SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Stevens, 2010 NSSC 133

Date: 20100401
Docket: CR. No. 314200
Registry: Halifax

Between:

Her Majesty the Queen

-and-

Keith Gordon Stevens

Sentencing Decision

Judge: The Honourable Justice Robert W. Wright

Heard: April 1, 2010 in Halifax, Nova Scotia

Oral Decision: April 1, 2010

Written Decision: April 13, 2010

Counsel: Crown Counsel - Melanie Perry
Defence Counsel - Kevin Burke, Q.C.

Wright J. (Orally)

[1] On February 9, 2010 the accused Keith Gordon Stevens entered a plea of guilty to two counts of discharging a firearm with intent to wound or endanger life, contrary to s. 244(1) of the Criminal Code, one count of unauthorized possession of a firearm in a motor vehicle, contrary to s.94(1) and one count of breach of probation (for possessing a firearm), contrary s. 733.1(1)(a), all pursuant to a plea bargain negotiated with the Crown.

[2] The pleas to the two s.244 counts were accepted by the court in lieu of the two counts of attempted murder set out in the indictment, under the authority of s.606(4) of the Code. Sentencing was set over until today to give counsel time to obtain a pre-sentence report, to finalize a joint recommendation on sentencing, and to give the victims of the shootings an opportunity to provide a victim impact statement (which was ultimately declined).

[3] At the sentencing today, counsel presented an agreed statement of facts which reads as follows:

> In the early morning hours of 3 January 2009, the accused, Keith Stevens, along with his girlfriend, Jenna Hart, went to Big Leagues bar ("the bar") located at 4 Forest Hills Parkway in Cole Harbour, Nova Scotia. Shortly after arriving at the bar, Mr. Stevens got into an argument with some of the other bar patrons over a sexual relationship that Ms. Hart was allegedly having with one of those patrons. The argument culminated in Ms. Hart asking Mr. Stevens to leave the bar. Ms. Hart accompanied Mr. Stevens to his grey Pontiac Aveo in the parking lot in order to get her purse, which she had left in his vehicle. Ms. Hart then returned to the bar alone as she intended to remain after Mr. Stevens' departure.

Approximately 10-15 minutes later, Ms. Hart saw Mr. Stevens approach the bar on foot and stop on the sidewalk outside the entrance. Ms. Hart went outside to talk with Mr. Stevens. Mr. Stevens asked Ms. Hart to leave with him; Ms. Hart declined. Mr Stevens asked Ms. Hart if she thought what was happening was a joke. At that point, Mr. Stevens lifted up his shirt and showed Ms. Hart what she thought was a gun tucked inside the waist band of his pants. Ms. Hart left and went back inside the bar and Mr. Stevens returned to his vehicle.

The victim, Sean Cogswell, who was 23 at the time of this incident, also went to the bar that evening with some friends. At approximately 1:30 AM, Mr. Cogswell left the bar and along with two of his friends, Myles Langille and Jay MacIntyre, approached a grey Pontiac Aveo that was parked at the end of the bar's parking lot. This was Mr. Stevens' vehicle. Although neither Mr. Cogswell nor his friends had been involved in the argument that Mr. Stevens had in the bar earlier in the evening, they approached Mr. Stevens' vehicle to tell Mr. Stevens that he should leave the area as there were a number of people inside the bar who would likely try to beat him up if he was still around after the bar closed.

As Mr. Cogswell got within a few feet of the vehicle, Mr. Stevens put the car in motion and the vehicle began slowly rolling forward. Mr. Stevens indicates that at that point he felt threatened by Mr. Cogswell and his friends and assumed they were there to assault him. Mr. Stevens then pointed a hand gun out the driver's side window of his vehicle and fired approximately four shots at Mr. Cogswell, who was approaching the driver's side window, and at Mr. Langille, who was near the back driver's side of the vehicle. Mr. Stevens shot Mr. Cogswell in the neck. Mr. Langille and the other people who were in the parking lot at the time were able to run away. Mr. Stevens then drove his vehicle out of the parking lot. Mr. Cogswell was able to stumble up the parking lot almost to the entrance of the bar where he finally collapsed on the pavement.

