

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R v. Currie*, 2015 NSSC 15

**Date:** 20150106

**Docket:** Syd. No. 415174

**Registry:** Sydney

**Between:**

Her Majesty the Queen

v.

Joseph Michael Currie

**Judge:** The Honourable Justice Patrick J. Murray

**Heard:** January 6, 2015, in Sydney, Nova Scotia

**Oral Decision:** January 6, 2015

**Counsel:** Richard Hartlen for the Crown  
William Burchell for the Joseph Michael Currie

**By the Court (Orally):**

**Introduction**

[1] James Michael Currie is a young man, at age 25 years. He is here today to be sentenced for a very serious criminal offence impaired driving causing death. The charge in the indictment reads as follows:

On the 9<sup>th</sup> day of July, 2011 at or near New Waterford, Cape Breton Regional Municipality, in the County of Cape Breton, Province of Nova Scotia, did while his ability to operate a motor vehicle was impaired by alcohol, did operate a motor vehicle and thereby did cause the death of Tyler Rose contrary to section 255(3) of the Criminal Code of Canada.

[2] Mr. Currie has entered a plea of guilty to this offence. By doing so he has admitted to the essential elements of the offence contained in s. 255(3) of the *Criminal Code of Canada*.

[3] At the outset I wish to thank counsel, Mr. Hartlen and Mr. Burchell for their submissions, which I have read and considered. In addition, I want to acknowledge the family of the victim, Mr. Tyler Rose, which I have already done by acknowledging their presence; Mr. Drake on behalf of himself and his sister and to confirm that I have listened to and considered the victim impact statements which have been read into Court, by Linda Drake (her brother on her behalf) and by Steven Drake. Linda Drake being the mother of Tyler Rose, and Mr. Steven Drake, the uncle of the victim, but as he said much more than an uncle.

[4] For Mr. Roses' parents and family I can think of almost nothing more painful, than to experience what they have experienced, and are still experiencing on a daily basis.

[5] This offence has had the gravest and most serious of consequences for the victim and his family.

[6] It has been a long wait for them and for Mr. Currie. For Mr. Currie this has been a life altering event. This incident occurred approximately 3 ½ years ago.

[7] The time has now come for Mr. Currie to receive his sentence, which must be a fit and proper sentence, as set out in sections 718 – 718.2 of the *Criminal Code of Canada*.

[8] In considering what is a fit and proper sentence would be I must take into account the circumstances of the offence and that of the offender.

[9] Under the *Criminal Code* the fundamental principle is that the sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[10] Crown and Defence here have made a joint recommendation, that an appropriate sentence for Mr. Currie would be:

- 1) Two (2) years federal incarceration; and
- 2) Two (2) years driving prohibition.

[11] While the Court is not bound by this joint recommendation, as the sentencing judge I must give it serious consideration and depart from it, only if I have cogent and clear reasons for doing so.

### **Circumstances of the Offence**

[12] The relevant facts are contained in the Crown's submission and have been accepted by the Defence on behalf of Mr. Currie and they have been read into Court by Mr. Hartlen.

[13] Mr. Currie and the deceased, Tyler Rose, were both raised in Cape Breton. They shared a similar background and had friends in common. They both lived and worked in the oil fields in Western Canada after they finished their secondary schooling.

[14] I will not repeat all of the facts as all involved are well aware of them and they have been read into the Court. I do wish to repeat one paragraph of the factual summary in the Crown's summary at paragraph 8. This was during the time of the alleged accident or collision:

Mr. Currie was observed exiting the driver's side of the Firebird he immediately began trying to rouse Mr. Rose while crying and making statements about what he had done to his friend.

[15] Both of these gentleman continually consumed alcohol up until the time they decided to go for a ride in Mr. Currie's blue 1996 Pontiac Firebird.

[16] Mr. Rose was ejected from the vehicle and died instantly with head trauma and multiple injuries.

[17] This is indeed a sad and tragic event in the true sense of the word. As the accused himself said in his pre-sentence report, “There was a life lost.”

[18] The accused further stated he has forged a bond with the victim’s family. I must say at this point that this is not only somewhat uncommon, as pointed out by Mr. Hartlen, but I believe it is inspiring. It provides a measure of hope I believe for all those dealing with this tragedy. It is indeed a tribute to the life of the late Mr. Rose.

[19] The offence of impaired driving causing death itself is among the most serious in the *Criminal Code*, as is evident by the maximum penalty for the offence, which is life imprisonment.

[20] The Court must be mindful of the clear statement in caselaw, that drinking and driving is a crime, not simply an error in judgment. Here I refer to the case of **R v. Cromwell**, 2005 NSCA 137.

[21] In addition, drinking and driving presents a grave risk to innocent people. And this was said in **R v. MacDougall**, [2011] N.S.J. No. 254 the case which has been submitted to me.

### **Circumstances of the Offender – Mr. Currie**

[22] I have said that Mr. Currie is a young man, and was in fact 22 years of age at the time of this offence.

