

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. MacDonnell, 2013 NSSC 29

Date: 20130111

Docket: CRH 347898

Registry: Halifax

Between:

Her Majesty the Queen

v.

Susan MacDonnell

SENTENCING

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Justice Kevin Coady

Heard: January 7 & 8, 2013, in Halifax, Nova Scotia

Sentencing: January 11, 2013

Counsel: Catherine Cogswell for Provincial Crown
Jean Morris for Defence

By the Court:

[1] Susan MacDonnell is a 44 year old woman who is before the Court without a criminal record.

[2] On November 3, 2011 she entered guilty pleas to the following two charges:

that she between the 1st day of February 2010 and the 20th day of April, 2010 at, or near Halifax, in the County of Halifax in the Province of Nova Scotia, being the parent of R.M., a child under the age of sixteen years, did fail without lawful excuse to provide the necessities of life to R. M., contrary to Section 215(2)(a) of the Criminal Code.

AND FURTHER THAT SHE AT THE SAME TIME AND PLACE AFORESAID, did unlawfully endanger the life of R. M., thereby committing an aggravated assault, contrary to Section 268(1) of the Criminal Code.

[3] Section 215 carries a 5 year maximum sentence with no minimum. Section 268 carries a 14 year maximum sentence with no minimum. Section.268 is defined as a “serious personal injury offence” which rules out a conditional sentence order pursuant to s.742 of the **Criminal Code**.

[4] For the purpose of this sentencing hearing, I have been provided with the following resources:

- A Pre Sentence Report dated March 12, 2012
- A comprehensive outpatient psychiatric assessment dated November 26, 2012 and authored by Dr. Neilson.
- A fitness and NCR report from Dr. Kronfli.
- Briefs from the Crown and the Defence.
- The oral evidence of Dr. Neilson and Mr. Banks.
- Counsel's submissions.
- An Agreed Statement of Facts.

[5] The Crown submits that the principles of sentencing require a 5 year sentence. The Defence submits that 2 years in a federal prison followed by a lengthy period of probation is the appropriate disposition.

[6] The facts supportive of these convictions are not materially in dispute and are captured in Exhibit #1, the Agreed Statement of Facts.

[7] I will provide a brief overview.

[8] The child R. was born May *, 2008. She suffered a variety of health challenges. She was apprehended at birth and placed in the care of Susan and Andrew MacDonnell. The MacDonnell's had a long history of providing foster care to special needs children. They were viewed by community services as an exceptional set of foster parents.

[9] When R. was 22 months old she was admitted to the IWK Hospital with the following diagnosis:

MAIN ADMISSION DIAGNOSIS: Hypoglycemia with ketosis, and failure to thrive, both occurring in spite of apparent adequate caloric intake via Jejunostomy tube.

The "J" tube had been in place for several weeks for the purpose of providing R. with sufficient sustenance to thrive. Notwithstanding this procedure, R. did not thrive and, as such, was hospitalized on March 23, 2010.

[10] It is simplistic to state that the medical staff were "stumped" as to why R. failed to thrive in light of her consumption of sufficient nutrients. It was this lack of any medical explanation that led to the focus shifting to Ms. MacDonnell.

When the focus turned to Ms. MacDonnell she acknowledged that she had

interfered with R.'s feeding by diluting the feeding formula as well as not administering it when required.

[11] In a police interview on April 28, 2010 Ms. MacDonnell admitted to tampering with R.'s feedings on 6-7 occasions while she was a patient at the IWK.

[12] The day before the police interviewed staff at the IWK who reported incidents in the hospital that suggested Ms. MacDonnell was tampering with R.'s "J" tube feedings.

[13] The particulars of those reports are set forth at pages 3-5 of the Crown's sentencing brief. These were clear explanations as to why R. was failing to thrive. When confronted with these reports Ms. MacDonnell clearly realized that she had been caught and that raised the troublesome question as to "why"?

- There was no criminal history of violence;
- She had a proven, positive record as a foster/adoptive parent; some 30 children had been placed in her care.

