

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Ginnish, 2008 NSSC 266

Date: 20080509

Docket: SN CRS 285725

Registry: Sydney

Between:

Her Majesty the Queen

v.

Albert Charles Ginnish

Decision on Sentence

Judge: The Honourable Justice Frank Edwards

Heard: May 9, 2008, in Sydney, Nova Scotia

Written Decision: September 10, 2008

Counsel: Darcy MacPherson, for the Crown
Darlene MacRury, for the Defence

By the Court:

[1] Mr. Ginnish was found guilty on a six-count Indictment following a trial before judge alone. I have already reviewed the salient facts in my decision at trial. I have explained why I have rejected his alibi evidence in relation to the February 24, 2006 incident. I went on to indicate that as to the whole of the evidence of Mr. Ginnish, I did not believe it, nor did what he said raise a reasonable doubt in my mind. This included his evidence of denial regarding the December 2005 incident. I have no doubt but that he assaulted Ms. Paul on each occasion, I therefore found him guilty of counts two and four in the Indictment. As well, I was satisfied beyond a reasonable doubt that on each occasion he did knowingly utter a threat to kill Ms. Paul as she had recounted in her evidence. I therefore found him guilty on counts one and five in the Indictment. Further it was clear from the evidence and not disputed that on each occasion he was subject to a probation order and therefore bound to keep the peace and be of good behaviour. By committing the assaults, he breached that condition both in December of 2005 and February of 2006. I therefore found him guilty on counts three and six of the Indictment.

[2] By way of preliminary comment I am tempted, Mr. Ginnish, to follow the Crown's recommendation and send you to a federal institution. But for reasons

that I will explain, I am not going to do that. But you must clearly understand, sir, that given your record, that if you were to commit another offence after serving your sentence on this one, you undoubtedly will be going to a federal institution and you will be going there for an extended period of time.

[3] I am going to let you serve the sentence that I am going to impose today in the local institution mainly because I think the best hope for you is to have access to the community resources and support which I know that are there for the asking for you from the Membertou community. It is really up to you, Mr. Ginnish. You can use this sentence as an opportunity to turn your life around. I have had the advantage of observing you through the trial while you were giving your testimony. You are not a stupid person. Surely, by now, you have reached the age where if you reflect on your record, you would realize you've got to turn your life around or you have got a miserable hopeless existence ahead of you and, you are going to spend the majority of your life in jail. I do not know what else I could say to impress that upon you, probably nothing. It is for you to make the decisions in your life now.

[4] In coming to my decision regarding sentence, I have taken into account the fundamental purpose and principles of sentencing which are set out in Section 718 of the Criminal Code, and they are: (a) to denounce unlawful conduct; and certainly violent behaviour such as you have been found guilty of, merit denunciation. (b) to deter you and other persons from committing offences. Hopefully this sentence will make you think before you decide to utter threats or act with your fists in the future and will send a message to others who might be inclined to solve their problems that way to think twice. (c) to separate offenders from society, where necessary. (d) to assist in rehabilitating offenders. Given the fact that you are still a young man, you are 28 years old. You could still have a good life but as I said, that is really up to you. (e) to provide reparations for harm done to victims, and (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[5] I know that you are not acknowledging your involvement in this, at least not publically, but I think you know as I know that you did commit these assaults and that you have to take stock of that.

[6] I am also cognizant of Section 218.2(3) of the Criminal Code which says that I am obliged to consider all available sanctions other than imprisonment that are reasonable in the circumstances with particular attention to the circumstances of aboriginal offenders, and I must say that it was taking that section in particular into consideration which dissuaded me, more than anything else from sending you to a federal penitentiary. But as I noted during the submissions of Counsel, your previous longest incarceration, well you did 45 days open custody, but your previous maximum as an adult was 30 days secure custody as a result of a conviction in February of 2002.

