

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Smith, 2011 NSSC 413

Date: 20110518

Docket: CRH 329528

Registry: Halifax

Between:

Her Majesty the Queen

v.

Shaun Ryan Smith

SENTENCING

Judge: The Honourable Justice Kevin Coady

Heard: May 18, 2011

Sentencing: May 18, 2011

Counsel: Denise Smith for the Crown
Alex Embree for the Defendant

By the Court:

[1] This is a sentencing of R. v. Shaun Ryan Smith. On April 26, 2011 Mr. Smith plead guilty to conspiracy to commit murder in relation to the shooting of Jason Hallett on November 18, 2008 in front of the IWK Hospital.

[2] After the usual inquiries, this court accepted that plea and sentencing was adjourned until today's date.

[3] The larger facts are not in dispute and have been reviewed by the Crown today as well as during the sentencing of Mr. Marriott earlier this week. I don't feel it a necessity to repeat them further, they are a matter of record.

[4] The fact that this shooting occurred at the IWK Hospital is significant in the impact it has had on this community.

[5] The amount of gun play and the number of "hits" and "attempted hits" over the past couple of years is certainly noted by our citizens.

[6] Generally, the public except that it involves criminal elements, gangs sometimes who live and operate in pockets of our city and generally stay by themselves.

[7] The public generally feels that these shooting and the people involved have no connection with them. The public derives some comfort from knowing that this social and geographic distance exists and they go about their lives feeling that these events are not likely to harm them or their families.

[8] The public feels that if they stay away from the gangs and the larger body of violent criminal, they will be safe. But when our citizens hear about an attempt to murder someone at 6:45pm at the local maternity and children's hospital in the middle of the city, that is different.

[9] When they are told that the incident involved stalking a target and one of the group walking up to a parked vehicle in front of the main doors to the hospital and blasting away three to five times at a person in the vehicle, and when they realize Mr. Hallett, who is the victim in this matter, was in the hospital maternity ward

visiting his child and partner while armed with a loaded pistol, that changes things as well.

[10] When that happens, the citizen's sense of safety is lost or at least diminished. No longer is the violence limited to places where it is expected to happen

[11] They think about how many times they sat in that lot at the IWK in their own vehicle waiting for their families or others to arrive or depart. They think about how many times they walked into that hospital to experience the joy of a new child and they realize that this could be any public building in Halifax.

[12] When this happened the public recognized that the violence has invaded their safe places and they experience a significant change in their view of the threat to they and to their families.

[13] The only way that the situation in this case at the IWK could be worse was if Mr. Hallett had been killed. I don't hesitate to say it was a lucky day for Mr. Hallett because Mr. Marriott could not shoot straight. It was also a very lucky day for Mr. Smith in that he is not before the court on a first degree murder charge.

[14] The effect on the community is a tragic one. Another tragedy that we have before us is a 23 year old man who participated in this conspiracy in a major way.

[15] Mr. Smith had lots of options besides getting involved with the criminal element and participating in this conspiracy.

[16] His criminal record suggests that his focus has been criminality from an early age. It begs the question to ask how Mr. Smith got to the place he was at on November 18, 2008.

[17] In my estimation it is about being part of something. It is about peer pressure and it is about wanting to play with the big boys.

[18] Sentencing is driven by precedent yet it requires developing a sentence that is reflective of the circumstances of the offence and the offender.

[19] The **Criminal Code** provides direction to sentencing judges. The range for attempted murder is wide right up to a life sentence.

[20] Section 718 of the **Criminal Code** sets forth the purpose of sentencing. It talks about denouncing unlawful conduct and deterring the offender and others from similar acts. It talks about separating offenders from society when it is necessary and of course it talks about rehabilitation which is always at play, and it talks about the promotion of a sense of responsibility in the offender.

[21] While Mr. Smith's offence and criminal history require firstly denunciation and deterrence, his young age calls for a degree of rehabilitative effort. Nonetheless, there is no debate about the fact that denunciation must trump the other factors set out in s. 718 and specifically his own personal rehabilitation.

[22] Section 718 also speaks of respect for the law and the maintenance of a just, peaceful and safe society which is particularly poignant to the facts of this particular case.

