**PROVINCIAL COURT OF NOVA SCOTIA**
**Citation:** *R. v. Redden*, 2020 NSPC 17

**Date:** 20200117
**Docket:** 8163344, 8163346
**Registry:** Truro

**Between:**

Her Majesty The Queen

v.

Beverley Francis Redden

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| **Judge:** | The Honourable Judge Alain J. Bégin, |
| **Heard:** | January 17, 2020, in Truro, Nova Scotia |
| **Decision** | January 17, 2020 |
| **Charge:** | 464(a) Criminal Code of Canada<br>264.1(1) Criminal Code of Canada |
| **Counsel:** | Thomas Kayter, for the Crown Attorney<br>Nicolas Hoehne, for the Defendant |

**By the Court:**

[1] This is the sentencing of Beverly Redden who was found guilty on September 19, 2019 of counselling Tesha Grant to commit the indictable offence of arson (which did not occur), along with one count of threatening to burn the same property. These were indictable offenses. The offenses occurred in the April to June 2017 time period.

[2] The facts are as noted in my published decision ***R. v. Redden*** 2019 NSPC 65.

[3] To be clear, Ms. Redden is **not** being sentenced for arson. She is only being sentenced for counselling someone to commit an arson (ss. 434 and 464(a), along with the threat (s. 264.1(1)). The house did burn down, but there is no evidence that it was as a result of an arson by Tesha Grant.

[4] The maximum sentence for the counselling to commit arson contrary to s. 464(a) of the Criminal Code is 14 years imprisonment. The maximum sentence for the threat charges is two years.

**The Positions of the Parties:**

[5] The sentencing for Ms. Redden is contested.

[6] The Crown states that it could reasonably ask for a period of incarceration of between 3 and 4 years, but that it is instead seeking a period of incarceration of 18 to 24 months, plus a period of probation. The purpose for seeking a lesser sentence is that it would give society the opportunity to supervise and counsel Ms. Redden during a probationary period.

[7] Defence counsel is seeking a lengthy period of probation as a conditional sentence is not available for this offense. Defence counsel points out that Melanie Deagle, a witness in this case, was sentenced to 36 months' probation on August 1, 2018 for an unrelated arson.

**Guiding Principles for Sentencing Judges:**

[8] As confirmed by the Supreme Court of Canada in the case of ***R. v. Nasogaluak*** 2010 SCC 6 at paragraphs 39 to 45, sentencing judges are required to consider s. 718 of the Criminal Code:

> [39] The central issue in this appeal concerns the possibility of reducing an offender's sentence to take account of a violation of his or her constitutional rights. Our Court must determine whether a s. 24(1) remedy is necessary to address the consequences of a *Charter* breach or whether this can be accomplished through the sentencing process. In addressing this issue, it is necessary first to review the principles that guide the sentencing process under Canadian law. The objectives and principles of sentencing were recently codified in ss. 718 to 718.2 of the *Criminal Code* to bring greater consistency and clarity to sentencing decisions. **Judges are now directed in s. 718 to consider the fundamental purpose of sentencing as that of contributing, along with crime prevention measures, to "respect for the law and the maintenance of a just, peaceful and safe society". This purpose is met by the imposition of "just sanctions" that reflect the usual array of sentencing objectives, as set out in the same provision: denunciation, general and specific deterrence, separation of offenders, rehabilitation, reparation, and a recent addition: the promotion of a sense of responsibility in the offender and acknowledgement of the harm caused to the victim and to the community.**
>
> ……
>
> [42] **For one, it requires that a sentence not *exceed* what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence. In this sense, the principle serves a limiting or restraining function. However, the rights-based, protective angle of proportionality is counter-balanced by its alignment with the "just deserts" philosophy of sentencing, which seeks to ensure that offenders are held responsible for their actions and that the sentence properly reflects and condemns their role in the offence and the harm they caused…..Whatever the rationale for proportionality, however, the degree of censure required to express society's condemnation of the offence is always limited by the principle that an offender's sentence must be equivalent to his or her moral culpability, and not greater than it. The two perspectives on proportionality thus converge in a sentence that both speaks out against the offence and punishes the offender no more than is necessary.**
>
> [43] The language in ss. 718 to 718.2 of the *Code* is sufficiently general to ensure that sentencing judges enjoy a broad discretion to craft a sentence that is tailored to the nature of the offence and the circumstances of the offender**. The determination of a "fit" sentence is, subject to some specific statutory rules, an individualized process that requires the judge to weigh the objectives of sentencing in a manner that best reflects the circumstances of the case (*R. v. Lyons*, 1987 CanLII 25 (SCC), [1987] 2 S.C.R. 309; *M. (C.A.)*; *R. v. Hamilton* (2004), 2004 CanLII 5549 (ON CA), 72 O.R.**

