

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Brooks , 2011 NSSC 64

Date: 20110117

Docket: CRH 325406

Registry: Halifax

Between:

Her Majesty the Queen

v.

Linden Tobias Brooks and
Christopher Joshua Brooks

SENTENCING DECISION

Judge: The Honourable Chief Justice Joseph P. Kennedy

Sentencing Date: January 17, 2011 in Halifax, Nova Scotia

Counsel: Darrell Martin for the provincial Crown
Roger Burrill for Christopher Brooks
Peter Planetta for Linden Brooks

By the Court:

[1] Thank you, good morning. Counsel?

[2] **MR. BURRILL**: My Lord, Roger Burrill appearing this morning for Christopher Brooks, the gentleman behind me. You know Peter Planetta, who is for Linden Brooks, the gentleman to my right, and of course you know Mr. Martin for the Crown. Just so that you know, Ramona Brooks, the mother referred to in the Pre-Sentence Report, is present in the body of the court and those are the interested parties, at least that I'm aware of in the court here today.

[3] With respect to my client, Christopher Brooks, we've had a Pre-Sentence Report prepared. Christopher has reviewed it and has no difficulty with its contents. We would have provided to you on January 4th a letter outlining our position with respect to the issues and what we anticipated was to be a joint recommendation with respect to Christopher. That still is the situation. I had indicated that there was a possibility that my client may take the stand to give testimony. I have been instructed very clearly that he does not wish to do that and will not be taking the stand. However, you need to know that the representations that were presented in the letter are still our position with respect to this issue.

[4] It's an interesting issue in terms of law with respect to how that might affect the proceedings here today in light of the fact that the standard sort of *Gardiner* application with aggravating and mitigating circumstances as it affects the Crown might, I would think, cause some issue as to whether testimony needs to be called. It doesn't really affect the Crown under these circumstances. It may affect the co-accused in the manner in which the circumstances are perceived in that regard. However, it's incumbent upon me to advise you that my instructions are very clearly not to take the stand and we'll not be providing testimony in that regard. I, with respect, don't think it will have any bearing on the joint recommendation - of course, that's not up to me - that's up to the Court to decide, and as you know, the recommendation for Mr. Christopher Brooks is a period of three years incarceration with respect to this matter. So that outlines the lay of the land with respect to Christopher Brooks' position, My Lord.

[5] **THE COURT:** Before I hear from the Crown, Mr. Planetta?

[6] **MR. PLANETTA:** Yes, My Lord. I've canvassed the issue with my client and I have instructions that he will not be giving any evidence today. The .. what was

set out in the materials that were filed with the Court, I could say that, I guess I'd characterize it as we're not necessarily in agreement, but we're not contradicting those ... what's been represented either, and I can advise the Court that with respect to Linden Brooks we do have a joint recommendation as well in that matter. Obviously there's a Pre-Sentence Report that's before the Court and I think those would be my preliminary comments.

[7] **THE COURT:** Thank you. Mr Martin?

[8] **MR. MARTIN:** My Lord, this is a situation where on the 12th of October, 2009, John Neary and his then son's girlfriend were returning to their apartment building at 1270 Hollis Street into an underground parking garage about 1:30 in the morning, October 12th, 2009. They saw the two Brooks brothers out front of that building and were unaware of what they were up to. It would appear that the two Brooks brothers followed this vehicle down a side alley to the back of the building where the garage door opened. As Mr. Neary was backing into a parking space, which would be the first space inside the garage door. The two Brooks brothers ran in underneath the closing garage door and approached the vehicle where Mr. Neary had opened the driver's door. They were yelling something about "where's Henry" and Mr.

Linden Brooks, along with his brother Christopher Brooks, were at the side of the door - the driver's door - demanding where Henry was.

