PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Patterson*, 2018 NSPC 46

Date: 2018-09-04
Docket: 8158588, 8164163, 8164164, 8164167, 8211974, 8211975
Registry: Pictou

Between:

Her Majesty the Queen

v.

Michael Anthony Patterson

SENTENCING DECISION

Judge:	The Honourable Judge Del W. Atwood
Heard:	2018: 4 September in Pictou, Nova Scotia
Charge:	Para. 129(a), sub-s. 145(5.1), para. 249(1)(a), sub-s. 259(4), *Criminal Code of Canada*
Counsel:	Bill Gorman for the Nova Scotia Public Prosecution Service Douglas Lloy Q.C for Michael Anthony Patterson

By the Court:

Preamble

[1] Sentencing courts will experience on rare occasions persons of otherwise solid and pro-social reputations coming into conflict with the law, committing serious offences, but clustered within a short time span. In effect, there is a sudden, inexplicable flareup; however, things settle down fairly quickly. Anybody can have a bad year.

[2] Michael Anthony Patterson's *annus horribilis* was 2017. He accumulated very quickly a number of charges in several judicial centres in Nova Scotia. These are the last to get sorted out.

Circumstances of the offences

[3] The court heard a statement of fact read into the record by the prosecution in accordance with ss. 723 and 724 of the *Code*, admitted as accurate by defence counsel. Facts which have been admitted formally are conclusive and require no further proof: *R. v. Castellani*, [1970] S.C.R. 310 at 317; *R. v. Curry* (1980), 38 N.S.R. (2d) 575 at para. 26 (N.S.C.A.); *R. v. Falconer*, 2016 NSCA 22 at para. 45; *R. v. Hood*, 2016 NSPC 78 at para. 31; *R. v. MacBeth*, 2017 NSPC 46 at para. 27.

[4] On 5 October 2017, police responded to a call of an intoxicated male outside an apartment building in Trenton. Mr. Patterson was that male, and he was, indeed, very drunk. On top of that, he insulted the police, was physically aggressive, and ended up being sprayed with an immobilising chemical irritant. After he had sobered up in cells, he was released by police on a Form 11.1 undertaking with a condition to abstain from alcohol. He was charged with one count of resisting a peace officer, para. 129(a) of the *Criminal Code* (case no. 8158588).

[5] On 8 October 2017, Mr. Patterson got arrested once more—again, drunk—walking away from a pub. A police officer arrested Mr. Patterson; regrettably, Mr. Patterson pulled away and took off. This run-in resulted in a charge of violating his 5 October Form 11.1 undertaking by drinking, sub-s. 145(5.1) of the *Code* (case no. 8164164) , and one more count of resisting, para. 129(a) (case no. 8164163). Mr. Patterson was not found until some time later, when he was arrested on a warrant from the Truro judicial centre.

[6] On 3 November 2017, Mr. Patterson was found under the influence of alcohol near the back door of a private home; he was arrested, brought to court in custody, and released three days later on a recognizance. This led to another charge of sub-s. 145(5.1) (case no. 8164167).

[7] Things reached a crescendo on 14 November 2017.

[8] Before I summarise what happened that day, it is important to note for context that on 19 June 2017 I sentenced Mr. Patterson for an offence under para. 253(1)(a) of the *Code* and prohibited him from driving for one year.

[9] Just before 8 a.m. on 14 November 2017, when children were playing and walking to a community school in Westville, Mr. Patterson was behind the wheel of a truck which police believed had been stolen. Police began a pursuit of Mr. Patterson. Mr. Patterson would not stop. He drove on the wrong side of a major roadway through the town. He blew through an intersection without stopping. A crossing guard has just led children across the roadway. Witnesses saw the truck almost tipping over as Mr. Patterson swerved dangerously on two wheels. He drove off the roadway, into a ditch, narrowly missing a backyard pool, but hitting a swing set. Prior to police calling off the pursuit due to public-safety concerns, Mr. Patterson's velocity exceeded 100 km/hr. Mr. Patterson was last seen heading out of Pictou County on the 102 Highway. He was arrested later in the day in Dartmouth. Mr. Patterson was charged with dangerous driving, para. 249(1)(a), and driving while prohibited, sub-s. 259(4) (case nos. 8211974-5).

