

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Bowers, 2010 NSSC 184

Date: 20100430

Docket: CRH 317933

Registry: Halifax

Between:

Her Majesty the Queen

v.

Sergio Davison Bowers

SENTENCING DECISION

Judge: The Honourable Chief Justice Joseph P. Kennedy

Sentencing Date: April 30, 2010 in Halifax, Nova Scotia

Counsel: Mark Heerema and Terry Nickerson for the
Provincial Crown
Stanley W. MacDonald, Q.C. for the accused

By the Court:

[1] I have before me for sentencing, Mr. Sergio Davison Bowers. I'll speak to the matter for a moment and then I'll have Crown read the statement of fact.

[2] There are multiple counts. He is charged with aggravated assault, misleading police, breach of an undertaking, possession for the purposes of trafficking ecstasy, and possession for the purposes of trafficking cocaine.

[3] Mr. Prosecutor, if you could tell the Court the fact situation that causes us to be before this Court today.

[4] **MR. HEEREMA:** On November 11th, 2008, following a series of disagreements between Sergio Bowers and Michael Patriquen, Jr., Sergio Bowers called an individual to come to Michael Patriquen, Jr.'s house and bring a gun. This individual arrived and was let into the house by Sergio Bowers. This individual shot Michael Patriquen, Jr. at close range in the chest. The gunshot wound has rendered Michael Patriquen, Jr. a quadriparaplegic. In calling this individual, Sergio Bowers knew or ought to have known that this individual may shoot Michael Patriquen, Jr. However, Sergio Bowers did not intend for Michel Patriquen, Jr. to be murdered. After Michael Patriquen, Jr. was shot, Sergio Bowers left the residence and was subsequently arrested. Upon arrest, he provided a false name to police and further, when searched, was found to be in possession of quantities of ecstasy and cocaine sufficient for the purpose of trafficking. Those are the facts, My Lord.

[5] **THE COURT:** Mr. MacDonald - anything stated by the Crown on which you do not agree?

[6] **MR. MacDONALD:** Those facts are agreed, My Lord.

[7] **THE COURT:** Thank you. Part of this sentencing process in Canadian courts is that we provide an opportunity for victims to present the judge with impact statements. Victims not being just the obvious victim, the subject of the offence itself, but also all of the other victims and we have victims here today who have not only submitted impact statements but would like the opportunity to read those impact statements to this Court, which is an opportunity that they deserve to have. I'm going to ask Melanie Jane Stephen to come forward.

[Victim impact statements read by Melanie Jane Stephen and Michael Patriquen, Sr.]

[8] **THE COURT:** Mr. Prosecutor - as to sentence?

[9] **MR. HEEREMA:** Thank you, My Lord. I have some brief remarks in support of the joint recommendation which has been put before you which I will outline at the conclusion of my submissions.

On November 11th, 2008 Michael Patriquen, Jr. was effectively given a life sentence. While the bullet which penetrated his chest did not kill him, it fatefully came to rest by his spine rendering him a quadriparaplegic. He is a young man, My Lord. Barring some medical breakthrough he'll spend the rest of his days in a wheelchair. While he remains possessed of a keen wit and sharp intellect, every day for the rest of his life he'll be confronted with the physical limitations imposed on him on that night. Sergio Bowers is the author of this tragedy. While Mr. Bowers did not shoot Michael Patriquen, Jr., he is solely responsible for arranging and facilitating the shooter. Without his direction and command, Michael Patriquen, Jr. today would enjoy the use of his legs. His moral blameworthiness is not diminished by the fact that he did not pull the trigger.

This case represents another senseless act of gun violence in Halifax - a city whose collective tolerance for this type of crime must be growing thin. Who is Sergio Bowers? By his criminal record, he has shown himself to be a young man committed to a life of crime, and I note, My Lord, that his criminal record is attached to the pre-sentence report before you today. Despite his youthfulness, he has accumulated a serious record for both violence and drugs and today he is here to be sentenced for both violence and drugs.

A pre-sentence report was ordered by this Court to assist Your Lordship in assessing Mr. Bowers and the Crown submits in light of his criminal record, the pre-

sentence report is relatively unsurprising. It is predominantly negative. In addition to showing that he has not made any significant steps towards becoming a contributing member of society, he does not appear to express remorse or contrition for his actions.

The need for this Court to denounce and deter this form of behaviour is clear. It is clear from the case law. In advance of today's hearing, the Crown forwarded to Your Lordship a number of decisions which centre around aggravated assault where serious injury has been meted upon the victim. It's clear from these cases that in such a situation such as this, denunciation and deterrence must form the paramount sentencing objectives. The range of sentence is wide and the joint recommendation presented here today, is within the range. It must be stated that Mr. Bowers pled guilty to this matter and this is significant in this case. It is significant because it does show some, however small, willingness to accept responsibility for his actions. It has spared the victim from testifying and saved judicial resources. These mitigating factors are present and the accused should be credited for it. This guilty plea and the joint recommendation which follows were born out of extensive negotiations between Crown and Defence. These discussions centred upon a sober look at the strengths and weaknesses of the Crown's case. To be sure, there were strengths in the Crown's case, but there were also weaknesses - weaknesses that were known to both the Crown and the Defence. This guilty plea and joint recommendation should be considered in that light.

