

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Halsey, 2008 NSSC 134

Date: 20080425

Docket: CR. Am. 290629

Registry: Amherst

Between:

Her Majesty the Queen

v.

Jason Halsey

Judge: The Honourable Justice J. E. Scanlan

Heard: 25 April 2008, in Amherst, Nova Scotia

Written Decision: 07 May 2008

Counsel: Mr. Bruce Baxter, for the crown
Ms. Stephanie Hillson, for the defence

By the Court:

[1] Mr. Halsey is now 22 years old. He was 21 at the time the offence was committed. As noted by the crown, he was in prison for other offences. He disobeyed the rules of the institution; went to an out of bounds area. In accordance with the rules and procedure as adopted in prison, he was to be subjected to a strip search.

[2] Mr. Halsey, as you look at his record going back to September 1999, does not have much respect for rules. This is reflected in his many, many convictions. Also as I look at his record of convictions, he is not adverse to being involved in offences that are violent. In that regard I refer to the fact that he was convicted of robbery, also convicted of possession of a weapon. Robbery and possession of a weapon of course connote nothing but violence, disrespect for other people, their person and their property, and of course the laws or rules by which this society governs itself.

[3] About the only thing that Mr. Halsey has going for him, in terms of positive note, is his age. I have to take that into account and say given the fact he was 21 years old when this offence was committed, I must say there is still some chance of rehabilitation. Mr. Halsey, as I go back in your record going back to 1999, it's looking more and more like there is very little chance of rehabilitating you. That will be for you to decide.

[4] The circumstances of this offence were that you were noted as being out of bounds, breaking the rules of the institution. You were taken from the gym upon instructions of the keeper to be strip searched. You went into the strip search room. As Dion Kearley, the corrections officer, was standing near you with corrections officer Joyce behind him, you moved into his personal space and he put his hands up. No violence from them whatsoever. Just part of a routine strip search as per the institution rules, and what did you do? You sucker punched him, not once but twice. A struggle ensued. Corrections officer Kearley, as a result of that struggle and those first two punches, had a serious injury to his face where bones were broken, requiring surgery, moving pieces of the bones that had been crushed in his face. He also hurt his back. He had to have an additional surgery. He hasn't been able to return to work since October of 2006.

[5] The other officer, Mark Joyce, he was struck at least twice during the ensuing ruckus as he tried to subdue you. The incident didn't end with two punches, but there was a struggle. It involved not only corrections officer Kearley and corrections officer Joyce, but other officers were called in to assist in subduing you. There was blood everywhere. It was pretty well all blood from Dion Kearley.

[6] I watched in the videotape of you after the incident that was taken as the result of the use of force. You did just about everything you could to show how serious your injuries were. You were looking in the mirror eight, ten, twelve, fifteen times trying to see the little scratch that was on your eye, so everybody could see just how badly they treated you in apprehending you.

[7] To add insult to injury, Mr. Halsey, not only did you sucker punch corrections officer Kearley, but you were bragging about it as they were taking you from one area of the prison to the other, bragging to your prison buddies how you, and I'm quoting you as close as I can without going back to my notes, how you "punched that fat f...er" and you think you broke his nose. You were so proud of what you did, so proud that you caused him injuries.

[8] These officers have a job, and as said by Mr. Baxter, it's a job that many of us wouldn't want. They have to control a situation where there are a number of inmates in an institution, some of them very dangerous, and they have to enforce rules of that institution. They have, in many cases, wives and children. They just get a pay cheque. I don't expect that any of them sign on expecting to get beat up by the inmates. The inmates know or should know there are rules. They should, and I hope they do after they hear about this sentence, understand that there are consequences if you decide you're going to assault a corrections officer. Like I said, they are just there to do a job. When people like you decide that they're going to cause as much injury as they can by sucker punching or doing whatever else they want to do to prison guards, they better understand that there are consequences, and the consequences are going to be severe.

