IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v.Wells, 2006 NSSC 313

Date: 20060906
Docket: 257537/257538
Registry: Sydney

Between:

Her Majesty the Queen

v.

Lawrence Wells

Judge:	The Honourable Justice Simon J. MacDonald
Heard:	September 5th and 6th, 2006, in Sydney, Nova Scotia
Delivered Orally	September 6, 2006
Counsel:	William Delaney, for the Crown Tony Mozvik, for the Defence

By the Court:

[1] I have heard sentencing remarks from counsel and have received their briefs and representations which I have considered along with their case law and we are here this afternoon for me to impose sentence.

[2] Mr. Wells has plead guilty to the following four counts in the Indictment sworn to on the 31st day of October, 2005.

[3] The eight count Indictment, of which he has pled guilty to four counts and they allege that he did on about the 28th day of January, A.D, 2005:

Count Number 3: Commit an assault on Jeanne Connor, contrary to Section 266(a) of the Criminal Code.

Count Number 4: Did break and enter a certain place to wit: 81 Micmac Crescent, Membertou, in the County of Cape Breton and did commit therein an indictable offence, contrary to Section 348(a)(b) of the Criminal Code and in relation to this particular count Mr. Wells has plead guilty to being unlawfully in

a dwelling house with intent to commit an indictable offence therein.

Count number 6: While bound by a probation order made by a Judge of the Provincial Court in and for the Province of Nova Scotia on the 10th day of January, 2005, willfully fail to comply with such order, to wit: keep the peace and be of good behavior, contrary to Section 733.1(1)(a) of the Criminal Code.

And finally, count number 8: Wound Pius Joseph Marshall thereby committing an aggravated assault contrary to Section 268 of the Criminal Code.

[4] I want to thank counsel as I have indicated earlier, for the manner in which they have handled themselves, representations they have made and the material they have been good enough to supply to the Court.

[5] Sentencing is one of the most difficult tasks facing a Judge. The Judge must uphold the law and society's standards. He or she must impose a sentence that is fair according to the law.

[6] I find it necessary to make a brief summary of the facts that occurred on the night of January 28, 2005. It began late in the evening of January 27th, 2005. Mr. Wells, along with his girlfriend, Jeanne Connor, visited a number of local bars in Sydney. They had been drinking there and in on occasion were asked to leave and another refused admission. They eventually took a cab to Membertou. They then stopped to visit with Mr. Pius Marshall who resided at 81 Micmac Crescent in Membertou. Shortly thereafter an altercation developed between Mr. Wells and Ms. Connor. The accused appeared to become jealous and he first slapped and then punched Ms. Connor. Mr. Marshall tried to prevent the altercation and a fight broke out between he and Mr. Marshall. The result of which Mr. Wells suffered facial injuries and there was blood over his face. Mr. Marshall put Mr. Wells out of the house and according to the evidence of Ms. Connor at the sentencing hearing, Mr. Well's father was called to come get him. She also told the court that he said he was going to come back with a shotgun

and blow hers and Mr. Marshall's heads off. Lawrence Wells, senior, came by in his truck and took the accused away.

[7] After the accused left, Ms. Connor was frightened and concerned about herself and was staying in Marshall's house for the night. There was discussions about her sleeping on the couch but she indicated she was afraid that Mr. Wells might return and asked if she could stay in the bedroom with Mr. Marshall. Later on that night, Mr. Wells got into Mr. Marshall's home. He went to the bedroom and found Ms. Connor and Mr. Marshall in bed together. They had gotten into bed and they were both fully clothed under a comforter and had gone to sleep. Ms. Connor said the next thing she saw was the accused standing over her and she felt dazed and had pain on the left side of her head. She said she was hit or kicked. She saw the accused standing beside the bed and he told her that she was going to die but first she'd have to watch Mr. Marshall die. She said she saw Mr. Wells on top of Mr. Marshall, striking him in the head and that Mr. Marshall did not appear to be conscientious at the time. She also said she saw a hammer on the floor which was not there before they went

to bed. Ms. Connor escaped the house and ran to a neighbor's home and 9-1-1 was called.

[8] Ms. Connor suffered bruises, chipped teeth and a cut to her stomach.