> **(3d) 1 (C.A.)). No one sentencing objective trumps the others and it falls to the sentencing judge to determine which objective or objectives merit the greatest weight, given the particulars of the case. The relative importance of any mitigating or aggravating factors will then push the sentence up or down the scale of appropriate sentences for similar offences. The judge's discretion to decide on the particular blend of sentencing goals and the relevant aggravating or mitigating factors ensures that each case is decided on its facts, subject to the overarching guidelines and principles in the *Code* and in the case law.**
>
> [44] The wide discretion granted to sentencing judges has limits. It is fettered in part by the case law that has set down, in some circumstances, general ranges of sentences for particular offences, to encourage greater consistency between sentencing decisions in accordance with the principle of parity enshrined in the *Code*. But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. **Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.**

[9] Section 718 of the Criminal Code explains the purpose and principles of sentencing:

> **Purpose**
>
> **718** The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> **(a)** to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
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> **(b)** to deter the offender and other persons from committing offences;
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> **(c)** to separate offenders from society, where necessary;
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> **(d)** to assist in rehabilitating offenders;
>
> **(e)** to provide reparations for harm done to victims or to the community; and
>
> **(f)** to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[10] Section 718.1 states that "A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

[11] In ***R. v. Hamilton*** (2004) 186 CCC (3d) (ON CA) the Court stated that proportionality is a fundamental principle of sentencing. It takes into account the gravity of the offence and the degree of responsibility of the offender. In other words, the severity of a sanction for a crime should reflect the seriousness of the criminal conduct. A disproportionate sanction can never be a just sanction. Aggravating and mitigating factors, and the principles of parity, totality and restraint are also important principles that must be engaged in the sentencing process.

[12] The Criminal Code views imprisonment as a sentence of last resort. An offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances and all available sanctions other than imprisonment that are reasonable in the circumstances should be considered.

[13] Section 718.2 states the other principles that the sentencing court is mandated to take into consideration, which for the purpose of this case are:

> **Other sentencing principles**
>
> **718.2** A court that imposes a sentence shall also take into consideration the following principles:
>
> **(a)** a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing:
>
> **…**
>
> **(iii.1)** evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
>
> shall be deemed to be aggravating circumstances;
>
> **(b)** a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> **(c)** where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> **(d)** an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> **(e)** all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community

> should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[14] With regard to the overall sentencing process I note the words of Chief Justice Lamer in ***R. v. C.A.M.*** [1996] SCJ No 28 at paras 91 & 92:

> 91. …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 offense, while at all times taking into account the needs and current conditions of and in the community. The discretion of the sentencing judge should thus not be interfered with lightly.
>
> 92. …It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime…Sentencing is an inherently individualized process and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offense should be expected to vary to some degree across various communities and regions of this country as the 'just and appropriate' mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred."

[15] In a rational system of sentencing the respective importance of prevention, deterrence, retribution and rehabilitation will vary according to the nature of the crime and the circumstances of the offender. There is no easy test that a judge can apply in weighing these factors. Much will depend on the judgment and wisdom of sentencing judges whom Parliament has vested with considerable discretion in making these determinations pursuant to s. 718.3.

[16] The Supreme Court of Canada in ***R. v. Lloyd*** 2016 SCC 13 confirmed that a provincial court judge's determination of the appropriate sentence is entitled to deference. The Supreme Court also stated in ***Lloyd*** that appellate courts cannot alter a trial judge's sentence unless it is demonstrably unfit, and that an appellate court may not intervene simply because it would have weighed the relevant factors considered by the sentencing judge differently.

[17] As noted in ***R. v. Suter*** 2018 SCC 34, trial judges have a "broad discretion to impose the sentence they consider appropriate within the limits established by law."

[18] As well, in ***R. v. Lacasse*** 2015 SCC 64, the Supreme Court of Canada commented on the deference that is to be given to a trial judge's discretion in determining the appropriate sentence by noting at paragraph 48:

> First, the trial judge has the advantage of having observed the witnesses in the course of the trial and having heard the parties' sentencing submissions. Second, the sentencing judge is usually familiar with he circumstances in the district where he or she sits and therefore with the particular needs of the community in which the crime was committed.

