PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Jeans*, 2013 NSPC 118

Date: 20131205
Docket: 2649024, 2649025, 2649026, 2649027
2649028, 2649029, 2649030, 2649031
2649032, 2649033, 2649034, 2659533
2661930
Registry: Pictou

Between:

Her Majesty the Queen

v.

Paul Ivan Jeans Jr.

SENTENCING DECISION

Judge: The Honourable Judge Del W. Atwood

Heard: December 5, 2013, in Pictou, Nova Scotia

Charge: 348(1)(a)CC (3 counts); 348(1)(b)CC (8 counts);
145(3)CC (2 counts)

Counsel: Jody McNeill, for the Nova Scotia Public Prosecution Service
Stephen Robertson, Nova Scotia Legal Aid,
for Paul Ivan Jeans Jr.

By the Court:

[1] The Court has for sentencing Paul Ivan Jeans. Mr. Jeans entered guilty pleas at an early opportunity in relation to a number of break-and-enter offences involving vessels; those charges are set out in information #683939. The prosecution elected indictable process in relation to all counts. Mr. Jeans elected to have the charges dealt with in this court.

[2] In addition, Mr. Jeans has entered guilty pleas to two summary-process counts of breach of recognizance. Those involved having contact and communication with Brenda Lee Crawford, an individual listed in Mr. Jeans' recognizance of September 26, 2013, as someone with whom Mr. Jeans was to have no contact. Ms. Crawford was Mr. Jeans' partner and, indeed, provided evidence against Mr. Jeans when interviewed by police.

[3] The court heard sentencing submissions last week, the prosecution seeking a term of imprisonment of nine to twelve months, followed by a term of probation. Defence counsel sought a short prison term followed by a term of probation. Following *R. v. R.R.B.*, 2013 BCCA 224, I adjourned sentencing to hear further

submissions, given that the court was considering the imposition of a federal term, given the seriousness of the offences.

[4] The positive or mitigating factors are Mr. Jeans' early guilty pleas. Mr. Jeans has been on remand since the 26th of October of 2013, as a result of his bail violations, and he has consented to remand since that time.

[5] Applying the principles set out by our Court of Appeal in *R. v. Carvery,* 2012 NSCA 107, I do intend to take the period of time that Mr. Jeans has spent in custody into account and given the very difficult circumstances described by Mr. Jeans, I believe that greater than one-to-one credit ought to be accorded.

[6] I note that Mr. Jeans has no prior record. The Court has considered the pre-sentence report which would appear to indicate that, although Mr. Jeans previously consumed alcohol, he has been alcohol free for the past three years as Ms. Crawford would not tolerate him having it. Mr. Jeans appears never to have been involved in the use of drugs. Mr. Jeans describes the offences against him as a way to cope and all pure stupidity.

[7] I have also taken into account the very brief section 672.13 psychiatric assessment report that was prepared by Dr. Kronfli dated November 20, 2013. The Court considers the content of that report, with the consent of counsel.

[8] Mr. Jeans would appear to be a reasonable candidate for a rehabilitative sentence, although the Court is still mystified to some extent as to Mr. Jean's motivation for becoming involved in this wide array of offences and not complying with the no-contact condition of his recognizance directed by the Court.

[9] In presenting a statement of facts to the Court in accordance with the provisions of sections 722 and 723 of the *Criminal Code*, the prosecution referred to allegations of uncharged offences. In my view, the Court must disregard those facts, absent cogent and substantial proof as comprehended under sub-section 724(3) of the *Criminal Code*, that would warrant the application of sub-section 725(1) of the *Criminal Code*. It is my view that the Court ought to disregard references to uncharged offences as those facts are unconnected completely with any of the charges before the court and have not been proven beyond a reasonable doubt.

[10] With respect to the aggravating circumstances, in my view there are substantial aggravating circumstances here. Mr. Jeans was involved in breaking into a number of vessels at the Pictou Marina over the course of, as I understand it, two evenings in September of 2013. That is certainly well within the recreational sailing season in this Province.

[11] Nova Scotia is a littoral or coastal province; one will find along our shores coastal communities, public and private wharfs, marinas, jetties, moorings and the like. Nova Scotians have sought their recreation and livelihood on the water for centuries. One thing that we have learned from decades upon decades of experience on the water, interspersed with tragedy, is this: it is dangerous to tamper with a vessel.

