

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R.v. Longaphy*, 2018 NSPC 52

**Date:** 20181121

**Docket:** 2668787, 2668788,  
2668789 & 2668790

**Registry:** Dartmouth

**Between:**

Her Majesty the Queen

v.

Christopher Longaphy

**Restriction on Publication: Ban on Publication Under Section 486.4 & 486.5 of the Criminal Code**

<b>Judge:</b>	The Honourable Judge Theodore Tax,
<b>Heard:</b>	September 18, 2018, in Dartmouth, Nova Scotia
<b>Decision</b>	November 21, 2018
<b>Charge:</b>	264.1(1)(a), 266, 267(a) & 267(b) of the Criminal Code
<b>Counsel:</b>	Eric Taylor, for the Provincial Crown Attorney Jonathan Hughes, for the Defence Counsel

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**Section 486.4 & 486.5: Bans ordered under these Sections direct that any information that will identify the complainant, victim or witness shall not be published in any document or broadcast or transmitted in any way. No end date for the Ban stipulated in these Sections.**

**By the Court:**

**Longaphy - Assault Causing Bodily Harm with a Weapon and Threats - Sentence Decision**

[1] Mr. Christopher Longaphy was found guilty following a lengthy trial of four offences which occurred on January 20, 2012 in Sackville, Nova Scotia. The four offences were assaulting Mr. T.G. with a baseball bat contrary to section 267(a) of the **Criminal Code**, assaulting Mr. T.G. and causing him bodily harm contrary to section 267(b) of the **Code**, assaulting Mr. J.B.. contrary to section 266 of the **Code**, and threatening Mr. J.B.. to cause bodily harm or death to him contrary to section 264.1(1)(a) of the **Code**. The Crown had proceeded summarily on all of the charges before the court.

[2] The issue before the Court is to determine a just and appropriate sentence in all the circumstances of these offences and this offender. The Court concluded, in finding Mr. Longaphy guilty of all four charges, that his intentional actions represented a series of unlawful acts which amounted to a very serious incident of vigilante justice to pursue lawless retribution against teenagers by an adult.

**Positions of the Parties:**

[3] The Crown Attorney recommended that specific and general deterrence as well as very strong denunciation of this unlawful vigilante justice requires a significant jail sentence, even for an offender who had no prior adult criminal record. It is the position of the Crown that a global jail sentence in the range of six to eight months ought to be followed by one year of probation, together with a DNA order pursuant to section 487.051(3) of the **Code** and a ten-year firearms prohibition order under section 110(2) of the **Criminal Code**.

[4] Defence Counsel submitted that, given the circumstances which resulted in Mr. Longaphy having the charges over his head for over six years, the sanction imposed by the Court ought to focus primarily on restraint, rehabilitation and promoting a sense of responsibility in the offender. It is the position of the Defence that the Supreme Court of Canada decisions in **R. v. Jordan** and **R. v. Cody** dealing with delays in the criminal justice system provide authority for the proposition that the Court could infer that Mr. Longaphy has suffered prejudice and incurred significant costs over the last six and a half years.

[5] Since the Crown proceeded summarily and given a positive pre-sentence report, Defence Counsel submits that this is an appropriate case to order a conditional discharge with Mr. Longaphy being subject to the terms of a probation order for eighteen months. In the alternative, if the Court is considering a sentence of imprisonment, then Defence Counsel submits that a conditional sentence order of imprisonment in the community of twelve to sixteen months in total is also an available sanction which would be consistent with the purpose and principles of sentencing found in sections 718-718.2 of the **Criminal Code**. It is the position of the Defence that in all the circumstances of the offence and the offender, it is not necessary to separate him from society.

### **Circumstances of the Offences:**

[6] During the evening hours of January 20, 2012, Mr. T.G., Mr. J.B.. and the third young person decided to throw snowballs at passing vehicles. Mr. T.G. was seventeen years at the time and his two friends were sixteen years old. Mr. T.G. had driven his friends in his truck and parked near a car dealership and then they hid in a line of trees to throw snowballs at oncoming vehicles.

[7] As a Jeep Liberty approached their location, the three teenagers threw snowballs at it and one or more of them hit its windshield. The female driver stopped, rolled down her window and yelled that the boys had just broken her windshield. The boys ran off. After waiting a short time, they went back to the car dealership to get Mr. T.G.'s truck.

[8] Longaphy's girlfriend was the driver of the Jeep Liberty was she was on the way to his house which was located nearby. That evening, Mr. Longaphy had arranged to watch a pay-per-view event of Ultimate Fighting Challenge mixed martial arts fights with three of his adult friends. Mr. Longaphy and his friends were drinking beer and whiskey and watching the fights for a few hours prior to his girlfriend's arrival. She told them that some kids had thrown snowballs and broken her windshield.

[9] Almost immediately, Mr. Longaphy and the other men raced out the door, jumped in a vehicle to find the people who had thrown the snowballs and created a dangerous situation on a busy road. A witness called by the Defence, during the trial, confirmed that Mr. Longaphy's girlfriend had advised them of the general location where her vehicle was hit by snowballs, but she was not able to provide any description of the people who had thrown them.