Section 733.1 CCC breach of probation sentenced 20 July 2007, 1 day custody, probation 1 year concurrent;

Section 145(3) CCC fail to comply with conditions sentenced 20 July 2007, 1 day custody, probation 1 year concurrent;

Section 145(3) CCC fail to comply with condition sentenced 09 July 2007, custody - secure 15 days concurrent;

Section 266 CCC assault sentenced 24 Oct 2005, probation 2 years;

Section 267(a) CCC assault with a weapon causing bodily harm sentenced 24 Oct 2005, 2 years probation;

Section 145(3) CCC breach undertaking sentenced 27 May 2003, probation 1 year suspended;

Section 145(3) CCC breach of undertaking sentenced 27 May 2003, probation 1 year suspended;

Section 264.1(1)(A) CCC uttering threats sentenced 31 Oct 2002, custody, probation, conditional 3 months concurrent;

Section 264.1(1)(A) CCC uttering threats sentenced 31 Oct 2002, custody, probation, conditional 3 months concurrent;

Section 264.1(1)(A) CCC uttering threats sentenced 31 Oct 2002, custody, probation, conditional 3 months concurrent;

Section 145(3) CCC breach of undertaking sentenced 27 Feb 2002, custody secure 30 days concurrent.

[7] You have compiled an extensive record that the lawyers have referred to. I will not read it in detail now but it will form part of the written version of my remarks here today. But it is punctuated by both assaults, uttering threats and failing to comply with conditions of probation or recognizance. Most concerning of course is that in light of this case where you have been convicted of assaulting a female person who was much smaller and less physically capable than you, and who at the time was intoxicated herself and therefore virtually defenceless. You have a prior record of assaulting a female and the Crown referred to that in their submission and that would be the assaults in June of 2005.

[8] I have carefully read the pre-sentence report and it confirms what is apparent from your record that you have difficulties with both anger management and substance abuse, in particular alcohol. And it seems the two go hand in hand. You

were drinking at the time of the commission of these offences and that seems to have some effect on your ability to control your temper.

[9] I have read carefully Ms. Paul's victim impact statement and she recounts that she still suffers both physically and psychologically as a result of the February 2006 assault on her. I will just quote a brief part of it:

“They physical injuries I received as a result of Al Ginnish beating me up and tried to kill me are I received a broken nose as a result. I have a big bump on my nose. I still have problems with my nose. I have a hard time breathing out of my nose. At times I have sinus problems.”

[10] She goes on to say how psychologically it has caused her a lot of anxiety and causes her to be fearful at times with males.

[11] I have perused the case law that have been provided to me by counsel and as I believe each of them have effectively acknowledged no two cases are the same and each case has to be decided with respect to its particular circumstances.

[12] Therefore on count number four, that you did on or about the 24th of February, 2006, did in committing an assault on Tina Paul cause bodily harm to her contrary to the Criminal Code, I sentence you to one year in a provincial jail. And

count number five, that you did on the same date, knowingly utter a threat to Tina Paul to cause her death, I sentence you to six months concurrent; and on count number six that you did while bound by a probation order made by provincial court failed without reasonable excuse to comply with such order, a further six months concurrent to the sentence imposed in count number four.

[13] With respect to count number two, that between the first day of December, 2005, and the 31st day of December, 2005, did commit an assault on Tina Paul, contrary to the Criminal Code, I sentence you to four months consecutive to the one year sentence that I imposed for count number four.

[14] Count number one, knowingly utter a threat on the 31st day of December, 2005, I sentence you to four months concurrent with the sentence in count number two. With respect to count number three, that you breached probation for the 2005 assault, four months concurrent. You have been on remand for two months so I will give you credit for four months. So your net sentence will be one year in a provincial jail. As I say, this is your last stop before you are looking at serious federal time.

[15] In addition when you are released from custody you will be subject to a further period of probation for a period of two years. Your track record in complying with conditions has been abysmal. That had better change because if it does not, you will no doubt be jailed for any breaches. You have come to the end of the line as far as consideration of non-custodial offences are concerned. So a condition of your probation will be that you abstain from alcohol; you are not to have alcoholic beverages, you are not to consume them or have them in your possession; and you are to take both grief counselling and anger management counselling as directed by your probation officer; and take any other counselling which is directed by your probation officer. There will be a no contact clause, direct or indirect with Tina Paul.

[16] Of course the statutory condition applies that you will at all times while on probation keep the peace and be of good behaviour. A DNA order and Firearms Prohibition Order for five years under Section 110. Apparently, according to his Counsel, firearms are not in his future.

[17] By way of conclusion, Mr. Ginnish, you are obviously an imposing figure physically. You are obviously very strong. If you assault somebody, particularly

somebody who is vulnerable, there is the risk that you could seriously injure or kill them. You have got to come to that realization. You've got to stop assaulting people.

J.