

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Sutton, 2012 NSPC 98

Date: 20121004

Docket: 2328381

Registry: Dartmouth

Between:

Her Majesty the Queen

v.

Kyle Sutton

Decision

Judge: The Honourable Judge Theodore K. Tax.

Oral Decision: October 4, 2012

Charges: On or about the 29th day of May, 2011 at, or near Sackville, Nova Scotia, did in committing an assault on Devin Cody Burke, cause bodily harm to Devin Cody Burke, contrary to Section 267(b) of the Criminal Code.

Counsel: Alex Keaveny, for the Crown
Colin Campbell, for the Defence

By The Court (Orally):

INTRODUCTION

[1] Mr. Kyle Sutton has pled guilty to a charge of assault causing bodily harm to Devin Burke, contrary to section 267(b) of the **Criminal Code**. The Crown proceeded summarily. The issue for the court to determine is a fit and proper sentence in all of the circumstances of the offence and of this particular offender.

[2] The Crown Attorney recommends that Mr. Sutton be ordered to serve a jail sentence of nine months, followed by a period of two years on terms of probation, as well as a DNA order and a section 110 **Criminal Code** firearms prohibition order.

[3] Defence Counsel submits that a just and appropriate sanction would be a conditional sentence order in the range of six to nine months followed by two years on terms of probation. In the alternative, if the court determines that this is not an appropriate case for a conditional sentence to be served in the community, then the Defence recommends a period of custody of up to 90 days in order to allow Mr. Sutton to serve the sentence on an intermittent basis. The Defence has no objection to the ancillary orders sought by the Crown.

CIRCUMSTANCES OF THE OFFENCE

[4] In the early morning hours of May 29, 2011, Mr. Devin Burke was outside a bar on Leaside Drive in Sackville, Nova Scotia. Mr. Burke had just been invited to go to his employer's residence and he approached Mr. Sutton and three other people outside the bar to invite them to join him. Mr. Burke was intoxicated and was acting jovially as he went over to shake hands with Mr. Sutton and the other

three young men. Suddenly, Mr. Sutton, who was highly intoxicated, threw one punch which struck Mr. Burke in the face. This unprovoked assault knocked Mr. Burke to the ground and rendered him unconscious for a few minutes. While Mr. Burke was lying on the ground, he was further assaulted for about 30 seconds by Mr. Sutton and the other three males. Mr. Burke has no real recollection of these events, as he woke up approximately five minutes after Mr. Sutton punched him in the face.

[5] Mr. Burke sustained serious injuries as a result of this incident. His right eye was swollen shut for several days and he needed four stitches to close a cut. He also suffered a concussion and was off work for two weeks due to problems with his vision. In addition, one of Mr. Burke's front teeth which had previously been replaced by a dental implant became dislodged and had to be replaced. However, in relation to the dental implant, the Crown Attorney stated that the victim had not indicated whether the implant had been replaced, and therefore, the Crown could not advance a claim for restitution at this time.

[6] The Crown Attorney also stated that Mr. Burke had been advised of his right to file a Victim Impact Statement, but at this point, no Victim Impact Statement has been filed. After making inquiries under section 722.2 of the **Criminal Code**, I found that the victim had been advised of his right to file a statement and that, in the circumstances, I was satisfied that an adjournment of the proceedings to make further inquiries would interfere with the proper administration of justice.

CIRCUMSTANCES OF THE OFFENDER

[7] Mr. Kyle Sutton will soon be 21 years old. He is single, lives at home with his parents and does not have any dependents. He was 19½ years old at the time of this offence. He graduated from grade 12 at Sackville High School in June 2010.

[8] Mr. Sutton has no prior criminal record either as an adult or under the **Youth Criminal Justice Act**.

