IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. R. B., 2008 NSSC 335

Date: 20081016
Docket: CrAt289563
Registry: Antigonish

Between:

Her Majesty the Queen

v.

R. B.

SENTENCING DECISION

Restriction on Publication: Pursuant to 486.4 (1) Subsection (2) of the **Criminal Code of Canada**

Judge: The Honourable Justice Douglas L. MacLellan

Heard: September 29th and 30th, 2008, Guysborough , Nova Scotia
October 2nd, 2008, Antigonish, Nova Scotia

Written Decision: November 19th, 2008

Counsel: Darlene Oko, for the Crown

Coline Morrow, for the Defence

Editorial Note

Identifying information has been removed from this unofficial electronic version of the judgment.

By the Court: (Orally)

[1] The matter before the court is sentencing of Mr. B. in regard to three counts. The Crown have indicated the factual bases for each count and I am satisfied that, in the circumstances, despite the fact that Mr. B. suggests the that he has no recollection of at least two of these incidents, that in effect if the matter had gone to trial he could have been convicted based on the evidence from the complainants, as stated by Crown, and as testified to under oath at the preliminary inquiry. I have had an opportunity to read the preliminary inquiry evidence and therefore I am prepared in the circumstances to enter convictions for counts three, four and six as set out in the indictment. I note that count six was amended to include two incidents in regard to T. O., one at B. and one at L..

[2] The court's job today is clearly simplified to a great extent based on the joint submission made by Crown and Defence counsel recommending a period of incarceration of two years. My job at this point is to simply determine whether despite the joint recommendation it is appropriate that this be the sentence in this particular case.

[3] Our Court of Appeal has said on a number of occasions that joint recommendations should generally be accepted, unless the court is concerned that it is not a proper sentence based on the principal of sentencing and the particular facts of the case. However, in this case we have senior crown counsel and senior defence counsel making a recommendation and it is not something I take lightly in regard to my position on sentence.

[4] A couple of things stand out in this case, I guess the first would be the fact that we have three complainants alleging similar type activity by the accused and that we are dealing with offences that are relatively ancient, to some extent, even to the extent that the offence of sexual assault did not exist at the time of the allegation in 1980 dealing with N. H. and that is why the Crown have charged Mr. B. with the count of indecent assault on a female, which was the offence that subsequently became sexual assault.

[5] The thing I guess that sticks out, I suppose more then anything else to me to make these offences very serious in my mind, is to some extent, not so much the actual facts of the incidents, although very disturbing to the victims, I guess would be, I suppose in the scheme of things and in looking at the sexual assault offences the

court deals with, would be on the lower level. However, the thing that sticks out I guess in my mind is the position of trust that Mr. B. was in at the time of these offences. He was a man, according to my calculations, of between twenty one or twenty four, dealing with relatives of his, who were significantly young at the time. The evidence I have is that the count number four with N. H., she would be seven or eight years of age at the time, the count three with N. P., she would be nine to twelve or eleven, twelve years old at the time and T. O. was only nine to eleven years of age. So what we have is a twenty year old taking advantage of children in circumstances where they are placed in his care by their parents, assuming that he would not violate them and he chose to take advantage of that and do what he did.

[6] And our court has on a number of occasions and our Court of Appeal has said that, that position of trust makes what might appear to be a relatively minor incident much more serious because of the concept of children being left in the care of an adult. I am of course mandated by the ***Criminal Code*** by Section 718, the principal of sentence, to consider whether I should consider principals of deterrents both to the offender here and to the public at large. And, one thing I think in Mr. B.'s credit, at this point at least, is that these incidents happened in the early eighties and would appear from the fact that he has no subsequent criminal record, a person might

conclude, that he has not continued to do this kind of thing. That's not necessarily absolutely correct but he has not been caught for doing this kind of thing so we have to give him I think the benefit of the doubt. In the sense that he comes to the court with no previous criminal record.

[7] On the other hand, many times this court deals with sex offenders who have no past criminal record. Many sex offenders don't get involved in other criminal activity, break and enters, robberies, assaults, but do get involved in sexual offences particularly against children it appears. So our Court of Appeal has said where you are dealing with young victims and clearly these girls were, these two girls and this young man were victims here, when you are dealing with young victims it raises the bar as far as the seriousness of the incidents.

[8] And, I've read N. H.'s victim impact statement and the effect this incident has had on her. And, I can tell her and the other victims here that they are to bear no responsibility for what has happened to them, they were children. The accused was an adult, it is entirely and utterly all his fault and I guess one of the things I suppose that this sentencing will do is hopefully put this incident behind them.

[9] I think it was completely appropriate for them to come forward as they did and subject themselves to having to testify and be cross-examined about things that happened a long time ago and things that were very personable to them and they did that at the preliminary and they have been spared that kind of grilling or questioning in front of a jury and again that is something that the accused here gets a bit of credit for in the sense that he has not put them through that a second time.

