PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Ward*, 2013 NSPC 91

Date:20131017
Docket: 2612931, 2612932, 2612933, 2612934, 2612937, 2612938, 2612940, 2612941, 2612942, 2612943, 2612944
Registry: Pictou

Between:

Her Majesty the Queen

v.

Steven Burton Ward

SENTENCING DECISION

Judge:	The Honourable Judge Del W. Atwood
Heard:	25 June, 30 August, 10 October 2013, in Pictou, Nova Scotia
Charges:	Sub-s. 88(2), para. 129(a), para. 264.1(1)(a)x2, para. 264.1(1)(b)x3, para. 264.1(1)(c), para. 267(a), sub-s. 333.1(1), sub-s. 430(4) of the *Criminal Code of Canada*
Counsel:	William Gorman, for the Nova Scotia Public Prosecution Service Stephen Robertson, Nova Scotia Legal Aid Commission, for Steven Burton Ward

By the Court:

[1] Steven Burton Ward is before the court today to be sentenced for eleven summary offences committed during the month of June 2013. Mr. Ward pleaded not guilty initially, but then changed his plea following the start of his trial on 30 August 2013 after having heard the evidence of his grandmother, Mrs. Winnifred Esther Smith.

[2] By agreement of counsel, the evidence heard by the court during the course of Mr. Ward's bail hearing on 25 June 2013, as well as the testimony of Mrs. Smith on 30 August 2013, constitute the evidence in support of the charges pursuant to section 724 of the *Code*. I entered convictions on all eleven counts at the end of proceedings on 30 August 2013. The court heard the sentencing submissions of counsel on 10 October 2013, and I reserved my decision until today. I have reviewed in great detail the pre-sentence report dated 30 September 2013, and, with the consent of counsel, I have gone over thoroughly the s. 672.2 assessment report prepared by Robert A. Pottle, MD, FRCPC, completed after I had made a s. 672.11-672.12 order on 25 June 2013 for the psychiatric assessment of Mr. Ward.

[3] The sentencing positions of counsel diverge widely. The prosecution seeks a total sentence of 2.5 to 3 years in a federal penitentiary. Defence counsel seeks a short period of provincial time followed by a lengthy term of probation. Defence has not asked that I consider a conditional-sentence order, and I agree that such an order would not be appropriate in this case, even if I were to conclude that a sentence of less than two years might be appropriate.

[4] The mitigating factors here are Mr. Ward's guilty pleas; although entered following the start of his trial, I am satisfied that they represent authentic expressions of remorse and an acceptance of responsibility.

[5] At twenty years of age, Mr. Ward is a young man, and, while he has struggled with serious substance-addiction issues and has made only very limited attempts to access treatment programming, he is not beyond the hope of rehabilitation. As my colleague Derrick J.P.C noted in *R. v. Cater*, a sentence ought not crush the prospects of rehabilitation, particularly in the case of a

youthful offender as is Mr. Ward.[1] Furthermore, I must be certain to recognize the principles of restraint as set out in paras. 718.2(c)-(e) of the Code. Furthermore, while this is not Mr. Ward's first adult sentence, his record as an adult is not lengthy.

[6] I take into account as well that Mr. Ward was denied bail, and has been on remand for the past 118 days. I intend to give Mr. Ward credit for that remand time on a day-for-day basis as allowed in sub-s. 719(3); enhanced credit was not sought in this case.

[7] I observe that Mr. Ward has the strong support of his grandmother, Mrs. Smith, this in spite of the fact that she was the principal victim of these crimes.

[8] The key aggravating factors are the level of violence and threats of violence involved in the commission of these offences. Mrs. Smith was confronted with Mr. Ward's serious threats to her personal safety, the safety of her home and her beloved pets on 1 June 2013. These were not idle words; they were accompanied

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[1] 2012 NSPC 38 at para. 47.

by actions, as Mr. Ward proceeded to put together what appeared to Mrs. Smith to be a very real shrapnel bomb constructed with shot Mr. Ward had extracted from a shotshell. Its whereabouts remain unknown. This device had a wick fuse, which Mr. Ward lighted in Mrs. Smith's presence; fortunately, he extinguished it. There is no evidence before me that this device would have detonated; however, the mere threat of it was terrifying to Mrs. Smith.