[9] In the Pre-Sentence Report, the probation officer noted that Mr. Sutton has been employed on a full-time basis as a cabinet installer since August, 2011. Mr. Sutton is described as an "excellent employee" by his supervisor who was aware of the charge before the court. The supervisor was not able to confirm that Mr. Sutton's position would be held if he was to receive a period of incarceration. Mr. Sutton was working 40 hours per week and being paid \$12 per hour.

[10] Defence counsel advised the court that, since the Pre-Sentence Report was prepared, Mr. Sutton has switched jobs and now works 6 days per week with a concrete company. Counsel added that Mr. Sutton was diagnosed with Attention Deficit Disorder at age 17 and was prescribed medication by his family physician, however, he only ingested the prescribed medication on two occasions and then stopped taking it because he experienced side effects.

[11] Mr. Sutton has the full support of his family. His mother was contacted to provide input for the Pre-Sentence Report. She confirmed the Attention Deficit Disorder diagnosis and that her son did not follow up with his medications due to side effects. Ms. Nicholson, mother of the Mr. Sutton, believes that her son has an anger management problem, which generally results in verbal outbursts, rather than in physical actions.

[12] Mr. Sutton entered an early guilty plea and accepted responsibility for the offence before the court. In terms of the circumstances of the offence, Mr. Sutton advised the probation officer that he was on his way to the bar with friends when they met several people outside the bar. He said that one of those individuals, who was a complete stranger, pushed his friend and he reacted by punching the victim. Mr. Sutton confirmed that he was intoxicated at the time of the offence.

SUBMISSIONS ON AGGRAVATING AND MITIGATING FACTORS:

[13] In the Crown's submission, a jail sentence is a fit and proper sentence due to the significant aggravating factors which are present in this case. Mr. Sutton participated in a group assault of Mr. Burke which was unprovoked and simply a random act of "gratuitous violence" to a complete stranger. Mr. Burke suffered serious injuries and was knocked unconscious for several minutes. It was sheer luck that Mr. Burke did not suffer more serious or even life-threatening injuries.

[14] In the Crown's submission, based upon the circumstances of this offence, the primary purposes and principles of sentencing at play under sections 718, 718.1 and 718.2 of the **Criminal Code**, are specific and general deterrence as well as denunciation of the unlawful conduct. Serious crimes of violence of this nature which are random and unprovoked where there is a high degree of responsibility of the offender call for a jail sentence, as a conditional sentence order does not send the appropriate level of denunciation of society for this unlawful conduct.

[15] Defence Counsel and the Crown also submit that there are significant mitigating factors present in this case. Mr. Sutton is a youthful offender, who is presently 20 years old. He does not have any prior adult or **Youth Criminal Justice Act** criminal record. Mr. Sutton entered a guilty plea at the earliest

opportunity when he was represented by counsel and accepts full responsibility for his actions. He is employed on a full-time basis working six days per week and he would, in all likelihood, lose his job if sentenced to a period of incarceration. Mr. Sutton has the full support of his family. In addition, he has been diagnosed with Attention Deficit Disorder and the doctor prescribed medication, however, he has not taken that prescribed medication because he experienced significant side effects.

ANALYSIS:

[16] In all sentencing decisions, determining a fit and proper sentence is highly contextual and is necessarily an individualized process which depends upon the circumstances of the offence and the particular circumstances of the specific offender. On this point, the Supreme Court of Canada stated, in **R. v. M.**(C.A.), [1996] 1 SCR 500 at paragraphs. 91 and 92,

“that the determination of a just and appropriate sentence requires the trial judge to do a careful balancing of the societal goals of sentencing against the moral blameworthiness of the offender and the gravity of the offence while at the same time taking into account the victim or victims and the needs of and current conditions in the community.”

[17] Given the circumstances of the offence, I agree with both counsel that denunciation of the unlawful conduct and specific and general deterrence are important purposes of sentencing in section 718 which must be considered in the context of a serious crime of violence. In this case, given Mr. Sutton's age, lack of any prior criminal record and his present circumstances, I find that the sentencing decision must also focus on efforts to rehabilitate him, promote a sense of responsibility and to acknowledge harm done to the victim.