The Crown is asking this Court to accept the following joint recommendation. Eight years for the aggravated assault minus any remand time that has accrued; three months for the misleading police, concurrent; three months for the breach of the undertaking, concurrent; three years for the possession for the purposes of trafficking ecstasy, to be served concurrently; three years for the

possession for the purposes of trafficking for cocaine, to be served concurrently. In addition, a DNA Order and a s. 109 Prohibition Order, and I do note that I have provided a copy to the clerk.

[10] **THE COURT:** There are some draft orders up here.

[11] **MR. HEEREMA:** I note for the record that Mr. Bowers has served 18 months of remand. The Crown and Defence are agreeing that under the normal circumstances that a two for one credit should be ... Mr. Bowers should be given credit for three years time served to this point. Subject to any questions to the Crown, Your Lordship, those are the Crown's submissions.

[12] **THE COURT:** Thank you, Crown. I have no questions. Mr. MacDonald?

[13] **MR. MacDONALD:** Thank you, My Lord. This is a joint recommendation. As a result, I expect my comments will be quite brief and it is a joint recommendation for a total sentence of eight years, with credit for time served of three years, so that the sentence going forward reflects the reduction of three years. I would submit, My Lord, that this is a sentence that is well within the range of sentence as my friend has provided case law and I would submit, My Lord, that that case law clearly shows that we're well within the range here.

My Lord, there's no question these are grim circumstances and there isn't a whole lot we can say that will provide any new insight into issues that have been around for centuries, including substance abuse, violence and senseless injury. My Lord, Mr. Bowers has pled guilty. This would have been a lengthy trial involving many civilian witnesses, police witnesses and expert witnesses. Mr. Bowers has accepted responsibility for his role in this crime. I do remind the Court that Mr. Bowers did not pull the trigger and he did not mean for this kind of harm to result, however, he does acknowledge that his actions certainly played a significant role in the outcome.

My Lord, I submit there are a couple of positives here in the sense that Mr. Bowers is 21 years old, he is a young person, his record is extensive but he does have dedicated family who, from all appearances, have tried to do their best for him. He certainly has a plan for when he is released from prison and I submit that hopefully he'll ... he's advised me that he'll put his mind to that at the time that he will eventually

come back out of jail. So, My Lord, I submit that in all of the circumstances this is an appropriate joint recommendation. It is, as my friend said, after extensive negotiations and a recognition of all aspects of the case and I submit that the sentence proposed ... sentences proposed, I should say, as well as the DNA Order and the s. 109 Prohibition Order should be imposed. Unless Your Lordship has any questions, those are my submissions.

[14] **THE COURT:** Thank you, Mr. MacDonald.

Occasionally you hear that idiotic statement that guns don't kill people, people kill people. Idiotic. People with guns kills people, and in this community over the last five, six, seven, eight years we have a lot of people with guns. Aimless, detached, vacant people. People with no futures - no sense of humanity because they don't have a sense of life. Life is cheap. Life is nothing. The difference between slapping your face and shooting you is no difference. Consequences are irrelevant. Consequences - in order to understand consequences, you'd have to think beyond Tuesday of next week. You'd have to have a future rather than living in a world of immediate gratification. Day in, day out stupidity. That's what we are experiencing in this community and we should do what we can to correct that.

You, Mr. Bowers, understand the rules? I hope you have a plan for when you get out because otherwise, Mr. Bowers, if you go right back into this world, then you're not going to live to be thirty - we're going to be reading your obit - lived life to the fullest. One of those obits and there will be a picture of you next to it taken when you were eight years old - people will say, "What a good looking kid, I wonder what happened to him?" You're off to a bad start. Your life, Mr. Bowers, your life won't last that much longer unless you correct the situation, but if you don't - if this is all there is - if it's just going to be a continuation of this stuff and if you do survive, then you're going to spend much of the rest of your life incarcerated. Locked up. So do the best you can to learn to survive in those circumstances because you cannot function in society as a whole and continue to act in the manner that you function, that you act in. You've got to develop some humanity, Mr. Bowers, it's that simple.

Now I see the pre-sentence report. I don't know whether it's totally correct or not, but it says "shows little remorse". Well of course not. Remorse - in order to show remorse - you've got to be connected to your humanity. You've got to be more than some sort of robot. You decide whether your life is worth more than this because so far you've been a disgrace. You're a disgrace. You're an embarrassment.

