

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *R. v. MacPherson*, 2015 NSSC 236

**Date:** 2015-08-10  
**Docket:** No. CRHNo. 427742  
**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Drew William MacPherson

<p><b>SENTENCING DECISION</b></p>
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**Judge:** The Honourable Justice Allan P. Boudreau

**Heard:** August 7<sup>th</sup> and August 10, 2015, in Halifax, Nova Scotia

**Written Decision:** August 12, 2015  
*(Oral decision was rendered on August 10, 2015)*

**Counsel:** Rick Woodburn, for the Crown  
Drew William MacPherson, self-represent Defendant

## **INTRODUCTION**

[1] This is the Court's sentencing decision in the case of **The Queen v. Drew William MacPherson**.

[2] Mr. MacPherson, you are today being sentenced for very serious offences. They are Criminal Negligence causing the death of Ward Robinson and causing bodily harm to Dennis Farnell. Also driving while your blood alcohol level exceeded the legal limit of 80 mgs of alcohol in 100 mls of blood, causing an accident which resulted in the death of Ward Robinson and which resulted in bodily harm to Dennis Farnell. These are Counts #1, #2, #6 and #7 on the Indictment dated May 25, 2015. A stay will be entered on Counts #3, #4, #5, and #8, being duplicitous and included offences, as agreed by the Crown.

[3] I begin my remarks by saying that nothing which this Court can do will replace the tragic loss suffered by the Robinson family, friends and neighbors, or the harm done to Dennis Farnell. I have read the victim impact statements filed with the Court and have heard two of those read on this hearing by Mr. Robinson's son and by his daughter. The hurt still remains and is very deep. It is hoped that this stage of the protracted proceedings will bring some measure of normalcy to those so affected by this needless tragedy.

[4] The comments I will now make are mostly directed at you, Mr. MacPherson. For reasons which only professionals with more specialized knowledge and training than I can understand, you do not appear to be aware of the irrefutable realities of your situation and of what you have done. You continue to deny the most obvious and blame everything that has happened on others. You do not appear to have any understanding or acceptance of your role in this accident and the resulting tragedy. Your denials and suspicions have no factual basis whatsoever and are not based on the reality of what occurred; nevertheless, you have somehow convinced yourself of the truth of your beliefs. Notwithstanding all that, I will continue with my comments and maybe something I say will give you some understanding of your situation.

## **FACTS**

[5] We do know, by Mr. MacPherson's admission, that during the late afternoon of September 30, 2011, he consumed at least one drink, which he believed to be a kind of scotch. He also said that he was concerned enough about driving that he considered the bus schedule to get him to the Burnside Correctional Centre, because he was due there at 8:00 p.m. to continue serving an intermittent sentence.

[6] It appears that Mr. MacPherson does not recall anything of September 30, 2011 after late afternoon. He said the next thing he recalls is waking up in the hospital seriously injured. There is absolutely nothing inconsistent with what happened that afternoon, except the apparent consumption of more alcohol, with what occurred later on the evening of September 30, 2011.

[7] Later on that evening, Mr. MacPherson's vehicle passed another vehicle on the Northern approaches to Barrington Street, at a very high rate of speed. The unrefuted testimony is that the speed of the MacPherson vehicle was 140 km per hour in a 70 km per hour zone. The MacPherson vehicle quickly went out of control at the turn into Barrington Street and collided head on with the taxi being driven by Mr. Farnell, with passenger, Mr. Robinson. The MacPherson vehicle rolled over and landed on its roof. Both vehicles were demolished.

[8] This accident caused the death of Mr. Robinson and the bodily harm to Mr. Farnell.

[9] The driver of the vehicle which the MacPherson vehicle passed at a very high rate of speed, and which was immediately and closely behind the MacPherson vehicle, witnessed the crash. That driver saw the MacPherson vehicle roll over and saw Mr. MacPherson's upper torso protruding through the driver's window. He

was pinned upside down between the seat, the steering wheel and the dash board. That witness said there was no one else in the vehicle and she saw no one else leave the vehicle. The expert testimony is clear that it would not have been possible for anyone else to have been in the MacPherson vehicle because of all of the debris and hundreds of CO<sup>2</sup> cylinders which occupied the interior space.

[10] Yet, in the face of this irrefutable evidence, Mr. MacPherson vehemently denies that he was the driver. He contends that he is the victim of a plot to, in effect, assassinate him. He said he must have been placed in that vehicle while he was unconscious, that the actual driver must have moved and pinned him upside down in the driver's position, then fled the scene. A person of Mr. MacPherson's intelligence should be able to see the impossible and irrational aspects of his contentions and his denials. Mr. MacPherson contends that he is the victim of a plot by his parents, his roommates, pedophiles, the police, the prosecutors, numerous lawyers, court administration, and judges; all conspiring to cover up the true perpetrator of the crime and to convict him, an innocent man. Needless to say, there is not one shred of evidence to support this contention. It has no basis in reality.

