PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Minugh*, 2023 NSPC 16

Date: 20230320
Docket: 8529068
Registry: Truro

Between:

His Majesty the King

v.

Leah Minugh

Judge:	The Honourable Judge Alain Bégin
Heard:	January 23, 2023 in Truro, Nova Scotia
Decision:	March 20, 2023
Charge:	423.1(1)(b) *Criminal Code of Canada*
Counsel:	Thomas Kayter for the Crown
	Nic Hoehne for the Defendant

By the Court, (all emphasis added):

[1] This is the sentencing of Leah Minugh who pleaded guilty to engaging in conduct with the intent to provoke fear in a justice system participant on August 11, 2021, contrary to s. 423.1(1)(b) of the Criminal Code. The Crown proceeded by Indictment.

The Facts

[2] The offence occurred at a traffic stop where Ms. Minugh was the passenger in a vehicle where the driver had been arrested for impaired driving. Another passenger in the vehicle made the smart decision to leave the scene on her own accord, but Ms. Minugh, whose judgment was clearly impaired by alcohol, and for reasons only known to Ms. Minugh, chose to stay and harass and threaten Cst. Dorrington in vile, vulgar, derogatory and inflammatory language.

[3] Most of the incident is captured on a body cam worn by Cst. Dorrington. It was not simply a few words by Ms. Minugh directed towards Cst. Dorrington, but it was a repeated, and visceral, engagement, that goes on for approximately 10 minutes.

[4] Some of the statements by Ms. Minugh towards Cst. Dorrington are as follows:

- Threatening to make a sexual harassment complaint against Cst. Dorrington.
- Calling him a “Baby killer”.
- Asking him, and making a threat, “Do you have kids? I will pay them a visit”.
- Asking him, and making a threat “Do you have a wife? I will call her up”.
- Threatening him that, “I’ll find out where you live”.
- Threatening his (deceased) daughter, “Tell your daughter that I will see her soon, bitch”.
- Calling him a “Piece of shit”.
- Insulting him by calling him “White privileged”.
- Antagonizing him by stating “Gonna shoot me?”.
- Insulting him by calling him “Dork in a dick”.
- Antagonizing him by stating “Black Lives Matter”.
- Antagonizing him by stating “Woke culture”.
- Antagonizing him by stating “Anti-police”.

The Positions of the Parties

[5] The Crown is seeking a short, sharp sentence of 30 days to emphasize denunciation and deterrence, followed by a period of probation.

[6] Defence is seeking a period of probation, suggesting that anything more than probation would neither be a fit nor fair sentence.

Sentencing Principles

[7] 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] …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 s. 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 s. 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.**

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

> 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;
>
> **(b)** to deter the offender and other persons from committing offences;

> **(c)** to separate offenders from society, where necessary;
>
> **(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.

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

[10] 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.

[11] 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.

[12] Section 718.2 states the other principles that the sentencing court is mandated to take into consideration:

> 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:
>
> **(i)** evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,
>
> **(ii)** evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
>
> **(ii.1)** evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
>
> **(iii)** evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
>
> **(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,
>
> **(iv)** evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
>
> **(v)** evidence that the offence was a terrorism offence, or
>
> **(vi)** evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act*

> 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.

[13] 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."

[14] 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.

[15] 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.

[16] 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."

[17] 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.

[18] 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.

[19] The behaviour by Ms. Minugh needs to be denounced. There was no evidence of any improper behaviour by Cst. Dorrington. Ms. Minugh was not even the target of the police investigation. She was a bystander who should have followed her friend's lead and walked away. Instead, she chose to embark on a completely inappropriate verbal attack on Cst. Dorrington. The Courts, and society, cannot condone such threatening and abusive behaviour towards police officers who are simply doing their job.

[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."

Victim Impact Statement

[25] Cst. Dorrington read his Victim Impact Statement in Court. Cst. Dorrington pointed out the substantial impact and risks that Ms. Minugh' s comments had on him. Cst. Dorrington pointed out that the comments made by Ms. Minugh had serious consequences as they threatened:

- Cst. Dorrington's marriage,
- his family members,
- his standing with this court where he appears regularly,
- his standing with his police colleagues,
- and his employment as a police officer

Pre-Sentence Report

[26] The Pre-Sentence Report notes difficulties with Ms. Minugh's mental health, anger management, and problems with her ability to handle alcohol.

[27] Ms. Minugh has recently commenced private therapy to address issues of trauma from her childhood, as well accessing anger management counselling.

[28] She is hopeful of attending law school.

[29] Ms. Minugh claims to have attempted suicide in the past.

[30] Ms. Minugh describes herself as "mean when under the influence of alcohol" and added that "I can get nasty." This is what brings her before the Court today. If someone knowingly has a problem with alcohol, she should avoid drinking alcohol, and not just assume that whatever happens after she consumes alcohol is not her fault, but the fault of the alcohol.