- There were no issues of substance abuse;
- Her husband was invested in caring for foster children.

It was obviously puzzling why a good mother, who loved children, would become involved in behaviours that threatened the life of her infant child.

[14] The first indication as to “why” appear in the police interview and are reported in Dr. Neilson’s report at page 23:

She felt her actions were a “mistake”

That such incidents made her realize “I had crossed the line between trying to be a nurse and trying to be a mom”.

“I was really tired. I hadn’t slept at that point for 3 ½ weeks”.

“There were lots of things that contributed to my really bad judgment”.

She stated that she could not explain her behaviour. “It’s going to be just inexplicable behaviour that I just don’t understand” and that “it was not a malicious desire to hurt R.”.

These comments address Ms. MacDonnell's actions but give no insight into the "why".

[15] Further statements gave an indication of possible reasons for Ms. MacDonnell's behaviour towards R. and they relate to a power struggle between the nurses and Ms. MacDonnell.

"We had gotten into a push-pull thing. That she was fighting the boundaries that had been put in place between mom and nursing".

"The more that these boundaries got pulled back, the more I kept trying to interfere and take ownership and take control".

"I did not actually cognitively get the pattern that I was in until the morning that I unhooked her and that's kind of when I went ... like, oh my gosh, what am I doing. You know I'm hurting, like I am aware after that event that I was hurting my daughter. I felt I was fixing my daughter".

While these remarks acknowledge the *actus reas* of these offences, they do little to illuminate the *mens rea*. They do not amount to accepting responsibility for criminal behaviour.

[16] On July 16, 2010 Dr. Kronfli completed an NCR assessment. That assessment elicited the following comments in relation to the question of “why”.

“I was perceived as a special person for fostering special needs kids ... I was getting satisfaction that I am special from the other people on the treatment team. I grew up as not desired and not measuring up.”

“Once I got my need fed I wanted this to continue. I did not want children’s services to take her and place her with someone else whom they might have if there were no special needs issues.”

It was these comments that suggested to me that full psychiatric assessment was required. First because they speak of a psychiatric illness when one had not been diagnosed, and two, there was no danger that she would lose R..

[17] The Court’s inquisitiveness was piqued by Dr. Kronfli’s conclusion that a diagnosis of “factitious disorder, specifically munchhausen - by proxy” was not made out.

[18] Dr. Neilson agreed to conduct an assessment for the Court. Her report is dated Novemer 26, 2012 and is Exhibit #2 in this proceeding. While I will make

ongoing reference to this report, and the associated viva voce evidence, three major conclusions stand out:

1. The diagnosis that Ms. MacDonnell is a “perpetrator of child abuse”.
2. The conclusion that the mechanism creating this diagnosis is “factitious disorder by proxy” which describes a situation where a caregiver meets their own needs by inducing medical symptoms in someone under their control.
3. That Ms. MacDonnell presents as a low to moderate risk to re-offend.

[19] It is noteworthy that Ms. MacDonnell cooperated fully with the process leading to Dr. Neilson’s report.

[20] I will now address factors in Dr. Neilson’s evidence that I find relevant to the design of a fit and proper sentence.

- She grew up in a stable, middle class family with the expected supports.

There was no abuse and she was loved and supported by her adoptive parents.

- Early on she developed an attitude that she never measured up to her mother and in response she worked harder and harder to please her mother at the expense of her own emotional well being.

- As an adolescent she involved herself in a variety of community and school activities. These activities were pro social and appropriate for a child her age.

- Up until University she was an honours student who continued to live a pro social life that included volunteering and extra curricular activities.

- She enjoyed employment from the age of 16 years, usually in the area of providing services to others. Since 1998 she has provided extensive care for special needs children in her home.

- She has been married to Andrew MacDonnell since August 1990 (22 years). He remains at her side notwithstanding the turmoil of the last 2-3 years. While their relationship may lack a certain romanticism, he is with her for the long term.