[18] In the sentencing decision, the court must also consider the fundamental sentencing principle found in section 718.1 of the **Code** which reminds judges that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In this case, given the nature of the assault and injuries suffered by Mr. Burke, I find that the gravity of the offence is at the higher end of a continuum of assaults, since this unprovoked attack caused significant bodily harm and injuries to the victim which lasted several weeks. In addition, Mr. Sutton and others continued to assault Mr. Burke while he was unconscious and laying on the ground. In these circumstances, I find that Mr. Sutton's degree of responsibility for this assault causing bodily harm to be high.

[19] With respect to other principles of sentencing found in section 718.2 of the **Code**, I am also required to consider all available sanctions other than imprisonment that are reasonable in the circumstances and not to deprive the offender of his liberty if a less restrictive sanction is appropriate in all the circumstances of the case.

[20] Defence counsel has submitted that it would be appropriate to order Mr. Sutton to be subject to the terms of a conditional sentence order. In **R. v. Proulx**, [2000] 1 SCR 61, Chief Justice Lamer said at paragraph 102 that

“Incarceration will usually provide more denunciation than a conditional sentence, but a conditional sentence can still provide a significant amount of denunciation. This is particularly so when onerous conditions such as house arrest are imposed and the duration of the conditional sentence is extended beyond the duration of the jail sentence that would ordinarily have been imposed in the circumstances. “

[21] Similar remarks with respect to deterrence were expressed by the Chief Justice in **R. v. Proulx**, supra, at paragraph. 107, however, Chief Justice Lamer went on to say that

"Nevertheless, there may be circumstances in which the need for deterrence will warrant incarceration. This will depend in part on whether the offence is one in which the effects of incarceration are likely to have a real deterrent effect, as well as on the circumstances of the community in which the offences were committed."

[22] In this case, I find that a conditional sentence order is an available sanction which may be imposed by the court under section 742.1 of the **Criminal Code** as there is no maximum term of imprisonment or minimum term of imprisonment which would preclude the court from making a conditional sentence order of imprisonment to be served in the community. Furthermore, I conclude that a conditional sentence order remains an available sanction since I find that an appropriate sentence, in all the circumstances of this case, would not result in a federal term of incarceration, nor would it be a fit and proper sentence to suspend passing sentence and order Mr. Sutton to serve a period on probation.

[23] The question then remains whether a conditional sentence order is a fit and proper sentence or whether the circumstances of this offence, the particular circumstances of this offender and the needs of the community to maintain a just, peaceful and safe society require the separation of this offender from society to deter him and other like-minded persons from committing offences of this nature.

[24] Section 718.2(b) of the **Criminal Code** incorporates a parity sentencing principle which reminds judges that the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar

circumstances. On this point, I note that it is often difficult to find those similar cases, as the sentencing process is highly individualized and it is based upon the circumstances of the offence and the particular offender.

[25] The Crown Attorney submitted three cases in support of his sentencing recommendations. In the case of the **R. v. Grouse and Parnell**, 2005 NSSC 320, the offenders were charged with aggravated assault which involved a spontaneous act of gratuitous, mob-like violence in downtown Halifax. Chief Justice Kennedy rejected a joint recommendation for conditional sentence orders for Ms. Grouse, a 22-year-old mother of three small children with several prior convictions and for Ms. Parnell, a 36-year-old single mother of three children with no prior criminal record. The court held that, in those circumstances, a conditional sentence was not appropriate to address specific deterrence and denunciation of the unlawful conduct where there were serious acts of the gratuitous violence in a mob-like context in the community. Ms. Parnell was sentenced to one year imprisonment and ordered to pay restitution while Ms. Grouse was ordered to serve a three year sentence of imprisonment in a federal institution and also ordered to pay restitution.