[10] I made inquiries of counsel and staff and have been informed that there are no s. 722 victim-impact statements to be filed with the court.

[11] The prosecution proceeded summarily, and Mr. Patterson pleaded guilty to all charges.

Circumstances of Mr. Patterson

[12] The court has received a presentence report dated 10 April 2018.

[13] Mr. Patterson is 29 years old; he experienced an unremarkable childhood and adolescence. He enrolled in a music program at university for a period of time. He worked as a scaffolder in Alberta between 2013 and 2015. At some point, he moved to the Yukon.

[14] One of Mr. Patterson's parents prepared a letter for the author of the presentence report. This letter described Mr. Patterson returning home to live with family in 2016. After that, many bad things happened. In 2017, Mr. Patterson was assaulted by strangers; he was in a car accident; he witnessed a drowning; he struck his head during an incident involving police; a former intimate partner experienced a miscarriage. Mr. Patterson's family called police because he was exhibiting erratic behaviour.

[15] Mr. Patterson told the presentence-report author that he began experiencing mental-health problems in the spring and summer of 2017. He felt he was spiralling out of control. While on remand in Halifax, he was prescribed medication to help him sleep and deal with anxiety. Since age 18, he has used marijuana, ecstasy and, occasionally, cocaine. He claims to have been clean since the fall of 2017, and has sought community mental health services.

[16] On the motion of and with the consent of counsel, I received in evidence a report that had been prepared by Dr. Risk Kronfli on 29 November 2017 for the purposes of a s. 672.11-672.12 assessment; that assessment had been ordered in the Halifax judicial centre pertaining to charges connected factually to the offences here from 14 November 2017. I have found Dr. Kronfli's reports consistently thorough, detailed, and keenly insightful. This one is no exception. In his report, Dr. Kronfli stated:

> With regard to the events that led to the charge, it is my opinion that no active psychiatric illness was present at the time of the events that led to the charges, and that most of his actions were secondary to intoxication and the releasing effect of alcohol and drugs.

[17] I have reviewed Mr. Patterson's record which I shall summarise:

Charge	Date of Offence	Sentencing Date and Judicial Centre	Sentence
Public mischief—s. 140	30 April 2017	19 June 2017 PICTOU	$250 fine
Impaired—253(1)(a)	30 April 2017	19 June 2017 PICTOU	$1000 fine 1 year prohibition
Bail breach—145(3)	14 Nov 2017	28 Feb 2018 HALIFAX	1 day time served 18-month probation term
Dangerous driving—249(1(a)	14 Nov 2017	28 Feb 2018 HALIFAX	1 day time served Probation 18 months 1-year driving prohibition
Assault police officer—270(1)(a)	14 Nov 2017	28 Feb 2018 HALIFAX	1 day time served Probation 18 months
Mischief—430	14 Nov 2018	28 Feb 2018 HALIFAX	1 day time served Probation 18 months
Possession over—355a	14 Nov 2018	28 Feb 2018 HALIFAX	1 day time served Probation 18 months
Drive while prohibited—259(4)	14 Nov 2018	28 Feb 2018 HALIFAX	1 day time served Probation 18 months 1-yr prohibition
Assault with weapon—267a	14 Nov 2017	28 Feb 2018 HALIFAX	1 day time served Probation 18 months 10 year s. 109 order DNA primary
Careless use—86(1)	14 Nov 2017	28 Feb 2018 HALIFAX	1 day time served Probation 18 months
Drive while prohibited—259(4)	27 Sept 2017	18 July 2018 TRURO	$300 fine 1-year prohibition
Breach of bail	14 Nov 2017	18 July 2018 TRURO	Suspended sentence Probation 6 months
Drive while prohibited—259(4)	14 Nov 2017	18 July 2018 TRURO	$500 fine 2-year prohibition
Possession under—355b	14 Nov 2017	18 July 2018 TRURO	Probation 6 months

[18] The sentences imposed in the Halifax judicial centre on 28 February 2018 pertained to offences Mr. Patterson committed in HRM on 14 November 2017

after fleeing from police in Westville the same date; three of the offences imposed in Truro on 18 July 2018 had to do with offences committed by Mr. Patterson on 14 November 2017 as he blew through Colchester County before being apprehended in HRM.

