

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Stephen, 2008 NSSC 204

Date: 20080425

Docket: CR182971

Registry: Halifax

Between:

Her Majesty the Queen

and

Melanie Jane Stephen

Judge:

The Honourable Justice Felix A. Cacchione

Heard:

April 25, 2008, in Halifax, Nova Scotia

Written Decision:

June 26, 2008

Counsel:

Anne Marie Simmons, for the Crown
Kenneth Greer, for Ms. Stephen

By the Court:

[1] Before I begin my reasons for judgment, I reserve the right to edit these reasons for grammatical and citation purposes, but not to change the content.

[2] Melanie Jane Stephen was convicted by me after 32 days of trial. The court sat without a jury. The evidence presented established beyond a reasonable doubt that over the period covered by the indictment she and her husband, Michael Patriquen had \$272,807.00 which came from Patriquen's drug dealing activities.

[3] The nature of her relationship with Michael Patriquen was made clear over the course of this trial. My reasons of February 1, 2008 set out the details of that relationship.

[4] Ms. Stephen's marriage to Patriquen can only be characterized as highly dysfunctional from the outset. The world she lived in was one clouded with deceit, substance abuse, paranoia and violence. It was also a world which provided Ms. Stephen a family and certain material comforts. Ms. Stephen was, throughout her marriage to Mr. Patriquen, a hard working and supportive spouse. Her work ethic is admirable. She was a successful salesperson whose work required her to be away from the family home and her family for weeks at a time. She took great pride in her work, her appearance, the appearance of her home and most importantly her family.

[5] She knew that she had married an independent and intelligent person who also happened to be a drug dealer. She initially held the hope that he would become a legitimate provider. However, when it was evident that Mr. Patriquen would not change his ways, she willfully blinded herself to the fact that her lifestyle was in part attributable to Patriquen's illegal activities. She was aware of what her husband was doing and justified to herself benefiting from his illegal source of funds as her entitlement for having to live with Patriquen, his temperament, his substance abuse, his friends and his activities. She chose to ignore what he was doing and focussed instead on her legitimate employment and source of funds. She truly believed that by having her own legitimate income, paying her taxes, that she could not be implicated in Patriquen's misdeeds or legal difficulties.

[6] She also used alcohol as a means of coping with the stress brought about by living with someone who supported himself and his family by illegal means. Patriquen also used alcohol. His drinking was a constant source of friction for Ms. Stephen.

[7] The relationship of these two persons can only be described as being one that was mutually abusive. The abuse was verbal, emotional and at times physical. Ms. Stephen was a battered women. She was physically abused during her marriage to Patriquen. The most serious abuse inflicted by Patriquen on Ms. Stephen occurred early on in their relationship. The physical violence, however, did de-escalate in nature, frequency and severity during the course of her marriage. However, the verbal and emotional abuse continued. At times Ms. Stephen responded to this in kind. In some ways the marriage which was painted or described through the evidence was that of two people going their separate ways while living under the same roof. They used each other when necessary, but the rest of the time they simply lived in their own different worlds.

[8] Mr. Patriquen would take off when he wanted to or had to. He looked after his business and his interests while Ms. Stephen looked after hers. Ms. Stephen was aware that many of the things she enjoyed and possessed were made possible by Patriquen's illegal activities. She, however, as I said previously willfully blinded herself to how she came to possess those things.

[9] When threatened by the police raid on her residence and the charges brought against her husband, threatened with the potential loss of some of the things which made her world enjoyable, she reacted by agreeing to a plan which Patriquen devised. The house would be re-financed and put in her name alone. Ms. Stephen believed that because she had her own income and she paid her taxes that she could not be tainted by the accusations against Patriquen and their repercussions. She wanted to save what little was left of her crumbling world, that is her home. She had worked hard to accumulate what she had, and what had brought her some measure of joy. Unfortunately her actions amounted to criminal offences.

[10] Ms. Stephen continued her relationship with Patriquen for six years after the home was raided and the charges were laid. The marriage became progressively more dysfunctional. The substance abuse increased with the increase in stress brought about by their legal difficulties. It was not until an incident in June of

2006 that Ms. Stephen realized that she had been married to someone who used and abused her. She left the marriage and has been on her own since then.