- Ms. MacDonnell and Andrew have cared for many special needs children over the last 10-13 years and were viewed as the super mom/super dad of the foster child world. There is no evidence before me that questions their sincerity and effectiveness in caring for approximately 30 placements. There is absolutely no evidence that Ms. MacDonnell treated any of these children the way she treated R..

[21] I am satisfied that the above positive factors must be viewed within the following framework which appears at page 12 of Dr. Neilson's report:

Ms. MacDonnell also presents as a woman who is not cognizant of her personal limitations or her emotional needs, and has repeatedly demonstrated that she is willing to ignore personal distress in the service of maintaining appearances irrespective of the cost to herself or others. This is evident in her past behaviour as well as in the timeframe around the offences which appears to be driven by her insatiable need for external approval, recognition, and validation. It also appears to be driven by her need to be perceived as (more than) competent in the eyes of others - indeed, perceived as an expert/advocate in the area of disability experienced by her child(ren) and their healthcare needs.

[22] Further in relation to Dr. Neilson's report, I am satisfied that substance abuse was not a factor in the offences, is not a factor in Ms. MacDonnell's life presently, and will not interfere with rehabilitative efforts.

[23] The circumstances of these offences, I find, are firmly rooted in a history of mental illness.

[24] The diagnosis "perpetrator of child abuse" is not contingent on the factors the court usually sees in cases of child abuse. It is very difficult for society to be compassionate, or even understanding, of persons who harm little children. Society holds adults to a high standard when child abuse is driven by impulse, addiction, poverty. The public, and the law, view these cases of child abuse as highly culpable and deserving of a sentence based on denunciation. In Ms. MacDonnell's case there is no doubt in my mind that her actions are the product of her conditions and, in my mind, that effects culpability. Ms. MacDonnell's mental health does not relieve her of all responsibility for the harm suffered by R. but it would be wrong to see her in the same way we view conventional abusers of children, such as baby shakers and the like.

[25] I am satisfied that her mental illness has continued beyond the offences and affects her judgment when dealing with the consequences of her actions. I believe it is simplistic to state that Dr. Neilson's secondary conclusions amount to her not accepting what Ms. MacDonnell was selling.

[26] When Ms. MacDonnell lies, deceives or manipulates there is an element of mental health at play. Cut it any way you want Ms. MacDonnell is a very sick woman.

[27] This conclusion is not about a moment in time. It is based on almost 25 years of struggle.

[28] It appears that she engaged in self harm as early as 14 years old. She continues to this day either harming herself or considering suicide. She reports amnesia in relation to the harm to R. and many other traumatic events in her life. It may be that such is a defence mechanism or it may be a symptom of her illnesses. It would be wrong to just ignore it as a manipulative ruse. It is also of

some note that until these offences occurred Ms. MacDonnell received no treatment for her complex mental health.

[29] Dr. Neilson stated as follows at page 14 of her report:

However, as noted earlier in the report, throughout her life Ms. MacDonnell has demonstrated borderline personality dysfunction as exemplified by her struggle with feelings of personal inadequacy/feelings of worthlessness/distorted self-image, ambivalence in her relationships (rejecting, alternating with extreme need to please), impulsivity in decision-making, and in her unhealthy and overwhelming level of attention to the physical needs of her family over her own emotional needs, as well as her high investment in her role as ‘super-mom’ (perfectionism). As an adult she also demonstrated several antisocial traits (such as failure to conform to social norms with respect to lawful behaviors; use of deception (lying/conning/manipulation) for her personal profit; impulsiveness in decision-making; and lack of remorse as indicated by having stolen from others. Prior to the index offence, these personality characteristics certainly interfered with her psychosocial functioning but not sufficiently for her to independently seek mental health treatment. However, subsequent to the investigation into the tampering with R.’s feeds, these personality features have been significantly in evidence, and have resulted in her independently seeking mental health attention.

[30] The issue of remorse is also addressed in Dr. Neilson’s report. She writes at page 18:

“Her level of remorse seems very superficial, her usual way of functioning is with an expectation that once an issue is addressed, it is over and she can move on and forget about it. Currently she seems intent to wallow in statements and behaviour that would make her appear vulnerable and somehow less culpable”.

