

**IN THE SUPREME COURT OF NOVA SCOTIA**

Citation: R. v. Vanmerrebach, 2008 NSSC 50

Date: 20080307  
Docket: CR. No. 276982  
Registry: Halifax

Between:

**Her Majesty the Queen**

-and-

**Trevor Robert Vanmerrebach**

---

**Sentencing Decision**

---

**Judge:** The Honourable Justice Robert W. Wright

**Heard:** March 7, 2008 in Halifax, Nova Scotia

**Oral Decision:** March 7, 2008

**Written Decision:** March 28, 2008

**Counsel:** Crown - Christine Driscoll  
Defence - Thomas Singleton

Wright J. (Orally)

[1] Trevor Vanmerrebach is being sentenced today after having been convicted on January 8, 2008 of dangerous driving causing the death of Michael Supple and dangerous driving causing bodily harm to Christopher Duggan, contrary to ss. 249(4) and 249(3) respectively of the Criminal Code. Mr. Vanmerrebach was acquitted of accompanying charges of criminal negligence causing death and criminal negligence causing bodily harm in respect of the same two victims. Sentencing was put over until today to allow time for a pre-sentence report to be obtained.

[2] The facts surrounding the case are set out in my decision rendered on January 8, 2008 and cited as 2008 NSSC 3. Briefly summarized, the accused was driving home in his newly acquired Ford Mustang with two of his lifelong friends as passengers after they had spent the evening together at a friend's home. The accused was driving at a highly excessive speed on a winding rural highway and lost control of his car as it exited a curve. The car slid sideways across the road and over the ditch before slamming into a utility pole with enormous force. All three occupants of the car were ejected upon impact. One passenger, Michael Supple, was pronounced dead at the scene and the other, Christopher Duggan, was seriously injured.

[3] The court found that the sole cause of the occurrence of the accident was the excessively high rate of speed at which the offender was intentionally operating his motor vehicle on a curved roadway. The court also found that the evidence admissible at trial was insufficient to establish that the consumption of alcohol was

a material factor. It is upon these facts that the court must now determine a fit and proper sentence.

[4] The purpose and objectives of sentencing and the principles to be considered are set out in the following provisions of the Criminal Code:

Section 718 reads 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 reparations 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.

Section 718.1 reads as follows:

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

Section 718.2 reads as follows:

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,...

(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.

[5] When certain criteria are met, a judge may order that a sentence be served in the community. Section 742.1 reads as follows:

Where a person is convicted of an offence, except an offence that is punishable by a minimum term or imprisonment, and the court

(a) imposes a sentence of imprisonment of less than two years, and

(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2,

the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

[6] In placing emphasis on the sentencing objectives of denunciation, deterrence, and providing reparation for harm done to the victims and the community, Crown counsel takes the position that an appropriate sentence here would be four years incarceration coupled with the maximum ten year driving prohibition under s. 259(2)(b) of the Code.

[7] Defence counsel, on the other hand, submits that a conditional sentence of two years less a day, with 18 months house arrest and related conditions, would be appropriate. He also suggests an additional four year driving suspension would be adequate on top of the two year suspension already served.

[8] In considering the matter of sentence, the court has the benefit of a Pre-Sentence Report dated February 2, 2008 which generally reflects favourably on the offender. Mr. Vanmerrebach is presently 23 years of age, single, and has a Grade 10 education. He hopes to get his Grade 12 Grade Equivalency Diploma and has aspirations of becoming a carpenter. He is presently living with his parents in Williamswood, having lost his employment because of lengthy work absences to attend his trial. He has been fairly steadily employed in various labour positions since 1996, and holds certificates for a forklift and overhead crane operator.

[9] It is apparent that Mr. Vanmerrebach has strong support from his family who speak highly of his character. They report that since the accident, however, their son has become withdrawn and displays a loner type behaviour. He now rarely goes out of the house and avoids public interaction.

[10] It is also apparent from information provided by the offender's mother, his family physician and his psychology counsellor that Mr. Vanmerrebach has experienced and continues to experience a lot of grief and remorse over the accident and the loss of his best friend, manifested by symptoms of insomnia, anxiety and depression. Since the accident, he has attended a number of counselling sessions with Genest Psychological Services Inc. but discontinued

those last year since losing his employment income. Dr. Genest, who was interviewed by the probation officer preparing the Pre-Sentence Report, reports that Mr. Vanmerrebach has suffered post-traumatic stress symptoms since the accident and that he needs a new direction in his life, whether it be upgrading his education, retraining or obtaining new employment. Dr. Genest recommends further psychological counselling to help Mr. Vanmerrebach cope with the emotional upset over the loss of his best friend.

[11] The Pre-Sentence Report also records that Mr. Vanmerrebach has accepted responsibility for the accident and has expressed remorse for his actions which he says will never be repeated after losing his best friend as a result, as well as ruining his own life.

