

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. N.B.P.*, 2018 NSPC 39

Date: 2018-09-11

Docket: 8087544, 8160749

Registry: Pictou

Between:

Her Majesty the Queen

v.

N.B.P.

SENTENCING DECISION

Restriction on Publication:

No one shall publish the name of a young person if it would identify the young person as a young person dealt with under this Act—s. 110 Youth Criminal Justice Act

Judge:	The Honourable Judge Del W. Atwood
Heard:	2018: 11 September in Pictou, Nova Scotia
Charge:	Paras. 266(a), 270(2)(b) of the <i>Criminal Code of Canada</i>
Counsel:	Jody McNeill for the Nova Scotia Public Prosecution Service Douglas Lloy Q.C for N.B.P.

PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT s. 110 OF THE YOUTH CRIMINAL JUSTICE ACT MAY APPLY AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION.

Youth Criminal Justice Act—Identity of offender not to be published

110. (1) Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

By the Court:

[1] N.B.P. has a sentencing hearing this afternoon for charges under para. 266(a) and para. 270(2)(b) of the *Criminal Code*. It started out being contested, but defence counsel and the prosecution have negotiated a joint submission.

[2] N.B.P. elected trial in this court and pleaded guilty to an indictable count of assault, para. 266(a) (case 8160749); the victim was a young person who was at a facility where N.B.P. was serving an Intensive Rehabilitative Custody and Supervision (IRCS) sentence for second-degree murder imposed in *R. v. B.P.*, 2015 NSPC 38.

[3] N.B.P. pleaded guilty to a summary count of assault of a peace officer, para. 270(2)(b) (case 8087544); he attacked a correctional officer at a prison where he had been remanded.

[4] These assaults were not trivial, and involved high levels of force. N.B.P. committed these offences after he had turned eighteen years of age; consequently, he is to be sentenced as an adult.

[5] There are no mandatory-minimum penalties applicable to either of the charges before the court; where the assault-peace-officer-charge was prosecuted

summarily, it carries a maximum permissible sentence of six-months' imprisonment. An indictable para. 266(a) count carries a maximum potential penalty of five-years' imprisonment.

[6] The sentencing hearing started out as contested. Defence counsel sought initially a non-custodial sentence; this was to prevent the conversion of N.B.P.'s IRCS youth sentence, imposed under para. 42(2)(r) of the *Youth Criminal Justice Act*, into an adult sentence. The statutory mandate for the conversion of a youth sentence into an adult sentence is set out in sub-s. 743.5(1) of the *Code*:

743.5 (1) If a young person or an adult is or has been sentenced to a term of imprisonment for an offence while subject to a disposition made under paragraph 20(1)(k) or (k.1) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or a youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r) of the *Youth Criminal Justice Act*, the remaining portion of the disposition or youth sentence shall be dealt with, for all purposes under this *Act* or any other Act of Parliament, as if it had been a sentence imposed under this *Act*.

[7] However, there is no longer a controversy between the parties; the court is being invited by the prosecution and defence to impose a total sentence of one year in prison, along with ancillary orders.

[8] The negotiated outcome has been described by counsel as a common recommendation rather than a joint submission.

[9] However, in reviewing *R. v. Anthony-Cook*, 2016 SCC 43—which is the leading case on point—it is clear that effective, efficient and beneficial joint

submissions can arise from even post-guilty-plea, post-finding-of-guilt agreements; this is because, even after there has been a guilty plea or a finding of guilt, there might be compelling mutual advantages to presenting the court with a unified recommendation regarding sentencing: it might obviate having a contested and prolonged sentencing hearing—which is certainly the case here—and it might resolve appellate issues that might delay a conclusive outcome in a case. A joint submission based on post-guilt negotiations will have the same beneficial effects for everyone with interests at stake—victims, the person to be sentenced, the prosecution, other justice-system participants, as well as the public and the administration of justice at large—as pre-plea agreements: see *Anthony-Cook* at paras. 35-40.

[10] The signal characteristic of a joint submission is a *quid pro quo*: each side gives something to gain something. That feature is evident in what counsel have worked out here. There will sometimes be backstories to joint submissions; it is generally better that the court not know about them, so as to prevent extraneous factors from distorting the outcome.

[11] A court ought to depart from a joint submission only if the court were to be satisfied that the submission would be contrary to the public interest or bring the administration of justice into disrepute: *Anthony-Cook* para. 32.

[12] In my view, the submission in this case is a reasonable one. It takes into account N.B.P.'s age and, while challenging, his realistic prospects for rehabilitation. In *R. v. Colley*, [1991] N.S.J. No. 62 (CA), the Court held that, in dealing with a youthful adult, if the need to protect society might be well served by a shorter sentence as by a longer one, the shorter ought to be preferred.

[13] However, the submission takes into account also the fact that N.B.P.'s record is one that is populated with highly violent acts; and he is to be sentenced today for violence, which would call for an emphasis on denunciation and deterrence: *R. v. Perlin*, [1977] N.S.J. No. 548 at para. 8 (CA); *R. v. G.A.M.*, [1996] N.S.J. No. 52 at para. 32 (CA).

[14] I find that the joint submission takes those factors into account; therefore, the court will sentence N.B.P. as follows.

[15] In relation to case number 8087544, the court imposes a sentence of three-months' imprisonment. In accordance with the provisions of para. 718.3(4)(a) of the *Criminal Code* (taking into account as well the provisions of sub-s. 718.3(6) of the *Code* which treats N.B.P.'s current youth sentences as sentences of imprisonment as described in para. 718.3(6)(b)) the three month sentence is to be served consecutively to any time being served. There will be a \$100-dollar victim

surcharge amount in relation to that charge and N.B.P. will have 48 months to pay that victim-surcharge amount.

[16] In relation to case number 8160749, there will be a sentence of nine-months' imprisonment that will be served consecutively to time being served and consecutively to the sentence which I have just imposed in relation to case number 8087544, for a total sentence of twelve months consecutive to time being served.

[17] The court will order a secondary-designated-offence DNA collection order in relation to case number 8160749 and Mr. McNeill I can't recall whether the prosecution was seeking a weapons prohibition.

[18] MR. MCNEILL: No, we asked for a section 110 but I did not specify the terms.

[19] THE COURT: The court is going to order and direct as well that, pursuant to section 110 of the *Criminal Code*, that there be a period of prohibition in relation to case number 8160749 commencing immediately and ending five years after N.B.P.'s release from custody. In addition, the court is going to order and direct that the warrant of committal be endorsed with a non-communication order in accordance with the provisions of section 743.21 of the *Criminal Code*. While in custody N.B.P. is to have no contact or communication with [name redacted from

decision]. I decline to order a no communication order in relation to the correctional officer who may come into contact with N.B.P. in his employment capacity. Any issue in relation to that?

[20] MR. MCNEILL: No, no that's fine, I expect that.

[21] THE COURT: Thank you. Any further submissions counsel in relation to N.B.P.?

[22] MR. LLOY: No, Your Honour.

[23] MR. MCNEILL: No.

[24] THE COURT: N.B.P. I'll have you go with the Sheriffs please. Thank you very much. I wish to express my appreciation to counsel for the extensive and thorough preparation that went into this hearing.

JPC