[26] In **R v. Cormier**, 1994 CanLii 3993 (NSCA), the Court of Appeal overturned the trial court's decision of a suspended sentence and two years on probation and substituted a six-month jail sentence followed by two years on probation for three charges of assault causing bodily harm contrary to section 267(1)(b) of the **Code**. The victim was a passenger on a bus when three young men boarded the bus and sat beside him. The three young men verbally and physically taunted the victim, and when the victim got off the bus, the three young men followed and continued to physically harass him. One of the young men struck the

victim first, but then the offender punched the victim with a most significant blow to the face which rendered him almost unconscious. The attack on the victim was completely unprovoked. The victim was taken to the hospital, his nose was fractured he had two black eyes, suffered severe headaches that caused him to miss work for a week and he still had those headaches 15 months later, at the time of the sentencing hearing.

[27] The question on appeal was whether the gravity of the offence was such that a youthful first-time offender should receive a custodial sentence. The court stated that the overriding consideration in sentencing with respect to crimes of violence is specific and general deterrence. The court also noted that there had been several recent incidents of youthful gangs "swarming" innocent citizens in the community and that the sentence imposed was clearly inadequate. While this case is similar in many respects to the case before me, I do note that the decision of the court was rendered on April 8, 1994 and that the regime for conditional sentence orders enacted by Parliament only came into force in September 1996. Therefore, the court was not able to consider the option of a conditional sentence order of imprisonment.

[28] The Crown also referred to **R. v. Mackenzie**, 1997 CanLii 15004 (NSSC) The victim intervened to stop a fight between two females while a large crowd around them had been cheering them on. As the victim tried to leave the area, the crowd of people gathered around him and started taunting him. The accused hit the victim in the back of the head with a beer bottle, which knocked him down and then the mob proceeded to kick the victim while he was on the ground. As a result of this attack, the victim suffered torn ligaments and severe break in his leg, a concussion, a broken nose, a black eye and cracked ribs. The victim spent a week

in hospital and needed an operation to insert a six inch steel plate with screws to stabilize his leg. He was off work for three months. When he returned to work, the victim was on light duties for a time and was still experiencing muscle pain and chronic tendinitis a year later.

[29] Justice Scanlan sitting on a summary conviction appeal held that the sentence imposed by the trial judge of 90 days in custody was "clearly inadequate" and substituted a sentence of six months in jail. Since conditional sentence orders of imprisonment pursuant to section 742.1 of the **Code** had just come into force, the judge considered whether a conditional sentence order would be an appropriate order in all of the circumstances of the case. Scanlan J. determined that where there are crimes of violence like this one which involved a "brutal and intentional application of force" by the offender and others as a party to a "mob scene," then, general deterrence and denunciation of the unlawful conduct called for periods of imprisonment to be served in prison.

[30] Although there are some aspects of the **Mackenzie** decision which are quite similar to the instant case, I note that the victim's injuries in that case were much more significant and long-standing and that an aggravating feature was the offender's role in leading the brutal attack by a mob on the victim. A further aggravating feature was the fact that Mr. McKenzie had two prior, related convictions for crimes involving violence which caused the judge to question whether anything other than a custodial sentence would deter the offender. In this case, Mr. Sutton has no prior criminal record.

[31] Defence counsel referred to several cases where conditional sentence orders have been ordered for offences involving serious crimes of violence. In **R. v.**

Burbine, [2001] N.S.J. No. 432 (NSSC), Hall J. ordered a conditional sentence of 18 months of imprisonment and two years under terms of probation for an aggravated assault. The victim suffered serious and permanent injuries as a result of the aggravated assault contrary to section 268 of the **Code**. The court accepted the joint recommendation of counsel as the offender was 24 years old, had no prior criminal record and had a "glowing" presentence report. However, the court did add that, given the nature of the serious acts of violence by the offender and the permanent and debilitating injuries suffered by the victim, had there not been a joint recommendation and such a positive presentence report, the court would have considered a sentence in the range of five years in a penitentiary.