[11] Nevertheless, Mr. MacPherson contends that, had he or the police been able to undertake a full investigation; e.g., check into him being poisoned, check

possible street surveillance cameras, question his roommates, etc., that his suspicions would have been proven to be true. Again, there is nothing whatsoever to support those contentions.

[12] The jury convicted Mr. MacPherson on all counts on the clear and irrefutable, **and I stress irrefutable**, evidence of what happened on the evening of September 30, 2011. Mr. MacPherson's contentions and allegations can only be described as fictional.

[13] I will now turn to the man, Mr. MacPherson, being sentenced today. He is 38 years old, and by all accounts, very intelligent. His résumé, Exhibit #1 in this hearing, shows that he had done some very clever and productive things prior to 2011. He was initially found to be unfit to stand trial in these proceedings; however, after further assessment by other psychiatrists, he was ultimately declared fit to stand trial.

[14] Mr. MacPherson claims that he is not a drinker and that he does not care much for alcohol; however, he has several alcohol-related offences or incidents where alcohol was a factor in his behavior.

[15] Mr. MacPherson, in the Pre-Sentence Report dated January 23, 2015, stated that he was diagnosed with Autism Spectrum Disorder at an early age. He said he

attended counselling in 2003. In that same Pre-Sentence Report, Mr. MacPherson said he did not agree with previous mental health diagnoses; however, he did report to the writer of the report that he was developing serious “psychiatrist issues” since being incarcerated. Unfortunately this was not explored for the purposes of the report, and I am unsure to what “psychiatrist issues” Mr. MacPherson may have been alluding.

[16] It is noteworthy that all indications, including from the Pre-Sentence Reports dated January 23, and July 17, 2015, are that Mr. MacPherson has basically no family, friend or significant community support. Moreover, he says he does not need any such support. Mr. MacPherson does not appear to have a realistic perception of his situation.

[17] It is also noteworthy that he has made threats against justice officials in the past. He has also made threats against the Court House saying he would like to “shoot it up and take it hostage.” Mr. MacPherson said those threats were not to be taken seriously and were simply a way to “vent” his frustrations with the justice system. However, even as late as his submissions for this hearing, filed July 24, 2015, he makes what can be described as “veiled” threats again justice officials when he says in effect, that he will obtain justice his own way.

[18] Mr. MacPherson has repeatedly found himself in conflict with the law and the justice system during his almost four years at the Central Nova Scotia Correctional Center, since the commission of the present offenses. He says that he had to commit offences in order to “get things done” while on remand. Mr. MacPherson presents an attitude or approach which is of serious concern to this Court; namely, “that the end justifies the means.” As a result, he has spent a great deal of time in segregation and accumulated over seven months of sentence time.

[19] Mr. MacPherson has a history of breaching court orders and undertakings. He was accused of 11 such breaches at the time of the present offences; however, those were severed from the Indictment on the motion of the Court. In the final analysis, Mr. MacPherson presents personal and correctional circumstances which are a very serious concern for this Court.

### **PRINCIPLES OF SENTENCING**

[20] The Principles of Sentencing are now codified in Sections 718, 718.1 and 718.2 of the **Criminal Code**; however, the basic principle remains the “protection of society” and how that can be best achieved. Those Sections of the **Criminal Code** read as follows:

**Section 718** 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 reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in the offenders, and acknowledgement of the harm done to victims and the community.

**Section 718.1** A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

**Section 718.2** A Court that imposes a sentence shall also take into account 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.

...

[Subsections (i) to (v) are not applicable to the situation at hand.]

- (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
- (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.

[21] The **Criminal Code** also now codifies as an aggravating factor for sentencing, the commission of certain offences while the offender's blood alcohol level exceeds 160 mgs of alcohol per 100 mls of blood. **Section 255.1** states:

Without limiting the generality of section 718.2, where a court imposes a sentence for an offence committed under this Act by means of a motor vehicle, vessel or aircraft or of railway equipment, evidence that the concentration of alcohol in the blood of the offender at the time when the offence was committed exceeded one hundred and sixty milligrams of alcohol in one hundred milliliters of blood shall be deemed to be aggravating circumstances relating to the offence that the court shall consider under paragraph 718.2(a).

