

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Doyle*, 2008 NSSC 380

Date: 20081204

Docket: CRS 292331

Registry: Halifax

Between:

Her Majesty The Queen

and

Arthur Doyle

S E N T E N C I N G

Judge: Justice M. Heather Robertson

Jury Trial

Heard: September 29 and 30, October 1, 2, and 3, 2008, in
Sydney, Nova Scotia

Sentencing: December 4, 2008, in Sydney, Nova Scotia

Written Decision: December 16, 2008 (**Orally: December 4, 2008**)

Counsel: Alonzo Wright, for the Crown
Darren Morgan, for the Accused

Robertson, J.: (Orally)

THE COURT: Would Mr. Arthur Doyle please stand? Is there anything you would like to say to the Court before I commence sentencing you Mr. Doyle?

MR. DOYLE: No, Ma'am

THE COURT: No. All right, thank you.

[1] Mr. Doyle you have been charged and found guilty of the commission of the following offences of breaking and entry into the home of Mr. Stephen Drake Sr. located at 319 Drake Street in New Waterford, Nova Scotia and of theft pursuant to s. 334(b) of the *Criminal Code* and for aiding and abetting and counselling Mr. Jeffrey Wade MacIssac in the commission of these offences.

[2] Jeffrey Wade MacIssac, your accomplice in this break and enter and theft, pled guilty to these charges and is currently serving a prison term of six years.

[3] A jury of your peers considered all of the evidence before them at trial. They were not satisfied beyond a reasonable doubt that you were the actual intruder in the home of Mr. Stephen Drake Sr. on April 23, 2007. There were no lights on in this residence and Mr. Drake's identification of you was based on his voice recognition of your distinctive voice.

[4] You will recall the evidence of Mr. Drake Sr. that he knew who the intruder was and had known the voice all his life. He said "Artie why are you doing this to me?" and the intruder replied "I'm not Artie."

[5] In the ensuing struggle over a toolbox in which Mr. Drake kept a supply of cash he was dragged through a bedroom door out into the livingroom and received a six-inch gash to his arm that took weeks to heal and today remains a serious scar, a memory of the events of that night.

[6] However, the jury had before them the evidence of Geoffrey Wade MacIsaac who said that he was the intruder and committed the theft that night. The jury did not find beyond a reasonable doubt that you were the intruder in Mr. Drake's home.

[7] The jury was however satisfied on the evidence that you were an active participant in this break and enter and theft. They did not accept Mr. MacIssac's evidence that you were at home in bed and unaware of his activities but rather you were an active participant aiding and abetting, counselling and helping Mr. MacIsaac plan this home invasion.

[8] This was a serious premeditated offence that ended up in an act of violence.

[9] I have the case law that has been presented to me by counsel for the Crown and counsel for you Mr. Doyle. From the defence I was presented with the cases *R. v. Grady*, 1971 CarswellNS 125 and *R. v. Young*, 2007 CarswellNS 188. These cases addressed the court's responsibility to consider both the issue of deterrence, sending a signal to the community and other offenders that a crime of this sort will not be tolerated, while also cautioning the court to be tempered in its deliberations and to consider the potential of the accused for rehabilitation and restoration to the community.