[9] This was followed by Mr. Ward's drug-induced fury on 23 June 2013, when Mr. Ward confronted his grandmother, and then police, brandishing a knife; I believe that I can infer safely from the facts that Mr. Ward would have been willing to use it, given the level of anger and rage evident in his conduct. In order to evade capture, Mr. Ward stole Ms. Smith's car and drove off dangerously, only to return to take on police who had arrived in response to Mrs. Smith's call for help. At one point, Mr. Ward clenched his knife between his teeth and tried to re-enter Mrs. Smith's home, all the while surrounded by police with their guns drawn ordering him to drop his weapon, but to no avail. Ultimately, Mr. Ward had to be subdued with a conductive electrical device and was taken into custody, but not without great difficulty. In my view, the officers involved are to be commended for the restrained and professional manner in which this tactical response was

conducted, without loss of life or serious injury to anyone. Sometimes, these sorts of incidents do not end well.[2]

[10] What is clear to the court is that Mr. Ward's conduct gave rise to a very high risk for lethality. It represents a pattern of escalating behaviour, borne out in Mr. Ward's prior record (including a youth record which I am satisfied is admissible in virtue of sub-s. 119(9) of the *Youth Criminal Justice Act*) made up of four prior findings of guilt for assault, seven prior findings of guilt for breaching *YCJA* sentences, one prior finding of guilt for threats, one prior finding of guilt for resisting police, one prior finding of guilt for theft, and one prior finding of guilt for damage to property.

[11] Although Mrs. Smith did not submit a victim-impact statement, I find that I am able to infer a high level of victim impact in this case. I had the opportunity to observe this very frail lady when she gave her evidence, and it is clear to me that she remains deeply shaken by the actions of Mr. Ward, a person whom she

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[2] *See, e.g.,* Newfoundland and Labrador, Provincial Court, *Report of Inquiries into the Sudden Deaths of Norman Edward Reid and Darryl Brandon Power* (<http://www.justice.gov.nl.ca/just/publications/reid_and_power_final_report.pdf>: accessed on 17 October 2013).

sheltered when he was sorely in need. There was, in my view a level of trust here which was violated, sufficient to meet the test in *R. v. Audet*[3] ; accordingly, I take into account the aggravating principle of breach of trust as set out in sub-para. 718.2(a)(iii) of the *Code*.

[12] I consider as well that the 23 June offences involved a high level of police response, requiring a substantial diversion of limited public resources.

[13] In reviewing Dr. Pottle's assessment, I am cognizant that I must not treat as aggravating references to uncharged offences. However, I may certainly consider biographic content in the report for the purposes of assessing the risk to public safety posed by Mr. Ward. I note that Mr. Ward's psychiatric history identifies his aggressive and explosive behaviour as having been observed from a very young age. This is linked closely to Mr. Ward's frequent use of cannabis, polysubstance abuse (including abuse of MDMA and ketamine), and non-compliance with psychiatric-outpatient followup.

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[3] [1996] S.C.J. No. 61at para. 39

[14] While Mr. Ward expresses a considerable fear of confinement, the fact is that, when he was certified to the IWK Child and Adolescent Psychiatric Unit in November 2011, he appeared to improve significantly.

[15] Defence counsel is correct that Mr. Ward appeared in court last week in as fit and healthy a state as I have seen him in quite some time. This often happens in cases of substance-addicted offenders who are bail denied: the enforced detoxification of remand may, indeed, have a therapeutic effect. But this sort of anecdotal, snapshot evidence offers little assurance that Mr. Ward's risk for potentially lethal violence might be managed effectively in the community. What is incontestible that it will take more than four months of remand, with a couple more tacked on, to change Mr. Ward's deeply ingrained lifestyle and habits to the point that his risk to public safety will be manageable.

[16] Given the high level of violence implicated in these offences, I believe that the sentence imposed by the court must place substantial emphasis on denunciation and deterrence and the correlative need to separate Mr. Ward from society for a significant period of time; the duration of the sentence must not be unduly lengthy, as the court must not overlook the need for rehabilitation. I

believe that this approach is supported by the decision of the Nova Scotia Court of Appeal in *R. v. Metzler*.[4] That case involved a youthful, first-time offender with a stellar reputation in the community who was one of three persons who committed a serious assault upon an unsuspecting victim; the Court of Appeal upheld a 22-month prison sentence and a 12-month term of probation imposed by the trial judge for that isolated event.