[31] Ms. Minugh also states that "anyone who knows me would say that I am short tempered." Again, having a problem with one's temper does not give someone the license to act as Ms. Minugh did towards Cst. Dorrington.

Aggravating & Mitigating Factors

[32] Ms. Minugh's negative attitude toward the justice system has been apparent throughout this process. Her attack on Cst. Dorrington brings her here today, and she also refused to come to Court for her trial, so she had to be picked-up by the police and brought to Court.

[33] Ms. Minugh's guilty plea was very late in the day, and in considering the guilty pleas, and the fact that Ms. Minugh's lengthy verbal tirade against Cst. Dorrington was captured on a body camera, I am mindful of the case of ***R. v. F.L.*** **[2018] OJ 482** at paras 22 and 23:

> A plea of guilt does not entitle an offender to a set standard of mitigation. The amount of credit a guilty plea attracts will vary in each case…In some cases a guilty plea is a demonstration of remorse and a positive first step towards rehabilitation. **In other cases, a guilty plea is simply recognition of the inevitable.**

[34] And in ***Buschmeyer*** **2021 ABQB 1008** at paras 78 and 79:

> [He] was clearly aware that he was in breach of the prohibition order on an on-going and continuous basis…
>
> …In terms of mitigating circumstances, I accept that the Accused entered guilty pleas to the offences involving breaches of the prohibition order. However, I do no not attach a great deal of weight to this fact in these particular circumstances**. [He] was in clear violation of this prohibition order over an extended period of time. As such, there was no viable defence to these charges available to him in these circumstances.**

[35] I must, however, note that not so long-ago Ms. Minugh was respectful of the criminal justice system when she was a witness for an impaired driving case that would likely not have resulted in a conviction but for her assistance as a Crown witness. Clearly, when sober, Ms. Minugh can be a contributing member of society.

[36] Although Ms. Minugh has expressed remorse in the PSR and stated that she wanted to write a letter of apology to Cst. Dorrington, that letter was never written. She did, however, apologize to Cst. Dorrington in Court.

<u>Range of Sentence</u>

[37] A wide range of sentences is available for Ms. Minugh, from an absolute discharge to a period of custody up to 14 years.

[38] As noted by Justice Arnold in ***R. v. Elliott*** **2021 NSSC 78** at para 37:

> "Denunciation and deterrence are of primary consideration in sentencing someone convicted of intimidating a justice system participant contrary to s. 423.1. Jail sentences often result from committing this crime."

[39] In ***R. v. Horton*****, 2014 ONCA 616 (Ont. C.A.),** the accused was convicted of intimidating a justice system participant and assaulting a peace officer. Both charges arose out of an incident where the accused kicked an occupied police cruiser, with the intention of intimidating or causing fear in the officer, who was at the time performing police duties. The Ontario Court of Appeal upheld a sentence of 10 months' imprisonment and two years' probation for the s. 423.1 charge and imposed a concurrent six months' incarceration for the assault.

[40] In ***R. v. Hefferan*****, 2014 CarswellNfld 93 (N.L. Prov. Ct.)** [*Hefferan*], the accused accosted the complainant in public, yelling and screaming at her, as a result of the complainant having provided a statement to police regarding the accused's son. The sentencing judge identified many positive circumstances relating to the accused: only one prior, unrelated offence on her record; a long-term relationship; a history of mental health and addictions issues; and a willingness to

engage in treatment. The accused received a 90-day intermittent sentence and two years' probation as a global sentence for these actions as well as for a fraud and a breach of probation. The Court explicitly stated that this was "a very lenient disposition and one significantly lower than what will be normally imposed for a breach of section 423.1 of the *Criminal Code*."

[41] Judge Q.D. Agnew provided a summary regarding such sentencings in his Provincial Court decision in ***R. v. Saddleback*, 2019 SKPC 42** at para 22:

> **"There are several common themes which run through these cases:**
>
> **a. the primary sentencing considerations must be denunciation and deterrence;**
>
> **b. a conviction under s. 423.1 will normally result in a term of imprisonment;**
>
> **c. the range of sentences for a first offence is from a suspended sentence to 18 months in jail. The middle of the range seems to be 12 months' imprisonment;**
>
> **d. probation is frequently added to the jail term;**
>
> **e. in the case of a second offence, there is a significant increase in penalty."**

Decision

[42] Ms. Minugh is incredibly immature and is someone who needs help with her problems with her alcohol consumption, her anger issues, and her mental health.

[43] This is a serious offence that requires denunciation and deterrence. Denunciation and deterrence in the form of a custodial sentence.

[44] Can the custody take place in the community? I believe so.

[45] I am sentencing Ms. Minugh to 3 months custody to be served under strict conditions in the community under a Conditional Sentence Order. This will be followed by a period of Probation for 24 months where Ms. Minugh will take the necessary counselling to deal with her issues, and she will report on three occasions during her probation on her progress to this Court.

Judge Alain J. Bégin, JPC