[12] The Pre-Sentence Report also notes that Mr. Vanmerrebach has no prior criminal record, except one minor unrelated offence committed as a youth which resulted in a non-custodial sentence and three minor regulatory offences committed under the **Off Highway Vehicles Act** when he was a young teenager. These offences are of little significance for purposes of today's sentencing.

[13] The probation officer concludes her Pre-Sentence Report with the opinion that Mr. Vanmerrebach presents as a favourable candidate for community supervision where he is employable, has no prior criminal record, and no substance abuse issues. The officer expresses the view that Mr. Vanmerrebach would benefit from continued psychological counselling and upgrading his education level and retraining to maintain employment.

[14] The court has also read the victim impact statements written by Michael Supple's parents, with Ms. Supple having read hers before the court today. These statements convey in a heart rendering manner the profoundly devastating effect the loss of their son has had on the Supple family. It is a loss that has dramatically changed their lives on a permanent basis.

[15] Obviously, no sentence to be imposed on Mr. Vanmerrebach can redeem the loss of Mr. Supple's life or provide any degree of atonement for that loss. The task left to the court is to determine a fit and proper sentence for this offender for these offences, having regard to the principles and objectives of sentencing as codified in the Criminal Code.

[16] One of those principles, as recited earlier, is that a sentence should be similar to sentences imposed on similar offenders for similar offences in similar circumstances. No two cases are exactly alike, of course, and the cases to which I have been referred by counsel reflect a fairly wide range of fact scenarios. Nevertheless, they are useful in formulating a general range of sentence for the offences of dangerous driving causing death and dangerous driving causing bodily harm.

[17] The several cases provided by the Crown, mostly from other Canadian jurisdictions, all resulted in a period of incarceration in a penal institution, generally ranging from 15 months to 30 months. The one Nova Scotia case referred to is so dissimilar as to be of no assistance whatsoever.

[18] Defence counsel has referred to a review of the sentencing case law pertaining to these offences found in the decision of this court in *R. v. C.H.D.* [2004] N.S.J. No. 550, which overall reflect a similar range. Defence counsel goes on, however, to cite the several cases reviewed in that same decision in which conditional sentences were imposed for the subject offences. Most of those conditional sentences fell within the range of 18 months to two years less a day.

[19] Defence counsel relies in particular on the well-known case of *R. v. Parker* [1997] N.S.J. No. 194 (NSCA). That case bears a number of similarities to the present case in that the 20- year-old accused, while driving a powerful car in an erratic manner and at excessive speed, lost control in a passing manoeuvre and hit four teenagers on a church lawn. Two were killed and the other two were badly injured. Alcohol was not a contributing factor. The trial judge, upheld on appeal, sentenced the accused to a conditional sentence of two years less a day with stringent conditions including house arrest for the entire period.

[20] There is no need for me to re-canvass the case law already reviewed in the *C.H.D.* and *Parker* decisions and in the interest of brevity, I will simply incorporate that case law by reference for purposes of this decision.

[21] In deciding upon the appropriate length of the sentence to be imposed, probation being inappropriate in this case, the court must also consider any aggravating or mitigating factors that may exist. The principal aggravating factor which adds to the gravity of the offences is the highly excessive rate of speed at which the offender drove over the protests of his passengers.



[22] There are, however, a number of mitigating factors to be considered. Mr. Vanmerrebach is a youthful offender with no prior criminal record of any significance. He has expressed great remorse and grief over what has happened and undoubtedly will have to carry that with him for the rest of his life. His positive pre-sentence report reflects his previous good character, work record, and strong family support, as earlier summarized.

[23] It is also important to remember that while Mr. Vanmerrebach has been found to be morally blameworthy so as to attract criminal responsibility (albeit for the lesser offences of dangerous driving causing death and dangerous driving causing bodily harm), he has been convicted of a crime whose basis of responsibility is negligence, namely, in the use of excessive speed on a rural highway, as opposed to an intentional criminal act such as assault or fraud.

[24] All of these factors lead me to the preliminary conclusion that within the general range of sentence reflected by the case law earlier mentioned, the appropriate sentence to be imposed here does not exceed the two year mark. That is to say, it does not call for a federal penitentiary term. Rather, the court is satisfied that the appropriate length of the sentence to be imposed on Mr. Vanmerrebach is two years less a day.

[25] The question then becomes whether it is appropriate for that sentence to take the form of a conditional sentence to be served in the community. As noted earlier, s. 742.1 of the Code sets out four criteria for the imposition of a conditional

sentence (as confirmed in the leading case of *R. v. Proulx* (2000) 140 C.C.C. 3d 449). They are as follows:

- (1) the offender must be convicted of an offence that is not punishable by a minimum term of imprisonment;
- (2) the court must impose a term of imprisonment of less than two years;
- (3) the safety of the community would not be endangered by the offender serving the sentence in the community; and
- (4) a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[26] There being no minimum term of imprisonment applicable here, it remains for the court to further consider the third and fourth of these criteria.