[17] While Mr. Ward's drug use might have contributed to his violent behaviour, it is clear that drug addiction cannot be utilized to excuse or minimize the seriousness of violence or the degree of responsibility of the perpetrator.[5]

[18] The threats against Mrs. Smith and the vehicle theft each carry maximum terms of imprisonment of 18 months as they were prosecuted summarily; the remaining charges carry maximum terms of six-months' imprisonment.

[19] Applying the principles set out in *R. v.Adams*.[6] , I will set out first what the court's sentence would have been, had each charge stood alone. This is not the actual sentence of the court. I will then examine the total sentence resulting from

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[4]2008 NSCA 26 at paras. 24-40.

[5]*See R. v. Dzikowski* (1990), 99 N.S.R. (2d) 362 at para. 6.

[6]2010 NSCA 42 at paras. 23-30.

that initial calculation, and apply the principle of totality, giving appropriate credit for remand time in determining the court's final sentence.

[20] The pre-Adams determination of the court is as follows:

- case 2612937, para. 264.1(1)(a), 9 months in custody had this charge stood alone;
- case 2612938, para. 264.1(1)(b), 4 months in custody had this charge stood alone;
- case 2612940, para. 267(a), 9 months had it stood alone;
- 2612941, para. 264.1(1)(b), 4 months had it stood alone;
- 2612942, para. 264.1(1)(c), 4 months had it stood alone;
- 2612943, para. 264.1(1)(b), 4 months had it stood alone;
- 2612944, para. 264.1(1)(a), 6 months had it stood alone;
- 2612933, sub-s. 430(4), 3 months had it stood alone;
- 2612934, sub-s. 333.1(1), 6 months had it stood alone;
- 2612932, para. 129(a), 118 days had it stood alone;
- 2612931, sub-s. 88(2), 6 months had it stood alone.

[21] Taking into account the principle of totality, and giving credit on a day-for-day basis for 118 days of remand time, the actual sentence of the court shall be as follows:

- case 2612937, para. 264.1(1)(a), 8 months in custody and that is the starting point sentence;

- case 2612938, para. 264.1(1)(b), a 2- month consecutive sentence;

- case 2612940, para. 267(a), an 8-month consecutive sentence;

- 2612941, para. 264.1(1)(b), a 2-month consecutive sentence;

- 2612942, para. 264.1(1)(c), a 2-month consecutive sentence;

- 2612943, para. 264.1(1)(b), a 2-month consecutive sentence;

- 2612944, para. 264.1(1)(a), a 4-month consecutive sentence;

- 2612933, sub-s. 430(4), a 2-month consecutive sentence;

- 2612934, sub-s. 333.1(1), a 6-month sentence, but to be served concurrently;

- 2612932, para. 129(a), the court will grant credit for the 118 days spent on remand on a day-for-day basis; the sentence for this offence shall be one day, to be served concurrently; pursuant to the *Truth in Sentencing Act*, I order and direct that the information and warrant of committal be endorsed to record that, but for the credit for the remand time, the sentence of the court would have been a 118-day consecutive sentence;

- 2612931, sub-s. 88(2), 6 months to be served concurrently.

[22] Accordingly, the sentence of the court on a go-forward basis shall be a 30-month term of imprisonment in a federal penitentiary in accordance with s. 743.1 of the *Code*.

[23] There will be a primary-designated-offence DNA collection order issued in relation to the para. 267(a) count, case number 2612940.

[24] The prosecution sought only a s. 110 prohibition order as the para. 267(a) charge was prosecuted summarily; however, it is my view that the offence retained its nature as an indictable offence, which brings into play s. 109. I find that I am persuaded strongly on this point by the reasons of Gorman J.P.C. in *R. v. Ruth*, in which the learned judge of the Newfoundland and Labrador Provincial Court marshalled an array of authorities:

> 53 The Crown's election does not change the nature of a section 267(b) offence. As pointed out in *R. v. S.P.*, [1996] O.J. No. 4620 (O.C.J.) at paragraph 8, the "essential indictable nature of the offence cannot be removed by a summary election." In *Vithiyananthan v. Canada (Attorney General)*, [2000] 3 F.C. 576 (T.D.) it was held, at paragraph 21, that "Hybrid offences are indictable offences even when summary proceedings are used to obtain a conviction." This conclusion finds support in section 34(1)(a) of the *Interpretation Act*, R.S.C. 1985, which states:
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> > Where an enactment creates an offence,
> > (a) the offence is deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment.

