

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. MacIntosh*, 2014 NSPC 45

**Date:** 2014-06-26

**Docket:** 2707163

**Registry:** Pictou

**Between:**

Her Majesty the Queen

v.

Cody Dylan MacIntosh

***DECISION ON SENTENCE***

**Judge:**

The Honourable Judge Del W. Atwood

**Heard:**

26 June 2014, in Pictou, Nova Scotia

**Charge:**

Para. 267(b) of the Criminal Code

**Counsel:**

Patrick Young, for the Nova Scotia Public Prosecution  
Service  
Douglas Lloy, Q.C., for Cody Dylan MacIntosh

**By the Court:**

[1] Mr. MacIntosh is before the Court to be sentenced in relation to a serious assault upon Mr. Michel Mailloux under para. 267(b) of the *Code*. The charge proceeded indictably; Mr. MacIntosh elected to have it dealt with in this court, and he pleaded guilty

[2] The positive factors are Mr. MacIntosh's early guilty plea and the fact that Mr. MacIntosh has accepted responsibility for his conduct.

[3] The negative or aggravating factors are that this was a crime of violence, it was unprovoked, and it resulted in serious, extremely serious, personal injury to Mr. Mailloux.

[4] The Court saw photography taken of Mr. Mailloux in the immediate aftermath of the assault, and that is before the Court as Exhibit #1; there is significant evidence of edema, haematoma, abraded injuries, exsanguination or blood loss, all demonstrative of Mr. Mailloux as having been a victim of serious blunt-force trauma that occurred in his own vacation property, as I understand it.

Mr. MacIntosh beat this man mercilessly after he had been invited inside for a drink.

[5] I do accept that Mr. MacIntosh struggles with substance abuse and also with his mental health. The Court does not sentence Mr. MacIntosh because of the fact that he experiences difficulty with his mental health or with substance abuse. The court does not disregard this evidence; however, as in *R. v. G.A.M.*, [1996] N.S.J. No. 52 at paras. 73-82 (C.A.) the Court's primary focus is, instead, upon the protection and safety of the public; Mr. MacIntosh's actions posed grave risk to public safety, and this is one of those instances when the separation of even a first-time offender from the community is appropriate.

[6] There is a joint submission before the Court for a bare federal term of two years plus a day. Applying the principles set out by our Court of Appeal in *R. v. MacIvor* 2003 NSCA 60, I ought to depart from a joint submission only if I were to be satisfied that the recommended sentence would bring the administration of justice into disrepute. In this case, I find the joint submission to be reasonable.

[7] In my view, the recommended sentence is consistent with fundamental purposes and principles of sentencing. It reflects sentence parity with the imposition of a sentence last week in *R v. Avery* 2014 NSPC 40 , it takes into account the principles as set out in section 718, 718.1 and 718.2 of the *Criminal Code*; it takes into account the principles of restraint and also the principles outlined by our Court of Appeal in *R. v. Perlin*, (1977), 23 N.S.R. (2d) 66 at 68, which applies to sentences imposed for crimes of violence, and which underscores the need for denunciation and deterrence in offences involving violence or weapons.

[8] Accordingly, Mr. MacIntosh, in relation to the para. 267(b) charge, the Court sentences you to two years plus a day. That will be served in a federal penitentiary.

[9] The Court will make a primary-designated-offence DNA collection order.

[10] There will be a stand alone restitution order under section 738 of the *Criminal Code* in the amount of \$1,538.00 in favour of Mr. Mailloux.

[11] The Court is also going to make a section 743.21 non-communication order. While in custody you are to have no contact or communication with Michel Mailloux or members of his immediate family, directly or indirectly.

[12] This offence occurred after the coming-into-force date of the changes to section 737 of the *Criminal Code*; therefore, there will be a \$300.00 victim surcharge amount and you will have 36 months to pay that victim surcharge amount.

[13] In accordance with section 109 of the *Criminal Code*, the Court orders that you be prohibited from possessing any firearm, other than a prohibited firearm or restricted weapon and any crossbow, restricted weapon, ammunition and explosive substance for a period of twelve years plus a day and the Court orders and directs, as well, that you be prohibited from possessing any firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

[14] I will order and direct that the order of committal be endorsed to recommend, Mr. MacIntosh, that you be admitted to mental-health counselling and programming at the earliest opportunity.

[15] Mr. MacIntosh, I'll have you accompany the sheriff's, if you could, please  
sir.

J.P.C.