, 2012

Charge: 348(1)(b)CC, 354(1)(a) (14 counts), 177CC (15 counts)
334(b)CC (6 counts), 355(1)(a)CC, 430(4)CC (2 counts)
145(1)(a), 145(3)CC

Counsel: Jody McNeill, for the Nova Scotia Public Prosecution
Service
Doug Lloy, Nova Scotia Legal Aid, for Stephen James
MacLeod

Orally:

[1] The Court has for sentencing Steven James MacLeod. Earlier this afternoon, Mr. MacLeod elected trial in this Court where required and pleaded guilty at a very early opportunity in relation to an array or property related charges, as well as one breach related charge. All of the incidents occurred in the New Glasgow, Westville, Stellarton area in fairly tight time frame in March of 2012, with the exception of vehicle-damage s. 430 charge in February.

[2]The primary principle of sentencing is ensuring that respect for the law is maintained; the Court seeks to ensure that society is populated by law-abiding people, where members of the public can live their lives without fear of their property being entered and taken.

[3]I'm not going to say too much more about this because Mr. MacLeod has heard the submissions of counsel and it's clear from the pre-sentence report that Mr. MacLeod is acutely aware and sincerely remorseful for what he has done. He correctly links his actions to the abuse of substances and the impaired judgment that can arise from that.

[4]The presentence report refers to Mr. MacLeod's youth and I don't intend to go into that in any great detail other than to say that Mr. MacLeod's history is

certainly well known to the Court. Mr. MacLeod was himself the victim of a crime over twenty years ago and that undoubtedly has had a profound effect upon him.

[5] Obviously, it's important that individuals who have been victims, even of serious crimes, not rely on that victimization to make victims out of others and I take Mr. MacLeod's comments to the author of the presentence report that he's placing the blame on himself alone and no one else. Mr. MacLeod is keenly aware of what he's done and that he has to face the consequences for it.

[6] The Court of Appeal of this Province in *R. v. Leaver* and *R. v. Zong*, also recently in *R. v. Adams*, has referred consistently to a three-year benchmark for break-and-enter-dwelling offences. This is not so much a starting point as a sliding scale. It's not a hard and fast starting point; however, in this particular case, I do believe that the joint recommendation that has been made to the Court is a fit and proper one.

[7] The Court is satisfied that this is an authentic joint recommendation within the context of the *R. v. Knockwood*. The Court of Appeal of this Province has stated consistently, as have other Courts, that when experienced counsel come before a sentencing Court with a joint recommendation, the Court should typically accept it unless the Court were to be satisfied that the joint recommendation would result in a sentence that would be so manifestly inadequate as to be erroneous.

[8]Indeed, there is authority from this Province and elsewhere that even if a jointly recommended sentence might be seen as falling outside the customary range of sentencing, the Court should nevertheless strongly defer to joint submissions made by counsel; this is because counsel will be well aware of the strengths and weaknesses of the case, and joint recommendations reflect those strengths and weaknesses. In this case, I find that the recommendation is appropriate.

[9]In relation to the section 348(1)(b) count, that is case #2435749, the Court will order a primary-designated-offence DNA collection order.

[10]In relation to all charges before the Court, I find that the imposition of victim surcharge amounts would work an undue hardship, given the total sentence that is being imposed; therefore, there will be no victim surcharge amounts.

[11]In relation to the 348(1)(b) break and enter into a dwelling, the Court will make that the starting point sentence and that will be a sentence of three (3) years, or thirty-six (36) months imprisonment.

[12]In relation to information 652496, that is two counts of 354, two counts of 177, there will be three (3) months consecutive, in relation to case #2435185 and then three (3) months concurrent in relation to the remaining counts. So, three months consecutive on 2435185 and then concurrent three (3) month sentences in relation to the remaining counts.

[13]In relation to the charge involving property of Tracey Benvie Johnson, #2436010, one (1) month consecutive.

[14]In relation to theft of property of John Hamilton, #2436020, one (1) month consecutive.

[15]In relation to property of Daniel Robert Burns, one (1) month consecutive.

[16]In relation to information #652492, theft of property of Roy Elliott, one (1) month consecutive and then in relation to the remaining counts, a 177 and a 355, that would be cases 167 and 168, one (1) month concurrent on each of those charges.

[17]In relation to the charge involving the damage to the motor vehicle of Emma Fredericks, one (1) month consecutive, and that is case #2418222.

[18]In relation to the 145 escape lawful custody, case #2458677, one (1) month consecutive.

[19]In relation to damage to Nova Scotia Power, case #2435748, one (1) month consecutive.

[20]In relation to the theft of property of Penzt, #2435738, one (1) month consecutive.

[21]In relation to theft of property of Fraser, #2435741, one (1) month consecutive.

[22]In relation to the multi-count information 652594, the first count, possession of property obtained by crime, one (1) month consecutive. And then in relation to count #2, one (1) month concurrent; Count 3, one (1) month concurrent; Count 4, one (1) month consecutive; Count 5, one (1) month concurrent. In relation to Count 7, possession of property obtained by crime, one (1) month consecutive and in relation to Count 8, one (1) month concurrent. In relation to Count 10, possession of property obtained by crime, one (1) month consecutive; and in relation to Count 11, one (1) month concurrent. Count 13, one (1) month consecutive and Count 14, one (1) month concurrent and then Count 16, one (1) month consecutive, and all remaining counts on that information, one (1) month concurrent.

[23]For a total sentence of fifty-four (54) months and that reflects the joint submission of four and a half years.

[24]I will order and direct, Mr. MacLeod, that the warrant of committal be endorsed to recommend that at the earliest possible opportunity, you be given access to assessment, treatment and counselling in relation to substance and mental health issues.

J.P.C.