[19] Mr. Patterson made an allocution to the court pursuant to s. 726 of the *Code*. Mr. Patterson apologised for his actions, and accepted responsibility for them. He described the problems he had experienced coping with stress over the past year; he acknowledged that he needed mental-health counselling, and stated that he had resumed taking medication that had been prescribed for him.

Sentencing submissions of counsel

[20] The prosecution seeks a sentence of 7-months' imprisonment, a 24-month driving prohibition, and a 12-month term of probation.

[21] Defence counsel sought initially an "appropriately crafted" conditional sentence order. However, in a late-breaking brief submitted to the court last week, defence counsel changed course, and invited the court to consider a suspended sentence.

Statutory ranges of penalty

[22] None of the charges before the court carries a mandatory-minimum term of imprisonment. Each of the charges carries a maximum legal penalty of six-months' imprisonment and a fine of $5000 in accordance with the general penalty provisions of s. 787 of the *Code*. The dangerous-driving count attracts a discretionary prohibition order of up to three years in duration; the drive-while-prohibited count carries a mandatory driving prohibition of up to three years. The charges are eligible for the full array of sentencing outcomes under the *Code*, ranging from discharges (s. 730), suspended sentences (para. 731(1)(a)), stand-alone fines (s. 734), fines with probation (para. 731(1)(b)), prison terms (ss. 718.3, 787), prison terms with probation (para. 731(1)(b)), prison terms with fines (s. 734), intermittent sentences with probation (s.732), and conditional sentences (s. 742.1).

Sentencing principles

[23] In determining an appropriate penalty, it is important that the court recognize that sentencing is a highly individualized process: *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 80; *R. v. Ipeelee* 2012 SCC 13 at para. 38; *R. v. Scott*, 2013 NSCA 28 at para. 7; *R. v. Redden*, 2017 NSSC 172 at para. 28; *R. v. MacBeth*, 2017 NSPC 46 at para. 8. "Only if this is so can the public be satisfied that the offender 'deserved' the punishment he received and feel a

confidence in the fairness and rationality of the system": *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486 at 533.

[24] In determining a fit sentence, a sentencing court ought to take into account any relevant aggravating or mitigating circumstances: para. 718.2(a) of the *Code*. The court must consider also objective and subjective factors related to the offender's personal circumstances and the facts pertaining to the particular case: *R. v. Pham* 2013 SCC 15 at para. 8; *R. v. Boutilier*, 2018 NSCA 65 at para. 21; *R. v. Skinner*, 2015 NSPC 28 at para. 33, varied by 2016 NSCA 54.

[25] Assessing a person's moral culpability is an extremely important function in the determination of any sentence. This is because a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. That fundamental principle is set out in s. 718.1 of the *Code*. In *Ipeelee* at paragraph 37, the Supreme Court of Canada noted that proportionality is tied closely to the objective of denunciation. Proportionality promotes justice for victims, and proportionality seeks to ensure public confidence in the justice system; it was characterised in *Ipeelee* as a *sine qua non* of a just sanction.

[26] In *R. v. Lacasse* 2015 SCC 64 at para. 12, the Supreme Court of Canada confirmed that proportionality is a primary principle in considering the fitness of a sentence. The severity of a sentence depends upon the seriousness of the consequences of a crime and the moral blameworthiness of the individual offender. A consequential analysis requires the court to consider the harm caused by criminalised conduct. *Lacasse* recognized that determining proportionality is a delicate exercise, because both overly lenient and overly harsh sentences imposed upon an offender might have the effect of undermining public confidence in the administration of justice.

[27] Pursuant to para. 718.2(b) of the *Code*, this court is governed by the principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This is the principle of sentencing parity. In *R. v. Christie*, 2004 ABCA 287 at para. 43, the reviewing court held that:

> [w]hat we must strive for is an approach to sentencing whereby sentences for similar offences committed by similar offenders in similar circumstances are understandable when viewed together . . . .

