PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Snell,* 2013 NSPC 122

Date: 20131211
Docket: 2631980, 2631981
Registry: Pictou

Between:

Her Majesty the Queen

v.

Darren Brent Snell

SENTENCING DECISION

Judge: The Honourable Judge Del W. Atwood

Heard: 11 December 2013 in Pictou, Nova Scotia

Charges: Robbery, section 344 of the *Criminal Code;* assaulting a peace officer, sub-section 270(2) of the *Criminal Code.*

Counsel: Jody McNeil for the Nova Scotia Public Prosecution Service
Rob Sutherland for Darren Brent Snell

By the Court:

[1] The court has for sentencing Darren Brent Snell. Mr. Snell is before the court today to be sentenced in relation to a single count of robbery, and also in relation to a single count of assaulting a peace officer. Both charges proceeded indictably.

[2] There is a joint submission before the court within the context of the decision out of our Court of Appeal in *R. v. MacIvor*, 2003 NSCA 60. In that case, the Nova Scotia Court of Appeal stated that, in cases when counsel have negotiated an authentic *quid pro quo* sentencing recommendation in the form of a joint submission, a sentencing court ought to defer to that joint submission unless the court were to be satisfied that the joint submission would bring the administration of justice into disrepute.

[3] In this particular case, the joint submission is essentially for a four (4) - year federal sentence less six (6) months, giving Mr. Snell time-and-a-half remand credit in accordance with the decision out of the Nova Scotia Court of Appeal in

R. v. Carvery 2012 NSCA 107, interpreting, as it did, the provisions of sub-ss. 719(3), 719(3.1), 719(3.2) and 719(3.3) of the *Criminal Code*.

[4] At first glance, the joint submission does appear to be at the very low end of the range, given Mr. Snell's significant record, and given the fact the Court of Appeal of this Province–in cases such as *R. v. Morton* , 2011 NSCA 51 and others– has stated consistently that substantial sentences ought to be imposed in relation to robbery-related offences–as, indeed, this one was: a robbery of a bank while armed with a knife. As the Court of Appeal stated in *R. v. Griffin*, 2011 NSCA 103:

> 36 This Court has recognized robbery is a serious offence requiring emphasis of deterrence and denunciation. A first offender may expect a term of three years (*R. v. Johnson*, 2007 NSCA 102, at para. 37). However, in exceptional cases, less onerous sentences have been imposed. For example, in *R. v. Benoit*, 2007 NSCA 123, an 18-year old with an extensive record received a sentence of two and a half years less remand time (also see *R. v. Bratzer*, 2001 NSCA 166).

[5] Counsel have the advantage that the court does not have of being fully familiar with the strengths and weaknesses of the case; based on those factors, the court is satisfied that the joint submission is within the sentencing range.

[6] Accordingly, Mr. Snell, giving you credit for the time spent in custody, the sentence of the court in relation to the Section 344 count will be a sentence of three-and-one-half (3 ½)-years' imprisonment. In relation to the Section 270 count, there will be a sentence of six (6)-months' imprisonment, but to be served concurrently.

[7] There will be a primary-designated-offence DNA collection order in relation to the robbery charge. Given Mr. Snell's prior record, I am satisfied that the order under Section 109 should be as follows: That Mr. Snell be prohibited from possessing any firearm other than a prohibited firearm or restricted firearm and any cross-bow, restricted weapon, ammunition and explosive substance commencing today's date and running for life. As well, Mr. Snell will be prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

[8] The warrant of committal will be endorsed to record in accordance with the *Truth in Sentencing Act* that, but for the credit given for the remand time of six (6) months, the sentence of the court in relation to the Section 344count would have been four (4)-years' imprisonment.

[9] The warrant of committal will be endorsed as well in accordance with the provisions of Section 743.21 of the *Criminal Code.* Although an endorsement under that section was not sought, I believe that it is appropriate. While in custody and subject to the warrant of committal, Mr. Snell is to have no contact or communication, either directly or indirectly, with Deborah MacIntosh or with Gregory Green.

[10] Given the duration of the sentence, the court finds that the imposition of a victim-surcharge amount would work an undue hardship. Obviously, a victim-surcharge amount would not be able to be paid by Mr. Snell within a reasonable period of time; therefore, the court declines to impose a victim-surcharge amount. I would note that these offences occurred prior to the in-force date of the new victim-surcharge provisions.

[11] Any further submissions, counsel, in relation to Mr. Snell?

[12] **Mr. McNeill**: No, Your Honour, thank you.

[13] **Mr. Sutherland**: No, thank you, Your Honour.

[14] **The Court**: That's all for Mr. Snell, sheriff, thank you very much.

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P.C.J.