

IN THE SUPREME COURT OF NOVA SCOTIA  
**Citation:** R. v. Best, 2005 NSSC 199

**Date:** 20050628  
**Docket:** CR 232388  
**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

William Ray Best and Joseph Charles Dawson

**Judge:** The Honourable Chief Justice Joseph P. Kennedy

**Heard:** May 2, 3, 4, 5, 9, 10, 11, 16, 17, 18, 19, 20, 23, 25, 26, 27  
& 28, 2005, in Halifax, Nova Scotia

**Decision**

**On Sentence:** June 28, 2005

**Written Release:** July 14, 2005

**Counsel:**

Arthur Theuerkauf and Cheryl E. (Gibson) Byard  
- for the Crown  
Lawrence Wm. Scaravelli for Mr. Best  
Donald C. Murray, Q.C. for Mr. Dawson

**By the Court:** (Orally)

[1] Let me say some things generally, before I become specific, about these two young men, and this incident. I want to talk about some larger issues as I see them in this Province at this time. What a terrible mess we have here today. What a mess this is. What an awful day this is. What is going to happen to this Province? What is going to stop this kind of situation from occurring? There is an ever growing significant number in our society, relatively young, who are not functioning properly. They do not function properly. And they are a significant segment of a generation. They are undisciplined, they are under educated, they are amoral and they are adrift. Lives dominated by drugs, gratuitous violence and stupid actions. Right here in Nova Scotia, “down home here”. Born and raised. Unable to predict consequences, or even perhaps more troubling, unconcerned with consequences. Never planning beyond the next weekend, or the next six pack. No future, nothing to lose. Why should they care? How do you deter the irrational? We will try.

[2] I continue to speak generally, you will not continue to behave without conscience or concern, you will not continue to brutalize with impunity. You will learn to understand consequences, cause and effect-when you do a bad thing, then bad things will happen to you. Simple equation. To the

extent that consequences are not understood because perhaps the Courts do not make them clear enough. I intend to do my part to remedy that unfortunate possibility.

- [3] Drugs are the constant. They are the evil. They factor, one way or another, in almost every case that we deal with in the criminal courts.
- [4] Darlene Wyllie when she testified said, and I quote, “everything bad that happened to us happened after we started selling drugs”. It was one of the few insightful moments in this sad trial. Of course that’s true, because when you sell drugs, when you sell marijuana out of your home, you invite the Billy Bests and the Joey Dawsons of this world to visit you. Drugs, central to the actions of these young men and some of their friends on that Saturday afternoon in Cole Harbour, looking for weed and money, weed and the money that weed generates. They were after drugs because they were drug users. Drugs played a central part in that “hair brain” scheme that was hatched that Saturday afternoon and evening, that no-win expedition to Lawrencetown. They were both in custody within 24 hours. Billy Best was recognized at the scene. What kind of planning, what kind of understanding, what level of consciousness develops this kind of stupid action?

- [5] I'll talk to you about home invasions. I've been quoted from *R. v. Barnes* case (2004 NSSC257), my position on home invasions, I don't intend to repeat it, other than to say that that remains my position. I'll add this though, that just as surely as the victims in the *Barnes* case, just as surely as the victims in that terrible *R. v. Harris* (2000 NSSCA7) matter, just as surely as the victims in any other home invasion, the Wyllies were entitled to the safety and the sanctity of their home. They were entitled to be safe in that home and when these gentlemen came to the door and asked, and more accurately, demanded to enter and the Wyllies said no. When the Wyllies did what they could in order to prevent that from happening, then they were properly and completely within their rights, trying to protect their home and, as it turns out their persons.
- [6] You cannot go into other people's homes without their permission. That's home invasion. Libel to life imprisonment for doing that. That is a consequence that I would wish that those people who contemplate that kind of terrible act would consider.
- [7] We all, most of us at least, sat in this courtroom and we listened to those 911 tapes, 911 calls. We listened to what terror sounds like. Some indication, some clue, some suggestion of what it must be like to be terrorized, fear for

your life. Some portions of the tape would have indicated I think, what it must be like to die, to be stabbed to death. This was an intolerable crime.

[8] The Crown has made application to obtain prohibitions, firearms, ammunition prohibitions in relation to both Mr. Best and Mr. Dawson. In relation to Mr. Best I am going to grant the Crown's application as set out, life time prohibition, going to grant the DNA order. In relation to Mr. Dawson, it is my understanding that Mr. Murray and the Crown are both in agreement in relation to the extent of the weapons prohibition order and I will grant the order according to the agreement between counsel and the DNA order likewise.