[28] This is the penalty analog of the principle of legality: not only must members of the public know what type of conduct is criminalised—see, e.g., *R. v. Lohnes* [1992] 1 S.C.R. 167 at para. 27; they must know also the penalties

that might be imposed for engaging in that conduct. The theory is that knowledge of both the risk of liability and the extent of liability will help those contemplating illegal conduct to make informed choices. See Clayton C. Ruby, Gerald J. Chan & Nader R. Hasan, *Sentencing*, 9th ed (Markham: LexisNexis, 2017) at para. 1.25.

[29] When a court is imposing a sentence for multiple counts, or if the person being sentenced is already serving a sentence, the court must consider imposing consecutive sentences, in accordance with the provisions of sub-s. 718.3(4) of the *Code*.

[30] The court must apply the principle that an offender not be deprived of liberty if less restrictive sanctions might be appropriate in the circumstances. Furthermore, the court must consider all available sanctions other than imprisonment that are reasonable in the circumstance. These restraint criteria are found in paras. 718.2 (d) and (e) of the *Code*.

[31] In *R. v. Gladue*, [1999] S.C.J. 19 at paras. 31 to 33, and 36, the Supreme Court of Canada stated that the statutory requirement that sentencing courts consider all available sanctions other than imprisonment was more than merely

a codification of existing law. Rather, the provision was to be seen as a remedy whereby imprisonment was to be a sanction of last resort.

Offence seriousness and moral culpability

[32] With the exception of the 14 November offences, Mr. Patterson's conduct fell at the lower end of the spectrum of gravity and blameworthiness. He was drunk and belligerent, but was not a risk to public safety. His actions were not premeditated or deliberate, but were the results of the disinhibiting effects of substances that have precisely that effect on people's thinking and behaviour.

[33] However, what Mr. Patterson did on 14 November 2017 was a whole lot different.

[34] Mr. Patterson blew through a school zone and a residential neighbourhood with recklessness and speed in evading police that created an elevated risk of lethality for anyone in his flight path. He was a prohibited driver. He drove a truck without the permission of the owner.

[35] I pause here for a *caveat*.

[36] Aggravating factors are circumstances that elevate the serious of the foundational offence or the moral culpability of the offender: *R. v. Proulx*, 2000 SCC 5 at para. 73; *R. v. Fice*, 2005 SCC 32 at para. 73. However, sentencing

courts must be cautious not to impose double penalties when a person before the court faces multiple counts, even when those counts are dealt with in more than one court.

[37] First of all, what might be considered ordinarily as an aggravating circumstance in relation to a particular offence might be captured entirely in a concurrently charged count. And so, yes, it would ordinarily be aggravating in a dangerous driving case that the driver was prohibited and was operating a stolen vehicle. However, Mr. Patterson is to be sentenced for driving while prohibited; indeed, it appears he was sentenced in Truro and Halifax for two other drive-while-prohibited infractions from 14 November 2017. Further, he was punished by the court in Halifax for stealing the truck—which he drove when he sped away from Westville, then through Truro and on into HRM—when it imposed a sentence for a para. 355(a) count.

[38] Furthermore, courts have recognized that even manifold offences—governed ordinarily by sub-s. 718.3(4) of the *Code*—might be part of "one continuous criminal act": *R. v. Oldham* (1975), 11 N.S.R. (2d) 312 (A.D.) at para. 13 (a principle recognized but not applied in that case, as Oldham's offences were done a week apart); "one single criminal enterprise": *R. v. Brush* (1975), 13 N.S.R. (2d) 669 (A.D.) at para. 9; "part of a linked series of acts within a single

endeavour": *R. v. Potts*, 2011 BCCA 9 at para. 88, leave to appeal refused, [2011] S.C.C.A. No. 172. In such a case, a court may consider imposing concurrent sentences. In this case, based on what I was told at the sentencing hearing about the charges for which Mr. Patterson was sentenced in the Halifax judicial centre on 28 February 2018 and the Truro judicial centre on 18 July 2018, there is a strong connection between those charges and the offences here from 14 November 2017: they occurred on the same date while Mr. Patterson was driving in the same stolen truck in full flight mode.

