PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Aird*, 2013 NSPC 63

Date: 20130729
Docket: 2556250, 2616965, 2616968
Registry: Pictou

Between:

Her Majesty the Queen

v.

Gregory Alan Aird

Judge:	The Honourable Judge Del W. Atwood
Heard:	29 July 2013, in Pictou, Nova Scotia
Charge:	Section 259(4); Section 259(4) and Section 254(5) of the *Criminal Code*
Counsel:	Patrick Young, for the Nova Scotia Public Prosecution Service Douglas Lloy, Nova Scotia Legal Aid, for Gregory Alan Aird

By the Court:

[1] The court has for sentencing Gregory Alan Aird. Mr. Aird has elected to have these indictable matters dealt with in this court, and he has entered guilty pleas to charges of driving while disqualified on 14 January 2013, driving while disqualified on 4 July 2013, and refusing a roadside-screening demand on that date, as well.

[2] The mitigating factors are the timely elections and guilty pleas. I am satisfied that Mr. Aird has the strong support of his common-law partner of over 24 years. Mr. Aird has been gainfully employed in the past and apparently has concrete plans, or, at least, is developing plans to leave the Province of Nova Scotia for work out west. The court obviously must be mindful of the fact that the court must not impose a sentence that would crush all prospects of rehabilitation.

[3] The aggravating factors are that, although Mr. Aird has pleaded guilty, the evidence against Mr. Aird of flagrantly violating prohibition orders made by this court is very clear. Mr. Aird drove while prohibited on 14 January, 2013; he drove

while prohibited on the 4 July, 2013. Mr. Aird has been subject to prohibition orders in the past, in 2000, 2007, 2008 and 2011.

[4] Orders of this court must be complied with, whether they be orders to comply with terms of probation or orders not to operate motor vehicles. The operation of a motor vehicle in the Province of Nova Scotia is not a right, but a privilege, a highly regulated and licensed activity.

[5] Alarming, as well, is the fact that on 14 January 2013, Mr. Aird operated a vehicle that was not covered by insurance; this is inherently risky behaviour in that it exposes the public to substantial loss in the event of a mishap. In taking into account the potential for uninsured loss, I note that the judgment recovery program in the Province of Nova Scotia is a publicly funded facility and uninsured losses are essentially borne by the public. Although the court certainly is cognizant of the fact that there was no uninsured loss that arose here, the court believes that it must focus on the issue of risk and that is certainly inherent in the decision out of our Court of Appeal in *R. v. MacEachern*.[1]

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[1](1990), 96 N.S.R. (2d) 68 at paras. 24-25 (A.D.).

[6] In relation to the offences from 4 July 2013, it is certainly aggravating that Mr. Aird drove while still prohibited, while he was awaiting sentencing in relation to the 14th of January, 2013 matter, and, indeed, while he was subject to bail conditions that required him to abide by the law, including abiding by the condition of his previously imposed driving prohibitions.

[7] I distinguish this particular case from *R. v. Bernard* where the Nova Scotia Court of Appeal, in a very comprehensive judgment, dealt extensively with the jump, gap and totality principles applicable to the sentencing process .[2] In the *Bernard* case, the Court of Appeal rightly pointed out the importance of sentencing courts giving adequate consideration to the gap principle and the principle of totality. I find that, based on Mr. Aird's record, indeed, I agree with the position taken by Mr. Young, there is no gap. What the court must be mindful of here is the application of the jump principle. Mr. Aird's record since 2000 has been one of intermittent and uninterrupted violations of *Criminal Code* requirements not to drink and drive, not to drive while prohibited; in my view, the emphasis in this particular case must be on denunciation and deterrence, although I certainly take into account the principles that require the court, as set out in

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[2] 2011 NSCA 53.

paras. 718.2(d) and (e) of the *Criminal Code*, to impose the least restrictive sanction that is consonant with the principles of sentencing.

[8] The degree of responsibility here is high. Mr. Aird is the sole author of his misfortune. The seriousness of the offences is extremely high in that the offences essentially involve the violations of court-ordered restrictions from operating motor vehicles.

[9] I am mindful of the fact that the notice of greater penalty served upon Mr. Aird on 5 July 2013, pursuant to Section 727 of the *Criminal Code,* would not engage the increased-penalty provisions in relation to the 14 January offence, as Mr. Aird had already made his election and put in his plea prior to the date of service of the notice. Under Section 259(4) of the *Criminal Code*, there are, in fact, no increased-penalty provisions applicable to driving while prohibited. Driving while prohibited prosecuted indictably carries a maximum potential term of imprisonment not exceeding five (5) years. There is no mandatory minimum. Had that charge stood alone, and applying the principles set out by the Court of Appeal in *R. v. Adams*,[3] the court would have contemplated imposing a sentence of

[3] 2010 NSCA 42 at paras. 23-30.

18-months' imprisonment. Similarly, in relation to the Section 259(4) charge from the 4 July 2013, taking into account Mr. Aird's prior record, the court would have contemplated imposing a sentence of imprisonment of 18 months had that charge stood alone. In relation to the refusal charge, had that charge stood alone, the court would have imposed a sentence of imprisonment of 18 months.

[10] Taking into account the principles of totality and deciding, as I do, that credit should not be given for remand time as, while on remand, Mr. Aird has essentially been serving the remainder of the conditional sentence order that had been imposed by the court on 15 September, 2011, the final sentence of the court will be as follows:

- In relation to the 14 January 2013 sub-s. 259(4) charge, prosecuted indictably, the sentence of the court is 12-months' imprisonment;
- In relation to the charge of sub-s. 254(5), refusal, from 4 July 2013, an indictable offence, the sentence of the court is 12-months' imprisonment consecutive service;
- And finally, in relation to the 4 July 2013 drive-while-prohibited charge, recognizing, as I do, that that occurs on the same date as the refusal charge, but recognizing, as well, that our Court of Appeal has long adopted the approach that

violations of court orders ought to attract consecutive time, the court imposes a sentence of 12-months' imprisonment to be served consecutively

[11] This results in a total term of imprisonment of three (3) years in a federal institution.

[12] In relation to each charge before the court, there will be a ten (10) year driving prohibition consecutive to any period of prohibition currently being served and consecutive to each other. This means there will be a ten (10)-year term of prohibition for the 14 January 2013 offence, consecutive to any prohibition currently being served, pursuant to Section 259(2.1) of the *Criminal Code*; a ten (10)-year period of prohibition in relation to the 254(5) charge consecutive to any prohibition currently being served and consecutive to the period of prohibition imposed in relation to the 14 January offence; finally in relation to the final charge of driving while prohibited, a further ten (10) years of driving prohibition and that is to be served consecutively to the periods of prohibition imposed here today and consecutively to any existing period of prohibition.

[13] Given Mr. Aird's limited circumstances arising from the sentence of imprisonment imposed here today, the court declines to impose any victim surcharge amounts. Anything further counsel?

[14] **Mr. Young**: No, sir.

[15] **Mr. Lloy**: Not from the Defence.

[16] **The Court**: Thank you. Mr. Aird, I'll have you go with the sheriffs, please, sir. Thank you very much.

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J.P.C.