[10] In addition, Mr. Longaphy's girlfriend phoned the RCMP to report the broken windshield. Const. Kyle Smith received this dispatch information and responded to the call to investigate. However, as he was driving to the area of the incident, Const. Smith was informed of a second call to the RCMP from the female complainant. Const. Smith was informed that the female complainant's boyfriend had detained two of the kids responsible for throwing the snowballs and he was also informed where they were located.

[11] The Court accepted the evidence of Mr. T.G. and Mr. J.B.. that they were walking along the road towards Mr. T.G.'s truck when Mr. Longaphy and his friends approached them in their vehicle. Mr. T.G. continued walking as Mr. Longaphy got out of the car and ran towards him. As that occurred, the other two boys ran off and were chased by two of Mr. Longaphy's friends.

[12] Mr. Longaphy was yelling at Mr. T.G. as he ran towards him with a bat in his hands and then hit him in the area of his knees with the bat, with sufficient force to cause him to fall to the ground. Mr. T.G. rolled over and then Mr. Longaphy was on top of him and asked if he had broken the windshield of the Jeep. When Mr. T.G. did not respond, Mr. Longaphy started hitting him with the bat. Mr. T.G. grabbed the bat to prevent further hits to his body and then Mr. Longaphy put the bat down and punched him several times in the face around his eye. Shortly after that, one of other adult males pulled Mr. Longaphy off Mr. T.G.

[13] The Court accepted Mr. T.G.'s evidence that one of the males had picked up the bat, put it in the car in which Mr. Longaphy had arrived at that location and then, the driver left with it before the police officer arrived. The driver did come back a short time later with the jacket for Mr. Longaphy as he was only wearing a t-shirt and jeans on this very cold evening when he chased down Mr. T.G. and attacked him.

[14] The Court found that Mr. T.G.'s evidence and the medical evidence of Dr. McVey established that Mr. T.G. had suffered bruising on his sides, legs and lower back, a broken bone under his left eye, cuts and a bump on top of his head and finger marks on his neck under his jaw where Mr. Longaphy had grabbed him and pushed him to the ground. In addition, the photographs of Mr. T.G., which were taken by his mother when Mr. T.G. was returned to the house by the police officer, also established that there was bleeding on the top of his head and under his left eye as a result of the assault by Mr. Longaphy.

[15] Mr. T.G.'s mother took him to the QE II Hospital where x-rays were done, and the diagnosis confirmed. Mr. T.G. received stitches under his left eye to close the wound. He was also referred to a plastic surgeon for treatment to repair the acute "blow out" fracture in the left orbital floor under his left eye. The Court concluded that Mr. Longaphy had punched Mr. T.G. several times in the face which caused bodily harm and that other injuries were caused by Mr. Longaphy assaulting Mr. T.G. with a weapon which was a baseball bat.

[16] Although Mr. J.B. had run off when the car in which Mr. Longaphy and the other adult males approached him, he was caught by a couple of the adult males and escorted back to the car dealership where Mr. Longaphy had already "detained" Mr. T.G.. When Mr. J.B.. was standing beside Mr. T.G., Mr. Longaphy looked at him and threatened him by saying: "do you want me to do this, what I did to your friend?" Mr. J.B.. said no and then Mr. T.G. told Mr. Longaphy that Mr. J.B.. was too young and to leave him alone. After that brief exchange, Mr. Longaphy punched Mr. T.G. in the face.

[17] In addition, the Court also accepted Mr. J.B.'s evidence that, shortly thereafter, Mr. Longaphy proceeded to punch and kick him about 6 or 7 times and that he went into a "turtle" position to protect his head. Mr. J.B. testified that the kicks and punches had landed on his arms and legs and caused a couple of bruises which he noticed about an hour later.

[18] After Const. Smith arrived at the car dealership around 11:45 PM on January 20, 2012, he initially spoke with Mr. Longaphy, who had identified himself. Const. Smith described him as being "quite agitated, upset and angry" and "making demands" that the two boys be arrested and charged with damaging the property of his girlfriend.

[19] Const. Smith's evidence established that after the two boys were seated in the back of his police car, they admitted their responsibility for throwing the snowballs. After Const. Smith noticed the injury to Mr. T.G.'s eye and Mr. T.G. explained what had happened, Const. Smith went back to Mr. Longaphy and informed him that he was now investigating him for assaulting the two teenaged boys. The Court accepted Const. Smith's evidence that Mr. Longaphy made a spontaneous utterance to the effect that he would drop the mischief charges if the boys dropped the assault charges.

[20] The Court rejected the evidence of the one witness called by the Defence where it was inconsistent with the evidence tendered by Mr. T.G., Mr. J.B., Const.