[9] John Neary responded saying he didn't know what they were talking about. There was heated argument between Mr. Linden Brooks and John Neary, who was confronting Linden Brooks. It appears that Christopher Brooks was standing beside Linden Brooks. At one point, Mr. Neary had taken a wrench from the floor of his car and was banging on the floor of the car. This led Linden Brooks to utter the words, "pull it, pull it" and we're assuming that means pull a sawed-off shotgun that Christopher Brooks had with him. Christopher Brooks did, at the insistence of his brother, pull this sawed-off shotgun out at waist level, pointed towards the window of the vehicle where - the side window of the vehicle - where Mr. Neary was and Melissa Muench, sitting in the passenger seat. Both were ... Melissa Muench was quite nervous about this - afraid. John Neary, despite the gun being pulled, continued to argue with Linden Brooks and used the racist terms that you find in Mr. Burrill's January 4th letter to Your Lordship. John Neary finally relented, Your Honour, and took out money, which turns out to be \$135, threw it on the garage floor ... was picked up by Linden Brooks, and both Linden Brooks and Christopher Brooks ran out of the building and exited through a small door next to the garage door. It would appear .. ran up Hollis

Street to South Street, up to Barrington Street. John Neary and Ms. Muench called the police - actually Ms. Muench called 911 and Mr. Neary took over. The police met up with those two outside. The police saw the two Brooks brothers running down Barrington Street, cordoned off the area, with the assistance of a tracking dog, found Linden Brooks and Christopher Brooks behind a building on Barrington Street and recovered a sawed-off shotgun, which was loaded with one shell near them, and \$135. Both were arrested. Those are the facts we're relying on, Your Honour.

[10] With respect to Mr. Burrill's letter of January 4th and anything that went on prior to the two Brooks brothers entering into the garage, I don't think that it matters to the Crown. I can tell you that John Neary, both in his statement, in his testimony and his discussions with me, felt that Mr. Linden Brooks was the person directing this despite the fact that Christopher Brooks had the sawed-off shotgun. It would appear that he was more nervous and anxious than anything else and what Mr. Burrill set out in his January 4th, 2011 letter to Your Lordship is borne out by what Mr. Neary told me and Melissa Muench told me with respect to the respective roles of the two parties. I mentioned to Melissa Muench and John Neary several times and also wrote them letters indicating that this matter was going to be sentenced today, asking that they forward Victim Impact Statements. They have not done so, My Lord, and the only

conclusion I can take is that they have no interest in providing Victim Impact Statements.

[11] **THE COURT:** The point is they were aware that we were sentencing today.

[12] **MR. MARTIN:** They were aware. I phoned them and talked to both of them, wrote them letters telling about the date. Interestingly enough, I've dealt with both of them subsequent, Your Honour, on other matters in court and they probably don't want to deal with the justice system anymore. But the bottom line, however, is that in that discussion with Mr. Neary, he echoes what's said in Mr. Burrill's letter that he felt that Christopher Brooks was in over his head and was more afraid than anyone there, and felt that we should treat him charitably despite what he did that evening with his brother. Those are the comments I have with respect to the facts.

[13] My Lord, you have Pre-Sentence Reports for both parties. I would indicate that there is a joint recommendation with respect to Christopher Joshua Brooks. The Crown is recommending a three year minimum period for the s. 95(2) offence. I would suggest .. not suggest - I believe it's mandatory that there be a ten year firearms prohibition for him.

[14] With respect to Mr. Linden Brooks, the Crown is recommending a period of five years which is minimum for a robbery with a prohibited firearm, that he's pled guilty to. He has been in custody since October 12th, 2009. I calculate that to be about fourteen months and a week of pre-sentence custody. My understanding of the law is that he would benefit from the old law with respect to remand time, which would afford him two for one if Your Lordship is so satisfied. With respect to him, the Crown is seeking a primary DNA Order and, as well, a ten year firearms prohibition. Those are my comments, My Lord.

[15] **THE COURT:** Is your suggestion as to remand time, Crown, part of the negotiations?

[16] **MR. MARTIN:** Yes. I indicated to Mr. Planetta that it's two for one taken off that five year time period.

[17] **THE COURT:** Thank you. Mr. Burrill?