Get a grip, young man. The one thing that you've got going for you - and maybe the only thing - is that you're only 21 years old. People do change, even the worst of us. So you decide. I'm not silly enough to think that you're paying much attention to me, but you better pay attention to some good advice or this will just be the first chapter, and the last chapter will not be very far down the road.

This is a tragedy. So many circumstances ... these young men had not been together that evening, there had not been some misunderstanding, and that gun not been available, and all of the terrible circumstances that combined lead to this kind of senseless, senseless, terrible thing happening. All right, what a mess. What a mess this is. What a mess this young man is. What a mess he's made. Here we are with this mess.

I've got experienced counsel before me and they've made a joint recommendation in relation to the sentence. There are reasons for a joint recommendation. Sometimes, you know, you read this kind of cursory reporting that they do in relation to criminal courts in this province and you'd think that a joint recommendation was some sort of a conspiracy or something. That's not what it is. What it is, is the best we can do with what we've got. That's what it is, and that's what experienced counsel representing the Crown, representing the people, and experience counsel representing Mr. Bowers have sat down and tried to come up with and then they've brought it to me and asked me if it was something that I could live with and I considered all of the various circumstances in this matter, and I said yes it is.

That decision was made back on the first day - we were about to start a jury trial with Mr. Bowers and that decision was made on the first day of that trial and that's why there was a change of plea to guilty on the counts that are before me and that's why that matter is now before me today.

Please understand, I'm not sentencing here on attempted murder. I'm not sentencing here on that count, I'm sentencing on aggravated assault. I'm sentencing on misleading a police officer; I'm sentencing on breach of probation - no surprise - and also, absolutely no surprise whatsoever is we have a couple of drug counts. No surprise because that's what is behind so much of the terrible behaviour, the awful ramifications that are playing themselves out on the streets and in the homes in the Halifax area - drugs. So it's no surprise that Mr. Bowers, along with everything else, is charged with possession of some drugs in this matter.

Let me formalize. Mr. Bowers has a bad prior record. I have a copy of that, I know what it is. It's all part and parcel of the mess that we have before us today. I've had an opportunity to review his pre-sentence report, accomplished by a realistic and experienced probation officer and he more or less tells it like it is in relation to this young man. I've had the benefit of good counsel telling me what, after proper negotiations, both sides being properly represented, they think is a sentence that they can agree upon.

I will say this before I sentence, that I hope that there is nothing in this world that can't get better. I firmly believe this. I've had, over the years I've been on the Bench, some of the most terrible, hopeless cases before me that I have had the opportunity to witness and see down the road, have resulted in changes. It's incredible - we're not the same people at 41 that we are at 21. Sometimes we're better people. Sometimes we don't live to be 41.

I am in agreement with the joint recommendation. I've had an opportunity and I'll speak very briefly reference to some of the cases cited which cause me to understand the range of sentencing in relation to the situation: *R. v. Wright* [2004] N.S.J. 612; *R. v. Tarr* [2009] N.S.J. 25; *R. v. R.J.W.* [2002] N.S.J. 558; that *Wenzel* case had some similarity - *R. v. Wenzel* [1992] A.J. 30. Much of this case law comes out of Provincial Court and, of course, where else would it come from. That's the situation that that Court must deal with regularly.

I believe that the recommended sentence comes within the guidelines and in the circumstances, I am prepared to sentence as recommended.

There will be a period of eight years federal time on the aggravated assault. There will be a period of three months concurrent on the misleading police; three months concurrent on the breach; there will be three years concurrent for possession for the purposes of trafficking ecstasy; three years concurrent for the possession for the purposes of trafficking cocaine. He will be given credit for remand time times two and that is part of the agreement, as a result of the agreement that has led to a joint recommendation today. I've got that Order for Prohibition, pursuant to s. 109, 114 in relation to firearms, ammunition, explosive substances for life. I'm signing that order. I have a further Order authorizing the taking of bodily substances so that a forensic DNA analysis can be accomplished and I'm signing that Order likewise. So we've got our totality of eight years less remand time as indicated and the two Orders signed. Anything else, counsel?

[15] **MR. HEEREMA**: Just to formalize, My Lord, that the Crown will not be offering evidence on the remaining counts.

[16] **THE COURT**: Thank you. Those counts will be withdrawn.

[17] **MR. MacDONALD**: My Lord, if I may, I know sometimes these things need to be clarified for the sentence administrators, I just want to make sure that the sentences for the other four offences aside from the aggravated assault are all concurrent to the aggravated assault.

[18] **THE COURT**: They are concurrent to the aggravated assault - by concurrent, I mean to the aggravated assault. Your totality is your ten years less your remand.

[19] **MR. MacDONALD**: Eight - totality is eight years.

[20] **THE COURT**: Eight years - I'm sorry - eight years less your remand.

[21] **MR. MacDONALD**: So they're concurrent with each other and also the remand time is calculated at three years.

[22] **THE COURT**: Thank you, I hope that clarified that.

Joseph P. Kennedy
Chief Justice