[12] A mariner in distress at sea cannot easily pull over to dry land and call the CAA. When a vessel is in distress, its crew and passengers are imperilled. To remain seaworthy, a vessel must be kept in good order, a minimum equipment requirement must be observed, equipment and material must be inspected regularly. A prudent and cautious master of a vessel will keep his or her ship,

large or small, in ship shape. This is because a master knows that an electrical failure, a mechanical failure, a material failure or a failure of any other essential system will put his vessel and its occupants in harm's way.

[13] After a vessel is tampered with by someone who has broken into an accommodation or a hold–assuming that the intrusion is detected–the master enters his ship not knowing the dangers that he might be facing. This is because intruders do not keep logs of what they take or damage. The master will need to ascertain whether the ship's navigational system is in tact. Are navigational aids intact? Is the ship-to-shore in tact? Have sea cocks been damaged or opened? Does the vessel remain mechanically and electrically sound? If the accommodation has a galley with a stove, has there been a fuel escape? Is the safety equipment in order, lifelines, personal flotation devices and the like?

[14] The potential risk of danger to mariners in these circumstances is significant and must not be taken lightly. I do not regard this as equivalent to a break-in into a car. Break-ins into vessels engage real and significant public safety concerns and the penalties, in my view, must reflect that. The court recognizes that Mr. Jeans did not steal anything of great value in these break-ins; however, it is the

risk associated with the break-and-enter and not the dollar-value loss that must be the focus of the court.

[15] Obviously, the Court must be mindful not to impose a sentence that would crush the prospect of rehabilitation. However, the Court must be mindful, as well, that the *Criminal Code* was amended last year in virtue of the *Safe Streets and Communities Act*, to exclude even non-dwelling B & Es, when prosecuted indictably.

[16] As the Court discussed recently in *R. v. Greencorn*, 2013 NSPC 112 at para. 16, the benchmark in the Province of Nova Scotia for break-and-enter offences is three (3) years; this was re-stated by the Nova Scotia Court of Appeal in *R. v. Adams*, 2010 NSCA 42. The lack of prior record may, in certain circumstances, warrant a departure from that benchmark to a term of two (2) years, when there is no prior record.

[17] As to the breach-of-recognizance charges, I am mindful that the purpose of bail is to ensure the good conduct of the accused and to ensure bail compliance. That purpose is not accomplished when individuals who are admitted to bail

commit offences against the administration of justice or commit further criminal offences; this was underscored by the Supreme Court of Canada in *R. v. Morales*, [1992] S.C.J. No. 98 at para. 40.

[18] In this particular case, I take into account the mitigating and aggravating factors that I have outlined, the risk arising from vessel break-and-enters, and the number of vessels that were broken into by Mr. Jeans. I take into account, as well, the period of time that Mr. Jeans has spent in custody on remand.

[19] Had each charge proceeded separately, the Court would have contemplated sentences in the range of six months to one year for each of the break-and-enter offences and in the range of three months in relation to the breach of undertaking charges.

[20] First of all, I will state there will be no victim-surcharge amounts as the Court is satisfied that victim-surcharge amounts would work an undue hardship.

[21] There will be a secondary-designated-offence DNA collection order that will be applicable to all of the break-and-enter charges.

[22] Taking into account all of the foregoing factors and the principle of totality, the final sentence of the court is as follows: In relation to Count 1 of the eleven count Information, count #1 the sentence of imprisonment will be two (2) months imprisonment. In relation to count #2, there is a sentence of imprisonment of two (2) months consecutive; count #3, two (2) months imprisonment consecutive; count #4, two (2) months imprisonment consecutive; count #5, two (2) months imprisonment consecutive; count #6, two (2) months imprisonment consecutive; count #7, two (2) months imprisonment consecutive; count #8, two (2) months imprisonment consecutive; count #9, two (2) months imprisonment consecutive; count #10, two (2) months imprisonment consecutive; and count #11, two (2) months imprisonment consecutive.

[23] In relation to the first breach of recognizance charge, there will be a sentence of two (2) months plus one day imprisonment consecutive.

[24] In relation to the second breach of recognizance charge, that is case #2661930, there will be a sentence of two (2) months; however, taking into account the period of time that Mr. Jeans has spent in custody, that will be two (2)

months concurrent, to be served concurrently. In accordance with the *Truth in Sentencing Act*, the Court will order and direct that the warrant of committal, as well as that information, information #685839, be endorsed to record that but for the remand time, the Court would have ordered a sentence of two (2) months consecutive.

[25] This results in a total sentence of **two (2) years plus one (1) day**, with no probation to follow as probation is not permissible in relation to a sentence exceeding two years.

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J.P.C.