[18] **MR. BURRILL**: Yes, thank you, My Lord. Mr. Martin has fairly and accurately outlined the circumstances of the incident here. It's just a little bit of an unusual event in that I get the sense and respectfully submit to the Court that this is one of these things that dangerously developed as the matter took place. And that's precisely why the provision is there in the *Code* - to avoid the escalating nature of interactions between, how shall I say, relatively aggressive human beings under those circumstances, so that a disaster doesn't happen. And thank goodness there was no disaster here, but I think you've got a pretty good sense of the dynamic of all the participants.

[19] The complainant is the complainant: that is, they come in all shapes and sizes, all forms and manners, and Mr. Neary under these circumstances was not what you would say the wilting flower in terms of the manner in which he involved himself with Mr. Linden Brooks and I make no other further comment except to say that the comments that were put in the letter of January 4th were excised entirely from the transcript from the Preliminary Inquiry and from his statement, so you get a sense of the dynamic at that stage. And, of course, some particular words, Your Honour .. My Lord, that would be used by anybody, complainant or otherwise, have a tendency to throw gasoline on a volatile situation and, indeed, it would appear that's what took

place here. The submission from Christopher Brooks is that while he was there with his brother, his information about what was taking place was such that he was acting only on the direction of his brother. That doesn't give him any excuse whatsoever, as the younger brother, for having in his possession that prohibited firearm and, indeed, the most recent changes with respect to the statutory minimum catch up a young 26 year old, with no prior adult criminal record, who is introduced to this type of situation by others. The law is as the law is, and short of any application with respect to the nature of the law in these circumstances, I would submit this is the type of sentence where the minimum should be imposed.

[20] You know from the Pre-Sentence Report that he's 26 years old; no prior record; brought up by a single mother; non-existent father; he had an influential older brother; lived in public housing most of his life, if not all; limited social assistance income. You know, as well, from the Pre-Sentence Report that he's described, and I would say this is perhaps somewhat characteristic of people before you in these types of circumstances, with learning disabilities - only obtained a limited Grade 9 education. He has, by all accounts I would suggest, My Lord, a life of some difficulty: limited education; limited social skills; subject to abuse when he was younger in both his social and otherwise setting. I had indicated in my notes that he is the marginalized

amongst the marginalized. That, of course, has no bearing on the impact of the statutory minimum other than to give you an impression of the circumstances of the offender. He's experienced mental health issues. He's currently prescribed Clonazepam for social anxiety difficulties. I can suggest to the Court, and perhaps it's evident from the Court's involvement with Mr. Brooks in the past, that anxiety has perhaps been pervasive throughout his involvement with this whole matter. He has Hepatitis C. He describes himself as suffering from serious seizures and health issues. Addiction issues have taken part in his young life, but you can see from the Pre-Sentence Report that he seems to have made a relatively good effort and there are references in the Report as to his ability to deal with addictions most recently.

[21] When you look at my letter of January 4th outlining the circumstances and the second last paragraph at page 5 of the Pre-Sentence Report expressing responsibility and then advising the complicated role of "my role as a brother", I had indicated in the letter that these types of psychological contact between brother and impact brother on brother is obviously very complex and one that's beyond the capabilities of counsel like me to explain, but you get a sense of the dynamic.

[22] If I might say this, My Lord, the most difficult thing about this is Ramona Brooks, the mother in this case. Ramona's health has been difficult and she's now going to experience a situation where both of her boys are going to a federal institution. But Christopher has been very much a support for her over the past number of years and she's going to be on her own and that indeed is a significant difficulty. We know what the principles of sentencing say with respect to general, specific deterrents. We also know what the statutory minimum is under these circumstances. I would respectfully submit to the Court that Christopher Brooks is the person, given his circumstances, whereby the statutory minimum should be imposed, and would ask the Court to impose the joint recommendation. One further small point - I would ask that you waive the surcharge here. I know it's sounds trite, but nonetheless he is a person of absolute no income at this stage and won't be for the next three years. I would ask that you find that there would be an undue hardship for him to pay that and ask that you waive it. Those are my remarks, My Lord.

[23] **THE COURT:** Thank you, Mr. Planetta.