[9] Mr. Marshall suffered brain injuries and was flown to Halifax where he underwent neurosurgery to deal with his severe head injury. The neurosurgeons had to remove part of his brain and he was left with a depression in his skull on the left side of his head.

[10] As I said at the outset Crown called witnesses at the sentencing hearing. Doctor Simon Walling was called. He was a neurosurgeon from Halifax and testified he operated on Mr. Marshall at the Halifax infirmary and diagnosed that he was suffering from traumatic brain injury. He had, as well, Doctor Walling said, multiple bruises over his body and a skull fracture the size, as he described, of a toonie. He said his brain was injured underneath and that part of his brain had to be removed. He said that the skull fracture was consistent with being struck by a blunt object and in response to cross examination he said that it was not caused by a

punch. He confirmed Mr. Marshall now has significant difficulties with communication and comprehension. He says that he has short term memory loss and he did not expect any significant improvement in Mr. Marshall's condition.

[11] Jeanne Connor was called by the Crown and she told the Court of the travels she and Mr. Wells had that night of their drinking. She also told what she recalled happening at Mr. Marshall's house and of her injuries. There was also questioning about the possibility of drugs being taken raised on cross examination. Ms. Connor told the Court of the slapping and the fighting that took place at Mr. Marshall's house and about her teeth being broken and the fairly deep wound in her stomach and that she said she suffered a concussion. She as well said her legs were bruised. She strongly testified that she was only in to bed to sleep. She said she had her clothes on and that she and Mr. Marshall were under a comforter. She said the reason she was there was because she was afraid Mr. Wells would come back.

[12] Mr. Pius Marshall, the chief victim, testified at sentencing. He was called by the crown. He said he was in good shape prior to the night in question and fully employed. He said he did not have any prior problems with memory but that he now has ongoing memory problems. He testified that he did not own a hammer similar to the one which was tendered in evidence found at the scene.

[13] Detective Constable Robert Pembroke was called and qualified as an expert in blood stain patterns. He is with the R.C.M.P. Forensic Lab. He viewed the scene at 81 Micmac Crescent in Membertou where the incident happened that day. He said he saw blood stains all over the room. The majority was in the bedroom. He described it was all over the four walls, the bed and a ceiling fan. He went on to say that the amount of blood on the mattress was a soaking blood stain and he explained that as being a large volume of blood soaking in. He went through the photographs where the blood stains were shown and I have had an opportunity to look at same. He said he never saw as much blood on a ceiling before and he estimated the ceiling length to be 14 feet.

[14] Constable Paul Tobin was called by the Crown and he testified as to the arrest of Mr. Wells. Constable Tobin said that Mr. Wells was coherent and seemed to fully understand the situation at the time he was apprehended in his view.

[15] The defense called Lawrence Wells Senior. He testified that he was an addiction counselor for Membertou Addiction Center for the past 13 years. He was shown the hammer which was marked as exhibit number 16 and he said he didn't recognize it and he never owned one that looked like that. He said a owned a hammer because he did rock collection and that he liked to explore. In the end, when asked by the Court, he agreed that the hammer that was found at the scene is the kind probably used in rock carving, but he denied using that type.

[16] The Court has had the benefit of a pre-sentence report prepared by probation officer, Wilma Menzies in the matter dated August 24, 2006. Upon perusal of same I find it is not a favorable report and reading the presentence report I find it presents an overall negative picture of the accused. It tells about his involvement in alcohol and drugs since at least

grade 7. It told how he tended to hang around with people who tended to be in trouble with the law. He has no real employment since age 18 and in fact has been incarcerated much of his life. The report indicates he has been in detoxification programs several times and as well, spent the summer of 2003 in the Lone Eagle Treatment Center in Big Cove, New Brunswick. It speaks of Mr. Well's acceptance of responsibility for his actions as he said so himself in court. It speaks of his remorse about what has happened and how it affected the relationship between his family and that of Mr. Marshall to which Mr. Wells addressed in open court at the conclusion of the sentencing remarks.

[17] Mr. Wells was on parole on previous occasions and the presentence report does not indicate a successful result on parole. In fact he has had his parole suspended and revoked on occasion. He has been recognized as a moderate to high risk to re-offend due primarily to a severe alcohol addiction and emotional issues including anger management and emotional control as indicated in the pre-sentence reporter.