54 As a result, an offence under section 267(b) of the *Criminal Code* is deemed to be an indictable offence. This characterization is not changed by the Crown's election. For the purpose of section 109(1)(a) of the *Code* it does not matter how the Crown actually proceeded, it is how it might have proceeded that is the crucial factor in determining if section 109(1)(a) applies to a particular offence.

55 In *R. v. Clark* (1977), 35 C.C.C. (2d) 319 (Ont. C.A) this issue arose in the context of an offence contrary to section 354(1)(a) of the *Criminal Code*. That section prohibits the possession of any property or thing which was obtained from "the commission in Canada of an offence punishable by indictment." The Ontario Court of Appeal concluded, at page 324, that these words referred to "the class of offence that must be proven to have been committed. It is not prescribing that the very offence by which the particular goods in an individual case were obtained must have been committed by someone who can be prosecuted by indictment for having committed it" (also see *Dallman v. The King* (1942), 77 C.C.C. 289 (S.C.C.), *R. v. Baugh* (1984), 11 C.C.C.(3d) 1 (S.C.C.) and *R. v. Beselica and Nagle* (1974), 23 C.C.C. (2d) 123 (B.C.P.C.).

56 In *R. v. Head* (1994), 124 Sask. R. 73 (Q.B.) the accused was charged with assault, contrary to section 266 of the *Criminal Code*. As here, the Crown elected to proceed by summary conviction. The sentencing judge imposed a prohibition order (section 100(1) at the time). On appeal, the court held that section 100(1) did not apply. The appeal court's reasons for this conclusion, were set out as follows:

> As will be observed from a detailed examination of said s.100(1) of the Criminal Code supra, before its provisions can be invoked there must exist two preconditions:
> FIRST: the offender must be convicted of an indictable offence in the commission of which violence against a person is used: and
> SECONDLY: on said conviction the offender may be sentenced to imprisonment for ten years or more.

> In the particular circumstances, as the requisite two conditions did not exist, the Provincial Court judge erred in making the noted s. 100(1) prohibition order.
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> 57 I am unable to reach the same conclusion. In my view this is an overly technocratic approach to the interpretation of a statute designed to enhance public safety. As pointed out by the Supreme Court of Canada in *Reference Re: Firearms Act*, [2000] 1 S.C.R. 783, these provisions are "designed to enhance public safety, and the safety of specific members of the public, by controlling access to firearms." This can be of crucial importance in cases involving spousal violence. It appears that a significant portion of homicides, in which one spouse kills another, involve the use of firearms (see *Reforming Criminal Code Defences*, a 1998 Research Paper issued by the Federal Department of Justice). Therefore, since section 267(b) of the Code is an offence for which the Crown can proceed by indictment and for which an offender might be sentenced to a period of ten years imprisonment, section 109(1)(a) applies.
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> 58 I hereby prohibit Mr. Ruth, pursuant to section 109(1)(a) of the *Criminal Code* from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance. This prohibition commences on today's date and expires ten years after Mr. Ruth's release from imprisonment. The prohibition order in relation to the items specified in section 109(2)(b) is for life. Pursuant to section 114 of the Criminal Code Mr. Ruth is hereby ordered to surrender, to a peace officer, any thing prohibited by this order that is in his possession, within two days of the commencement of the order.

[25] Although not binding upon me, I find this reasoning highly persuasive, backed up by ample authority; accordingly, pursuant to s. 109 of the *Code*, given the dangerous use of knives by Mr. Ward and the substantial evidence that he had assembled a bomb, I find it necessary to make a lifetime prohibition order.

[26] Given the duration of the sentence, and given Mr. Ward's limited means, there will be no victim-surcharge amounts imposed.

[27] Mr. Ward, if you could accompany the sheriffs please, sir.

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J.P.C.