[10] The Crown has submitted a series of cases that reflect society's abhorrence of crimes of this sort, a home invasion against a vulnerable old man who now lives in fear. The cases urge the Court to consider the aggravating circumstances which they suggest outweigh the ameliorating factors. In *R. v. Harris*, [2000] N.S. J. No. 9, there was a sentence of 15 years but I note that case reflected a high degree of violence against an elderly couple. *R. v. Wright*, 2006 CarswellOnt 7721, notes that a home invasion has been considered by various Courts of Appeal and they consistently imposed sentences that exceed five to eight-year ranges saying that ranges are not fixed in law, unlike binding legal principles, but run the gamut of sentences as low as four years and as high as thirteen years. There is a suggestion that higher sentences should be reserved for more serious situations of confinement and serious personal injury. *R. v. Brace*, 2008 CarswellYukon 61, was on the low end of the scale and a sentence of three years was imposed. *R. v. Matwi*, 1996 CarswellAlta 148, I note that the accused was an aboriginal offender. The starting point for a home invasion the court suggested was eight years. *R. v. Moore*, 2008 CarswellBC 673, the global sentence of eight years was imposed for a home invasion. *R. v. O'Keefe*, 2007 CarswellNfld 284, deals with the disparity of sentencing between a co-accused in a home invasion, Mr. O'Keefe was then sentenced to eight years, but the Court of Appeal reduced his sentence to six years. *R. v. Vickers*, 2007 CarswellBC 2764, Mr. Vickers received a ten-year sentence and

the court noted that while rehabilitation cannot be overlooked, the accused was not a good candidate for rehabilitation in that case. *R. v. Fraser*, 2007 CarswellSask 593, the court dealt with the aggravating factors of a home invasion under section 348.1 of the *Criminal Code* and they spoke to a range of seven to ten years recognizing the vulnerability of victims and in consideration of the degree of violence involved in the crime.

[11] So, let me first deal with the Victim Impact Statement. We agree that this is an abhorrent crime that offends community standards. Mr. Stephen Drake Sr. is a 73-old man that before this time lived happily in his community with his friends and his family on a lovely little street where everybody felt safe and he treated you as his family, “Artie.” But his home was invaded on that night and as a consequence he placed steel bars on his windows. He hired a security company to install dead bolts on his doors. Every night he is anxious when he goes to bed and his family calls him to see if he is locked in. He lives in fear. He says you have “driven a stake into the heart of our neighbourhood” and he misses visiting with your sister at Christmas time. Your mother and father do not speak with him. You have created a terrible situation in his life, an old man who is alone. He says “You stole more than money when you hatched the plan to invade my home. You stole my sense of security. You stole my independence. You stole life long friendships. You changed my life forever.” I hope these words of Mr. Drake Sr. will haunt you for the years of incarceration that I am about to impose on you.

[12] As I have said, home invasions are abhorrent acts often in the face of the desperation that accompanies drug addiction. Deterrence is an important aspect of consideration in sentencing in home invasions. We have to send a message to other offenders that the community will not tolerate this behaviour. Now, I have kept in mind the sentencing provisions of s.718 of the *Criminal Code* and I do not need to recite them for you today. Mr. Doyle you have a previous criminal record, but I am also mindful of your possible rehabilitation. You are 47-years of age; I know you regret these acts and you have been attempting to deal with your addiction. I know that you checked into a treatment program and paid for it yourself.

[13] I am not certain of the possibility of you being totally rehabilitated but I am hopeful that you can be restored as a useful member of the community. Your pre-sentence report is basically a good report. You are a good man, not prone to violence, but you have just been caught in this serious never-ending cycle of drug addiction and the crime that can accompany it. I am also mindful of the violence in

this case although it is a shocking reminder to Mr. Drake Sr. of these events, is on the lower end of the scale, with respect to the cases that the Crown placed before me. I also considered the co-accused sentence after he pled guilty to these offences. I have considered that you have been in custody for two months and you will therefore be credited with four months time served.

[14] So now I impose the following sentence upon you. I accept the Crown's recommendation that on the charge of theft you will be sentenced to four months plus a day to be served concurrently with the sentence for break and entry. And this time served four months will be credited to that offence under s. 334(I) of the *Criminal Code*. As to the sentence for break and entry, I am sentencing you to six years incarceration in a federal penitentiary where it is my hope you will avail yourself of counselling and treatment programs and re-enter society as a useful and good citizen at the end of this term. I will be issuing the DNA Order and Prohibition against weapons as requested by the Crown. Mr. Wright, you will forward those orders to me for my signature.

Justice M. Heather Robertson