[9] **Let me speak to the sentence of Mr. William Best.** Let me say before doing so that I am fully aware of the decision of the Supreme Court of Canada in *R. v. Shropshire* [1995] S.C.J. 52 in all its respects. Certainly the s. 744 factors set out I am fully aware of those factors and I am taking those factors properly into consideration in relation to sentencing in this matter. I am also aware of the decision of the Nova Scotia Court of Appeal in *R. v. Harris* [2000] N.S.J. 9 in that terrible home invasion, what the Nova Scotia Court of Appeal said about home invasions and sentencing for home invasions in that case. Let me also say, I am now speaking of Mr. Best, that

I am most interested in the deterrence and denunciation in the general and specific, both general and specific deterrent, but particularly general deterrent when I consider proper sentence in relation to the matter.

[10] Mr. Best killed Mr. Wyllie. He stabbed him three times with a long bladed knife. He took that action almost immediately upon entering into that house. There was no hesitation. I am satisfied that he had the knife to do violence, should violence be necessary. I have to say on the facts that he hardly waited at all to find out. We cannot let that kind of brutality take place without expressing denunciation. I hope that this sentence, in part at least, accomplishes that goal.

[11] Mr. Best even at a very young age, he's only 19 as of today, was 18. I believe, at the time of the offence, had already acquired a prior record including prior assaults. I know what has been said about him in his presentence report, but I have to say that I don't think people were watching very closely. I don't think they were watching very closely. This was a young man, even had this incident never taken place, he was heading for trouble. He was on probation at the time that he committed these offences. All of those factors I take into consideration.

- [12] The overriding mitigating factor is his age. He's only 19 years of age, who's to say at 35 or 40 or 45 that he will be of the same mind and nature, and amoral propensity that he has today. Who's to say that he cannot be rehabilitated at the age of 19. Who's to say that he cannot change. The thing that we know in the criminal courts, people change. None of us is the same person today that we were when we were 19 years of age. Maybe change for the better. So rehabilitation is possible, it is correct that he has family support and he's going to need it. The next period of his life is not going to be easy.
- [13] I am most mindful and conscious of the jury recommendation. I asked that jury to make a recommendation, it was very difficult for them to do that, but they did it nevertheless. They recommended that Mr. Best serve between 10 and 15 years before the possibility of parole. They were a very good jury. Their recommendation leaves me considerable discretion in relation to the first possible date of parole. You have heard, ladies and gentlemen, expressed during the course of this sentence hearing that eligibility for parole does not mean freedom. It means simply this, that is the first date that you can even be considered for parole. First date that you can even be considered for parole. Whether you are paroled or not will depend upon

your circumstance at that date and what the parole board decides based upon an investigation of that circumstance.

[14] Mr. Best has spent 17 months in remand. There has been no application made to consider that remand time at anything other than the usual, subject to anything other than the usual formula, that is times two. In the circumstances, I believe that that is a correct formula. That remand time is considered, and properly so in relation to the period that this Court imposes with respect to the first possibility of parole. Keeping in mind all of those factors, keeping in mind the consideration pursuant to s. 744, keeping in mind the specifics of this offence and the specifics of young Mr. Best who is before me. I sentence as follows, please stand Mr. Best.

[15] On the charge of second degree murder I sentence you to life in a federal institution without possibility of parole for 15 years. I consider that to be a global sentence 18 years without parole when one considers the remand period. On the charge of robbery, the home invasion charge, I sentence you to a period of 10 years in the federal institution to run concurrently. Additionally the two orders imposed will apply. I'll take ten minutes to allow Mr. Best to be transported.



[16] **Sentence of Joseph Dawson.** We are back for the sentencing of Mr. Joseph Dawson. Let me say that Mr. Dawson's position before this Court is well made. I do not know how his position could have been better put. I congratulate Mr. Murray for having done so. I will repeat without actually doing so, what I have said generally about my concerns for our society, Nova Scotia generally. My concerns about this incident specifically; and I will stress that my concerns for society generally are a factor in my emphasis on the deterrent denunciation aspect of sentencing in relation to these matters. I will repeat everything that I said, not only what I said generally and specifically as to the problems with our society and the evil of drugs, such a constant in relation to those problems, but everything, everything that I said to this point becomes a factor in relation to the sentencing of Mr. Dawson. I repeat the necessity of the deterrence, denunciation, general and specific, particularly general. I will repeat what I said about violence, brutality, home invasion and I will repeat a statement that I made in *Barnes, supra*, and that is, that if the criminal justice system cannot protect people in their own homes, then let's pack it in. Let's pack it in. What is a criminal justice system for if it can't protect people in the sanctity of their own little

room? Safety of their own little room. So I do think that the deterrent aspect of sentence is a major factor.

