PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Pilgrim*, 2013 NSPC 60

Date:20130723
Docket:
2397489, 2420683, 2425077, 2522617
2587595, 2587598, 2587599, 2624167
Registry: Pictou

Between:

Her Majesty the Queen

v.

Barry Ronald Pilgrim

SENTENCING DECISION

Judge:	The Honourable Judge Del W. Atwood
Heard:	23 July 2013, in Pictou, Nova Scotia
Charges:	733.1CC (3 counts), 145(5.1)CC (2 counts) 175(1)(iii)CC, 430(1)(C)CC, 145(3)CC
Counsel:	Patrick Young for the Nova Scotia Public Prosecution Service Stephen Robertson, Nova Scotia Legal Aid, for Barry Ronald Pilgrim

By the Court:

[1] Court has for sentencing Barry Ronald Pilgrim. Mr. Pilgrim is before the Court to be sentenced having been found guilty following trial on charges of breach of probation, causing a disturbance, interference with property, and breach of form 11.1 undertaking; finally, Mr. Pilgrim has just pleaded guilty to breach of a judicial undertaking that was entered into before this Court last week.

[2] A mitigating factor is that Mr. Pilgrim entered a guilty plea to the 145(3) charge here today. Mr. Pilgrim was born December 27, 1954. Mr. Pilgrim has stated that he is "too old" to be doing this sort of thing any longer and he professes to have insight into the need to remain offence free; he assures the Court that, if placed on a conditional sentence, he would comply with it. Obviously, the Court must take into account, as well, the need for reformation and rehabilitation and must not impose a sentence that would crush the prospect of rehabilitation. It is mitigating also that none of the offences before the Court involved any overt acts of violence.

[3] Mr. Pilgrim entered not-guilty pleas to most of the charges and the trial went ahead last Thursday; it is clear from the statement of principle by our former Appeal Division in *R. v. Campbell* that an accused person is entitled to her or his

day in Court and maintaining one's innocence is not an aggravating sentencing factor.[1]

[6] Mr. Pilgrim has asked the Court to consider the imposition of a conditional sentence order. In order to impose a conditional sentence, the Court must, first of all, determine that a sentence involving community supervision alone would not be appropriate. I am satisfied that a sentence involving community supervision only would not be appropriate. The need for denunciation and deterrence is too great in this case, given the array of charges, the nature of the conduct, the seriousness of the conduct involving violations of court orders and bail conditions, the inferred level of victim impact and the need to denounce generally conduct of this nature.

[8] The Court must then satisfy itself that a sentence of imprisonment of less than two years would be appropriate. I am not so satisfied. I believe that, based on the array of charges before the Court, based on Mr. Pilgrim's antecedents, a federal period of custody of two years is an appropriate sentence; therefore, as the term of imprisonment that the Court deems appropriate is not less than two years, a conditional sentence order is excluded under s. 742.1 of the *Code*.

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[1] [1977] N.S.J. No. 443 at para. 16 (A.D.).

[9] Even if I were wrong on that point, I would nevertheless not impose a conditional sentence order in this particular case. Mr. Pilgrim's promises to comply with court orders are essentially meaningless. It is clear to the Court from Mr. Pilgrim's recent conduct–being released on bail on the 18 July 2013 on a varied undertaking to comply with terms of house arrest, only to see Mr. Pilgrim picked up a day later by New Glasgow Police in spite of his profuse assurances in Court last Thursday that he would comply with the conditions of house arrest– that Mr. Pilgrim simply cannot be trusted to comply with court-ordered conditions. This isn't to say that Mr. Pilgrim doesn't mean it when he says today that he would follow the rules of house arrest. I'm sure that he does mean it; but I'm equally certain that, as soon as Mr. Pilgrim were to leave the Court, he would violate those conditions.

[11] I consider as aggravating the significant diversion of policing resources involved in the investigation of the crimes committed by Mr. Pilgrim. Aggravating, as well, is the fact that Mr. Pilgrim sought to target, in soliciting for monies in violation of Judge Halfpenney-MacQuarrie's probation order, people going into banks or retail stores. The offences involving the Shoppers Drug Mart satisfy me that Mr. Pilgrim's conduct presents a real risk of disruption of normal

retail business operations. I base that on the credible and reliable testimony of Mr. Matlock, Ms. Donovon, Ms. MacIvor and Ms. Miller.

[14] Although I certainly do not allow hearsay use of evidence as to what Ms. Miller, the Shoppers cashier, was told by the customer whom she was required to escort out to the car, I am satisfied from the circumstances that were described to me of Mr. Pilgrim's conduct on December 4th of 2011, that his conduct had a significant disruptive effect on the business at the Shoppers Drug Mart in New Glasgow.

[15] I observe, as well, that Mr. Pilgrim often targets people who are seated in their vehicles, parked in parking lots. Passengers in cars cannot easily back away from unwanted, in-your-face solicitations.