Smith and the medical opinion evidence of Dr. McVey. The Defence witness had testified that he never saw Mr. Longaphy hit Mr. T.G. with a bat or punch him, there was no bat involved in the chase and that Mr. T.G.'s injuries were probably caused when he slipped and fell while running away from Mr. Longaphy in the parking lot and did a "face plant." Moreover, the witness stated that he never heard Mr. Longaphy threaten anyone or assault the younger and smaller of the two teenagers who the adults had detained. However, the witness also acknowledged that, for a significant period of time, he was not near Mr. Longaphy, since he remained in the vehicle to keep warm on a cold night while they waited for the RCMP officer to arrive.

[21] In the final analysis, the Court concluded that the Crown had established, beyond a reasonable doubt, the essential elements of all four charges before the court. Moreover, the Court concluded that Mr. Longaphy was absolutely irate and furious when he raced out the door of his house on a mission of vigilante justice, which led to the unlawful actions of assaulting Mr. T.G. with a baseball bat and causing him bodily harm by punching him in the face as well as assaulting and threatening Mr. J.B.. The Court concluded that Mr. Longaphy's unlawful actions of vigilante justice were fueled by alcohol, his feeling that the broken windshield of his girlfriend's vehicle had put her in a dangerous situation as well as his anger over missing the UFC fights on television.

### **Circumstances of the Offender:**

[22] The Pre-Sentence Report notes that Mr. Longaphy is presently forty-two years old and has been in a very stable and positive common-law relationship for the last four years. He does not have any prior adult criminal record. He grew up in a very stable family environment with two younger sisters and a younger brother.

[23] Mr. Longaphy's common-law partner described their relationship as being very good and that he has been great to her children from a previous relationship. She added that Mr. Longaphy has shown significant regret and remorse over this matter and is confident that he would never display similar behaviour in the future. Mr. Longaphy's sister-in-law also stated that he has displayed a lot of remorse and fully accepted responsibility for his actions and confirmed that he is involved in a very stable common-law relationship.

[24] Mr. Longaphy graduated from high school in 1994 and then attended St. Mary's University for one year working towards a general Arts degree. After that,

he left University and completed a one-year diploma in Network Administration from CDI College in 2001.

[25] Mr. Longaphy is self-employed doing general maintenance and works about forty to fifty hours per week. Due to the offences before the Court, his job prospects are somewhat limited as many of his previous work locations required security clearances. He has worked steadily over the years, with the longest period of employment as a Close Circuit Television operator for fifteen years. He has volunteered as a basketball coach for several years and helps with general maintenance at the local Royal Canadian Legion.

[26] In terms of his health and lifestyle, Mr. Longaphy has suffered some minor workplace injuries but has good physical health. There are no issues with respect to any substances. He has been a member of the Metro Pool League for the past eighteen years serving as captain for twelve years, which included controlling finances and organizing fundraisers. He has been involved with the Royal Canadian Legion, attending weekly meetings, fundraisers and benefits.

[27] A long-time friend of Mr. Longaphy confirmed that he is a “giving and hard-working person” and that there are no issues with respect to alcohol, illicit drugs or his mental health. The friend indicated that he was “surprised” on hearing the circumstances of the incident and indicated that it was an isolated incident and “out of character.”

[28] Mr. Longaphy advised the Probation Officer that he accepted responsibility for the incident and he regrets his actions and expressed his remorse towards the victims. He advised the Probation Officer that the case has been before the Court for over six years from the date of the offence and that it has caused considerable financial strain, lost work time and stress. The convictions have also had an impact on his travel, job prospects and future earnings. Mr. Longaphy stated that he was open to attending anger management and any other programming that was offered.

**Victim Impact Statement:**

[29] Although no victim impact statements were filed by either Mr. T.G. or Mr. J.B., a victim impact statement was filed by Mr. T.G.’s mother. She stated that she adopted her son as an infant from Columbia. On January 20, 2012, Mr. T.G.’s mother had called her son around 11:30 PM to find out where he was, but Cpl. Smith answered the phone. He told her that her son was “safe” but needed to go to



a hospital. The RCMP officer informed her what had happened, and she was became very concerned about her son's physical situation.

[30] Mr. T.G.'s mother said that when her son walked in the door, he "was bruised, bloody and battered." She observed that her son's left eye was swollen shut, a cut just below it was open and bleeding, his nose was swollen, his lips were bloodied and swollen, as well as crusted blood and cuts in his scalp. He also had welts on his sides and lower back as well as on his legs. She immediately took him to the hospital, arriving shortly after 1:00 AM. She remained there throughout the evening while the medical staff attended to him. Mr. T.G. missed school and work for a few days and wore sunglasses to conceal the most visible injury to his left eye, which took some time to heal.

### **Brief History of this Trial:**

[31] Given the submissions by Defence Counsel that the Court should exercise restraint based upon real or inferred prejudice suffered by Mr. Longaphy due to the length of time that this matter has been before the court, it is important to set out a brief history of this matter. The original Information in this matter had been sworn on February 22<sup>nd</sup>, 2012 and the Crown proceeded by way of summary conviction. The original information did not include a charge of assault causing bodily harm to Mr. T.G. contrary to section 267(b) of the **Criminal Code**.