I accept these comments as “spot on”. Remorse is considered a good indicator of rehabilitation. However, it is my view that her lack of true remorse is associated with her myriad of mental health conditions. In other words, this behaviour is but another adaptive strategy.

[31] The primary diagnosis of “factitious disorder by proxy” was explained by Dr. Neilson at page 21 of her report:

For the information of the Court, in lay language, Factitious disorder by proxy is when a parent (usually the mother) presents the child to medical personnel under the pretext of manufactured symptoms of disease (e.g. “seizures”, headaches”) OR deliberately takes manipulative measures that are directly harmful to the child (e.g. administration of medical drugs; dilution of infant formula) in order to use the child as a vehicle to obtain, maintain, and regulate a relationship with medical personnel, or with others viewed as powerful. These relationships contain elements of neediness but also in many cases strong hostility, in that the medical personnel are being fooled and manipulated into harming the child at the urging of the mother (in the fruitless pursuit of a non-existent diagnosis).

The psychiatric literature suggests that the psychological needs of the perpetrator are often not limited to ‘assumption of sick role’ and are thought to range from thriving on the attention and recognition that results from being perceived as the devoted parent of a sick child to the need to covertly manipulate or deceive authority figures. Still others are thought to be genuine “help seekers” - i.e. a mother who is genuinely overwhelmed and who fabricates a symptom in her child in order to obtain the help she so desperately needs.

[32] Dr. Neilson states that while this behaviour is thought to have psychological origins, it arises from personality dysfunction and is not a major mental illness.

While that may be so, it would be improper to conclude that this is solely a common condition based on human weakness. After all it has the power to dislodge maternal and human instincts in a mother whose whole purpose is to care for children.

[33] I accept Dr. Neilson's analysis of what led to harming R.. She stated at page 26 of her report:

- the offence behavior likely had several motivators that were “fluid” (i.e. overlapped, co-existed, and/or recurred in time).
- the need to manipulate health circumstances in R. that would be most favorable to the child's adoption into the family.
- the need to assume a dependent status and receive nurturance while preserving her facade as a coping super-mom.
- the need to be the center of attention and to feel important which eased her chronic feelings of worthlessness.

- the need to feel superior to authority figures (nurses/doctors) that was gratified by being able to deceive them

It is reasonable to think about why this never occurred to all the other children in Ms. MacDonnell's care over the years.

[34] I conclude that by the time R. arrived the load was just too heavy. I expect that over the years Ms. MacDonnell had the same needs but that she was able to cope without the behaviours she exhibited towards R., in other words she never reached the "tipping point". In 2010 not only did she have the demands of R. but she had the care of five other special needs children in her home. She was overwhelmed but refused herself help or psychological attention. As a result she offended. The offences allowed her to maintain her facade in the foster community and to achieve some respite from the pressures at home. This review leads me back to the question that is significant in the sentencing analysis; what is Ms. MacDonnell's risk to re-offend?

[35] What does low to moderate mean? Dr. Neilson offered the following opinion at page 30 of her report:

SUMMARY RISK STATEMENT: Based on a convergence of results from the risk assessment tools employed in this assessment, my clinical judgment is that Ms. MacDonnell poses a low-moderate risk of violent re-offence, and a low moderate risk of any criminal recidivism. In my opinion, the most likely scenario for future violence is similar to the current: that is, the victims are likely to be similarly vulnerable individuals who Ms. MacDonnell is able to manipulate (e.g. disabled children in the family home; elderly people in a care setting; or vulnerable members of the public who Ms. MacDonnell is 'helping' in a volunteer setting or position of trust).

It is of some significance that the risk to re-offend is limited to children and maybe other vulnerable persons. Suggestions that the elderly, etc are at risk is speculative.