[18] The R.C.M.P. officer who was contacted for the preparation of the report indicated that there was a high level of concern within the community of Membertou regarding the offender's return to the community. The officer said that Mr. Wells is considered a high risk to the police and the community if he is released.

[19] The report does indicate that Mr. Wells has a strong support from his family members and, according to the writer, is a highly spiritual person.

[20] I have had an opportunity to review and listen to counsel address Mr. Wells' significant criminal record. As I said earlier he has been in custody most of his life. He has numerous break and enter convictions along with convictions involving violence. His criminal record is incorporated in these remarks as addressed by the Crown and is attached hereto. It also shows his background which ranges from assaults, break and enter, assaulting peace officers, uttering threats and drinking while driving. He has created disturbances, been involved in mischief and consistently seems to turn to crime and returns to jail.

[21] There were two victim impact statements presented to the Court. One was submitted by Jeanne Connor about the impact the incident had on her life. Crown counsel referred to it in detail and it describes her injuries and tells about how it has physically and emotionally affected her. She felt that it is a miracle that she is still alive and that she felt victimized as a result of a horrific crime. She told of going through hopelessness, despair, self pity and guilt in which she blamed herself. However, she has indicated she has gone to school, became a professional counselor and is working with the Elizabeth Fry Society in Nova Scotia.

[22] Mr. Marshall in his victim impact statement told about the very serious injuries he sustained. He not only sustained injuries to his brain and his skull but lost most of his teeth and had to wear a leg cast for six months use a wheelchair and a cane. He has been advised by his doctor he will never be able to return to work again. Where he had, previous to this incident, been steadily employed. The victim impact statement which he prepared along with his sister, Roseanne Sylvester, tells how he becomes frustrated over memory loss and that he cannot remember dates and numbers. He is insecure around a crowd and they feel like he acts like

a stoke victim. Mr. Marshall told about the damage to his apartment and his furniture. He has lost his income as a drywall/painter and now has to go on welfare. The statement speaks of how he has to take one day at a time and that experiences dizzy spells and sometimes loses his balance when walking.

THE LAW

[23] The principles of sentencing have been enunciated in the classic case of **R. v Grady,** 1971 5 NSR (2d) 64 where the Court said that the protection of the public should be achieved and it could be done either by (a) deterrence of; or (b) reformation and rehabilitation of the offender or; (c) a combination of both deterrence and rehabilitation.

[24] The Parliament of Canada set forth principles of sentencing in 1996 in particular Section 718 which states as follows:

> "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 other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparation for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

S. 718.1 states that sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

As well, one must look at S. 718.2 which deals with other sentencing principles and it says:

A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor,

(ii) evidence that the offender, in committing the offence, abused the offender's spouse or child,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim, or

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,

shall be deemed to be aggravating circumstances;

(b) is important in this particular sentence because it provides?

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

Very applicable in this particular sentencing is:

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[25] The Crown referred to the following authorities in relation to sentence:

1. **R. v Harris**, [2000] N.S.J. No. 9 (N.S.C.A.)
2. **R. v Best** [2005] N.S.J. No. 347 (N.S.C.C.)
3. **R. v Ferreira** [1995] O.J. No. 287 (Ont. Ct. Just. (Gen Div.))
4. **R. v D.C.B.B** [1999] B.C.J. No. 700 (B.C.S.C.)
5. **R. v Simard** [1987] A.Q. No. 1423 (Que. C.A.)
6. **R. v Glover** [2002] A.J. No. 770 (Alta. Ct. Q.B.)
7. **R. v Sinclair** [1996] A.J. No. 170 (Alta C.A.)
8. **R. v Dennis** [1993] M.J. No. 104 (Man. C.A.0
9. **R. v Wallan** [2003] B.C.J.A. No. 1267 (B.C.S.C.)