[22] Considering the circumstances of this offender, Mr. MacPherson, I am satisfied that, at this time, a very important aspect of protecting society is Section 718(c) and I quote, "to separate offenders from society, where necessary." Having said that, I must also consider all the other objectives outlined in Section 718. There can be no question that subsections (a) and (b), denunciation and deterrence are also very important. Fatal motor vehicle accidents involving alcohol are unfortunately still all too common.

[23] I am very concerned about what can be accomplished as far as rehabilitation is concerned. Hopefully, Mr. MacPherson can receive and benefit from services available to him in the federal prison system, which is what I intend for Mr.

MacPherson. In view of his present assertions and denials, this may be a difficult, if not lengthy process.

[24] As far as some of the other principles of sentencing are concerned, such as Sections 718 (e) and (f), they are not achievable at this time considering Mr. MacPherson's present state of mind.

### **FINAL ANALYSIS**

[25] I have been cited numerous cases by both the Prosecution and the Defence. The total sentences for the offences such as the present ones range anywhere from 4 to 12 years. As has been directed by many court decisions, including the Supreme Court of Canada, the sentencing process must not simply consider the offence, but it must also consider the individual offender. In other words, both must be considered in deciding on the disposition which will best protect society.

[26] In the present case, the offence itself has several aggravating factors. One is driving a motor vehicle while Mr. MacPherson's blood alcohol level was almost three times the legal limit, and certainly Section 255.1 that I read before applies.

[27] Another is the negligent wanton and reckless rate of speed at which it was impossible for Mr. MacPherson to control his vehicle, particularly approaching the curve leading into Barrington Street.

[28] Another is the fact that Mr. MacPherson was supposed to report to and be at the Burnside Jail by 8:00 p.m. that evening, yet he was obviously consuming alcohol that afternoon and he did not report to the Burnside Jail. Also his consumption of alcohol was in breach of existing court orders.

[29] Yet another is that Mr. MacPherson was apparently so impaired by alcohol or a drug, that he does not recall the accident or the events leading up to it.

[30] I cannot consider Mr. MacPherson's attitude regarding remorse as a mitigating or as an aggravating factor because he continues to deny his responsibility in the commission of the offences.

## **CONCLUSION**

[31] Considering the circumstances of both the offences and of the offender, I have concluded that, for the offences of Criminal Negligence Causing Death and Criminal Negligence Causing Bodily Harm, being Counts #1 and #2, sentences of

ten years and four years respectively, to be served concurrently to one another, is the most appropriate way to achieve the fundamental purpose of sentencing.

[32] Likewise, I have concluded that sentences of ten years and four years on Counts #7 and #6 respectively, to be served concurrently to one another, and all sentences to be served concurrently, is the most appropriate way to achieve the fundamental purpose of sentencing.

[33] Therefore, I have concluded that a total sentence of ten years, less credit for time served on remand, is necessary to contribute to a peaceful and safe society in all of the circumstances of this case.

[34] Mr. MacPherson has been in custody some three years and ten months since the commission of the present offences. Some of that time was spent serving sentences totaling some seven months for other offences committed while incarcerated. The Crown contends that those approximately seven months should be deducted from any credit time on remand. Mr. MacPherson contends that credit, by way of remission time, would have been earned, and he requests that the seven months served for other offences be reduced accordingly for credit time purposes on the present offences.

[35] While it is acknowledged by the Crown that Mr. MacPherson had a rough time on remand at the Central Nova Scotia Correctional Centre, it contends that most, if not all, of the problems encountered were the result of his inappropriate and, at times, unlawful behavior. There can be no question that Mr. MacPherson, because of his assertions about the present charges, was frustrated about the justice system. This is apparent from his more than 60 appearances and motions in various courts during his remand time. Nevertheless, his frustration does not justify his behavior while on remand and I find he is responsible for most, if not all, of his problems at the Central Nova Scotia Correctional Centre. There is no question he experienced significant physical pain, but that was as a result of the offences and his resulting injuries and not because he was incarcerated on remand.

[36] I see no compelling reason to allow more than one-for-one credit for time served on remand, except for a couple of months remission time which would have been earned serving other sentences.

[37] I therefore award Mr. MacPherson three and a half years of credit time for time served on remand.

[38] In the result, Mr. MacPherson is sentenced to a net term of six and a half years, obviously in a federal institution, where it is hoped he will benefit from the services he needs.

[39] I will also order a prohibition from driving pursuant to Section 259(2)(a.1) of the **Criminal Code** for a period of 15 years following the termination of Mr. MacPherson's period of incarceration.

[40] Mr. MacPherson, I sincerely hope you will be able to benefit from your time in prison by taking advantage of the services, counselling and treatments available to you.

[41] All remaining Counts with respect to the May 28, 2014 Indictment, Counts #9 - #19, are stayed at the request of the Crown.

Boudreau, J.