Mr. Cogswell was taken to the QEII Health Centre, where he was placed on a respirator and into a drug induced coma. The bullet, which struck his vocal cords and collapsed one of his lungs, is still lodged in his shoulder blade and unable to be removed. After Mr. Cogswell was out of the coma he had a chest tube to keep his lung inflated and had a tracheostomy tube in his throat in order to breathe. He spent ten days in hospital. The shooting left Mr. Cogswell with a paralyzed vocal cord.

After Mr. Stevens left the parking lot, he abandoned his Pontiac Aveo on the Ross Road, near Highway #7 in Cole Harbour, Nova Scotia. Upon testing, gun shot residue was found inside the vehicle, including on the inside driver's side door.

> In the afternoon on 3 January 2010, Mr. Stevens telephoned Patricia Beakley, who was an old family friend of Mr. Stevens' father, asking if he could come over to her residence in Eastern Passage. Mr. Stevens indicated he was in trouble and said that he did not want to speak of it over the phone. At approximately 3 PM, Mr. Stevens arrived at Ms. Beakley's residence. Mr. Stevens told Ms. Beakley that the evening before he had shot someone in the Big Leagues' parking lot with a .22 calibre handgun. He asked Ms. Beakley for a drive to Montebello. Ms. Beakley refused to take Mr. Stevens to Montebello; however, she did drop him at a bus stop. On 4 January 2010, Ms. Beakley contacted the police and disclosed her conversation with Mr. Stevens.
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> On 5 January 2010, Mr. Stevens turned himself into police. At the time of the commission of these offences, Mr. Stevens was on a Probation Order dated 25 February 2008 compelling him to keep the peace and be of good behaviour and not to have in his possession any firearm, cross bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance or any other weapon as defined by the *Criminal Code*.
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> Since the shooting, Mr. Cogswell has had to have an injection of botox into his paralyzed vocal cord in order to move the paralyzed vocal cord next to his working vocal cord so he is able to speak. Mr. Cogswell will have to have an operation in order to put a piece of plastic in the tissue behind his paralyzed vocal cord as a permanent means of maintaining his ability to speak.

[4] The principles of sentencing are set out in ss. 718, 718.1 and 718.2 of the Criminal Code. I need not recite them at length for purposes of this decision. Suffice it to say that the courts in this country have stated on numerous occasions that the sentencing objectives to be emphasized for crimes of violence, particularly with the use of guns, are denunciation and deterrence, both general and specific. Those, of course, have to be balanced by the sentencing objective and prospects of rehabilitation.

[5] The offences committed here are very serious ones. Mr. Stevens made a very poor and reckless choice in resorting to the use of gun violence in the situation in which he found himself, and is fortunate that he is not facing a life

sentence for murder. The gravamen of these offences and the sentencing objectives of denunciation and deterrence must be adequately reflected in fixing a fit and proper sentence to be imposed.

[6] Under s.718.2 of the Code, the court is required to also take into account any aggravating or mitigating circumstances relating to the offence or the offender. Crown counsel in her submissions has pointed out three aggravating factors to be taken into consideration by the court, namely, the egregious nature of firing a handgun multiple times towards individuals in the parking lot of a public place, the seriousness of the injury inflicted upon Mr. Cogswell as above recited, and the fact that he was on probation at the time of committing the offence.

[7] Mr. Stevens' criminal record is of little import in this case where it consists only of one prior conviction for common assault in 2007, which was in a domestic setting. For that, he received a conditional discharge and probation, indicating that it was a relatively minor offence.

[8] There is little in the way of mitigating factors present in this case other than Mr. Stevens' acceptance of responsibility through his guilty pleas which eliminated the need for a trial and his remorse for his actions. These factors are reflected in his pre-sentence report which is generally positive about his prospects for rehabilitation. It tells that Mr. Stevens is presently age 25 (23 at the time of the offence), and is single with a four-year old son. He has a grade 11 education and was employed at an auto company prior to this offence.

[9] In his interview with the probation officer, Mr. Stevens described his background as having had a difficult upbringing after his mother left the family home when he was 3 years old and he felt generally mistreated by his father during his childhood. He also reported that he was diagnosed with Attention-deficit Hyperactivity Disorder as an adult, as well as depression, for which he takes medications and is being followed by the psychiatric department at Central Nova Correctional Facility. Mr. Stevens also continues to be a patient of Dr. Ilser, a psychologist, who has continued to treat him during his incarceration on remand for anger management.

