

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. MacLeod*, 2016 NSPC 84

Date: 2016-07-18

Docket: 2969518, 2969519, 2969520,
2969521, 2969523, and 2969524

Registry: Pictou

Between:

Her Majesty the Queen

v.

Steven James MacLeod

SENTENCING DECISION

Judge:	The Honourable Judge Del W. Atwood
Heard:	18 July 2016 in Pictou, Nova Scotia
Charge(s):	Sub-Section 88(2) of the <i>Criminal Code</i> Para. 264.1(1)(a) x 2 of the <i>Criminal Code</i> Para. 129(a) of the <i>Criminal Code</i> Para. 267(a) of the <i>Criminal Code</i> Section 266 of the <i>Criminal Code</i>
Counsel:	Jody McNeill, for the Nova Scotia Public Prosecution Service Douglas Lloy, Q.C., Nova Scotia Legal Aid, for Steven James MacLeod

By the Court:

[1] The court has for sentencing Stephen James MacLeod. Mr. MacLeod entered guilty pleas at an early opportunity in relation to an array of summary counts: possessing a machete for the purposes of committing an offence, uttering threats against police, resisting arrest, assaulting police with a weapon, and assaulting his wife.

[2] The facts read into the record by the prosecution pursuant to ss. 723 and 724 of the *Criminal Code* and accepted as accurate by defence counsel are that police received word of a 911 domestic-violence report; the call had been placed 4:30 p.m. 19 March 2016. Police went right away to an address on Diamond Street in Westville. Officers met Victoria MacLeod, who was shaking and in tears; her clothing was blood-stained. Ms. MacLeod stated that she and Mr. MacLeod, who is her husband, had been arguing; he had thrown her around and then struck her in the face causing her to bleed. They had consumed alcohol, and Mr. MacLeod was reported by Ms. MacLeod as being highly intoxicated. More officers arrived. Ms. MacLeod informed police that Mr. MacLeod might have left for his mother's home. While police were speaking with Ms. MacLeod, a telephone call came in from Mr. MacLeod. One of the police

officers took the call; it was Mr. MacLeod. The officer described Mr. MacLeod's speech as slurred very heavily. Police went directly to Mr. MacLeod's mother's home. They found Mr. MacLeod there, drunk and menacing. Mr. MacLeod threatened to shoot police. Police placed Mr. MacLeod under arrest. He pulled away, and brandished a machete which was ensheathed; Mr. MacLeod attempted unsuccessfully to remove the machete from its sheath. Police proceeded to take Mr. MacLeod to the ground; Mr. MacLeod struggled violently, and implored police to shoot him. Mr. MacLeod was subdued effectively, and was taken away.

[3] The para. 267(a) charge carries a maximum potential penalty of 18-months' imprisonment, as do the offences involving uttering threats against police; the remaining charges fall within the general penalty provisions of section 787 of the *Criminal Code*, and would attract maximum sentences of imprisonment of six months. There are no mandatory minimum sentences for any of the charges before the court.

[4] There is a joint recommendation here for a two-year bare federal term of incarceration; this would be the remainder—or go-forward sentence—after deducting credit for the period of time that Mr. MacLeod has been on remand, reckoning one-and-a-half days' credit for each day of remand time in

accordance with *R. v. Carvery* 2014 SCC 27, *aff'g*. 2012 NSCA 107. That would add up to a 141-day credit, which I will deal with in the court's *Truth in Sentencing Act* endorsement in relation to case number 2969521.

[5] This is a common sentencing recommendation. As it was described to the court, it is tantamount to a joint submission. The Court of Appeal of this province, in *R. v. McIvor* 2003 NSCA 60, stated that a sentencing court may depart from a joint recommendation only if the court were to be satisfied that the joint recommendation would not be in the public interest or would bring the administration of justice into disrepute. In my view, the joint recommendation in this case is a reasonable one. It is a substantial sentence. It takes into account, first of all, Mr. MacLeod's record, which is substantial, and I would add that Mr. MacLeod was on conditional release at the time of these charges.

[6] It takes into account as well that these sorts of situations—incipient suicide by cop—carry significant risks of lethality.