[26] The defence has submitted the following cases in relation to their position:

1. **R. v Sotera** [1987] OJ No. 515 (Ont. C.A.)
2. **R. v Ballantyne** [1997] 115 Man R. 92(d) 76 (C.A.)
3. **R. v David** [1997] 86 B.C.A.C. 316 (C.A.)
4. **R. v Rasanen** 1997 CarswellBC 1434 (C.A.) (eC)
5. **R. v Caulfied**, 1998 CarswellBC 1971 (S.C.) (eC)
6. **R. v Anderson,** 2001 Carswell NS 28 (S.C.) (eC)
7. **R. v Kolba**, 2002 CarswellMan 324 (Prov. Ct.)(eC)

8. **R. v Miganeh**, 2004 CarswellOnt 55519 (Sup.Ct. Jus.)(eC)

9. **R. v Harris**, 2005 CarswellMan 317 (Prov. Ct.)(eC)

10. **R. v Lenon**, 2002 Carswell BC 2030 (S.C.)(eC)

11. **R. v Jordon**, 2004 CarswellYukon 93 (C.A.)(eC)

[27] It seems to me that unfortunately Mr. Wells is one of those individuals who is totally unable to remain at large for any appreciable period of time without committing further criminal offences.

[28] Mr. Wells is an aboriginal. As such, s.718.2(e) mandates that I ought to consider that status in determining the appropriate sentence. This matter was addressed in ***R. v. Carriere*** (2002) 164 ccc (3^{d}) 569, Ont.C.A. where the court said at paragraph 17, as follows:

> "Mr. Carriere is an aboriginal. Section 718.2(e) directs the sentencing court to consider that status in determining the appropriate sentence. That consideration is intended to ameliorate the serious problem of over-representation of aboriginal people in our jails and to encourage the sentencing court to have recourse to a more restorative approach to sentencing. The provision is also a statutory recognition of the systemic disadvantage suffered by aboriginals in the Canadian community. Section 718.2(e) does not, however, mean that a sentence should be automatically reduced by virtue of the

> accused's status as an aboriginal offender. As with all sentences, sentences imposed on aboriginals must depend on a consideration of all of the relevant sentencing factors. Where the offence is a violent and serious one and the principles of denunciation and deterrence dominate the sentencing calculus, the appropriate sentence will often not differ as between aboriginal and non-aboriginal offenders: ***R. v. Wells (2000)*** *141 ccc (3d) 368 (S.C.C.) at p. 386.*

[29] I have reviewed the cases as submitted by both crown and defence relative to the sentences recommended by each side. I as well have considered the chart prepared by Mr. Mozvik on behalf of his client. It is trite law to say that no two cases are the same. Each case remains different on its facts. I have considered the various ranges and the case authorities as presented in coming to a conclusion I consider appropriate in this matter. I do not propose to analyze each and every case in the sentencing decision as counsel have already addressed those cases in their remarks to me, and I have considered their remarks accordingly.

[30] I wish now to deal with the matter of the provocation issue as raised by the defence and say I am not satisfied this is a case where provocation is a valid argument. There were threats and a fight involving Mr. Wells and Mr. Marshall prior to his leaving the Marshall residence. He left there and

he was gone for at least several hours, according to the evidence. I am satisfied this would be regarded as a cooling down period.

[31] Insofar as the argument about Mr. Wells entering the bedroom and seeing his girlfriend Ms. Connors in bed with Mr. Marshall, and concluding that there was some kind of romantic involvement, I find that if he came to that conclusion, it was a reckless conclusion for him to arrive. The evidence I accept shows the purpose for Ms. Connors going there was for the protection of herself from Mr. Wells. She and Mr. Marshall had their clothes on and the comforter to keep them warm. For Mr. Marshall to immediately proceed to attack them, I attribute to the fact of his alcohol and/or drugs he consumed and to carry out the threats that he made earlier.

[32] I am satisfied as well the hammer tendered in evidence as exhibit 16, was the hammer used in the vicious beating of Mr. Marshall. I am further satisfied the hammer was not Mr. Marshall's. Although Mr. Wells Sr., testified that he didn't have such a hammer, I find that hard to accept

because he was asked directly he admitted it was the type used by people who would be involved in rock-carving as he himself, was.