[23] Mr. Currie has had a stable common law relationship with his spouse, Judy Ann Wilson, age 24, which began 2.5 years ago. They have recently had a child together, a girl born October 9, 2014. Ms. Wilson has been gainfully employed, but is currently on maternity leave.

[24] Mr. Currie’s presentence report is very positive. Although his parents separated when he was 12, he has maintained a close relationship with them, even though he lived with his mother. Mr. Currie states he had a positive childhood and his family was always close.

[25] His mother, Ms. Rhonda Bruce, stated that her son was doing well at the time of this offence, which came as a shock. His father, Mr. Gerard Currie, stated

his son takes responsibility for what he did. They have both talked to him and both are naturally concerned and remain supportive of him.

### **Presentence Report**

[26] Having read and considered Mr. Currie's presentence report, there are numerous things that stand out in my view:

- That he is always polite and people compliment him on his attitude and behaviour.
- That he has always had good friends, and does not associate with those who exhibit criminal behaviour.
- That he is an excellent employee and is furthering himself with his trade as a pipefitter. This is verified by his employer's willingness to pay for his further training as a class 2 & 3 pipefitter pointed out by Mr. Burchell.
- That he has been employed and when employed is able to provide financially for his new family. I concur with his Defence counsel that it is not common that someone of his age before this Court would have the presence of mind to save \$5,000.00 for his family and this does speak volumes I think.
- That while he has used alcohol, it is not a persistent problem. It may or may not be a lingering issue. If it is then he should certainly seek help in that regard.
- The report further states that Mr. Currie has experienced shame and guilt over this matter, but is still a great father and an outgoing person.
- That he has expressed remorse and has shown remorse, according to the sources in the presentence report.
- That he has acknowledged the huge impact this has had on his life, but has also stated, "I live everyday with this on my head, but worse, his family has to live with this as well", referring to his friend Tyler Rose's family.
- Constable James Fitzgerald of the Cape Breton Regional Police was contacted for the purpose of the presentence report. He confirmed that

- Mr. Currie has presented no problem since the offence and that Mr. Currie is known to work in Alberta. Constable Fitzgerald expressed his desire that Mr. Currie will continue to focus on a positive lifestyle.
- That this incident is out of character and that Mr. Currie's focus is family and employment as is evident from the report.
  - It has been stated and is a fact that Mr. Currie has no prior criminal record.

### **Range of Sentence**

[27] I will now discuss sentencing principles and the range of sentence.

[28] Section 718 of the *Criminal Code* reads:

“The fundamental purpose of sentencing is to contribute along with crime prevention initiatives to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) To denounce unlawful conduct;
- (b) To deter the offender and others from committing offences;
- (c) To separate offenders from society where necessary;
- (d) To assist in rehabilitating offenders; and
- (e) To provide reparations for harm done to victims or to the community and asked to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[29] Additional considerations are what is referred to as aggravating factors and mitigating factors. A sentence should be increased or reduced to account for any aggravating or mitigating circumstances relating to the offence or to the offender. Also a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[30] There are other factors which I will not refer to verbatim, but one of those reflects a consideration that incarceration and deprivation on liberty would be a last resort except where warranted.

## Caselaw

[31] Counsel for the Crown has relied upon the case of **MacDougall**, a decision of the Honourable Judge A. Peter Ross, as has the Defence. In that case the accused was sentenced to two (2) years imprisonment for a similar offence. He was 18 years of age. He had no prior record, and had a blood alcohol level of at least 108. Like the present case the accused was speeding at the time of the accident when the victim, who knew the accused had been drinking, asked for a ride home.

[32] The learned Judge Ross discussed and reviewed the caselaw applicable to sentencing in impaired driving causing death offences, and in particular the leading case of **R. v. Morine**, [2011] N.S.J. No. 61. At paragraph 12 Judge Ross noted in **Morine** the appropriate range of sentence to be three (3) to five (5) years. He reviewed cases with lengthier sentences than two (2) years and those with two (2) years. Eg. **R. v. Litchfield**, 2010 ABPC 13.

[33] While the caselaw provides guidance, sentencing is an individualized process. It is well established that each case must be decided on its own circumstances, taking into account those of the offence and those of the offender, and weighing the relevant mitigating and aggravating factors in the context of the particular case before the Court. Mr. Hartlen referred to this in response to my questioning. The facts of every case separate at some point from those in the jurisprudence.

[34] In **MacDougall**, the court recited the following statement from another leading case, **Cromwell** at paragraph 12

Drunk driving is a crime of distressing proportions. The Courts have consistently recognized that the carnage brought by drunk drivers is unabating and causes significant social loss.

[35] Following that the Court in **MacDougall** referred to the following statement of Justice Cromwell in **R. v. MacLeod**, (2004), 222 N.S.R. (2d) 56:

Generally incarceration should be used with restraint where the justification is general deterrence. However, I also accept the view of the Ontario Court of Appeal shared by the Supreme Court of Canada in **Proulx**, that offences such as this are more likely to be influenced by a general deterrent effect.