[19] Denunciation is the communication of society's condemnation of the offender's conduct. A sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantial criminal law. Society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the court can show this is by the sentences that they pass.

[20] In ***R. v. EMW*** 2011 NSCA 87, our Court of Appeal affirmed the words of Judge Campbell when discussing the difference between retribution and vengeance, at para 18:

> Retribution is punishment. It is objective, measured and reasoned. Vengeance and anger have no place in sentencing. When reason and objectivity give way to expressions of righteous indignation or revenge, a sentence is no longer an expression of a system of values. It has then become an emotional act and not a rational one. It is then not measured or restrained. Justice can be and sometimes should be hard. It must, however, be thoughtfully so. It is important to treat the offender in a way that reflects his level of culpability. Simply put, the punishment, and punishment it is, should fit the crime and the person who committed it.

[21] As also noted by our Court of Appeal in ***R. v. EMW***, rehabilitation is a much greater consideration for a sentencing judge when the offender has accepted responsibility.

[22] A court must exercise caution in placing too much weight on deterrence when choosing a sentence, especially incarceration. This caution arises from empirical research which suggests that the deterrent effect of incarceration is uncertain.

[23] I am mindful of the principles of sentencing as outlined in ***R. v. Grady*** (1973) 5 NSR (2d) 264 (NSAC) where the court confirmed that the primary focus was on the protection of the public and how best to achieve that whether through deterrence or rehabilitation, or both. Protection of the public includes both protection of society from the particular offender as well as protection of society from this particular type of offense.

[24] The same court in ***R. v. Fifield*** [1978] NSJ 42 stated at para 11, "We must constantly remind ourselves that sentencing to be an effective societal instrument must be flexible and imaginative. We must guard against using…the cookie cutter approach."

**Relevant Case Law for this Matter:**

[25] As noted, Defence counsel reminded this Court that Melanie Deagle, also a witness in this case, was sentenced to 36 months' probation on August 1, 2018, for an unrelated arson. That fire resulted in a total loss worth $133,000. I was the sentencing judge for Ms. Deagle. I have taken the opportunity to listen to the Court recording for Ms. Deagle's sentencing. I can advise that it was accepted by Crown and Defence that Ms. Deagle had no intention to burn the house down, but that she had lit a mattress on fire and that the fire quickly got out of control. Ms. Deagle promptly ensured that there were no occupants in the house, and she immediately provided an inculpatory statement to the police. The Crown in the Deagle matter confirmed that arson cases usually receive a federal sentence, but then referred to the exceptional circumstances that were present in the Deagle matter. The Crown also noted in the Deagle matter that there were evidentiary issues/concerns, and that it was a true joint recommendation.

[26] Crown counsel relies on the following cases:

- ***R. v. Domoslai*** 2016 NSSC 344
- ***R. v. Malley*** 1994 CarswellNB 168 – where there was a 30 month sentence for counselling arson
- ***R. v. Overland*** 2014 ONSC 5545 – where there was a 1 year sentence for counselling arson
- ***R. v. Liesner*** 1979 CarswellBC 1017 – where there was a sentence of 5 months for attempted arson, followed by 12 months' probation
- ***R. v. Lorna Jean Parkes*** 1995 CarswellNB 397 – where there was a 10-month sentence for arson conspiracy, followed by 12 months' probation
- ***R. v. Morand*** (Jan. 15, 1986) No. 51/85 (1986) (Ont. Dist.Ct.) – where there was a 1-year sentence for attempted arson, followed by 2 years' probation

**Pre-Sentence Report dated December 18, 2019:**

[27] The Crown emphasizes that the actions by Ms. Redden were "planned, prolonged and deliberate." She has prior convictions for assault and her PSR is "a narrative of denial."

[28] To date, Ms. Redden refuses to accept any responsibility for her actions and that "she did nothing wrong."

[29] Her Pre-Sentence Report states at page 7 that Ms. Redden does not wish to take part in any community-based interventions. This would make a lengthy period of probation versus incarceration meaningless.

[30] It was shocking to read at page 1 of the Report that Ms. Redden lost her mother as a result of a house fire in 2005, and that her father eventually succumbed to his injuries from that same fire in 2013. How could Ms. Redden counsel Ms. Grant to burn a house, albeit uninhabited at the time, with her own personal background of tragedy related to a house fire?

[31] Somewhat ironically, at page 6 of the Report, Ms. Redden states that "I hate watching other people using people." This is exactly what Ms. Redden attempted to do with Ms. Grant.