[33] I conclude from the evidence that Mr. Wells Sr. was endeavoring to help his son when I assess his credibility, especially on cross-examination and about the hammer. In sentencing Mr. Wells, I have considered as some of the aggravating factors, the following:

1) the negative pre-sentence report;

2) the demonic and vicious assault on Mr. Marshall in his own dwelling house;

3) the lengthy criminal record of Mr. Wells;

4) he was on probation at the time of this offence for only a period of approximately 18 days;

5) the use of the hammer as a weapon.

[34] I have considered the following as mitigating circumstances for Mr. Wells:

1) his guilty plea;

2) his remorse and comments to the court at the conclusion of the sentencing hearing and in the pre-sentence report.

[35] This is a case where an earlier fight between Mr. Marshall and the accused had ended. Mr. Marshall and Ms. Connors were both concerned about their own safety as far as Mr. Wells was concerned. He made threats to them that I find, justified their concern. They had him put out of the house. He tried to get back in again and eventually, his father took him away. Nonetheless, this did not stop Mr. Wells. Several hours later as I said earlier and the evidence shows, he returned to the scene to unlawfully enter Mr. Marshall's house and do a vicious and cowardly attack on Mr. Marshall. Besides Mr. Marshall, he assaulted Ms. Connors who he referred as his girlfriend.

[36] I reject outwardly the argument put forth by defence counsel and find as a fact there was no provocation here in this particular case. I find it to be an attack on a defenseless man in his bed, asleep at night by Mr. Wells. The attack and beating was so violent that as Detective Constable Robert Pembroke testified, he never saw as much blood on a ceiling before, as he

did when he arrived and viewed the scene at 81 Micmac Crescent at around 4:15 p.m. on January 28, 2005. He said that there was a considerable amount of blood from one end of the ceiling to the other. There was, as well, the issue of the involvement of a lamp in this particular incident and I listened to the evidence of Detective Constable Peterson, who said that in his opinion, the lamp wouldn't account for all the blood staining in the room. The mattress he was on, and the blankets were all soaked with his blood. I use those remarks to describe the brutal beating that Mr. Marshall endured from Mr. Wells.

[37] Like many people who have a similar record to Mr. Wells over time, he comes from a disadvantaged and troubled background. To be fair, he has had very little chance in life. Unfortunately, however, whatever forces in society or in his own life that may have caused him to lead the life that he has led over the years, the current reality is that he presents a danger to the community. He has had an opportunity to correct his life in earlier opportunities with parole and treatment but has not overcome the difficulties he has. Constable Tobin referred to this in his remarks to Ms. Menzies as indicated in the pre-sentence report wherein he described the

concern the community had about him. I also conclude from the pre-sentence report, the evidence before me, including the criminal record that this is so.

[38] If there was an example of a fortuitous situation, it is that the beating Mr. Wells did to Mr. Marshall did not cause his death. This is the sort of situation that could have led Mr. Wells to a much worse result than exists at the present time, if at all possible. Mr. Marshall has lost any chance of employment as a result of the beating, whereas he was fully employed before this beating. He has had part of his brain removed. He suffered a fractured leg and as I indicated earlier in my remarks, he still suffers. I must say as well that I have had the opportunity to observe and listen to Mr. Marshall on the witness stand and I observed that he has a deep depression in his skull on the left side and as well, his memory recollection is as indicated difficult, along with his means of communication. He must carry this with him the rest of his life.

[39] In this case, the crown has urged the court to consider a sentence in the range of 10 to 12 years. The defence has argued and recommended a

sentence to the Court of 5 to 6 years. Both counsel agree that Mr. Wells should be given credit for time served.

[40] In my view, this case can be classified as a form of home invasion. I say so because Mr. Marshall had his house locked, he was in his bed asleep when Mr. Wells got in the house and viciously assaulted him. The courts must do their part to preserve a citizen's right to live in security of their own home. A message must be sent that people should feel safe in their own home and if someone is to enter illegally and proceed to beat them as Mr. Wells has done, they are going to jail for a long period of time. There should be severe sentences imposed on people who do or are inclined to commit this type of offence. In doing so, it will send a message to the criminal element that if they are found guilty of a home invasion type crime, they will spend a long time in jail. The public must, I feel, be safe in their homes.

