

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Russell*, 2014 NSPC 8

Date: 2014-02-27

Docket: 2668969, 2668970, 2668971

Registry: Pictou

Between:

Her Majesty the Queen

v.

Stephen William Russell

Judge: The Honourable Judge Del W. Atwood

Heard: 27 February 2014 in Pictou, Nova Scotia

Charge: 267(b)CC, 267(b)CC, 264.1(1)CC

Counsel: Jody McNeill, for the Nova Scotia Public Prosecution
Service
Hector MacIsaac, for the Stephen William Russell

By the Court:

[1] The Court has for decision the case of Mr. Stephen Russell. Sentencing was adjourned from last Tuesday as, although there was no joint submission, the Court contemplated imposing a sentence greater than the 12-15 months sought by the prosecution. I applied *R. v. R.R.B.*, 2013 BCCA 224 at para. 22, which contains the entirely sensible recommendation that sentencing judges let counsel know if sentences outside the range of what is being recommended by counsel are being contemplated by the court. When the case returned to court today, defence counsel revised his recommendation to a two-year bare federal term.

[2] Mr. Russell is before the Court in order to be sentenced in relation to three indictable counts: one charge of assault causing bodily harm upon Traci Anne Parker in October of 2012; a further charge of assault causing bodily harm upon Ms. Parker on 6 November, 2013; finally, a charge from 6 November, 2013 of uttering a threat to Ms. Parker to cause her death.

[3] The facts that were put before the Court in accordance with the provisions of sections 723 and 724 of the *Criminal Code* are that on 16 November 2013, the

RCMP received a 911 call of domestic assault. The 911 operator reported hearing a female screaming and sounds as if an individual was hitting her. The female provided directions to a cottage in rural Pictou County. Police arrived and spoke with Ms. Parker; Ms. Parker informed the police that Mr. Russell had assaulted her. Mr. Russell was advised of his right to counsel. He declined counsel. Ms. Parker was taken to the emergency room at the Aberdeen Hospital. Her injuries from the assault consisted of two black eyes, bruises to her face and arms, and she needed two stitches to close a laceration over her right eye. She was discharged after treatment. The Court viewed Exhibit #1, photos of Ms. Parker taken at the hospital. The photography depicts Ms. Parker as bloodied and battered.

[4] Cst. Schmultz, who was the investigator, obtained a sworn KGB statement from Ms. Parker. Ms. Parker informed the officer that she and her common law partner, Mr. Russell, had been at a camp the preceding evening in Mount Thom. They left and drove to another camp and then left that camp and returned home. Both were intoxicated by alcohol. Mr. Russell drove his vehicle. Ms. Parker was concerned about Mr. Russell's driving and did not want him to drive any longer, at least not until he had sobered up; and so she hid the ignition keys. Mr. Russell demanded the keys from Ms. Parker and proceeded to grab her by the throat, throw

her to the ground and pull her by the hair. Mr. Russell continued to punch and kick Ms. Parker while she was on the ground. Ms. Parker threw her cell phone under a vehicle to prevent Mr. Russell from getting it. Mr. Russell kicked Ms. Parker in the head with his work boots. This broke her glasses.

[5] Ms. Parker was able to call 911 using her cell phone after she had crawled under her car. Mr. Russell proceeded to pull her away; however, before doing so, Ms. Parker was able to tell the 911 operator her location.

[6] Mr. Russell continued to kick and punch Ms. Parker while she was on the ground. He told her: "I'm going to kill you, you bitch".

[7] Police arrived and separated Mr. Russell from Ms. Parker. After Ms. Parker provided her KGB statement regarding the November incident, she described to Cst. Schmultz an incident that had occurred after a Halloween party in 2012.

[8] She told the officer that she and Mr. Russell arrived at the Halloween party on an ATV. When it was time to leave, Mr. Russell was unable to find his keys. Mr. Russell proceeded to blame Ms. Parker for hiding the ATV keys, grabbed Ms.

Parker and pulled off her helmet. He dragged her to the back of a parking lot. Ms. Parker ran away. A Mr. Ward stopped his vehicle and offered Ms. Parker a drive. Once Ms. Parker had entered Mr. Ward's vehicle, she observed Mr. Russell in the back seat.

[9] Mr. Ward drove Ms. Parker and Mr. Russell to their camp and dropped them off. At that point, Ms. Parker tried to run to the camp but she was unable to see without her glasses. Mr. Russell threw her phone away and continued to push and drag her on the ground. Mr. Russell threw Ms. Parker to the ground causing an injury to her shoulder. At that point, Mr. Russell went to bed. Ms. Parker sought medical treatment and it was determined that her shoulder had been dislocated.