[11] She has made strides in dealing with life on her own. The past few years have not been easy ones for her. She has faced protracted matrimonial, criminal and civil proceedings. She has been forced to live in a place other than the house she loved so much, while Patriquen remains in that home, despite a court order granting her possession of the matrimonial home. She has been estranged from her children. She has suffered financially as a result of being charged with these offences. The successful and profitable business career she had, which she enjoyed so much and which gave her some degree of self-esteem, was terminated when search warrants were executed on her employer's offices. She has had to live throughout these times with the anxiety and stress of a lengthy criminal trial. There has been a public airing of her family's lifestyle and dysfunction.

[12] Ms. Stephen, as I indicated, was abused physically and verbally. The route taken by her counsel in defending these charges was to raise the defence of duress. Even though this defence was not successful at trial its preparation did have some positive affects on Ms. Stephen. As a result of her contact with Mary Haylock while preparing her defence she gained insight into her life, her behaviour and her relationships. She appears as well to have come to grips with the substance abuse that clouded her in the past. The stigma and embarrassment to Ms. Stephen has been great. The present offences were not motivated, on Ms. Stephen's part, by a desire to make money without having to work for it. As stated, she was employed full-time. She, however, was lulled into living a lifestyle that was beyond her legitimate means. She willfully blinded herself to the illegality of her actions and those of Patriquen. The resultant consequences of this have been great for Ms. Stephen. She has lost her employment, her home and her family.

[13] Courts across the country have stated that ordinarily money laundering offences will attract a custodial sentence, usually in the range of one to three years and that the main consideration in dealing with such offences is that of general deterrence.

[14] Mr. Patriquen for his part in these offences, which was more substantial than that of Ms. Stephen, was given a three year custodial sentence concurrent to the six years he was serving for the substantive drug offences. He was also fined \$259,427.00 in lieu of forfeiture. That fine has yet to be paid.

[15] The principles of sentencing are set out in ss. 718-718.2. They have been referred to by counsel. I am well aware of them. I am considering them, as I always do, in arriving at a fit and proper sentence. As indicated in s.718 the fundamental purpose of sentencing is to contribute along with crime prevention initiatives to respect for the law and maintenance of a just, peaceful and safe society by imposing sanctions that have one or more of the following objectives. Denunciation is the first objective set out in s.718. It is one which must be addressed by this Court. Deterrence to the offender, better known as specific deterrence.

[16] In the present case I am satisfied given what Ms. Stephen has gone through that she has been specifically deterred and there is no need for specific deterrence.

[17] The other consideration is that of general deterrence. That is, deterring other persons from committing similar offences. To separate offenders from society where necessary and rehabilitation is also to be considered.

[18] None of the aggravating factors listed in s.718.2 are applicable in the present case. A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. I am mindful that where consecutive sentences are imposed the combined sentence should not be unduly long, that an offender should not be deprived of his or her liberty if less restrictive sanctions may be appropriate in the circumstances.

[19] I am also mindful of the provisions contained in s.10 of the *Controlled Drugs and Substances Act*. Those provisions in fact mirror the ones contained in s.718 and 718.2. I should say that none of the aggravating factors listed in s.10 of the *CDSA* are applicable to the present situation.

[20] Our Court of Appeal in the case of *The Queen and Parker*, referred to the comments of Chief Justice MacKinnon in the *Grady* case, and I quote:

It would be grave mistake, it appears to me, to follow rigid rules for determining the type and length of sentence in order to secure a measure of uniformity. For almost invariably different circumstances are present in the case of each offender. There is not only the offence committed but the method and manner of committing, the presence or absence of remorse. The age and circumstances of

the offender and many other related factors. For those reasons it may appear at times that lesser sentences are given for more serious offences and vice versa. But the court must consider each individual case on its own merits even if different factors involved are not apparent to those who know only of the offence charged and the penalty imposed.

[21] The presentence report is, in my view, a positive one. Ms. Stephen is 52 years of age. She has a Grade 12 education, separated with two children. She was convicted by this Court of offences under ss. 8.2 and 9.2 of the *Controlled Drugs and Substances Act*. Both of them carrying maximum penalties of 10 years incarceration. She has one prior unrelated *Criminal Code* offence which is so dated that it is not necessary to consider. She was one of three children. Her father died when she was 10 years old. This, as evidenced through her testimony, affected her greatly. It would appear as well from the evidence, not only the comments in the presentence report, that both parents were weekend drinkers. However, her mother's alcohol consumption increased after her father's death.