**Restitution:**

[32] The issue of restitution was brought up by the Crown. It was suggested that perhaps a nominal amount could be ordered payable to Ms. Harnish for her psychological and emotional suffering due to the loss of her house. I have refused the invitation to make an order for restitution as I do not wish to hamper in anyway damages that could be awarded in any civil suit by Ms. Harnish against Ms. Redden for the loss of her house.

[33] Further, as previously noted, I am not sentencing Ms. Redden for the burning of the house, but I am sentencing her for counselling Ms. Grant to burn the house.

**Victim Impact Statement:**

[34] Ms. Harnish submitted a Victim Impact Statement. Much of what she refers to in her Statement refers to the loss of her house in a fire, as opposed to the

actions for which Ms. Redden was found guilty, which was counselling someone to burn the house.

[35] Clearly, Ms. Harnish and Mr. Turner have suffered immensely as a result of Ms. Redden's actions.

**Aggravating Factors:**

[36] Ms. Redden has a history of violence as she has a criminal record with two convictions for assault.

[37] I accept that Ms. Redden's actions were planned, deliberate and prolonged. It was not a spontaneous counselling, or isolated threats, in the heat of an argument. Rather, Ms. Redden made a concerted effort to try and convince Ms. Grant to burn the Harnish/Turner house.

**Mitigating Factors:**

[38] It is a struggle to find any mitigating factors for Ms. Redden. She maintains her innocence, as is her right, and she refuses to take responsibility for her actions, and for the resultant consequences of her actions.

[39] Someone who lost their own parents in a house fire should know better than to counsel someone to burn down someone else's house.

**Ancillary Orders:**

[40] Stand up Ms. Redden.

[41] There will be a 20-year weapons prohibition for Ms. Redden. This a mandatory order for the first count pursuant to s. 109.

[42] There will be a DNA Order. The first count is a secondary offence.

**Decision:**

[43] The most relevant cases for my consideration are ***R. v. Malley*** 1994 Carswell NB 168 (30-month sentence for counselling arson), ***R. v. Overland*** 2014 ONSC 5545 (1-year sentence for counselling arson), and ***R. v. Lorna Jean Parkes*** 1995 Carswell NB 397 (10-month sentence for arson conspiracy).

[44] These cases all emphasize the need for a sentence for this type of offense to emphasize deterrence, denunciation, and the protection of the public.

[45] I sentence you to a period of incarceration of 14 months for the counselling arson charge.

[46] I sentence you to a further sentence of 1 month on the threat, to be served consecutively to the 14 months on the counselling arson charge.

[47] This will be for a total sentence of 15 months.

[48] Upon your release from jail you will serve a period of 24 months' probation on the following terms:

- Report to a Probation officer at 14 Court street, Suite #206, Victoria Court, Truro Nova Scotia with 3 days from the date of expiration of your sentence of imprisonment and thereafter when required and in the manner directed by the Probation Officer.
- Remain within the Province of Nova Scotia unless written permission to leave the Province has been obtained from your Probation Officer, in advance.
- Do not possess or consume alcoholic beverages.
- Do not possess or consume illicit drugs, or prescriptions drugs, or marijuana without a valid prescription.
- Do not enter or be in any premises where alcohol is the primary product of sale, including liquor stores, taverns, pubs, distilleries, wineries, breweries, beverage rooms, night clubs and licensed pool halls.
- Undergo an assessment with regard to your alcohol consumption, and successfully complete any counselling or program regarding alcohol consumption directed by your Probation Officer, including, if so ordered, any residential program.
- Undergo and successfully complete any counselling or program regarding drug use directed by your Probation Officer, including, if so ordered, any residential program.
- Undergo and successfully complete any counselling or program regarding anger management as directed by your Probation Officer.

- Undergo and successfully complete any psychiatric, psychological, or mental health counselling directed by your Probation Officer.
- Undergo and successfully complete any counselling directed by your Probation Officer regarding grief management, loss of husband and parents.
- Do not contact or communicate with, or attempt to contact or communicate with, directly or indirectly, with Tiffany Harnish, Tesha Grant, Melanie Deagle.
- Do not go to or enter any of the residential properties or premises of Tiffany Harnish.
- Do not beset, watch, or follow from place to place Tiffany Harnish.
- Sign all consents required by service providers to release information on your participation in any assessment, counselling or programs to permit the probation service to monitor your progress.

[49] Go with the Sheriffs.

Judge Alain Bégin, JPC