[39] Finally, I recognize that, in sentencing Mr. Patterson, while not bound by the sentencing outcomes imposed upon him by my colleagues in Halifax and Truro, I ought to try to follow them, as judicial comity leads to consistent and stable results: see, *e.g.*, *R. v. Letourneau*, 2008 ABPC 192 at para. 42; *Re: Hansard Spruce Mills*, [1954] 4 D.L.R. 590 (B.C.S.C.) at 591; *R. v. T.A.P.*, 2013 ONSC 797 at para. 58, varied on other grounds, 2014 ONCA 141.

[40] With these precautions in mind, I would situate Mr. Patterson's offences of 14 November 2017 toward the upper end of the scale of factual seriousness for motor-vehicle-connected crimes not involving injury or death.

[41] In assessing Mr. Patterson's moral culpability, I find that there is insufficient evidence before the court to allow me to conclude that Mr. Patterson was suffering from a mental illness as might have mitigated his criminal responsibility. At the invitation of defence counsel, I have I taken into account Dr. Kronfli's assessment that I mentioned earlier in my judgment. Dr. Kronfli was of the opinion that Mr. Patterson had no active psychiatric illness; rather, Mr. Patterson's criminal transgressions of 14 November 2017 "were secondary to intoxication and the releasing effect of alcohol and drugs". When substance misuse leads to dangerous behaviour, courts may treat it as an aggravating factor, especially when an offender decides to oppose indicated counselling: *R. v. Head*, [1970] S.J. No. 266 (CA); *R. v. Letourneau*, 1991 ABCA 309 at para. 6; R. v. *Pitkeathly* (1994), 69 O.A.C. 352 at para. 13.

[42] In my view, a more integral approach should take into account the varied ways people might abuse substances, the varied ways those substances affect human behaviour, and the prospects of the abuse being treated effectively.

[43] In this case, Mr. Patterson's abuse of alcohol and other substances had become serious—but only recently so.

[44] Further, Mr. Patterson's prospects for rehabilitation are very good: he has remained clean and compliant with stringent terms of bail since last February; he recognizes the need for counselling and has taken steps to go through with it. Indeed, it is now mandatory that he do so, as he is on probation out of Halifax and Truro until August 2019 to "attend for substance abuse assessment and counselling". These are mitigating factors as they attenuate Mr. Patterson's risk to the community.

[45] I am satisfied from the evidence that Mr. Patterson panicked once he saw he was being followed by police: he was behind the wheel when under a court order not to drive, and he had taken a truck without the owner's permission. Plus, he had charges pending before the court. This threw Mr. Patterson into full flight mode, which he acted out on a grand scale until he was stopped in HRM. I consider this similar factually to *R. v. Fraser*, 2016 NSPC 49. As I decided in *Fraser*, panic-induced, situational behaviour is less morally culpable than criminal activity that is premeditated and well thought out. Crimes that are deliberate and calculated tend to be crimes done for profit, gain, or for the infliction of targeted harm or suffering. None of that is in evidence here. In my view, the panic element lessens Mr. Patterson's moral culpability for the November charges.

[46] Mr. Patterson pleaded guilty. He has remained offence free since he resumed his bail following his sentencing hearing in Halifax in February 2018; in addition to his bail, he has been subject to and appears to have been going along with stringent terms of probation imposed by courts in Halifax and Truro. These factors satisfy me that Mr. Patterson is a good candidate for a community-based sentence.

[47] Yes, Mr. Patterson has a record. However, a record is not an aggravating factor, in that Mr. Patterson is not to be resentenced for offences committed in the past. However, record may signify an elevated need for specific deterrence or for specific rehabilitative measures.

[48] Remarkable in Mr. Patterson's history is that he had not found himself in conflict with the law before 2017; his offending behaviour is linked to an acute substance-use disorder which is now being managed in the community very effectively.

[49] All of these factors cause me to situate Mr. Patterson's moral culpability for his 14 November 2017 offences toward the lower end of the scale.

