

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Mason*, 2019 NSPC 26

Date: 2019-07-02

Docket: 8309026

Registry: Pictou

Between:

Her Majesty the Queen

v.

Justin Mason

SENTENCING DECISION

Judge:	The Honourable Judge Del W. Atwood
Heard:	2019: 2 July in Pictou, Nova Scotia
Charge:	Section 266 of the <i>Criminal Code of Canada</i>
Counsel:	T William Gorman for the Nova Scotia Public Prosecution Service Stephen Robertson for Justin Mason

By the Court:

[1] The court has for sentencing this afternoon Justin Mason. Mr. Mason entered a guilty plea at an early opportunity in relation to a charge of assault on a Kyle Delorey contrary to ¶ 266(b) of the *Criminal Code*. It happened at the Northeast Nova facility. As the prosecution elected to proceed summarily, the maximum permissible penalty for this offence is six months imprisonment and/or a \$5,000 fine, in accordance with the general-penalty provisions of § 787 of the *Code*. There are no mandatory minimum penalties and the charge is eligible for the full array of sentencing outcomes under the *Criminal Code*.

[2] As a result of *R v Knott*, 2012 SCC 42, probation would be a permissible sentencing outcome in this case, notwithstanding Mr. Mason's existing federal sentence. I state this point merely as a review of the statutorily permissible outcomes. Probation is not the actual sentence of the court.

[3] Proportionality is the primary principle of sentencing. A sentence should reflect the seriousness of the offence and the degree of responsibility of the person who committed it. This was an assault within a correctional institution. It appears to have been some form of turf battle and Mr. Delorey was the target. That this was reprisal violence elevates the seriousness of the offence; however, I take into

account that Mr. Mason was not the sole actor here. There was a Jeremy MacDonald who was involved also.

[4] Mr. Mason pleaded guilty without delay.

[5] The presentence report informs the court that Mr. Mason has been making good progress with his programming during the course of his federal sentence.

What Mr. Mason did to Mr. Delorey does not seem to be characteristic behaviour.

[6] I agree with Mr. Robertson that the need for specific deterrence in this case would be lessened because of those good-conduct factors.

[7] However, the prosecution makes the valid point that that there is a need for an element of general deterrence, that is to say that the court is not just speaking to Mr. Mason, but is also speaking to other persons situated similarly to Mr. Mason and I do agree that a clear message must be sent by the court that there is no such thing as jailhouse immunity. Prisons and penitentiaries are not *Criminal-Code*-exempt zones.

[8] Mr. Mason's pre-sentence report suggests he is a good candidate for rehabilitation; he has held demanding jobs; he has gone substantial periods of time being offence free; he has faced collateral consequences for assaulting Mr.

Delorey, as comprehended in *R. v. Suter* 2018 SCC 34, as his date for full parole got pushed back to December 2019.

[9] I believe that the appropriate outcome in this case is that the court impose a sentence of imprisonment of 30 days to be served consecutively to any time currently being served. Consecutive service is authorized in ¶ 718.3(4)(a).

[10] The court will order and direct that the warrant of committal be endorsed to record that, while in custody, Mr. Mason is to have no contact or communication with Kyle Delorey.

JPC