[41] I have considered the arguments of Mr. Mozvik that Mr. Wells had been drinking heavily on the night in question and taking pills. I have considered as well, his apology to the family and the request by Mr. Wells

through Mr. Mozvik to the Court for an opportunity to change his life around. In response, I say that he has had several opportunities to do this and yet he has not done so. He has had several opportunities to correct his alcohol and drug problems yet he has not done so.

[42] I agree with the words spoken by Justice Jamie Saunders in **R. v MacRae,** 1996 NSJ No. 91 because it is still applicable today when he said at paragraphs 5 and 7:

> "5. I have always considered that the essential purpose of sentencing is to maintain respect for the law by which society chooses to regulate itself, thereby ensuring the peaceful enjoyment, order and safety of its citizens. The community expects the court to enforce its standards, to denounce unlawful conduct and deal firmly but fairly with those persons convicted of criminal offences. In determining a fit and proper sentence, well-recognized principles have come to be applied in this jurisdiction.
>
> The primary consideration is always protection of the public. In addressing that primary concern, the sentencing judge is obliged to ask whether such protection may best be achieved by specific deterrence of the offender, general deterrence of those similarly disposed, rehabilitation of the offender, or some combination thereof. The weight to be given to each of those three factors depends on the circumstances of each case. These were

> violent crimes. The law tells us that in cases of violence, emphasis or weight must be placed on general and specific deterrence. One must never lose sight of the prospect for rehabilitation and reform of the offender. While always emphasizing general and specific deterrence in punishing for violent crime, one must also give some weight to the rehabilitation of the offender. In light of the reality that one day the prisoner will be released, one must reflect on the prospects for that individual's safe and productive return to her or his community. I have considered all of these things when determining a just and fit sentence for every one of you.
>
> 7 The members of this court and my colleagues on the Court of Appeal have repeatedly used harsh and pejorative words, not only to denounce such reprehensible behaviour by those responsible, but to deter others who may think - if they happen to think at all - it smart to emulate it. Yet violent and notorious acts in our province continue to escalate, and one might occasionally wonder whether the words make any difference or whether anyone is really listening."

This was affirmed by Justice Saunders in **R. v MacNeil** 1997 NSJ, No 503.

[43] **Stand up please Mr. Wells**. Mr. Wells having regard to the purposes of sentencing as set out in Section 718 of the Criminal Code and given the totality of the circumstances in this case I conclude that the

objectives of denunciation and deterrence must be given paramount consideration. Other considerations which the criminal code in cases mandate, such as rehabilitation cannot be ignored, but must in my view, on the facts of this particular case assume a subordinate role. Having regard to these objectives and bearing in mind Mr. Wells' aboriginal status, I conclude and I sentence Mr. Wells to nine years in prison on count number 8 involving the wounding of Pius Joseph Marshall, thereby committing an aggravated assault contrary to Section 268 of the Criminal Code.

[44] I further sentence you on count number 3 for committing an assault on Jean Connor contrary to section 266(a) of the Criminal Code of Canada to a period of incarceration for two years to run concurrent to your sentence for count number 8 herein.

[45] I further sentence you on Count number 4 for being unlawfully in a dwelling place at 81 Micmac Crescent, Membertou, County of Cape Breton and commit therein an indictable offence contrary to Section 348.1(b) of the Criminal Code of Canada to a period of three years in jail to run concurrent to the sentence imposed for Count number 8 herein.

[46] I further sentence you on count number 6, while bound by a probation order made by a Judge of the Provincial Court in and for the province of Nova Scotia on the 10th day of January, 2005, wilfully fail to comply with such an order, to wit: to abstain from the use of alcoholic beverages, contrary to Section 733(1) of the Criminal Code, to two years to be concurrent with the sentence imposed on count number 8.

[47] I further order you receive credit for time served which I understand is from January 28, 2005 which in my estimation makes it, 1 year 7 months 9 days, that will be doubled for a total of 2 years, 14 month, 18 days or 3 years, 2 months 18 days credit.

[48] I recommend Mr. Wells, that if at all possible and within the power of the authorities as where you are to reside in jail, that they send you for treatment of your problems to a traditional native treatment center.

[49] As well, there will be no firearm probation as there is already one in effect nor will there be a requirement for a DNA order as I understand from crown counsel that has already been obtained.

J.