

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Francis*, 2019 NSPC 1

Date: 20190102

Docket: 8207508

Registry: Sydney, Nova Scotia

Between:

HER MAJESTY THE QUEEN

v.

JAMES JOSEPH FRANCIS

Judge:	The Honourable Judge Ann Marie MacInnes,
Heard:	October 18, 2018, in Sydney, Nova Scotia
Decision	January 2, 2019
Charge:	Section 344(1)(b) of the <i>Criminal Code of Canada</i>
Counsel:	Shane Russell, for the Crown Alison Aho, for the Defendant

By the Court: (Orally)

[1] James Joseph Francis is a 25-year-old transgender woman who prefers to be known as Jamie. Her preferred pronouns are her and she and I will use these in this sentencing decision. Ms. Francis has pled guilty to a single count of using an imitation firearm, a pellet gun, in robbing Broadway Convenience, Sydney, Nova Scotia, of money and cigarettes, contrary to section 344(1)(b) of the *Criminal Code of Canada*.

[2] This robbery took place on March 14, 2018 at 8:18 pm. She had her face covered during the robbery. She entered the store, pointed the gun at the cashier and demanded money and cigarettes. She received three packages of cigarettes and \$495. While the robbery was underway two 12-year-old girls entered the store and Ms. Francis told them to leave, which they did. Shortly thereafter a man entered the store, Ms. Francis pointed the gun at him directing him to put his hands up and get on the floor. Instead the man fled the building. Ms. Francis left the store, disposed of the gun, which was recovered and returned home. Her parents called the police and she was subsequently arrested and charged.

[3] The crown and defense positions on the appropriate sentence are different, but not very. The crown urges a four-year sentence, less remand credit, and the defense urges a three-year sentence, less remand credit. There's agreement on the ancillary DNA and weapons prohibition orders, which are, of course, mandatory.

[4] The crown has urged that I focus on denunciation and deterrence. Ms. Francis has a lengthy record, which includes two break and enter convictions, one theft conviction, one possession of stolen property conviction, six breaches of probation, one conviction for being unlawfully at large, and a breach of release conditions. She has also been convicted of an assault and has served a prior federal sentence for convictions of uttering a threat, sexual interference and luring. The crown urges that I impose a four-year sentence less remand time, notwithstanding Ms. Francis' mental health struggles, which include anxiety, depression, obsessive compulsive disorder, substance abuse and gender dysphoria. He states that she is not very different from any of the accused who come before the court, nor is she different from any law-abiding citizens who struggle daily

with mental illness. He urges me to remember that she is not a first offender. She has had the opportunity to be rehabilitated on prior sentences she has served, both in and out of custody. He concedes that her guilty plea, remorse, and mental health challenges are mitigating factors, but these are far outweighed by the aggravating factors, which include the high degree of violence, the pointing of the imitation gun, the attempt at concealing her identity, the vulnerability of a convenience store clerk, the exposure of two 12 year old children, the exposure of the male customer at whom the weapon was pointed, the evidence of some level of premeditation and planning, and the criminal record.

[5] The defense has urged me to impose a three-year sentence, less remand time. She asks me to consider the youthfulness of her client, as well as the many challenges she has had to face. She was adopted as a child by Mr. and Mrs. Manning, who have resolutely stood by her and supported her throughout everything. She has a grade 12 education but hopes to complete university and perhaps assist other young people like herself who have faced hardship and illness. She resided with her parents in Oshawa, Ontario and when her parents moved back home to Sydney, she followed them shortly thereafter.

[6] Defense counsel has exerted tremendous effort in setting out Ms. Francis' attempts to address her myriad of mental health issues. While in Ontario, Ms. Francis attempted on numerous occasions to access services, but inpatient...both inpatient and outpatient. Sometimes she met with success, but more often she failed. The instability in her life, poverty, homelessness, addictions, lack of a family doctor, lack of any holistic mental health strategy left her utterly unsupported and flailing. This was further compounded by her lack of steady, reliable medication.

