

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Maloney*, 2013 NSPC 46

Date: 20130403

Docket: 2532901, 2532902, 2532903

Registry: Pictou

Between:

Her Majesty the Queen

v.

Stephen Joseph Dakota Maloney

Judge: The Honourable Judge Del W. Atwood

Heard: 3 April 2013 in Pictou, Nova Scotia

Charge: 430(4), 333.1(1)CC, and 334(a) of the *Criminal Code*

Counsel: Herman Felderhof, for the Nova Scotia Public Prosecution
Service
Rob Sutherland, for Stephen Joseph Dakota Maloney

By the Court:

[1] The Court has for sentencing Stephen Joseph Dakota Maloney. Where an election was required, Mr. Maloney elected today to have his charges dealt with in this Court; he then pleaded guilty to an indictable-absolute-jurisdiction charge of damage to a Volvo semi-tractor, an indictable theft of a Con semi-tractor, and, finally, an indictable theft of a trailer and contents valued in excess of five thousand dollars. The contents of the trailer consisted of a substantial quantity of liquor destined for Nova Scotia Liquor Corporation outlets.

[2] The mitigating factors—that is, the positive factors—are Mr. Maloney’s early guilty pleas, and the fact that, although Mr. Maloney does have a youth record that is properly before the Court in accordance with sub-section 119(9) of the *Youth Criminal Justice Act*, this is the first time that Mr. Maloney will have gotten a substantial sentence as an adult.

[3] Another mitigating factor is the important information relayed to the Court by Mr. Sutherland regarding Mr. Maloney’s aboriginal background. I apply the principles set out by the Supreme Court of Canada in *R. v. Gladue*, [1999] 1 S.C.R. 688 and also in *R. v. Ipeelee* 2012 SCC 13. The Court takes judicial notice of the broad, systemic, cultural and background factors affecting members of First Nations communities who come into conflict with the law. The Court also takes into account the case-specific information that has been provided helpfully today by Mr. Sutherland.

[4] I take into account the fact that Mr. Maloney is a young adult, although not a young person within the definition of the *Youth Criminal Justice Act*. Mr. Maloney's date of birth is May 31, 1991, so he'll shortly be turning 22 years of age.

[5] The Court must not impose a sentence that would crush the prospects of rehabilitation. The Court is mindful of the fact that there is a joint submission before the Court that has been negotiated by experienced counsel, who are conscious of the strengths and weaknesses of the case; applying the principles set out in *R. v. MacIvor* 2003 NSCA 60 at paras. 31-33, the Court intends to give effect to the joint submission.

[6] The key aggravating factor here is the serious nature of these offences, involving damage to property and theft of a substantial quantity of inventory destined for the Nova Scotia Liquor Corporation; there is an economic cost here in terms of the loss of use of property and the retail-sale value of the unrecovered merchandise. Mr. Maloney's degree of responsibility was substantial.

[7] Although the prosecution made reference to this being an organized-crime or a criminal-organization offence, I am not satisfied, applying the definition of "criminal organization" as set out in sections 2 and 467.1 of the *Criminal Code*, that this was a criminal-organization offence so as to attract the aggravating principles of sentencing in section 718.2 of the *Criminal Code*.

[8] However, I am satisfied, based on the significant value of the theft and the substantial degree of planning and calculation that was obviously involved in carrying out a heist of this magnitude, that this was an enterprise level of crime; although I do take into account Mr. Maloney's status as a member of a First Nation community, I do apply the principles set out by the Ontario Court of Appeal in *R. v. Jacko* 2010 ONCA 452 at para. 64; that case dealt with an aboriginal offender, and the Court held that, as the seriousness of an offence elevates, there will follow as a consequence greater parity with sentences imposed upon non-aboriginal offenders.

[9] I reviewed in detail the very helpful case authorities submitted to the Court by Mr. Sutherland. I do agree that *R. v. Pearson*, [1986] B.C.J. No. 101(B.C.C.A.) is very similar on its facts ; in that case, a three-year federal term was upheld for a major liquor heist. This helps define the range which supports the joint submission here.

[10] First of all, the Court is going to waive the imposition of victim-surcharge amounts in relation to all charges given the circumstances of Mr. Maloney, and given the nature of the sentence to be imposed by the Court. In addition, there will be a secondary-designated-offence DNA collection order in relation to the section 334(a) charge, that is case #2532903.

[11] Taking into account the joint submission and giving credit to Mr. Maloney for the 129 days of remand, the sentence of the Court will be as follows:

[12] The starting-point sentence will be the 334(a) charge, a straight indictable offence, carrying a maximum potential penalty of ten years imprisonment. The sentence in relation to case #2532903, the 334(a), will be a sentence of one (1) year, seven (7) months and twenty (20) days.

[13] In relation to the theft of the International Con semi-tractor, a 333.1 indictable charge, a maximum potential sentence of ten years, case #2532902, the sentence will be one (1) year imprisonment to be served consecutively.

[14] In relation to the 430(4) charge, case #2532901, had that charge stood alone, the Court would have imposed a sentence of Four (4) Months and Ten (10) Days; however, taking into account the period of time spent in remand, the Court will give Mr. Maloney credit of four (4) Months and ten (10) days and accordingly the actual sentence to be imposed by the Court for that charge will be a period of one (1) day concurrent time, so that the total sentence of the Court will be a period of **Two (2) Years, Seven (7) Months and Twenty (20) Days** on a go-forward basis.

[15] I would ask that the Information and the Warrant of Committal be endorsed in accordance with the *Truth in Sentencing Act* to record that, in relation to case

#2532901, but for the remand time, the sentence in relation to that charge would have been Four (4) Months and Ten (10) Days. Mr. Maloney, I'll have you accompany the sheriffs please, sir.

P.C.J.