[9] In this case, I have to take into account not just the fact that you assaulted a peace officer, but the consequences in terms of the injury that you caused to this officer. I already noted you broke bones in his face. Although he didn't lose any sight or vision, we heard the expert here talk about how serious it was. The bones that were broken, had they damaged muscles around the eye, could have caused him to have double vision for the rest of his life. It didn't. You're lucky. We do

he had that dangerous operation around his eye and that he went for many weeks with a tube coming out of his nose to drain the sinus area, because the bones crushed right into the sinus cavity. In addition he had to undergo another operation because of a herniated disc in his back. It's a year and a half later and he's still not back to work. We didn't get a victim impact report from him, but we heard from him. We don't know how much more impact that has had in him and his family, in terms of the quality of life he enjoys or doesn't enjoy anymore. Mr. Halsey, what I did hear is enough to convince me that the injuries sustained by this individual, Dion Kearley, were very serious. I have to take into account the seriousness of those injuries in terms of the sentence that I impose.

[10] Like I said, when you left that room on the way to segregation where they were going to videotape your small cut, your small scrape, you wanted to be a hero to all your prison buddies; proclaiming to them just how good a sucker punch you delivered to this victim. Well Mr. Halsey, you're going to get a chance to go back to see your buddies in that institution, or some other institution, and explain to them just what it costs for an inmate to do what you did.

[11] You expressed regret to the officer in terms of what you did. I expect, however, as he endured the pain of both the face and back injuries and the operations, it's of small consequence to him. I have to wonder as well how much of that regret is as a result of the fact that you're facing an imminent prison sentence. Having said that, I give you the benefit of the doubt and say to you maybe the remorse is genuine.

[12] I take into account as well that there was no guilty plea in this offence. You are entitled to a trial, but in the absence of a guilty plea there is no mitigation. It doesn't add to your sentence, it's just there is nothing to take away.

[13] I consider all of those things I must consider pursuant to the provisions of the *Criminal Code*, take into account the age and circumstances of this offence. I take into account the common law. Both your counsel and Mr. Baxter referred to other cases. The sentences range from a number of months to a number of years. The *Rudderham* case, there was originally a three year imprisonment term. The sentence was reduced to two years. The age of the accused at that time was 23. You were 21. The accused referred to being drunk in *Rudderham* at the time of the assault. You weren't drunk in this case.

[14] In terms of whether you or not you should get credit because of the time you've served in prison already, Mr. Halsey, you would have been in prison in any event on the new charges. The fact you didn't apply for a bail hearing in the circumstances in this case, it didn't make any difference. You were going to be in prison on the new ones. In saying that, I take into account the reverse onus. I take into account the nature of the offences as described by the crown. You in jail, Mr. Halsey, and you were going to stay in prison on the new offences. The fact that you waived the right to a bail hearing on this offence, basically I'm satisfied was nothing more than a concession that there was no way you were getting out of prison.

[15] Mr. Halsey, on the offence of assault causing bodily harm, section 267(b) of the *Criminal Code*, I sentence you to 25 months in prison. For the offence 270(1), assaulting a peace officer, I sentence you to 25 months in prison. That's concurrent to the first. On the offence of assaulting Mark Joyce, I sentence you to a period of eight months in prison. That is also concurrent to the first two sentences. It takes into account that these incidents all occurred out of the same single event. In addition, Mr. Halsey, I impose a requirement upon you to provide a DNA sample. I'm not sure if the crown has an order prepared. Mr. Halsey, this is not to say there is no hope for you, in terms of you rehabilitating yourself. Others can't rehabilitate you. I simply say to you, you're running out of chances, and if you don't change your life drastically, and if you keep up with what you've been doing, you might as well get used to living in prison for the rest of your life, because that's where you're going to be.

[16] I might point out that although the crown referred to subsequent charges, they in no way impact on the sentence that I imposed here today. Simply I think the crown offered them up in terms of context as to why he would have been in prison in any event. I do not in any way increase his sentence because subsequent to these charges he was allegedly involved in other serious matters. I just want that clear on the record. He will be sentenced separately for those offences, if he is convicted.

J.