[7] In addition to all of this, she was attempting to discover who she truly was. A female person born in a male's body. The sub, the subject of ridicule, the object of fear and misunderstanding and the victim of abuse and trauma. All of that interspersed with periods of incarceration, while on a waiting list for mental health services and without her medication she came to Nova Scotia where she knew she had, at least, family support. She would not have realized, of course, that here in Cape Breton we too have experienced long waiting lists and challenges in accessing medical services, especially mental health services. With no medical care, no medication, few coping mechanisms in place, and in the throws of a mental breakdown, she turned to alcohol, obtained her father's pellet gun, disguised herself and robbed the convenience store.

[8] The defense has asked me to consider in mitigation that she acted alone and without sophisticated or significant planning. There were no physical injuries resulting from her actions. She cooperated with police and acknowledged responsibility for her actions. She entered a guilty plea. Her youthfulness, and most particularly her mental health issues, which impacted on why she committed this offense, as well as her *bona fide* efforts to seek treatment. She has also urged me to consider that since the date of the offense Ms. Francis is now on her proper medication. She continues to enjoy the support of her family, some of whom have submitted letters in support of her. She is now clean and sober. She has met with a psychologist to begin hormone therapy. She has expressed genuine remorse for her conduct. She will receive assistance from the Elizabeth Fry Society, including help in changing her name and for the first time she has dreams and aspirations, believing that while in federal custody she can begin hormone therapy.

[9] Again, I wish to thank counsel for their thoughtful and comprehensive submissions. I have considered the exhibits filed, as well as the case law provided. I have also considered the Supreme Court of Canada decisions in **R v. Nasogaluak**, [2010] 1 SCR 206 and **M. (C.A.)**, [1996] 1 SCR 500, which confirm that sentencing is an individualized process. Although I am guided by case law from the Nova Scotia Court of Appeal on the appropriate range of sentencing for robbery cases, there is no specific sentence which must be imposed. I am, of course, bound by the principles of sentencing as contained in section 718 of the *Criminal Code*. This section requires that I impose a sentence which will protect society and contribute to respect for the law and the maintenance of a just, peaceful and safe society. This is obtained by imposing just sanctions which will denounce unlawful conduct and the harm it causes, deter offenders and others from committing crimes, separate offenders from society where necessary, assist in rehabilitation, provide reparations to victims and the community and promote a sense of responsibility in offenders, an acknowledgement of the harm done to victims and the community.

[10] I am also bound by principles of proportionality, restraint and disparity. I must consider all reasonable alternatives to custody, and if there are none, I must not make the custodial sentence any longer than necessary to achieve the sentencing objectives. In this particular case, I am satisfied that a federal sentence is required to meet the principles of sentencing and achieve the protection of the public. I am satisfied that denunciation and deterrence are the primary objectives, but not the only ones. I am satisfied that there is a very real possibility of rehabilitation for this young woman. I accept that she has tried very hard to get

help for her mental health issues but has not succeeded. It brings me no comfort to know that the services which eluded her in the community may well be more available to her in a federal prison.

[11] I am satisfied, Ms. Francis, that you must be separated from society. You must understand, as must others, that the commission of this type of offense will result in a long period of incarceration. I have considered your circumstances and I realize that your life has been a struggle. It must have been agonizing to not be able to live your life as you truly are. I hope that you will find peace. I have considered the aggravating and mitigating factors, as well as the time you have spent on remand, which as I understand it amounts to 443 days, with enhanced credit. By my calculation that works out to be 14 and a half, given your credit, up to 15 months. I am satisfied that the appropriate sentence for you is 42 months in custody, less your remand time. I believe that the three-and-a-half-year sentence adequately meets the objectives of denunciation and deterrence, while permitting you an opportunity for rehabilitation. The sentence of the court will be, on a go forward basis, a sentence of 27 months in custody from today, giving her the remain...remand credit that I have calculated.

[12] While you are in custody, I hope that you will be given ready and free access to mental health services and it will...and it is my expectation that you will never be placed in solitary confinement, as this would likely exacerbate your already fragile condition. As this is a primary designated offense, I order that you provide a sample of your DNA and that will be lodged in the national databank, and I make the mandatory lifetime prohibition order pursuant to section 109 on the possession of any weapons, firearms, ammunition or explosive devices.

[13] It is a new year, Ms. Francis, I hope that you will be kept safe while in custody and that you will use this opportunity for a fresh start to emerge as a new, genuine and more hopeful person than you were in the past.

[14] That's your sentence, Ma'am. I wish you the best of luck.