[23] Section 718.2 also applies, specifically it calls for an analysis based on a comparison of the aggravating and mitigating factors at play when adjusting a sentence within a set range.

[24] In Mr. Smith's case the aggravating factors far out number any mitigating factors. In fact the only mitigating factors I can see are Mr. Smith's age, he is still quite a young man and there is hope for him in the future, if he follows what he told me today, the support of his family which is very important both in the short term and the long term. The guilty plea, I am certainly prepared to acknowledge that there is an element of mitigation there but very limited amount given the way in which that played out and the time in which it was developed. As far as remorse, I would say the jury is still out on that one.

[25] If Mr. Smith gets it together as he stated earlier, then these factors speak well of his rehabilitation. Specifically his family support and his age.

[26] We all know that outcome would represent the best way to protect society.

[27] I find the following aggravating factors:

He clearly was an active participant in the plan and not a peripheral player, which is very clear when you listen to the intercepts which were captioned at the time of this offence.

His extensive criminal record given his young age.

Also that he accepted that the goal of the plan was to commit a first degree murder and the avoidance of that, as I referenced earlier, is more good luck than design.

Further aggravating factor is the fact that the plan unfolded in such a public place and the fact that he was on probation and subject to a firearms prohibition on November 18, 2008.

The injury to Mr. Hallett and the ordering of the Blazer to be reported stolen after the fact, also contribute to the aggravation.

[28] After reviewing the sentencing principles and reviewing the case law provided by the Crown and Defence, I find the range of sentencing to be from 10

years to life. Of course recognizing that life is generally reserved for the offenders with the most and worst aggravating factors at play.

[29] I am cognizant as well that Mr. Marriott received 15 years and no remand credits.

[30] There are a number of cases that have been referred to me and I am not going to go into them with great detail. I use them for reference, particularly *R. v. Michaels* in British Columbia where an accused involved in an attempted murder in a role somewhat akin to Mr. Smith's and he received 12 years. *R. v. Joseph* was a case out of British Columbia as well, which was a shooting in the back conflict between drug dealers and he received 10 years. I have reviewed *R. v. Jordan* out of Ontario, where the sentence was life as a comparator of the cases which will attract the most severe sentence that exists within the range. That was also a case where the public was at great risk. I have also considered *R. v. Situ* out of Ontario which resulted in a sentence of 15 years for a shooting in a pool hall and the victim was rendered a quadriplegic. In *R. v. Thompson* out of Ontario which was a 12 year sentence which was a shooting in a motor vehicle in which no motive was ever discovered by the Court. I have also reviewed *R. v. LeBlanc* out of our court,

a case involving some of the same players as in this case and the sentence there was 16 years and that was a case where there were many aggravating factors and virtually no mitigating factors. I have reviewed Justice Duncan's decision in *R. v. Belisle Taylor* which resulted in a 10 year sentence plus a slight adjustment for remand time.

[31] I have given full consideration to *Belisle-Taylor* as Mr. Smith relies on that case in his submissions.

[32] Justice Duncan found that the facts in that case required a sentence at the upper end of the range. I find that Mr. Smith also requires a sentence in the upper area of the range.

[33] While it is possible for counsel to debate the similarities and the differences between the two cases, the reality is, that this is a very serious offence and both involving an attempt to murder another individual.

[34] Mr. Smith was involved in the planning and the execution of the conspiracy to commit murder. It was a cold blooded brazen act designed for one purpose, the elimination of Mr. Jason Hallett.

[35] That is what happened in both cases in Belisle-Taylor it was Mr. Melvin Jr.. Consequently I conclude on all the circumstances that a fit a proper sentence is 10 years.

[36] Now Mr. Smith has been on remand for 27 months. I have reviewed carefully s. 719 of the **Criminal Code** as well as the authorities provided to me by counsel. The starting point is a one for one credit that is the intention of the section. I do not find that the circumstances justify moving from that place. I am unable to find factors that I could articulate and support of moving from the one for one section of the code.

[37] So it is the sentence of this Court that Mr. Smith serve 10 years commencing on the date of his arrest twenty-seven months ago. I also order that Mr. Smith provide a DNA sample for the DNA data bank and a lifetime firearm prohibition.

[38] The rest is up to Mr. Smith and I wish him good luck in getting his life on track.

J.