[32] The Crown filed a replacement information with the four charges before the court. Mr. Longaphy did not enter his plea of not guilty for several months and trial dates were missed due to two separate suspensions of his lawyer from the practice of law by the Nova Scotia Barristers Society. The trial had originally been estimated by counsel and scheduled by the court for about half day, which estimate included the likelihood of a couple of defence witnesses. The significant underestimation by both counsel of the amount of time required for trial on repeated occasions, created significant delay in this prosecution.

[33] The hearing of trial evidence was very significantly affected by the two suspensions of Mr. Longaphy's Defence Counsel shortly before scheduled trial dates. Previously scheduled trial dates had to be adjourned. Shortly after the lawyer's first suspension, a colleague in that firm took over the file, but on the next scheduled date for trial, some of the witnesses were not available. After the lawyer's second suspension during this trial, Mr. Longaphy did not wish to engage

the colleague from that firm and requested a trial adjournment to retain a new lawyer.

[34] Trial evidence was eventually heard on seven days, being October 7 and December 2, 2015, January 22, June 20 and June 28, 2016, April 7, 2017 and concluding with one defence witness being called on May 8, 2018.

[35] Defence Counsel was retained shortly before the April 7, 2017 trial continuation date and, at that time, the evidence of the final Crown witness was concluded. However, Defence Counsel advised the Court that Mr. Longaphy would be proceeding with an application pursuant to section 11(b) of the **Charter** that his right to be tried within a reasonable time had been infringed.

[36] The **Charter** application was dismissed in **R. v. Longaphy**, 2017 NSPC 67, which was rendered on November 21, 2017. The Court concluded that Mr. Longaphy's right to be tried within a reasonable time had not been infringed due to the numerous "exceptional circumstances" and other delays which were attributed to the Defence.

[37] After the **Charter** application was dismissed, trial evidence continued and was concluded on May 8, 2018. The trial decision of the Court was rendered on July 6, 2018.

### **Principles of Sentencing:**

[38] The fundamental purpose of sentencing as set out in sections 718 of the **Criminal Code** is to protect society and to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions. The imposition of just sanctions requires the Court to consider one or more of the sentencing objectives set out in section 718 of the **Code**. Those objectives are denunciation of the unlawful conduct, specific and general deterrence, rehabilitation of the offender, separating offenders from society, where necessary, providing reparations for harm done to victims and promoting a sense of responsibility in the offender.

[39] The fundamental principles of sentencing to be applied, as appropriate, in sentencing decisions, are set out in sections 718.1 and 718.2 of the **Code**.

[40] In **R. v. C.A.M.**, [1996] SCJ No 28 at para. 91, Chief Justice Lamer stated that the determination of a just and appropriate sentence is a delicate art which

attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community.

[41] The Supreme Court of Canada also held in **CAM** stated at para. 92 that there is no such thing as a uniform sentence for a particular crime and that sentencing is a highly contextual and an inherently individualized process. While there is a principle of parity that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances, it may be very difficult to locate those similar situations. In addition, sentences will likely vary in different areas of the country as the determination of the ‘just and appropriate’ sanction will depend on the needs and current conditions of and in that community.

[42] In this case, the Crown Attorney submits that the primary focus should be on specific and general deterrence as well as denunciation of the unlawful conduct. It is the position of the Crown that crimes with this magnitude of violence certainly require a judicial response that emphasizes deterrence and denunciation and places those primary sentencing purposes above rehabilitation.

[43] In addition, the Crown Attorney submits that pursuant to section 718.01 of the **Criminal Code**, Parliament has directed that where victims were under the age of eighteen years at the time of the offence, as in this case, the objectives of denunciation and deterrence shall be given primary consideration.

[44] Defence Counsel does not take serious issue with those primary purposes, he also submits that the court should exercise restraint and also emphasize Mr. Longaphy’s rehabilitation as the incident was out of character and was the result of Mr. Longaphy’s impulsive reaction and belief that the broken windshield of his girlfriend’s car had placed her in a very dangerous situation. Defence Counsel also submits that Mr. Longaphy has suffered inferred prejudice from having this matter hanging over his head for several years and that a community-based disposition would allow Mr. Longaphy to continue to support his family.

[45] In **R. v. Ipeelee**, 2012 SCC 13 at para. 37, the Supreme Court of Canada pointed out that assessing a person’s moral culpability is an extremely important function in the determination of any sentence. This is because the principle of proportionality as set out in section 718.1 of the **Criminal Code** requires that a sentence must be proportionate to the gravity of the offence and the degree of

responsibility of the offender. The Supreme Court of Canada also noted that the principle of proportionality is tied closely to the objective of denunciation, promotes justice for victims and seeks to ensure public confidence in the justice system.

[46] In addition, Defence Counsel submits that section 718.2(d) of the **Criminal Code** requires the Court, in imposing sentence, to consider that the offender should not be deprived of his liberty, if a less restrictive sanction may be appropriate in the circumstances.