[32] In **R. v. Rushton** 2005 NSSC 360, MacAdam J. sitting on a summary conviction appeal, upheld a conditional sentence order of 12 months which was primarily imposed for the offences of assault causing bodily harm and assault with a weapon. The Crown did not appeal the length of the sentence, but rather the form of sentence. The Crown had sought a period of 12 months to be served in a correctional center for the crimes of violence. The court dismissed the appeal as the sentence imposed by the trial judge was not "clearly or manifestly excessive or inadequate" and did not apply wrong principles.

[33] In **R. v. Marsman**, 2007 NSCA 65, the Crown appealed a three-year suspended sentence following a guilty plea to an aggravated assault of a police officer, who was engaged in the lawful execution of his duty at the time of the assault. The officer was in the course of arresting Mr. Marsman for a violation under the Liquor Control Act when the offender, who was much bigger than the officer, "lost it" and attacked the officer with his fists. The officer suffered a "vicious beating of a short duration." The officer suffered several cuts to his face,

his face was bruised and swollen, lost consciousness for a period of time but did not require hospitalization other than to have the lacerations sutured. He was off work for 6 weeks and then returned on light duties as he had suffered a concussion.

[34] The Court of Appeal allowed the appeal and held that the trial judge erred in overemphasizing rehabilitation. The court said that the trial judge had also erred by concluding that denunciation and deterrence did not have to be stressed in the circumstances of the case. In **Marsman**, the Court of Appeal said, at para.. 26:

“...that in cases of aggravated assault which is a very serious crime of violence, the principles of deterrence and denunciation can only be properly addressed through a period of incarceration. However, given the truly unique circumstances of this offender (at para.35) which included widespread community support, no prior adult record, sincere remorse for his actions, his actions were totally out of character and that the offender suffered from the mental illness and had made significant progress, the court concluded that a federal term of incarceration was unnecessary.”

The Court of Appeal concluded that incarceration was required to adequately address the objectives of denunciation and deterrence, and substituted a sentence of two years less one day to be served in the community under the terms of a conditional sentence order.

[35] Defence counsel also referred to **R. v. Metzler**, 2008 NSCA 26 which involved a charge of assault causing bodily harm. The offender and two other men met the victim outside a store where he was taking a break from work at 3 AM and demanded cigarettes from him. The victim refused to offer cigarettes and one of the people with the offender "sucker punched" the victim twice. The offender then

punched the victim with a closed fist on his jaw which caused severe injuries. The victim's jaw was broken and required surgery, and he had a permanent scar on his face. He also sustained damage to two teeth which required dental reconstruction. The trial judge ordered a period of 22 weeks imprisonment followed by 12 months on terms of probation.

[36] The Court of Appeal dismissed Mr. Metzler's conviction and sentence appeal. Mr. Metzler was a 20-year-old high school graduate, with no criminal record and had received awards for bravery. The trial judge had rejected the Crown's recommendation of a conditional sentence order and also the Defence recommendation for a conditional discharge. The trial judge declined to order a conditional sentence order as he concluded that the offender posed danger to community safety because of the violent nature of his offence and that he had breached the terms of his release pending sentencing. The court held that the sentence was fit in the circumstances of this "brutal, unprovoked and random assault" which had profound and lasting consequences for the victim.

[37] In **R. v. Chickness**, 2011 NSSC 225, the court sitting on a summary conviction appeal upheld the trial judge's decision to order a conditional sentence on the charge of assault causing bodily harm contrary to section 267(b) of the **Criminal Code**. The offender had slashed the victim with an 8 inch knife along the jawbone of his face, which left a permanent scar. The appeal court did, however, grant a Defence appeal to reduce the length of the conditional sentence order to a total of 15 months as the Crown had proceeded summarily and in that case, the maximum sentence for that offence was 18 months imprisonment. The conditional sentence order was followed by a period of 18 months on probation. The trial judge had found the accused guilty and in passing sentence took into account that the

accused had a dated criminal record, was a low risk of reoffending, had complied with conditional sentences in the past and was suffering from multiple sclerosis.