Sentence parity

[50] In considering sentencing parity, I take into account the non-custodial sentences imposed upon Mr. Patterson in Truro and Halifax for what happened on 14 November.

[51] I apply also a case decided recently in this judicial centre. In *R. v. Kelly,* 2017 NSPC 45, I imposed a jointly recommended fine upon a completely sober young motorist charged with dangerous driving who rocketed through the serpentine section of the 104 near Marshy Hope at velocities that would get a wide-bodied aircraft airborne as he wove dangerously around other cars and into opposing traffic. Mr. Kelly endangered life and limb on a scale comparable to, if not greater than, Mr. Patterson's wrongdoing.

Remand credit

[52] It appears to me that Mr. Patterson spent some period of time on remand on the charges before the court: approximately three days for the charges prior to 14 November 2017; and then twenty-three days between 15 November and 6 December 2017 as a result of a remand order issued in the Halifax judicial centre when Mr. Patterson was being assessed psychiatrically. He remained on remand on his Halifax charges until he was sentenced there on 28 February 2018.

[53] The court is required to consider remand time in determining an appropriate sentence when that remand is the result of the offence: sub-s. 719(3). This may require a sentencing court to consider periods of remand for charges not subject to a sentencing hearing, but related to charges for which sentence is to be imposed: *R. v. Hatt*, 2017 NSCA 158.

[54] The record before me shows that Mr. Patterson was sentenced in Halifax to a one-day term of imprisonment for his 14 November 2017 offences which, as I have found, are connected to the charges before the court today; he was given fines and probation in Truro. The record does not disclose that the sentencing judges in Halifax or Truro felt it necessary to grant credit for the time Mr. Patterson spent on remand. I operate on the sure and certain assumption that those judges intended to apply the law and fulfil the mandatory jurisdiction set out in sub-ss. 719(3.2)-(3.3) of the *Code* to put on the record any remand credit given; that the record does not refer to the granting of a credit leads me to conclude the judges did not feel credit was required in order to reach the decisions they did not to imprison Mr. Patterson, but to place him on probation, instead. Credit-for-time-served endorsements are not needed here, as I would not have imposed any terms of imprisonment, even without there having been time spent on remand.

Sentence of the court

[55] In line with my colleagues in Halifax and Truro, I believe that a non-custodial sentence would be most appropriate here. It takes into account proportionality, particularly Mr. Patterson's lower level of moral blameworthiness. It takes into account Mr. Patterson's young age and limited record. It takes into account the very good prospects for Mr. Patterson's rehabilitation, and will allow Mr. Patterson to continue receiving the support he has sought in the community. He will have the strong support of his family in all this.

[56] The court imposes the statutory-minimum victim-surcharge amounts with 12 months to pay. The court suspends the passing of sentence on all counts, and places Mr. Patterson on probation for 12 months. In addition to the statutory conditions of probation, Mr. Patterson shall:

- Attend for substance-abuse assessment and counselling as directed by the probation officer, mental-health assessment and counselling, as well as any other counselling as directed;

- Sign all consents to release of information required by the probation officer;

- Not possess, take or consume any controlled substance except in accordance with a physician's prescription;

- Report to the local community corrections office within two working days;

- Not possess, take or consume alcohol or any intoxicating substance;

- Not enter any place or business where alcohol is the primary product of sale;

- Comply immediately with any demand for urinalysis in accordance with the terms of para. 732.1(3)(c.1) and (c.2) of the *Code;*

- Participate and cooperate with any counselling, assessment or program directed by the probation officer and notify the probation officer immediately of any missed assessment or counselling appointment.

[57] There will be a 24-month prohibition order in relation to case 8211975, to be served consecutively to any existing prohibition order; this is in accordance with sub-s. 259(2.1) of the *Code*. I decline to impose a discretionary prohibition order for the dangerous-driving count. The totality principle should

apply to ancillary orders; the total effect of the mandatory prohibition which I have imposed for the drive-while-prohibited count covers adequately the public-safety interest. As the prohibition which I have imposed does not relate to an alcohol-consumption-related offence, the interlock provisions do not apply.

[58] I wish to thank counsel for the thorough submissions made in this case.

JPC