

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Humphreys*, 2009 NSSC 277

Date: 20090910

Docket: CRH 311288

Registry: Halifax

Between:

Her Majesty The Queen

v.

Kenneth James Humphreys

Judge: The Honourable Justice M. Heather Robertson

Heard: September 10, 2009, in Halifax, Nova Scotia

Oral Decision: September 10, 2009 (**Sentencing**)

Written Release: September 22, 2009

Counsel: Michelle James and Terri Lipton, for the Crown
Kevin Burke, Q.C., for the Defence

Robertson, J.: (Orally)

[1] Thank you counsel for your submissions to the Court. As you have pointed out, you have presented to the Court a joint recommendation and in accepting the joint recommendation I have regard for the purpose and principles of sentencing as articulated in s. 718 of the *Criminal Code*:

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.

R.S., 1985, c. C-46, s. 718; R.S., 1985, c. 27 (1st Supp.), s. 155; 1995, c. 22, s. 6.

[2] I have also considered s. 718.1 of the *Criminal Code*, the fundamental principle that:

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

R.S., 1985, c. 27 (1st Supp.), s. 156; 1995, c. 22, s. 6.

[3] As well, I have considered the other sentencing principles of s. 718.2:

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, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor, (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or

(v) evidence that the offence was a terrorism offence shall be deemed to be aggravating circumstances;

(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.

1995, c. 22, s. 6; 1997, c. 23, s. 17; 2000, c. 12, s. 95; 2001, c. 32, s. 44(F), c. 41, s. 20; 2005, c. 32, s. 25.

[4] I have read and considered the pre-sentence report which outlines the very sad life of Kenneth James Humphreys in his failed attempt to deal with alcohol addiction. I have obviously considered the submissions of counsel today and the case law that counsel has placed before the Court.

[5] I accept the joint recommendation. This sentence cannot restore a life that has been taken. It cannot take away the pain that has been suffered, but it is in the appropriate range of sentences for crimes of this nature, indeed, on the high end. It is not an unfit sentence or an unreasonable sentence and it does not in my view bring the administration of justice into disrepute or offend the public interest. Mr. Humphreys you heard from the victims today. Their victim impact statements are compelling and tragic in their pathos. These are the family and love ones of Gregory Adam Fost. His death was tragic and senseless all because you were unable to overcome a lifetime of outrageous alcohol abuse and addiction.

[6] Your defence counsel properly refers to your addiction as a sickness and indeed I note it is a sickness that has plagued even some of the victims of your crime who were present that day. You are going to live with the knowledge that you took Mr. Fost's life and you are going to have to live with the hurt you observed today from so many people who loved and cared for him. Perhaps now you will deal with the addiction that brings you here today.

[7] And I say to all the victims of this crime, some of you expressed this eloquently, the hope that Mr. Humphreys redeems himself by his future conduct in his life and that he can become a rehabilitated offender and this is indeed an important aspect of the principles of sentencing.

[8] Kenneth James Humphreys, I sentence you to 10 years on the charge of manslaughter with concurrent sentences of 6 years and 2 years respectively on the remaining counts of aggravated assault and unlawful confinement.

[9] Mr. Humphreys has served 16-1/2 months in pre-trial custody and as is the usual practice Mr. Humphreys will receive a 2 for 1 credit that is to say, 33 months credit for time now served and that will be deducted from this 10 years sentence. So, you will now serve a total of 7 years 3 months incarceration in a federal institution for the offences to which you have plead guilty.

[10] That concludes my sentencing.

MS. JAMES: Just one other thing that I neglected to address in my submissions. It would be appropriate given the conviction and the sentence on the first two counts, the manslaughter and the aggravated assault to issue the corollary orders for DNA sample from Mr. Humphreys as well as a firearms and weapons' prohibition, I would submit.

THE COURT: Mr. Burke anything to say there?

MR. BURKE: No, I haven't

THE COURT: That indeed is quite acceptable and appropriate. So those additional conditions will apply.

MS. JAMES: I'll draft those orders and have them submitted to the Court, My Lady.

THE COURT: Thank you very much.

Justice M. Heather Robertson