[16] Similarly, going to people's homes–and this is the charge laid by Cst. Pond, the October 16, 2012 offence, in the Town of Stellarton–going to people's homes with unwanted solicitations involves an invasion of a person's privacy and intrusion onto property.

[17] Soliciting the elderly, such as Mr. Strickland, a man who was going about his business heading into the Bank of Montreal on April 20, 2013, is a concern to the Court because the elderly are soft targets for hard-luck stories. Alternatively,

the elderly will feel vulnerable when confronted by aggressive, in-your-face panhandlers.

[18] This is not a matter of criminalizing those afflicted by poverty. There are income-support programs, housing programs and emergency-assistance programs that are available through government to assist individuals in need. The Court certainly recognizes the challenges faced by those confronted by financial poverty and housing related poverty but that is not the issue here. The issue here is a matter of protecting the public from the sort of predatory behavior which has had Mr. Pilgrim in conflict with the law since 1972, when he participated in a robbery in the Blue Acres area of Pictou County which resulted in the death of a service station attendant and resulted in a three or four year federal sentence for Mr. Pilgrim for a robbery related offence.

[19] Mr. Pilgrim's record since 1999, as proven in Exhibit #1, has been almost continuous. It includes 15 convictions for breach of probation, 7 property related convictions, 8 convictions under section 145 of the *Code*, one conviction under section 266, one conviction under section 264.1 and one conviction for robbery. I do note that the robbery offence resulted in the imposition of a conditional

sentence; I infer from the nature of that sentence that the level of force or violence involved was, in all likelihood, not great. But a robbery, nevertheless.

[20] In my view, these facts before the Court resemble the facts that were before the me in the case of *R. v. Dean*,[2] when the Court imposed a federal sentence upon a championship-level probation violator, which is the same sort of situation that the Court is faced with here today.

[21] I do intend to take into account the totality principle and so the first tabulation that the Court provides will not be the actual sentence. It will, in accordance with the decision of our Court of Appeal in *R. v. Adams*,[3] describe the sentence that the Court would have imposed had each charge stood on its own.

[22] Case #2397489, breach of probation, indictable (absolute jurisdiction), had it stood alone, the Court would have imposed six (6) months; #2420683, breach of probation, indictable (absolute jurisdiction), had it stood alone, the Court would have imposed eight (8) months; #2425077, breach of probation, indictable (absolute jurisdiction), had it stood alone, the Court would have imposed a sentence of nine (9) months; #2522617, breach of probation, summary offence,

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[2]2011 NSPC 40.

[3]2010 NSCA 42.

had it stood alone, the Court would have imposed a sentence of four (4) months; #2587595, cause a disturbance, section 175, summary offence, had it stood alone, the Court would have imposed a sentence of four (4) months; #2587598, 430(1)CC, interference with property, summary offence, had it stood a alone, the Court would have imposed a sentence of four (4) months; #2587599, a charge of 145(5.1)CC, summary offence, had it stood alone, the Court would have imposed a sentence of four (4) months; and case #2624167, 145(3)CC, indictable offence, elected into this Court, had it stood alone, the Court would have imposed a sentence of six (6) months.

[23] The final sentence of the Court, taking into account the principle of totality, will be as follows:

- Case #2397489, breach of probation, indictable (absolute jurisdiction) B four (4) months imprisonment. That is the starting point sentence.

- Case #2420683, breach of probation, indictable (absolute jurisdiction), the sentence of the Court is five (5) months consecutive service.

- Case #2425077, breach of probation, indictable (absolute jurisdiction), six (6) months imprisonment consecutive service.

- Case #2522617, breach of probation, summary offence, four (4) months but concurrent service.

- Case #2587595, breach of keep the peace, three (3) months consecutive service.

- Case #2587598, 430CC charge, summary offence, four (4) months but concurrent service.

- Case #2587599, breach of form 11.1 undertaking, or 145(5.1)CC, summary offence, three (3) months consecutive service.

- Finally, Case #2624167, 145(3)CC, indictable, elected into this Court, three (3) months consecutive service, for a total sentence of twenty-four (24) months imprisonment, which is a bare federal sentence.

[24] As that is a sentence “not exceeding two (2) years”, as comprehended in para. 731(1)(b) of the *Code*, it will be followed by a term of probation of twelve (12) months to start on the expiration of the federal sentence, during which time Mr. Pilgrim, you are to:

- Keep the peace and be of good behaviour;

- Appear before the Court when required to do so by the Court;

- Notify the Court or your probation officer, in advance, of any change in your name, address, employment or occupation;

- You are to report to a probation officer at 115 MacLean Street, New Glasgow, Nova Scotia, no later than 10 days after the date of the expiration of your sentence of imprisonment, and after that, as directed;

- You are not to solicit or beg for money except for proper applications to government agencies for income assistance; and

- You are not to enter upon any private residences, lands or buildings, soliciting for money or seeking work or employment.

[25] Given the duration of the sentence and given Mr. Pilgrim's very limited means, the Court finds that the imposition of a victim surcharge amount would work an undue hardship and therefore the Court declines to impose any victim surcharge amount.

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J.P.C.