

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Hanlon, 2010 NSSC 286

Date: 20100706

Docket: CRT No. 325505

Registry: Truro

Between:

Her Majesty The Queen

v.

Alexander Francis Hanlon

Defendant

**DECISION
SENTENCE**

Judge: The Honourable Justice Nick Scaravelli

Heard: July 6, 2010, Truro, Nova Scotia

Written Decision:

Charge: **That he**, on or about the 31st day of January, 2009, at, or near Bible Hill, in the County of Colchester, Province of Nova Scotia, did steal money and liquor from Gordon Michael Moore, and at the time thereof did use violence to Gordon Michael Moore, contrary to Section 343(b) of the **Criminal Code of Canada**.

Counsel: **Paul Drysdale, Crown Attorney**
David Mahoney, Solicitor for the Defendant

By the Court:

- [1] In the present case there is a joint recommendation on sentencing. The offender, Mr. Hanlon, has entered a guilty plea to a charge of robbery contrary to section 343(b) of the **Criminal Code**. Violence was used where the victim was assaulted in his home, with a weapon. I believe an aluminum or steel pipe.
- [2] I note the guilty plea followed what our Court of Appeal has termed a true plea bargaining. That is what is known as a negotiated plea in exchange for leniency. The joint recommendation is that the offender serve a period of incarceration of two years in a Federal Penitentiary. In making the recommendation both counsel have indicated they are aware of the starting range of three years of imprisonment for an offence of this nature as stated by our Court of Appeal.
- [3] I have reviewed Crown and Defence counsel briefs that were earlier submitted to the Court and the cases that have been cited by both Crown and Defence. I have also heard submissions from counsel. I have reviewed the pre-sentence report and have considered the principles of sentencing as set out in section 718 of the **Criminal Code**. I have also considered section 348.1 of the **Criminal Code**.

- [4] The victim was in his residence at the time of the offence, according to information provided to the Court. This residence was known by the offender and his accomplice to be the location of a bootlegging operation or business. Both Crown and Defence counsel submit that the circumstances of this case calls for a deviation from a sentence in the three year range. I note the offender was 21 years of age at the time of the offence. He has what is considered a minor criminal record and has never been incarcerated. According to the pre-sentence report he is healthy and is gainfully employed. His employer is indicating his willingness to maintain or re-offer him his employment following sentence. According to the pre-sentence report the victim has moved on and has advised that he has put this matter behind him.
- [5] In terms of the negotiated plea the Crown has acknowledged a distinctly arguable issue relating to the admissibility of the offender's confession statement which resulted from what is termed a "Mr. Big Operation". The issue at trial, as explained by counsel, would be voluntariness of the statement. The Crown has submitted that this evidence was critical to the successful prosecution of the offender. The offender's statement also led to the guilty plea of the co-accused who was sentenced to five years

imprisonment in light of his prior criminal record, which included previous Federal Penitentiary sentence.

[6] Under the circumstances, I accept the joint recommendation for sentence as put forward by the Crown and Defence counsel .

[7] Mr. Hanlon would you stand please?

[8] The Court is sentencing you to a period of incarceration of two years in a Federal Penitentiary. There will also be a primary designated offence DNA order pursuant to section 487.051 of the **Criminal Code**, as well as a section 109 Firearms Prohibition for a period of ten years following the expiration of the prison sentence. You have indicated Mr. Hanlon, through your counsel, that you have plans for your future and that you no longer consume alcohol. I am pleased to hear that and I wish you well with your future endeavors.

J.