[38] The Defence counsel also referred to the case of **R. v. Gaudet**, 2009 NSPC 54 which involved a sentencing hearing for a charge of aggravated assault contrary to section 268(2) of the **Criminal Code** and two charges of a common assault contrary to section 266 of the **Code**. The offender had entered guilty pleas to all charges. Mr. Gaudet was a 21-year-old first time adult offender who had a prior youth criminal justice record, but was described as a hard-working, model student at school. In *Gaudet*, supra, the aggravated assault involved the accused using a knife to stab his brother three times; however, two of stab wounds were of a superficial nature. The aggravated assault had occurred while Mr. Gaudet was on terms of Recognizance for the assault of two women outside a pub by spitting on them after a verbal altercation.

[39] In that case, the trial judge concluded that a conditional sentence order was not an available option under section 742.1 of the **Code**, as Parliament's 2007 amendments to the **Criminal Code** excluded crimes for "serious personal injury offences" which were prosecuted by indictment. In that case, the trial judge noted that Mr. Gaudet was a youthful first time adult offender and while the goals of denunciation and deterrence remained an overriding concern, principles of rehabilitation and promoting a sense of responsibility in the offender to ensure the long-term protection of society must not be overlooked. The judge also pointed out that the aggravated assault occurred between brothers who were drinking alcohol and were probably intoxicated and as a result, it was not a random act of violence involving strangers. The Pre-Sentence Report was positive, the offender had enrolled in the community college and was doing well in the program, had stopped

consuming alcohol and drugs altogether and had entered early guilty pleas and accepted full responsibility for the offences. In that case, the court ordered a sentence of nine months incarceration in jail, followed by 12 months on probation for the aggravated assault charge.

THE APPROPRIATE SENTENCE:

[40] At the outset, it is worth repeating that in terms of section 718.1 of the **Criminal Code**, which deals with the proportionality principle, I have found that the gravity of this offence is at the higher end of a continuum of assaults given the nature of the assault and the injuries suffered by Mr. Burke. Furthermore, I found that Mr. Sutton's "sucker punch" was a completely unprovoked attack which rendered the victim unconscious for several minutes, and then he and others continued the assault of Mr. Burke while he was on the ground. In those circumstances, even though Mr. Sutton was highly intoxicated, I find that his responsibility for the assault and the bodily harm caused by that attack, to be high.

[41] I agree with the Crown Attorney that where there are serious crimes of violence, especially in circumstances where it involved gratuitous, unprovoked and mob-like violence perpetrated on an unsuspecting stranger. In those circumstances, I find that the primary purposes of sentencing which should be considered by the court are specific and general deterrence and denunciation of the unlawful conduct. However, I also find that, given the fact that the offender is youthful and has never before been convicted of any criminal offence, the sentencing decision should also assist the offender in his rehabilitation as well as promoting sense of responsibility in him. Therefore, I also find that the sentencing principles mentioned in 718.2(d)

and (e) which focus on restraint must be taken into account in determining the appropriate disposition.

[42] In my earlier remarks, I concluded that a conditional sentence order was an available option in this case because the Crown had proceeded summarily and therefore the maximum sentence for an assault causing bodily harm under section 267(b) of the **Code** is a term of imprisonment not exceeding 18 months. After a careful review of the circumstances of this offence, the particular circumstances of this offender, the needs of the community to maintain a just, peaceful and safe society and that I have found that the primary purposes of sentencing at play in this case were specific and general deterrence and denunciation of the unlawful conduct, I find that a conditional sentence order is not an appropriate disposition in this case.