[47] Section 718.2 (e) of the **Code** was inserted by Parliament to also require the Court imposing sentence to consider all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or the community, with particular attention to the circumstances of aboriginal offenders. While there is no doubt that this principle must be considered by the court in imposing sentence, there is no indication from Defence Counsel or the information contained in the Pre-Sentence Report to indicate that Mr. Longaphy is an aboriginal offender.

[48] In addition to the sentencing principles set out in sections 718-718.2 of the **Code**, section 718.2(a) of the **Criminal Code** requires the Court to consider the aggravating and mitigating circumstances which may increase or reduce the sentence imposed by the Court.

#### **Aggravating and Mitigating Circumstances:**

[49] I find that the Aggravating Circumstances are:

- Mr. Longaphy's actions amounted to a very ugly incident of vigilante justice which involved a lawless retribution by an adult against defenseless children to extract admissions of responsibility and to punish them for throwing snowballs at his girlfriend's car;
- Mr. Longaphy chased down Mr. T.G. and then perpetrated a series of assaults initially, by hitting his lower body with a baseball bat being used as a weapon which caused bruising and then punching Mr. T.G.'s face, which caused significant bodily harm to Mr. T.G.;
- Although Mr. Longaphy was the only person among the adults who assaulted the two victims and threatened Mr. J.B., his actions were supported

by the three adult males which magnified the intimidation, fear and violence perpetrated on the victims by Mr. Longaphy;

- In committing the offences before the court, Mr. Longaphy abused two people under the age of eighteen years, which is a statutory aggravating circumstance found in section 718.2(a)(ii.1) of the **Criminal Code**.

[50] I find that the Mitigating Circumstances are:

- Mr. Longaphy had no prior adult or youth record;
- The Pre-Sentence Report is very positive, which shows him to be a person of prior good character and community minded;
- Although he was not under restrictive release conditions, there have been no violations of any release conditions nor any further charges during the six and a half years that this matter has been before the Court;
- Mr. Longaphy expressed his remorse and regret for this incident to the Probation Officer and has apparently also indicated to the Probation Officer that he accepts full responsibility for his actions;
- He has a very supportive immediate and extended family and collateral sources have indicated that the incident was “out of character” and he has a solid work record and continues to provide for his family;
- The convictions for these offences have limited job prospects, travel and future income in addition to placing him under a financial strain over the years.

[51] With respect to what I have found to be a mitigating circumstance, the Crown Attorney submits that an expression of remorse and regret, even on the eve of sentencing, ought to be considered as a mitigating factor. However, he submits that this mitigating factor should be given very little weight in the circumstances of this case, since they were only expressed after Mr. Longaphy was found guilty and after the Defence called a long-time friend of Mr. Longaphy to testify that he never hit, kicked or threatened either boy, he never had a baseball bat and that he did not cause Mr. T.G.’s injuries. While I agree with the Crown Attorney that the sincerity of Mr. Longaphy’s last-minute expressions of remorse and regret may certainly be questioned, they were nonetheless expressed to the Probation Officer and by family members and therefore, even at this late stage, they should be given some weight in considering the mitigating circumstances.

[52] The parity principle stated in section 718.2(b) of the **Criminal Code** requires the court to consider imposing a similar sentence for an offender who has committed a similar offence in similar circumstances. While it is often difficult to find those similar offenders and similar circumstances, I find that this principle reminds the Court to consider an appropriate range of sentences and provides a basis upon which any disparity between sanctions for different offenders may be justified by the Court.

[53] The Crown Attorney submitted several cases to support his recommended range of six to eight months in jail followed by one year on probation. The following cases were referred to by the Crown Attorney:

1. **R. v. Custer**, 2006 SKPC 42 (CanLII) where the offender entered an early guilty plea to a charge of assault causing bodily harm which proceeded by way of summary conviction. The accused had taken a baseball bat and went to a residence where he his intimate partner was located and called her to come out. She left the residence, followed by the victim and then, motivated by feelings of jealousy, the offender struck the victim in the head and arms with the bat causing cuts and fractures to the bones on both arms as he tried to block the blows.  
  
The Court rejected a joint recommendation for a twelve-month conditional sentence order because it would not be proportionate to the gravity of the offence and the offender's degree of responsibility. Instead, the Court ordered twelve months incarceration, but deducted one month as a pre-sentence custody credit and an additional two months, since the offender had pled guilty with the expectation that the plea bargain would be followed. In refusing to order a conditional sentence, the Court referred to **R. v. Guest**, [1998] S.J. no. 446 (SKCA) where the Court of Appeal stated that the accused's conduct constituted a "form of violent vigilante justice" and the trial judge ought not to have ordered that the term be served in the community.
2. **R. v. Gannon**, 2015 NSPC 97 which involved a sentence for an assault causing bodily harm by an accused person who was part of a group who swarmed an innocent victim who was acting as a good Samaritan. Mr. Gannon and another individual punched the victim several times, knocking him to the ground. The third accused, who was part of their group, then kicked the victim as he lay motionless on the ground. The victim sustained fractures to his facial bones and a concussion coupled with emotional trauma. He was off work for 48

days. The accused had entered an early guilty plea and accepted responsibility.