[10] The mitigating factors are that Mr. Russell has no prior record, no prior findings of guilt before the Court. Mr. Russell has been gainfully employed in a steady job in the past; he lost his job as a result of being charged with these offences.

[11] Mr. Russell obtained his grade 12 education from the Westville High School; he then attended the Nova Scotia Community College, taking a machinist

course. He withdrew from that program in order to find work.

[12] Mr. Russell has acknowledged his responsibility through his election to this Court and his guilty pleas. He states that he is unable to remember his actions clearly due to his level of intoxication but believes the truth of what Ms. Parker told police; he feels horrible for his behaviour and bears extreme guilt and shame for his actions.

[13] The aggravating factors are the high level of violence involved here as well as the high level of victim impact.

[14] First of all, in relation to Mr. Russell's application to vary his undertaking, that application is going to be dismissed by the Court because the undertaking ends with the imposition of sentence.

[15] The Court observes, first of all, that Ms. Parker bears no responsibility whatsoever for what happened to her in October of 2012 and November of 2013. The question is often asked why a person in an abusive relationship would remain and "allow it to happen again". The Court would state conclusively that Ms.

Parker in no way allowed herself to be the victim of these two vicious crimes.

There are a number of reasons why a victim of domestic abuse might decide to remain in an abusive relationship. There might be issues of financial dependency, family or peer pressure, but more particularly fear: fear of what might happen if the abused partner were to seek to leave. This is often coupled with profuse promises and assurances and reassurances offered by the perpetrator that “it will never happen again”, and it never does—until it does happen again. And again.

[16] Ms. Parker was intoxicated on November 16, 2013. That fact is before the Court. However, that does not diminish Mr. Russell’s criminality or conduct in any way. First of all, I observe that the assault upon Ms. Parker was entirely unprovoked and I apply the principles set out in *R. v. C.V.M.*, 2003 NSCA at para. 38, in which Bateman J.A. states:

I have considered, as well, that this was an unprovoked assault. I do not suggest that provocation would in any way excuse this brutal attack. The lack of provocation, however, speaks of the random nature of such an outburst and the probability of the victim being unable to avoid circumstances that could lead to a similar attack in the future.

[17] In this case, although Ms. Parker might have been impaired, her judgement

was clear enough and her resolve sound enough to know that Mr. Russell should not be driving a motor vehicle. She took the reasonable step of removing the keys and it was her act of good judgment that incited Mr. Russell's violent rage.

[18] I certainly apply the primary principle of proportionality. The seriousness of the offence and the degree of responsibility of the offender must be first and foremost in the Court's mind.

[19] In considering the seriousness of the offence, the Court notes the significant injuries sustained by Ms. Parker. In her victim-impact statement, she refers to the two black eyes, the stitches in her forehead from the steel toe of Mr. Russell's work boots; multiple bruises on her cheeks and chin. Her jaw was sore from being punched and she could not open her mouth wide enough to bite a sandwich for four days and it hurt to chew anything. Her scalp and hair hurt from being punched and kicked and dragged by her hair. She had multiple large bruises covering her arms and legs. She had cuts and scrapes on all of her arms and legs and her lips were swollen and cut. She was stiff and sore for the better part of a week, finding it very uncomfortable to walk and move around. She missed two weeks of work and had to use all of her vacation days and sick days until her face

had healed. These are the physical injuries that were very clear to the Court in Exhibit #1.

[20] Edema subsides, contusions will heal, scar tissue will settle down, blood on the face can be irrigated at the hospital and washed away; but emotional scars remain and in this respect, Ms. Parker's victim-impact statement is eloquent. She states:

Emotionally there is not one single emotion that I have not felt or am still feeling since the attack. Mad and angry, hurt and sad that the person I loved so deeply and depended on to protect me and take care of me forever could hurt me so viciously and violently. The shame of having to call my mother from the back of an ambulance at 2 am to let her know that I was on my way to the hospital beaten and bleeding. I'm embarrassed and ashamed that I allowed Stephen to hurt me. I'm embarrassed to go out in public

[21] Ms. Parker mentions the mental anguish of having to call her father in Ontario and present him with the knowledge of what had happened to her. She refers to the emotional strain on her relationship with her in-laws whom she loved with all her heart and who were such a huge part of her life.