[22] Ms. Stephen was abused, more so emotionally I would say than physically by her mother, although there may have been some minor instances of physical abuse. She married at age 27. The marriage, as I have said, was dysfunctional and abusive. She left that marriage in 2006. She has not had contact with her children since her separation except for, I am told not only through her presentence report but by her counsel, that she has had recent electronic communication with her daughter.

[23] The presentence report notes that apart from her formal education she has completed an esthetician and electrolysis course in 1975. She has been employed consistently throughout her adult life. She is a successful salesperson. She was a regional sales manager and she worked hard at that employment. The report notes that her gross annual income is approximately \$70,000.00. Her counsel indicates and has filed with the court documentation showing that her indebtedness amounts to over \$80,000.00 presently. She is awaiting a surgical procedure. She has been on antidepressants and sleep medication since 2006 and she has continued counselling, not only with her family physician but also with a psycho therapist, Ms. Haylock.

[24] Dr. Aloysius, the family physician, describes her in a letter dated February 25, 2008 as "her mood is not good and her sleep is not good.". He recommends

continued pharmacological treatment as well as psychological therapy. Despite her limited financial resources Ms. Stephen paid for her own counselling sessions from May 2007 to February 2008. Ms. Haylock described her in Court as having symptoms similar to battered woman syndrome, although she did state that there was no official diagnosis. It is clear, not only from the presentence report but comments made by Ms. Stephen during the course of the trial, that she was at the time of these offences using alcohol as a coping mechanism when under stress. She does not consider her use of alcohol to be an addiction.

[25] Ms. Haylock does believe that she would benefit from further counselling so that she can get on with her life. Ms. Stephen acknowledged heavy alcohol usage, particularly in the last years of her relationship with Mr. Patriquen. Ms. Stephen advised the probation officer that she attempted suicide on two occasions. The most recent occurring when convictions were entered. She is described by a friend as a person with a lot of passion, a good mother, a real go-getter. She was also described, and I have no qualms in accepting, that she is hardworking, a great housekeeper and someone who loves her children.

[26] Letters provided by her counsel describe her as organized, thoughtful, a good person who works hard. Theresa Gilbert, the paternal grandmother of Ms. Stephen's granddaughter states that she is a decent human being who if given a chance can be an asset to the community. She is dedicated, outgoing, kind-hearted and helpful.

[27] I was impressed by the letter written by the former Executive Assistant to the Vice President of Sales and Marketing for Triple C Inc., Ms. Stephen's employer for, I believe it was nine or 10 years. She described Ms. Stephen as extremely competent, organized and efficient. She had excellent rapport with her customers. A letter from, I believe it is Ms. MacIsaac, refers to Ms. Stephen staying in her dysfunctional family because of her religious upbringing.

[28] The probation officer who prepared the report found that she appeared to answer questions in a genuine manner. Ms. Stephen related that she would never have involved herself in these offences if she had known she could go to jail. She also stated that she did not leave her husband because she had no where to go. Ms. Stephen expressed extreme remorse for her actions and of course wished that she could do many things over in her life. Ms. Stephen has indicated a willingness to pay restitution or to performing community service. Her counsel requests a

discharge either conditional or absolute. I believe conditional, I should say, because her work requires that she has the ability to travel to the United States. I accept Ms. Stephen's expression of remorse and her comments earlier this afternoon.

[29] This is one of the more difficult sentencings I have had to do in the time that I have been on the Bench. It is difficult for several reasons. Ms. Stephen is a broken woman. That was obvious throughout the course of this trial. She was abused and it would appear that Mr. Patriquen is continuing the abuse, although in different ways; that is through legal proceedings. It would be in my view unfair to kick someone when they are down.

[30] I am mindful of the authorities. I recognize the seriousness of these offences and I recognize that they must be denounced. However, the Crown's submission that these offences and the circumstances of this offender require a custodial term in a federal institution is not one which I accept. There must be denunciation and there must be deterrence. As I have said, Ms. Stephen, I am satisfied has been deterred. The question is the need for general deterrence, and there is a need for general deterrence.