Judge Hoskins noted that there were several mitigating circumstances, the offender was a very youthful, first-time offender and therefore he applied the principle of restraint which underlies the provisions of section 718 of the **Code**. The Court concluded that the offender's degree of responsibility was less than the offender who had viciously kicked the victim in the head while he was unconscious and laying on the ground. The Court ordered a conditional sentence of imprisonment in the community for twelve months followed by eighteen months on probation.

3. **R. v. Power**, 2016 NSPC 30 which involved a sentence imposed by me on an offender who had pled guilty to the charge of assault causing bodily harm to the good Samaritan in the **Gannon** case. The Crown had proceeded by way of summary conviction. At the time of the incident, Mr. Power was subject to a recognizance with a curfew condition which had been breached, and he also pled guilty to of possession of stolen property exceeding five thousand dollars (\$5000) and having possession of a weapon (bear spray) for a purpose dangerous to the public peace contrary to section 88(1) of the **Criminal Code**. The Crown had proceeded by indictment on the possession of stolen property and the possession of a weapon charges.

The Gladue Report confirmed that Mr. Power was a very youthful aboriginal offender, whose life had been influenced by several systemic and personal Gladue factors. They included substance abuse and violence in the family, mental health issues, unemployment, quitting school in grade ten and becoming involved in the drug subculture and stealing from family members to finance his drug habits. He had no prior adult or Youth Criminal Justice record at the time of the offences and had accepted full responsibility and expressed his remorse for his behavior.

Despite several mitigating factors, given Mr. Power's high degree of responsibility and the gravity of the assault causing bodily harm and possessing a weapon dangerous to the public peace while being subject to a curfew, I could not conclude that the offender serving a conditional sentence order in the community would not endanger the safety of the community or was consistent with the purpose and

principles of sentencing. In the final analysis, applying the principles of proportionality and totality as well as restraint in the case of a first-time, youthful offender, Mr. Power was ordered to serve twenty-two weeks of imprisonment for the offence of assault causing bodily harm contrary to section 267(b) of the **Code** and consecutive sentences for the other offences.

4. **R. v. Little**, 2012 ONCJ 210 involved an offender who was found guilty following a trial of assault causing bodily harm. The offender believed that the victim had “date raped” his girlfriend on some prior occasion. The offender “sucker” punched the twenty-four-year-old victim on the jaw. The victim’s jaw was broken in four places and two teeth were chipped. He required the insertion of four steel plates, wires to his jaw and strong medication to manage the pain. He could not eat solid foods or talk for several months.

The offender was twenty-five years old, employed and raised in a good and stable family. Just before turning eighteen, while he was still a youth, he had been found guilty of dangerous driving causing death and suffered physical and psychological impacts from the incident. The Crown had sought a sentence in the range of six to nine months in jail to deter this act of vigilante justice, while Defence Counsel sought a conditional discharge or if jail was required, a sentence in the intermittent range. The Court concluded at para. 6, that it must send a strong message that “street justice” will not be condoned and to do otherwise makes the community unsafe and undermines respect for the rule of law. The Court noted that the facts of the case were aggravating, the offender’s attack was quick, calculated and unprovoked and had caused several injuries. The Court rejected a conditional sentence as well as an intermittent sentence and ordered 4 months in jail followed by one year on probation.

### **The Just and Appropriate Sanctions:**

[54] After having reviewed those similar cases, as the Crown Attorney and Defence Counsel noted during their submissions, there is a wide range of sentences that have been imposed in similar circumstances which involved similar offenders. Certainly, for the purpose of the parity principle, I find that the cases provided by the Crown Attorney establish that courts have ordered conditional sentence orders in the community as well as periods of imprisonment.



[55] As I mentioned previously, the fundamental principle of proportionality in sentencing which is found in section 718.1 of the **Criminal Code** requires the Court to consider that the sentence imposed should be proportionate to the gravity of the offence and the offender's degree of responsibility. In this case, I find that there are two equally serious charges of assault with a baseball bat as well as a vicious assault causing bodily harm to a teenaged boy under eighteen years. There are also the two serious charges of threatening and assaulting a second teenaged boy under the age of eighteen years. I find that the gravity of those offences is heightened by the fact they were perpetrated as acts of "vigilante or street justice" which must be very clearly denounced by the court.

[56] With respect to the offender's degree of responsibility or his moral blameworthiness, I find that it is very high given the fact that Mr. Longaphy acted in a calculated manner to engage in unlawful acts of violence to extract admissions of responsibility from the two teenaged boys for throwing snowballs at his girlfriend's vehicle and breaking the windshield. Mr. Longaphy's unlawful acts occurred while he was absolutely furious about the damage to his girlfriend's vehicle, fuelled by alcohol and led to the decision to take matters into his own hands in committing this reprehensible act of vigilante justice. For those reasons, I find that Mr. Longaphy's moral blameworthiness for these acts of vigilante violence is very high and requires an emphasis on deterrence and denunciation of the unlawful conduct to ensure that this type of criminal conduct does not gain any undue legitimacy.