[17] I speak of Mr. Dawson, Mr. Dawson did not kill John Wyllie, we know what the autopsy said, we know what the jury found, but Mr. Dawson lugged that bat all the way from Dartmouth to Lawrencetown. He lugged that bat out of that car and down that driveway and into that house. He did so for a purpose. I know that there has been testimony in relation to what was expected within that home, but I can say this, based upon the evidence, without any hesitation based on the evidence before this Court, that clearly once these young men got to the front door, they knew what to expect. They knew two things, that there were people at home and there were people at home who were resisting the invasion of their property and when they went from the front door to the back door and through that back door and up those stairs, they did so in expectation of that situation. So it was proper for that jury to conclude that a reasonable person in the position of Mr. Dawson would have anticipated, would have anticipated bodily harm in the course of that expedition, in the course of that home invasion, that's of course what happened, bodily harm.

[18] Mr. Dawson has two prior assaults and he too was on probation at the time of this offence. Mitigating factor, his age. Only 20 years old, he was only 19 at the time of this house invasion and I will repeat that we are not the same people at 35 or 40 or 45 or 50 that we were when we were 19. Sometimes we are worse, but often better, often better. And our justice system does believe in rehabilitation because we have seen it happen over and over and over again. So it is a real possibility that Mr. Dawson can be rehabilitated and that reality is not ignored in this sentencing consideration. Another mitigating factor, his background. In the presentence report his mother referred to “tough love”. “Tough love” I guess in this instance was putting a 15 year old on the street. That was “tough love”. Didn’t work so well. These catch phrases that are used to explain, to rationalize, the failure of parental responsibility. Another mitigating factor, his plea offer. Mr. Murray has indicated that six weeks after the incident Mr. Dawson was prepared to plead guilty to the offence of manslaughter which the jury ultimately convicted him of and the offence of robbery, which the jury convicted him of. That is a factor. That he was prepared to plead at that early time, rather than to go through the trial process, to accept responsibility for his acts at an early date. Please don’t take my reference to that possible

plea as any suggestion that the Crown did anything other than the right thing in this matter, if I didn't think that aiding and abetting was a possibility, I wouldn't have left it to the jury. The Crown made its case. The jury made its finding.

[19] Finally, time spent pending and Mr. Murray has made an interesting argument asking this Court to use a formula other than the usual two for one in relation to those 17 months. I have considered that possibility, particularly the reality that he was denied contact with friends, relatives for a six month period, that was a matter that I have thought about, especially in circumstances of this nature, that kind of contact is most important. I have thought about it. I am not going to, on the basis of what little information I have at this stage, to be second guessing the Correctional Service. Let me say that I know this, I know that a major problem that our provincial incarceration facilities have to address is contraband. How those facilities react to that problem, without a complete investigation of the matter, is not something that I am going to second guess. The explanation for the failure of contact in this specific was tied to the problem of contraband at the institution. I am not, on the totality of the information provided, going to

change the formula of two for one in relation to time spent pending remand time. Mr. Murray's argument is on record.

[20] Let me also say that I am familiar with the case *R. v. Barton*, 2003 CarswellBC 865 (B.C.C.A.), *R. v. Varga*, 2000 CarswellAlta 165 (Alta. C.A.), the rationale in those cases. I have listened to what Mr. Murray said about those cases, being the high water mark with respect to matters of this nature and I had read and just recently read them again before considering sentence in this matter. Taking all of the s. 744 factors into consideration I am repeating my awareness of the Supreme Court of Canada in *R. v. Shropshire*, *supra*, in that good decision of the Nova Scotia Court of Appeal in *R. v. Harris*, *supra*. Considered all of these factors. Please stand please Mr. Dawson.

[21] On the charge of manslaughter, I sentence you to a period of 12 years in the federal institution, without the possibility for parole for half of that time, make reference to the *Corrections and Conditional Release Act*, I am satisfied that this is a global sentence of 15 years. On charge of robbery I sentence you to a period of 10 years in a federal institution to run concurrently.

[22] The orders that are requested are granted on basis that I had previously stated. Thank you counsel.

Chief Justice Kennedy