[27] The third criterion involves the determination or assessment of the risk posed to the safety of the community by the offender, and not the broader risk of whether the imposition of a conditional sentence would endanger the safety of the community by providing insufficient general deterrence or undermining general respect for the law. Two factors should be taken into account:

- (1) The risk of Mr. Vanmerrebach re-offending and;
- (2) The gravity of the damage that could ensue in the event of a re-offence.

[28] In view of the nature of this case, the pre-sentence report and the various mitigating factors earlier referred to, I am satisfied that the risk of re-offending here is negligible and that the safety of the community would not be endangered by service of his sentence in the community. Moreover, the offender will be

prohibited from driving for a period extending beyond the length of his sentence, as will be addressed later.

[29] As to the fourth criterion, the court recognizes that in a case of this nature, the sentencing objectives to be emphasized are denunciation of unlawful conduct and deterrence, tempered by assistance in rehabilitation. It was expressly recognized in *Proulx*, however, that a conditional sentence can provide significant denunciation and deterrence, particularly when onerous conditions are imposed.

[30] I am satisfied therefore that all of the criteria for a conditional sentence have been met in this case. I recognize that the satisfaction of the necessary criteria does not automatically entitle an offender to a conditional sentence, nor oblige the judge to impose one. Rather, a discretion to do so remains with the sentencing judge.

[31] After careful consideration, I have concluded that a fit and proper sentence to be imposed on Mr. Vanmerrebach is a conditional sentence of two years less a day to be served in the community, essentially through house arrest as a punitive measure, coupled with other conditions I will specify under s. 742.3 of the Criminal Code. I am satisfied that with the attachment of such conditions, the need for denunciation of Mr. Vanmerrebach's conduct and the need to provide deterrence of similar conduct by others can be achieved, while assisting Mr. Vanmerrebach to become a productive member of society.

[32] I find reinforcement in the appropriateness of this sentence by its consistency with the result in *Parker*, a case involving perhaps even more

egregious circumstances.

[33] The first set of conditions to be attached are set out in s. 742.3(1) of the Code. The mandatory conditions prescribed there are that the offender:

- (a) keep the peace and be of good behaviour;
- (b) appear before the court when required to do so by the court;
- (c) report to a supervisor within 2 working days from today and thereafter continue to report as directed by the supervisor;
- (d) do not leave the jurisdiction without the written permission of the court or the supervisor; and
- (e) notify the court or supervisor in advance of any change of name or address, and promptly notify the court or supervisor of any change of employment or occupation.

[34] I also impose the following additional conditions pursuant to s. 742.3(2):

(1) Mr. Vanmerrebach is to remain confined to his residence at all times for the duration of his conditional sentence except for the following permitted absences:

- (a) to travel by the most direct route to and from, and attend, his future place of employment, retraining or continued education at regular hours;
- (b) to travel by the most direct route to and from, and attend, any interviews for purposes of obtaining employment or pursuing a program of retraining or further education;
- (c) to perform 150 hours of community service as directed by his supervisor;
- (d) to attend appointments with his supervisor;
- (e) between the hours of 2:00 - 4:00 p.m. each Saturday for the purpose of buying groceries and other personal and household needs (subject to a change in those specific hours as approved by his supervisor);

(f) to obtain medical or dental treatment;

(g) to travel to and from, and to attend, rehabilitative assessment counselling or treatment as approved by his supervisor, (it being recommended that the offender resume his counselling sessions with Genest Psychology Services Inc.);

(h) if written permission is first obtained from his supervisor for some other purpose;

(2) Mr. Vanmerrebach is to perform 150 hours of community service as directed, it being recommended that such community service include speaking to designated groups about the consequences of dangerous driving;

(3) Mr. Vanmerrebach is to have no contact with any members of the Supple family or with Christopher Duggan or any members of his family;

(4) Mr. Vanmerrebach is to carry a copy of his conditional sentence order and present himself at the door of his residence upon request by his supervisor or the police.

[35] Where I do not consider there to be a need for continued supervision of Mr. Vanmerrebach beyond the term of his conditional sentence, no further probation order need be made.

[36] The Crown is also seeking the maximum 10 year driving prohibition order. Defence counsel suggests an additional four year driving prohibition, on top of the two year driving suspension already served. With what I assess as a low risk for recidivism for such offences, I accept the defence position and impose an additional four year driving suspension from this date forward.

[37] Finally, the court is required to impose the mandatory 10 year weapons prohibition order under s. 109 of the Code. The victim surcharge payment is

hereby waived under the present circumstances.

J.