[43] Looking at the parity principle found in section 718.2(b) of the **Code**, this sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. While it is often difficult to find a case that is truly "similar" to the circumstances of this offence and this offender, the **Metzler** decision referred to by Defence counsel does bear a very striking similarity to the facts and circumstances of this case. In that case, as in this one, the victim was punched by the offender and another person, which caused bodily harm to the victim who suffered serious injuries and required dental work as result of the brutal, unprovoked and random assault. The offender was essentially the same age as Mr. Sutton with no prior record and he was ordered to serve a period of 22 weeks in jail followed by a term of 12 months on probation.

[44] I find that there are several mitigating factors in this case: (1) the early guilty plea by Mr. Sutton; (2) he is a youthful 1st time adult offender; (3) he had no prior adult or **Youth Criminal Justice Act** record; (4) he has accepted full responsibility for this offence; and (5) the Pre-Sentence Report was quite positive.

[45] However, I also find that there are several aggravating factors: (1) the assault which caused bodily harm was a brutal, unprovoked and random attack; (2) after Mr. Sutton's punch had knocked the victim unconscious, the assault of the victim by Mr. Sutton and others continued in a mob-like fashion; (3) the circumstances of this offence are unfortunately all too common in this community and often end in tragic consequences. As a result of these aggravating factors, I find that the appropriate disposition in this case requires a sentence which will promote respect for the law and the maintenance of a just, peaceful and safe society.

[46] Having considered all of the circumstances of the offence, this particular offender, the primary purposes and principles of sentencing at play in this case, the gravity of the offence and the offender's degree of responsibility as well as the mitigating and aggravating factors, I find that a conditional sentence order of imprisonment in the community would not satisfy the purposes of deterrence and denunciation of this unlawful conduct. At the same time, I am mindful of the principle of restraint and the fact that Mr. Sutton is a youthful, first time adult offender.

[47] I hereby order Mr. Sutton to serve 90 days in a provincial correctional center to be served on an intermittent basis pursuant to section 732(1) of the **Code**. Upon the completion of the 90 day sentence, Mr. Sutton will be subject to a period of two years on terms of probation. In this regard, I am satisfied that this sentence will

balance the sentencing purposes of denunciation and deterrence which are served by "real jail time" with the purposes and principles of rehabilitation, promoting a sense of responsibility in the offender and restraint which will allow him to continue with his employment, family relationships, responsibilities and obligations in the community.

[48] The terms of the probation order will include the statutory terms and conditions - keep the peace and be of good behavior; appear before the court as and when required to do so by the court and notify the court or probation officer, in advance, of any change of name, address, employment or occupation.

[49] In terms of the optional conditions contained in the probation order, Mr. Sutton will be required to: (1) report to the probation officer at 277 Pleasant St. within 5 days of the expiration of the sentence of imprisonment and thereafter as directed by the probation officer; (2) remain within the province of Nova Scotia unless written permission is obtained from your probation officer; (3) you are not to have any direct or indirect contact or communication with Mr. Devin Burke and there are no exceptions to that condition; (4) make reasonable efforts to locate and maintain employment or educational program as directed by the probation officer; (5) attend for assessment and counseling in anger management as directed by the probation officer; (6) attend for assessment counseling or a program as generally directed by the probation officer; (7) participate in and cooperate with any assessment, counseling or program directed by the probation officer; and (8) not to associate with or be in the company of Jonathan Sparks, except incidental contact in an educational or treatment program or while at work.

[50] I am also adding a term to the probation order to report back to the court if directed by your probation officer after 18 months of probation if: (1) you have successfully completed any recommended assessment, treatment or counseling; or (2) for a status report.

[51] In addition, I am making the ancillary orders requested by the Crown. I am making an order that will require you to provide a sample of your DNA under section 487.051 of the **Criminal Code** as this is a primary designated offence. I am also making the section 110 **Criminal Code** firearms prohibition order which will prohibit you from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance for a period of 10 years.

[52] Finally, with respect to the victim fine surcharge under section 737 of the **Code**, given the fact that you are employed on a full-time basis without any dependents, I cannot find that the imposition of the \$50 victim surcharge would pose an undue hardship. I will provide three months to pay that victim surcharge.