[10] Both health care professionals in their interviews noted good progress being made by Mr. Stevens, both from a health point of view and a psychology point of view. Dr. Ilser sees Mr. Stevens as a person motivated to learn and having a lot of potential.

[11] His family members who were interviewed (his mother and aunt) were very supportive of him. They saw his actions to be very uncharacteristic and perhaps attributable to falling in with the wrong crowd. Both his family members and health professionals thought that Mr. Stevens would benefit from an education program. Presently, he is participating in the general Equivalency program at the correctional facility.

[12] In his interview, Mr. Stevens has accepted responsibility for his actions and has expressed remorse over them. He expressed to the probation officer an interest in bettering himself and that he just wants to be given a chance.

[13] Bearing all the foregoing in mind, I now turn to a consideration of the joint recommendation on sentencing presented by counsel today. It has the following three components:

1. A global term of imprisonment of six years on the two s. 244 offences (to be served concurrently), less credit for time served on remand on a 2 for 1 basis which translates into a reduction of 30 months;
2. A term of imprisonment of 12 months in respect of the s. 94(1) offence (to be served concurrently);
3. A term of imprisonment of 1 month in respect of the s.733.1(1)(a) offence, again to be served concurrently;
4. The issuance of an order authorizing the taking of DNA samples under the provisions of the Criminal Code;
5. A weapons prohibition order under s.109(2) of the Criminal Code.

[14] The obligations of a sentencing judge, when presented with a joint recommendation of counsel arising from a genuine plea bargain, were considered by the Nova Scotia Court of Appeal in **R. v. McIvor** [2003] N.S.J. No. 188. In essence, the sentencing judge is required to assess whether the joint recommendation on sentence is within an acceptable range (i.e., whether it is a fit sentence) and if it is, there must be sound reasons for departing from it.

[15] The minimum sentence for the s.244 offences is prescribed (in subsection 2) to be five years imprisonment in the case of a first offence, as is the situation here. The maximum sentence is prescribed to be 14 years imprisonment.

[16] The Crown has referred me to a half dozen cases which provide some measure of guidance on proper sentencing outcomes for s.244 offences which are the foremost offences committed here. Two of these cases were decided by the Alberta Court of Appeal in **R. v. Nguyen** [2009] A.J. No. 1009 and **R. v. Letourneau** [1996] A.J. No. 941. The other four cases are from Ontario and New Brunswick respectively and are cited as **R. v. Pocasangre** [2008] O.J. No. 3595, **R. v. Moreira** [2009] O.J. No. 1426, **R. v. M.D.R.** [1998] N.B.J. No. 160 and **R. v. MacKenzie** [2006] N.B.J. No. 88.

[17] I need not review these cases in detail for purposes of this decision. In summary, however, they reflect an overall range of four years (which predated the current minimum sentence provision) to nine years imprisonment for convictions of s.244 offences, depending on the circumstances of the offences committed and the offenders.

[18] All in all, I am satisfied that the joint recommendation presented here does fall within the acceptable range of sentencing outcomes, reflected by the case authorities above referred to. I therefore impose on Mr. Stevens the following sentence:

1. A global term of imprisonment of six years on the two s. 244 offences (to be served concurrently), less credit for time served on remand on a 2 for 1 basis which translates into a reduction of 30 months. In the result, Mr. Stevens is to serve another 42 months imprisonment from this date forward;
2. A term of imprisonment of 12 months in respect of the s. 94(1) offence (to be served concurrently);

3. A term of imprisonment of 1 month in respect of the s.733.1(1)(a) offence, again to be served concurrently;
4. The issuance of an order authorizing the taking of DNA samples under the provisions of the Criminal Code;
5. A weapons prohibition order under s.109(2) of the Criminal Code.

[19] I note in the pre-sentence report that a recommendation has been made that Mr. Stevens would benefit, during his incarceration, from an education program, an anger management program, substance abuse counselling and a parenting course. I encourage Mr. Stevens to take advantage of such programs to better himself for reintegration into society, which he has expressed a positive attitude to do. I also encourage the correctional facility to make these programs available to Mr. Stevens whenever they can.

[20] In the circumstances of incarceration, the victim surcharge is waived. It should also be noted that upon the imposition of this sentence, Crown counsel stated that no evidence would be called on the remaining charges set out in the indictment, as a result of which they stand dismissed as well as the two counts of attempted murder subsumed by the guilty pleas entered on the two counts under s. 244.

J.