[24] **MR. PLANETTA:** The facts as they were read in by my friend, Mr. Martin, are agreed upon and they have been read in, my recollection was, previously

and they were agreed upon at that time. What we have here is a situation which as my friend Mr. Burrill put it, was escalated. I think the facts show, despite the fact that there was obviously something going on, that a robbery was not what was planned and it was a situation that escalated and this is the end result. We have a joint recommendation before the Court. Mr. Linden Brooks has instructed me to join in this recommendation. It's a recommendation that followed some period of lengthy discussions between myself and the parties - both of my friends involved. Mr. Brooks has pled guilty. I echo my friend's comments with respect to the complainant and won't add any further on that.

[25] In the Pre-Sentence Report that's before the Court, there is, I would say, some amount of positive in the Pre-Sentence Report, and what I do indicate as positive there is that it shows that Mr. Brooks has a desire and a willingness to move on with his life and he has a rough plan of what he would like to do after his sentence expires. He has taken part in some programming in the past and he's expressed a willingness to take part in some programming in the future, and has some rough outline of some goals that he would like to pursue which involves moving on with his life and getting away from this way of life. The sentence that's recommended would represent the minimum for a person in Mr. Brooks' position. I submit that where he has pled guilty and accepted

responsibility for his actions, that it is an appropriate sentence and that it is one that's been achieved after some significant amount of negotiation. I would ask that Your Lordship impose the sentence that is recommended.

[26] I would comment briefly on remand credit. Mr. Linden Brooks was arrested on the offence date. He has been in custody since October 12th, 2009. My friend, Mr. Martin, is correct in his calculation - that will be a period of one year, two months and approximately a week that he's been in custody.

[27] **THE COURT:** Is that remand the only reason he's been in custody?

[28] **MR. PLANETTA:** Yes, he has no other .. he's had no other matters of this period, so he was remanded solely on this matter. That is my calculation if Your Lordship wanted it broken down in days, my calculation is 430 days he's spent on remand, and it does pre-date the amendments to the *Criminal Code* with respect to remand credit, so I submit that he is eligible, obviously for more than a day for day and submit to the Court that what has been customary in most cases is the double remand credit and ask the Court to calculate his remand credit at that rate and that that is the joint recommendation that's before the Court, therefore, my submission would be that

he has 860 days remand credit to be deducted from a global five year sentence. I would also ask for a waiver, obviously, of the Victim Fine Surcharge as he's been in custody for over a year already, and if Your Lordship follows the joint recommendation, he will be in a federal institution for a significant period of time and won't have an ability to pay. Subject to any questions, My Lord, those would be my submissions.

[29] **THE COURT:** Thank you. Does either Mr. Linden Brooks or Mr. Christopher Brooks wish to speak to the Court before sentencing in the matter? Mr. Linden Brooks?

[30] **LINDEN BROOKS:** I just want to say that I'm sorry this happened. I didn't mean for this to happen. I'm sorry my brother was involved. I'm just glad no one got hurt and just to get my life on track when I'm done.

[31] **THE COURT:** Does Mr. Christopher Brooks wish to speak to the Court?

[32] **MR. BURRILL:** He has nothing to say. Thank you.

[33] **THE COURT:** Thank you. Firstly, I going to waive the fine surcharge in relation in to both the individuals. It's not a practical situation in relation to either. I don't know whether counsel are familiar with that HBO series, "The Wire". It's no longer going on but when it was on television, was one of the best and most insightful programs, depictions of indicators as to what the streets are like. In the case of "The Wire" was the city of Baltimore. I don't think Baltimore is that much different than Halifax. This would have been a classic episode from The Wire. The brothers - the older brother, the younger brother - the futility, the stupidity of the entire exercise, reckless stupidity of a very serious criminal nature. We've got a sawed-off shotgun; we've got a shell - that weapon. Mr. Linden Brooks tells me that he didn't mean for it to happen. Well, sorry but I don't understand how you didn't mean for it to happen. Maybe you didn't mean to get caught, but that was part of the futility of the entire thing. You got caught within an hour - \$135 - Mr. Neary grabs the gun - we've got a murder charge maybe - tragic. And I do accept the suggestion - I think it's corroborated by the testimony of Mr. Neary at the Preliminary, that Mr. Linden Brooks was the moving force in relation to this matter. And I'd have to say to you, Mr. Brooks, I'm glad you're sorry. You know, in some circumstances, older brothers are