[36] It is clear from the cases, that the sentence must provide a clear message to the public that drinking and driving is a serious crime, not merely a lapse in judgement.

[37] Mr. Currie well knows he made a serious mistake, with the most serious of consequences and as a result committed a most serious crime.

[38] It is these same types of consideration that support the range suggested in **Morine** of three (3) to five (5) years. In short, a substantial period of incarceration.

[39] Judge Ross concluded in **MacDougall** at paragraph 26:

I am to be animated by principles of proportionately and uniformity. Here the cases almost invariably, perhaps always result in penitentiary terms of imprisonment.

[40] The joint recommendation proposed here is less than the suggested range of three (3) to five (5) years in **Morine** but is a penitentiary term of imprisonment.

[41] It is certainly within the range of sentence actually granted in **MacDougall**, **Litchfield** and others.

### **Joint Recommendation**

[42] In assessing whether to accept the joint recommendation I must determine whether the joint submission is justified. In doing so I consider the record before me, the admitted facts, the presentence report and the victim impact statements and the submissions of the learned counsel before me. The Court has listened to the profound statement of Linda Drake that, “while Tyler only blessed this world for 27 years he made a huge impact.” The Court has heard the moving statement of Steven Drake when he said, “we (he and his wife) cried in each other’s arms”.

[43] The test is not whether I would impose a sentence different from the jointly recommended sentence, but whether the sentence is clearly unreasonable, such as being excessively harsh or excessively lenient. The Court is ultimately the guardian of the public interest. They are to protect the public interest and the administration of justice.

[44] As stated at paragraph 20 of **Cromwell**:



Joint sentence recommendations arising from a negotiated guilty plea are generally respected by the sentencing judge.

[45] Where the recommendation is contrary to the public interest or would bring the administration of justice into disrepute, or is otherwise unreasonable, the judge retains a discretion to reject the joint submission.

### **Disposition – Joint Recommendation**

[46] Having weighed and considered the joint recommendation of a two (2) years federal incarceration I am satisfied that it is not unreasonable.

[47] In considering **MacDougall**, I was concerned that Mr. Currie was older at age 22 and should have exercised better judgment. Another concern was the fact that Mr. Currie's blood alcohol level was quite excessive, above 160, higher than in **MacDougall**, but perhaps not so in view of Mr. Burchell's submissions today.

[48] However, in taking these factors into account, there are several important mitigating factors which must also be taken into account. Mr. Currie has never before been before the courts. Apart from this offence he has a clean record.

[49] Secondly he has shown remorse. This has been verified by Father MacGillvary and Father Currie, who spoke highly of him.

[50] He has had long talks with his father about moving forward and the remorse and shame he feels was expressed by his mother and by he in his own words. The presentence report confirmed he became emotional when speaking about this incident.

[51] There is as well his guilty plea. The Crown in its brief addressed this point as follows at paragraph 13:

He has accepted responsibility for his conduct. He did so in the face of apparent technical defences which might have potentially weakened the Crown's case against him. By doing so he spared the justice system the resources which would have been necessary to establish his culpability. More importantly he spared Mr. Rose's family the indignity of having to relive this horrible occurrence through the venue of a public trial.

[52] In conclusion, while I did have some reservations, I have decided that the mitigating factors I have referred to, along with others warrant acceptance of the joint recommendation.

[53] As pointed out, it has been reached by two senior and experienced counsel before this Court.

[54] Mr. Currie is deep down a good person how has expressed sincere regret for his involvement and for what happened to his friend, for what he caused to happen to his friend.

[55] He is fortunate to have had the benefit of the forgiveness received from Mr. Rose's family.

[56] Father Currie stated,

The victim's family has been good to the offender and have helped him through the grieving process.

[57] If this kind of compassion can be shown by them, the Court should as well show some restraint.

[58] I do not believe that specific deterrence for Mr. Currie is of paramount concern. As to general deterrence, a two (2) year penitentiary term for someone never previously before the law, with a young family, and no criminal background sends, I think, a very strong message to like-minded individuals, and to the public generally that harsh penalties will result if convicted of this type of offence.

[59] This will be coupled by the two (2) year driving prohibition. As I said, some measure of restraint must be shown where incarceration is imposed in the name of general deterrence. I am satisfied the sentence imposed shows the measure of restraint called for. It being at or near the range of sentence, a penitentiary term, I am prepared to accept it and I agree with counsel that the paragraphs which have been cited from the **MacDougall** case, are equally applicable to Mr. Currie.

[60] I have said or meant to say that Mr. Rose's family have shown a lot of class on his behalf.

[61] I hope everyone here can move forward, slow as it may be, with that in mind. Hopefully the fond memories will overtake those of this unfortunate situation, which can never be changed or forgotten.

**Sentence**

[62] Mr. Currie in keeping with the joint submission, I sentence you to two (2) years in a federal penitentiary. In addition, I am going to impose a two (2) year driving prohibition and that will be incorporated into the Order of the Court.

Murray, J.