[57] In the recent case of **R. v. Suter**, 2018 SCC 34 (CanLII) at para. 46, the Supreme Court of Canada reiterated earlier comments made by **R. v. Proulx**, 2000 SCC 5 (CanLII) at para. 82 and **R. v. Ipeelee**, 2012 SCC 13 CanLII at para. 38 that sentencing is a highly individualized process and that a sentencing judge must have "sufficient manoeuvrability to tailor sentences to the circumstances of the particular offence and the particular offender". Tailoring sentences to the circumstances of the offence and the offender may require the sentencing judge to look at collateral consequences. Examining collateral consequences enables the sentencing judge to craft a proportionate sentence in a given case by taking into account *all* of the relevant circumstances related to the offence and the offender.

[58] In **Suter**, the issue was whether the sentencing judge should have taken into account the collateral consequence that the accused, who was charged with refusing to provide a breath sample after causing an accident which resulted in the death of a two-year-old child, was later abducted by vigilantes who cut off his

thumb with pruning shears for his role in the child's death. In the final analysis, the Supreme Court of Canada held that violent actions against an offender for his or her role in the commission of an offence necessarily formed part of the "personal circumstances of that offender" and should therefore be considered in the determination of an appropriate sentence.

[59] While the **Suter** case may be instructive for considering the Defence Counsel submission of the collateral consequences of this matter hanging over Mr. Longaphy's head for six and half years and the financial impact on him, I find that the **Suter** decision of the Supreme Court of Canada also provides helpful guidance with respect to the Court's view of vigilante violence. In discussing whether the vigilante violence inflicted on the offender should be considered as a mitigating or collateral circumstance on the offender's sentencing, Justice Moldaver indicated that it could be considered to a "limited extent," but added, in **Suter**, at para. 58:

*"Vigilantism undermines the rule of law and interferes with the administration of justice. It takes justice out of the hands of the police and the courts, and puts it into the hands of criminals. As a general rule, those who engage in it should expect to be treated severely."* [Emphasis is added]

[60] In my opinion, the recent comments of the Supreme Court of Canada in **Suter** point to the fact that vigilantism undermines the rule of law and interferes with the administration of justice. Mr. Longaphy's unlawful actions did indeed take justice out of the hands of the police and the courts to put it into his hands, which, in this case, resulted in the assault of two teenaged boys to extract admissions of responsibility. It is obvious from those remarks, which I strongly endorse, that even if the conditional discharge recommended by Defence Counsel was to be considered in Mr. Longaphy's best interests, it is without question and very clearly contrary to the public interest.

[61] As I noted previously, the fundamental principle of sentencing is proportionality and I have already concluded that both the gravity of these offences and Mr. Longaphy's moral blameworthiness or degree of responsibility for them is very high. In this case, section 718.01 of the **Criminal Code** must also be considered as Parliament has specifically enacted that provision to ensure that courts shall give primary consideration to denunciation and deterrence where the victims of the unlawful acts were under eighteen years of age.

[62] However, the Court must also consider the aggravating and mitigating circumstances in section 718.2(a) of the **Criminal Code** which may increase or

reduce the sentence that the Court may impose on the offender. As mentioned previously, there are several aggravating and mitigating circumstances. In addition, in this case, the imposition of a sentence must also take into account the principle of totality found in section 718.2(c) of the **Code** as the court is required to impose a sentence for each of the four offences for which Mr. Longaphy was found guilty and if consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

[63] In addition to taking those sentencing principles into account in determining the just and appropriate sanction, Parliament has also enacted provisions which require the Court to consider all available sanctions other than imprisonment that are reasonable in the circumstances and not to deprive the offender of his liberty if a less restrictive sanction is appropriate in all the circumstances of this case [see section 718.2(d) of the **Code**]. Parliament has also enacted section 718.2(e) of the **Code** which requires the court to consider all other available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to the victims or to the community, and if applicable, with particular attention to the circumstances of aboriginal offenders.

[64] I find that Lamer CJC stated in **R v. Proulx**, supra, at para. 102 that incarceration will certainly provide more denunciation than a conditional sentence, but a conditional sentence can still provide a significant amount of denunciation, particularly where there are onerous conditions imposed and the duration of the sentence is extended beyond the duration of the jail sentence that would ordinarily be imposed in the circumstances of the case,

[65] Having considered the significant mitigating circumstances in this case, I find that the sentence to be imposed upon Mr. Longaphy does not require him to be separated from society as there is a less restrictive sanction that I find to be appropriate in the circumstances. However, I also find that there are several significant aggravating circumstances present in this case which lead me to the conclusion that ordering a conditional sentence order of imprisonment in the community would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 of the **Criminal Code**.

[66] Furthermore, I find that the sentence to be imposed by the court is an available sanction under section 742.1 of the **Code** as there is no minimum term of imprisonment for any of the offences for which he was convicted. Moreover, neither the Crown Attorney nor Defence Counsel have recommended a sentence of

over two years of imprisonment. I find that Mr. Longaphy serving a conditional sentence order of imprisonment in the community is also an appropriate sanction as I am satisfied that his service of that sentence in the community would not endanger the safety of the community and as I mentioned, would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 of the **Code**.