[22] She describes being mentally drained and experiencing insomnia. Finally, she feels thankful: thankful to the 911 dispatcher who had to listen to the horror until she was able to provide directions of her whereabouts; and thankful for the quick action of Csts. Camp, Neal, and Whittington and the other members of the RCMP who were able to find her. Indeed, the rapid response of police is to be commended here.

[23] It is clear to the Court from the facts that were read into the record that police arrived just in time. Obviously, the Court cannot engage in speculation; however, the Court must focus on the issue of risk and I find that the risk of lethality to Ms. Parker that morning of 16 November 2013 was real and substantial.

[24] I am reinforced in that, given Mr. Russell's conduct toward Ms. Parker a year before in 2012. I wish to re-emphasize—and I refer to Ms. Parker's victim impact statement where she described herself as being embarrassed and ashamed that she allowed Stephen to hurt her—this is not a case of Ms. Parker having allowed anything. What was inflicted upon her was a violent and unprovoked act of alcohol-fuelled rage that resulted in serious bodily harm, serious victim impact

and Ms. Parker is in no way responsible for what happened to her. The person who bears sole responsibility is Mr. Russell.

[25] I apply the principles of sentencing set out in sub-paras. 718.2(a)(ii) and (iii) of the *Code*. In my view, it is aggravating that Mr. Russell, in committing these offences, abused his common law partner. I agree entirely with Ms. Parker's expression of concern that the person who was supposed to protect her for life, abused her physically and emotionally in such a way; that, indeed, is reflected in the *Criminal Code* which states:

[E]vidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim, shall be deemed to be an aggravating circumstance.

[26] The assault-causing charges are not conditional-sentence eligible, given the provisions of para. 742.1(e) of the *Code*. I apply the principle of parity as set out in para. 718.2(b) of the *Code*. I have reviewed the decisions out of our Court of Appeal in *R. v. Knockwood*, 2009 NSCA 98; *R. v. Sweet*, 2007 NSCA 31; and, indeed, *C.V.M., supra*. In my view, an appropriate sentence for the section 267(b)CC charge from October 2012 is twelve- (12) months' imprisonment. In relation to the 267(b) charge from 16 November of 2013, had that charge stood

on its own, a sentence of fifteen -(15) to- twenty-four- (24) months' imprisonment would have been appropriate, based on the principles that I have outlined.

However, given what is essentially a revised sentencing submission by defence counsel, I do believe that a sentence of twelve (12)- months' imprisonment, to be served consecutively, in relation to that charge is appropriate, for a total sentence of **twenty-four (24) months**, a bare federal sentence, twenty-four (24) months incarceration. In relation to the section 264.1 charge, the charge of uttering threats, there will be a sentence of three (3) months, but to be served concurrently, so that the total sentence of the Court is a bare federal sentence of twenty-four (24) months.

[27] I recognize that a twenty-four (24) month sentence will, in all likelihood, result in a substantial period of parole. I don't intend to impose an additional period of probation, given the duration of the sentence that I've imposed here today and given the likelihood of parole conditions dealing with issues of rehabilitation and victim protection.

[28] Although not sought by counsel, I do find that it is necessary, given the risk that Mr. Russell poses to Ms. Parker, to order and direct that the warrant of

committal include a non-communication order under section 743.21CC: while in custody, Mr. Russell is to have no contact or communication, either directly or indirectly with, Traci Anne Parker.

[29] The Court will order and direct that there be a primary-designated-offence DNA collection order in relation to both of the section 267(b)CC charges, as they are primary designated offence matters.

[30] The Court is also going to make an order under section 109 of the *Code*. The Court orders and directs, Mr. Russell, that you be prohibited from possessing any firearm other than a prohibited firearm or restricted firearm and any crossbow, restricted weapon, ammunition and explosive substance, beginning today's date and ending 18 years plus 2 years, reflecting the period of incarceration, so for a total of 20 years, effective today's date.

[31] You are also ordered to be prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

[32] On the October 27th charge, there will be a \$100 victim surcharge amount with 36 months to pay. In relation to the remaining two counts, those occurred following the commencement date of the amendments to section 737 of the *Code*; there will accordingly be a \$200.00 victim surcharge amount in relation to the 267(b)CC count from November 16th and a further \$200.00 victim surcharge amount in relation to the section 264.1CC count, and again with 36 months to pay those victim surcharge amounts.

[33] Anything further in relation to Mr. Russell?

[34] Mr. MacIsaac: No, Your Honour.

[35] Mr. McNeill: No, Your Honour.

[36] The Court: That's all for Mr. Russell, Sheriff, thank you, very much.

J.P.C.