[31] The Crown in its sentencing remarks described the offences and the planning and deliberation involved as sophisticated. There was no question of the planning and deliberation. Although I cannot say that it was sophisticated.

[32] Ms. Stephen, despite the fact that she has been down, has continued to work and to try to better herself. She certainly has had a lot on her plate. Counsel for Ms. Stephen asks that this Court consider discharging her on conditions so that she would not have a criminal record. The test is well known. It is set out in *Fallowfield* and refers to whether a discharge would be in the best interests of the accused and not contrary to the public interest. I am satisfied that it certainly would be in Ms. Stephen's best interests. However, I am not satisfied based on the evidence before me that it would not be contrary to the public interest to discharge her.

[33] Accordingly the Court will impose the following sentence. Ms. Stephen, with respect to the first count on this indictment I am sentencing you to one day in jail considered served by your attendance here today. There will be a fine as well in the amount of \$5,000.00 or in default of payment five months in a local

correctional facility. Given your present financial circumstances I will allow you until April 25, 2011 to pay that fine.

[34] With respect to the second count on this indictment which is in my view a distinct and separate offence, the elements are different and there is, although some limited nexus in time, it is not one which would merit a concurrent sentence. Accordingly, there will be a consecutive sentence on the second count.

[35] The authorities have set out that the range for this type of offence, money laundering, is one of a custodial sentence for a term of one to three years. The Crown in submitting a range of two to three years incarceration did acknowledge however that the case borders on the conditional sentence range. In the present case considering all of the circumstances of the offence, the circumstances of the offender at the time it was committed, I am satisfied that an appropriate sentence would be that of 18 months incarceration. I am satisfied, however, that serving the sentence in the community would not endanger the safety of the community. Such a sentence would, in my view, be consistent with the fundamental purpose and principles of sentencing.

[36] Accordingly I sentence Ms. Stephen to 18 months incarceration to be served in the community. The first six months she will be under house arrest. She will be permitted to leave her residence to attend employment and for medical emergencies only. During the second six months she will be under a curfew from 11:00 p.m. to 6:00 a.m. daily. The final six months will have no curfew nor house arrest. The conditional sentence will be followed by a probationary term for three years.

[37] The terms of the probation are as follows: She will be required to report to a probation officer within seven days within the completion of her conditional sentence, and at such other times as the probation officer directs. She is not to take or consume a controlled substance as defined in the *CDSA* except in accordance with a medical prescription. She is to complete 25 hours of community service work as directed by the probation officer before October 25, 2010. She will attend for mental health assessment and counselling as directed by her probation officer. She will attend, as well, for a substance abuse assessment and counselling if directed.

[38] I am a bit all over the map here but just let me go back to the fine. I am waiving the victim surcharge, given her present circumstances.

[39] Part of the conditional sentence order will be that she not take or consume controlled substances unless prescribed by a physician. That she participate in the continued counselling with Mary Haylock. That she attend, as well, for mental health assessment. That she attend for an assessment and counselling or program as directed by her supervisor, and she is to participate and cooperate with any assessment, counselling, or program directed by her supervisor.

[40] I had listed the exceptions to the house arrest and curfew as being attendance for employment and dealing with medical emergencies. I will add to that when attending a scheduled appointment with her counsel, her supervisor or probation officer and travelling to and from that appointment by a direct route. As well, when attending court at a scheduled appearance or under subpoena, again travelling to and from by a direct route. When attending counselling appointments, treatment programs, she is permitted out. And I will add when making application for employment or attending job interviews, Mondays to Fridays between 9:00 a.m. and 5:00 p.m.

[41] Ms. Stephen will be allowed out of her residence for no more than six hours per week approved in advance by her supervisor for the purpose of attending her personal needs.

[42] I am not satisfied that I do have the authority, even with consent, to order that she sign a quit claim deed. That matter will have to be dealt with by other courts.

[43] She will attend at the offices of the conditional sentence supervisor on or before April 30, 2008 to meet and get directions from that supervisor.

[44] The statutory conditions form part of the order.

[45] Ms. Stephen I trust that you have learned a lesson. I wish you the best of luck. Take care of yourself. Thank you counsel.

Cacchione, J.