[67] In coming to the conclusion that a conditional sentence order of imprisonment in the community is the just and appropriate sanction in this case, I have taken into account the very unique and highly mitigating circumstance that this matter has been before the court for over six and half years under what I have already described as “exceptional circumstances.” In addition, I have also taken into account the fact that, although Mr. Longaphy was not under restrictive release conditions, he has not committed any breaches of those conditions, he did not have any prior youth or adult criminal record and has not committed any subsequent criminal offences as well as the fact that the Pre-Sentence Report is very positive which shows that he has led a pro-social life as a productive member of the community.

[68] Having concluded that a conditional sentence order of imprisonment to be served in the community is an available option and that it is, in my opinion, the most appropriate option which is consistent with the fundamental purpose and principles of sentencing and would not endanger the safety of the community, I hereby order Mr. Longaphy to be subject to a conditional sentence order of imprisonment in the community for a total period of 15 months to be followed by a period of probation for nine months. The sentence imposed by the Court will be as follows:

1. For assaulting Mr. T.G. with a weapon contrary to section 267(a) of the **Criminal Code** - four months;
2. For assaulting Mr. T.G. and thereby causing bodily harm to him contrary to section 267(b) of the **Criminal Code** - six months consecutive;
3. For assaulting Mr. J.B. contrary to section 266(b) of the **Code** – three months consecutive; and finally
4. For threatening Mr. J.B. contrary to section 264.1(1)(a) of the **Code** - two months consecutive.

[69] The conditional sentence order of imprisonment in the community shall be served in the following manner with the first six months to be served under terms of house arrest, the second five months of the conditional sentence order to be served under the terms of a curfew to remain in his residence from 11:30 PM to 6:00 AM the following morning, seven days a week, subject to certain terms and conditions as well as exceptions which I will outline in a moment. The final four months shall be served under the general terms and conditions of the conditional sentence order without house arrest or curfew conditions. Upon completion of the conditional sentence order, Mr. Longaphy shall be subject to the terms and conditions of a probation order for a further nine months, the terms of which will be outlined in a moment.

[70] I will also be signing an order pursuant to section 487.051(3) of the **Criminal Code** which will authorize the taking of a sample of bodily substances from Mr. Longaphy for forensic DNA analysis.

[71] In addition, I will be signing a firearms prohibition order pursuant to section 110(2) of the **Criminal Code** which will prohibit him from having in his possession any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance for a period of ten years.

[72] Finally, there is a fifty dollar (\$50) surcharge for victims for each of the offences for which Mr. Longaphy was convicted pursuant to section 737 of the **Criminal Code**, which was in force at the time of these offences in January 2012. The grand total for the victim surcharge is two hundred dollars (\$200) and I will provide Mr. Longaphy with eighteen months to make that payment.

[73] The terms and conditions of the fifteen-month conditional sentence order of imprisonment in the community are as follows:

- Keep the peace and be of good behaviour;
- appear before the court when required to do so by the court;
- Report to the supervisor today and thereafter as required by the supervisor and in the manner directed by the supervisor;
- remain within the Province of Nova Scotia unless written permission to go outside the province is obtained from the court or the supervisor;

- notify the court or the supervisor in advance of any change of name or address and promptly notify the court or the supervisor of any change in employment or occupation;
- not to possess, take or consume alcohol or other intoxicating substances;
- not to possess take or consume a controlled substance as defined in the **Controlled Drugs and Substances Act** except in accordance with a physician's prescription for you or some other legal authorization;
- not to have any direct or indirect contact or communication with T.G or J.B. or any members of their immediate family and there are no exceptions;
- attend for assessment and counselling in anger management as directed by the sentence supervisor;
- participate in and cooperate with any assessment, counselling or program directed by the sentence supervisor.

[74] With respect to the exceptions to the house arrest and curfew to be imposed during the first eleven months of the conditional sentence order, the following exceptions will apply:

- when at regularly scheduled employment or travelling to and from that employment by a direct route
- when dealing with a medical emergency or medical appointment involving you or a member of your household and travelling to and from it by a direct route;
- when attending a scheduled appointment lawyer or a probation officer and travelling to and from those appointments by direct route;
- when attending court at a scheduled appearance or under subpoena travelling to and from the court by direct route;
- when attending a counselling appointment, treatment program or other program at the direction of and with the permission of your sentence supervisor travelling to and from those appointments, meetings or programs by direct route;

- for not more than four (4) hours per week, approved in advance by your sentence supervisor for attending to your personal needs;
- such other exceptions with the prior written approval of your sentence supervisor.

[75] Following the completion of the Conditional Sentence Order of imprisonment in the community, Mr. Longaphy shall be subject to the terms of a probation order for nine months which will include the statutory terms and the same optional terms and conditions as contained in the conditional sentence order, without Mr. Longaphy being subject to either house arrest or curfew conditions.

[76] Orders Accordingly

Theodore Tax , JPC