[10] So on the side of credits or benefits to the accused I suppose I am dealing with an accused person who is, according to my math, about, close to fifty years of age, has no criminal record, has entered a guilty plea before the victims had to testify about the incidents themselves at trial and I am, I have a joint recommendation from experienced Crown counsel who has consulted with the victims and is satisfied that the proposed sentence is appropriate in the circumstances.

[11] I do confirm and agree with Crown counsel that a jail term is very often the result of convictions or guilty pleas of these kinds of activities. Here we have three complainants alleging a number of different incidents. Mind you to some extent these are old offences but again our Court of Appeal has said on a number of occasions just

because they are old does not lessen the seriousness of them or somehow absolves the accused of responsibility.

[12] So, based on what I understand to be the state of the law about joint recommendations and the kind of offence that I am dealing with here I am prepared to accept the joint recommendation of both Crown and Defence counsel and on that bases will proceed to sentence as follows. Just let me ask Crown and Defence is the suggestion here that it be concurrent sentences on all three counts?

[13] **MS. OKO**: Yes my Lord that would be the Crown's position.

[14] Mr. B. if you would stand up sir. Mr. B. for the offence that you did between the 1st day of January, 1983 and the 31st day of December, 1984 at or near L. in the County of * (*editorial note- removed to protect identity*), Province of Nova Scotia did commit a sexual assault on N. P. contrary to Section 246.1 of the ***Criminal Code of Canada***. I sentence you to a term of imprisonment for two years in a Federal Institution.

[15] For the offence that between the 1st day of January, 1980 and the 31st day of December, 1981 at or near L. in the County of * (*editorial note- removed to protect identity*), Province of Nova Scotia you did commit an indecent assault on N. H. a female person contrary to Section 149 of the ***Criminal Code of Canada***. I sentence you to a term of imprisonment for two years in a Federal Institution concurrent to the sentence already imposed.

[16] For the offence that you did between the 1st day of January, 1983 and the 31st day of December, 1987 at or near B. L. and L., in the County of * (*editorial note-removed to protect identity*), Province of Nova Scotia did commit a sexual assault upon T. O. contrary to Section 246.1 on the ***Criminal Code of Canada***. I sentence you to a term of imprisonment of two years in a Federal Institution concurrent to the two previous sentences already imposed.

[17] In addition to that Sir, I have all ready made an order directing that you submit to the taking of a D.N.A. sample for purposes of registering your D.N.A. with the sex abuse registry and that you will be obligated to register with the sex abuse registry and complete any forms necessary to do so.

[18] **THE COURT**: What is that section Ms...?

[19] **MS. OKO**: For the D.N.A. Order or for the sex offender...?

[20] **THE COURT**: The sex offender registry.

[21] **MS. OKO**: It is Section 490, My Lord, and I will give you the exact Section, the 490.013 My Lord.

[22] **THE COURT:** O.K. you will register as to comply with Section 490.013 of the ***Criminal Code of Canada***.

[23] **MS. OKO**: My Lord, I think there also needs to be an order under Section 109, I apologize, I meant to include that in my submissions, which is a fire arms prohibition it appears to be mandatory as well My Lord.

[24] **THE COURT**: Ms. Morrow do you have any...

[25] **MS. MORROW**: I believe it is mandatory but ...

[26] **THE COURT:** O.K.

[27] **MS. MORROW**: ...I didn't bring my code over with me I would ask for the surety to confirm as firearms never played any role in this.

[28] **THE COURT**: I think its, although I guess, the only issue is whether that was in force at the time of the...

[29] **MS. MORROW**: It may not have been.

[30] **MS. OKO**: It does appear to apply, I would suggest retrospectively, it says when the person is convicted or discharged the only provision is that for an indictable offence in the commission of which violence against a person is used, threatened or attempted and for which the person maybe sentenced to imprisonment for ten years or more, Section 246.1 is such a section. The maximum, the possible imprisonment under Section 246.1 is for ten years. So, I would suggest that it would apply My Lord, unless the Court feels otherwise. It does appear to be appropriate upon conviction.

[31] **THE COURT**: And the restriction would be for a prohibited weapon, with, where, what, what is the...

[32] **MS. OKO**: Under Section 2, My Lord, Section 109 Sub Section 2.

[33] **THE COURT**: Yes, right.

[34] **MS. OKO**: Yes, any firearm other then a prohibited weapon and restricted firearm, cross-bow, restricted weapon, ammunition, explosive substance during that period.

[35] **THE COURT**: O.K.

[36] **MS. OKO**: Would be for a minimum of ten years from the persons release from imprisonment.

[37] **THE COURT**: O.K.

[38] **MS. OKO**: And also when I think would include the provisions of Sub Section 3.

[39] **THE COURT**: O.K.

[40] **MS. OKO**: Actually, they, there repetitive firearm, cross-bow restrictive weapon, ammunition and explosive substance.

[41] **THE COURT**: O.K., I am prepared in the circumstances to make such an order under that Section of the Code for a period of ten years. Is there anything else from either counsel.

[42] **MS. OKO**: No, My Lord, thank you.

[43] **MS. MORROW**: No, My Lord

[44] **THE COURT**: Thank you very much.

MacLellan, J.