supposed to look after their younger brother. That's a common situation that no matter how tough your own life may be, you look after your brother. In this instance, you've got your brother carrying the gun. No priors and he's got the gun and you didn't mean for it to happen. Terrible. Tragic. Mr. Linden Brooks has a significant record but it's not particularly relevant to the matter before the Court. Aside from resisting, there doesn't seem to be any prior violence with the exception of the uttering threats, otherwise the, not surprising, litany of drug offences. Mr. Christopher Brooks, perhaps surprising, has no priors which compounds the sad reality of this matter. Takes his brother with no priors into this situation.

[34] I have got a recommendation here that isn't a perfect recommendation, but it's a recommendation made by experienced counsel and I respect their experience and I respect that they are fully aware of the totality of this matter. There has been some obvious benefit to the guilty pleas being entered. One of the benefits is that at least we don't have here what might have occurred with brother testifying against brother - that would have been ... compounded the sad circumstances. We're dealing with mandatory minimums. Welcome to the world of the mandatory minimum - although

minimum sentences, they are not inconsiderate sentences. They are not, in my view, light sentences.

[35] In the instance of Mr. Christopher Brooks, I'm satisfied with no prior record, given the totality of the circumstances, and I do accept the fact that he was not the prime mover, but he had the gun. There will be the minimum period of three years in a federal institution and the ten year firearm prohibition that is mandatory.

[36] In the instance of Linden Brooks, frankly I would say it bothers me - I'm somewhat troubled by the fact that we're dealing with old formula for remand time - I'm not sure he's entitled to it, but I respect the fact that it's been part of the negotiations between senior counsel. I respect their judgment. I'm going to sentence Mr. Linden Brooks to the minimum period of five years in a federal institution. We'll give him credit - times spent on remand under the old formula times two, which I believe the Crown suggested would be fourteen months, so he'll get credit for fourteen months on the five year minimum sentence.

[37] **MR. MARTIN:** My Lord, it's fourteen actual months, so it should be 28.

[38] **THE COURT:** Oh, 28, I'm sorry - it was fourteen actual months?

[39] **MR. MARTIN:** Yes, October 12th, 2009.

[40] **THE COURT:** Under the formula, it will be 28 months. Twenty-eight months - I correct that - credit in relation to a five year sentence. Again, I want the record to reflect that although the sentences are minimums they are, I consider to be considerable in these circumstances, adequate. Anything further counsel?

[41] **MR. MARTIN:** With respect to Mr. Linden Brooks, a primary DNA Order and a ten year firearm prohibition as well.

[42] **THE COURT:** Thank you, I'll make that Order. There are additional charges, Crown?

[43] **MR. MARTIN:** I believe .. are we at a position where the Crown can withdraw those other charges against both?

[44] **THE COURT**: Undertaking not to relay?

[45] **MR. MARTIN**: Yes, My Lord.

[46] **THE COURT**: Is Defence satisfied with that?

[47] **MR. BURRILL**: Either that or offering them no evidence is fine under the circumstances. I was just trying to determine .. were there not guilty pleas tendered in this?

[48] **MR. MARTIN**: We'd offer no evidence on all the other remaining charges, My Lord.

[49] **THE COURT**: Thank you. The matters are dismissed. Let's be specific. We had a six count Indictment. Mr. Linden Brooks entered a plea of guilty to Count 1 - robbery. Mr. Christopher Brooks entered a plea of guilty to Count 4 which was the possession of the prohibited firearm. Count No. 2 is dismissed; Count No. 3 is

dismissed; Count No. 5 - specific to Linden Brooks, is dismissed; Count No. 6 - specific to Linden Brooks, is dismissed. Thank you.

Kennedy, C.J.