[7] There was a case in Newfoundland, approximately 15 years ago, involving a Mr. Darryl Power. That was a police shooting, resulting in a fatality. Members of the Royal Newfoundland Constabulary responded to a complaint somewhat similar to the one that resulted in Mr. MacLeod getting arrested. Police found

Mr. Power, and he threatened them with a large knife; it was a highly volatile situation that, indeed, resulted in Mr. Power's death. It had a profound impact upon the community and upon Mr. Power's family. And upon the officer whose shot resulted in Mr. Power's death. See Newfoundland and Labrador, *Report of Inquiries into the Sudden Deaths of Norman Edward Reid and Darryl Brandon Power*, online at:

http://www.justice.gov.nl.ca/just/publications/reid_and_power_final_report.pdf.

These are potentially lethal situations that can go wrong very quickly. I agree with counsel that a high degree of denunciation and deterrence must be reflected in the sentence imposed by the court. The joint recommendation reflects that sentencing imperative.

[8] Mr. MacLeod made a s. 726 allocution to the court informing me that he did not intend to hurt any one. I accept that as Mr. MacLeod's sober assessment and expression of regret. But it does not detract from the actual violence of the situation as it unfolded at the time.

[9] The recommendation takes into account the principle of sentencing parity, and is in line with similar sentences imposed in this court: *R. v. Cooper* 2015 NSPC 3; *R v. Russell* 2014 NSPC 8. It also reflects the statutorily aggravating

characteristic of spousal-partner violence, in accordance with paras. 718.2(a)(ii) and (iii) of the *Code*.

[10] The sentence of the court will be as follows: in relation to case number 2969518, the sub-s. 88(2) of the *Criminal Code* charge, that will be the starting-point sentence, three-months' imprisonment, \$10.00 fine and \$3.00 victim-surcharge amount.

[11] In relation to case number 2969519, the first count of uttering threats, a sentence of three months to be served consecutively, plus a \$10.00 fine and \$3.00 victim-surcharge amount.

[12] In relation to case number 2969520, the resist para. 129(a) charge, three months to be served consecutively, a \$10.00 fine and \$3.00 victim-surcharge amount.

[13] In relation to case number 2969521, the para. 267(a) count, 12 months to be served consecutively, a \$10.00 fine and \$3.00 victim-surcharge amount. I will order and direct that the warrant of committal be endorsed to record, in accordance with the *Truth in Sentencing Act*, that, but for the remand time, the sentence of the court in relation to that count would have been 12 months, plus 141 days. That figure of 141 days is not part of the sentence, it is merely an

endorsement, in accordance with the *Truth in Sentencing Act*, to reflect what the sentence would have been, but for the remand time. The warrant of committal will record the actual sentence for that count as being 12 months to be served consecutively, plus the \$10.00 fine and \$3.00 victim-surcharge amount.

[14] In relation to case 2969523, the second charge of uttering threats, three months, but to be served concurrently, with a \$10.00 fine and a \$3.00 victim-surcharge amount.

[15] And finally, in relation to case number 2969524, the assault charge, that will be a sentence of three months, to be served consecutively. A \$10.00 fine and \$3.00 victim-surcharge amount.

[16] The sum is a total sentence of 24 months, to be served in a federal institution, or a bare two-year federal sentence.

[17] As to the fines and victim-surcharge amounts, Mr. MacLeod will have 36 months to pay them.

[18] The para. 267(a) count is a primary designated offence, *DNA Identification Act* matter; therefore, there will be a primary designated offence DNA order under s. 487.051, applicable to case number 2969521.

[19] In relation to that count, there will also be a section 110 order. The court will prohibit Mr. MacLeod from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance. That order commences immediately, and it expires three years after Mr. MacLeod's release from imprisonment.

[20] The total sentence of the court is 24 months. There will be the *Truth in Sentencing Act* endorsement on case number 2969521. There will be a primary DNA order on that count as well, and the s. 110 order in relation to that count. Ten-dollar fines, \$3.00 victim-surcharge amounts in relation to each count, and 36 months to pay. The parties agreed that there would be no probation. Probation would not be permissible under para. 731(1)(b) of the *Code* in any event as the court has imposed fines and terms of imprisonment.

JPC