[36] This case has been before the Courts for 2 ½ years and this raises the question as to whether Ms. MacDonnell has made any progress addressing her illnesses. Dr. Neilson suggests that Ms. MacDonnell has made little or no progress. On the other hand Dr. Kinley in her April 26, 2012 report stated that in relation to her prognosis "her mental state is still fragile but improved". On the issue of ongoing risk Dr. Kinly stated "I do not find her to be a threat to anyone at this point". Dr. Kinley also stated that "she does experience remorse for her actions and the prognosis for this woman is good given that she finds herself in an environment of support, respect and understanding".

[37] Mr. Barry Banks has been involved with Ms. MacDonnell since June, 2010. He testified that after nine months Ms. MacDonnell experienced personal and spiritual growth. He testified that when he saw her after an intensive seven week day treatment program in April, 2012 he observed “an incredible amount of growth”.

[38] For the purpose of this sentencing, and after considering the three sources, I conclude that Ms. MacDonnell has made appreciable progress respecting her mental health issues. I do accept that she still has a long way to go.

[39] The evidence that I have thus far reviewed represents the foundation on which to apply the principles of sentencing.

[40] Section 718 of the **Criminal Code** sets forth the basic principles of sentencing and states:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

I interpret these words as not just applying to the accused but to the larger community. I am of the view that the most important words in that phrase are “just sanctions” and “just sanctions” do not always equate to severe sanctions.

[41] Society can often be heard to complain that the Courts are soft on criminals and that we require stricter penalties. Those pressures have resulted in legislative intervention.

[42] It is my view that in Ms. MacDonnell’s case society recognizes that her actions toward R. are the product of a mental illness and not just the product of human weakness.

[43] I am not suggesting that society will feel that she should not be held accountable but people will see this as a special case requiring a carefully crafted sentence. While society may like to see the book thrown at the truly violent and dangerous offender, I do not feel that the public will feel the same about Ms. MacDonnell. This represents the compassion in our society and the view that Courts should be guided by the moral culpability of the offender. I suspect that if you canvassed the ordinary citizen as to what they would like to see in a sentence

on these facts the response would be that any sentence should contribute to making her better.

[44] The first “objective” in section 718 is “to denounce unlawful conduct”. The sentence I impose today must contain a healthy dose of denunciation, but it must be tempered because of Ms. Donnell’s circumstances.

[45] The crown’s position equates denunciation with the quantum of incarceration. However we must remember that in enacting this section Parliament has mandated that expanded use be made of restorative principles in sentencing because of the general failure of incarceration to rehabilitate offenders and reintegrate them into society. We must also remember that our prisons are full of mentally ill offenders for which prison amounts to warehousing.

[46] The Crown submits that the right amount of denunciation is five years.

[47] In the case of *R. V. CMR* [2004], O.J. No. 4490 the Ontario Court of Appeal imposed sentences of four and five years on the following facts:

All witnesses described [C.R.] and [B.R.] being tethered, made to sleep in a dog cage in the case of [C.R.], made to sleep within a specially constructed room and, in the latter stages, made to sleep in cages constructed out of cribs that had locks. [C.R.] received a greater proportion of this type of treatment. All witnesses speak of the physical striking of the boys by C.M.R. with a slipper and by W.L.R. with a shoe horn. The accused must be found to have been party to the assaults on [C.R.] and [B.R.] by [their son-in-law] since they were conducted at times pursuant to W.L.R.'s requests and with the knowledge of C.M.R.

All witnesses speak of the effects of this physical punishment when it was used to train the young boys not to defecate in their diapers at night. Both [C.R.] and [B.R.] confirm[ed] after gentle but persistent questioning by the police that they did eat their own feces and drink their own urine to hide these accidents out of fear of what would occur if they were discovered. All witnesses confirm the shouting of profanities and demeaning comments by W.L.R. at various points in the process when she discovered bad behaviour that she deemed had to be corrected.

[48] In the case of *R. v. Naglik* [1991], O.J. No. 789 the Ontario Court of Appeal imposed a sentence of 4 ½ years on the following facts:

Peter Naglik, the victim alleged in the indictment, was born on August 27, 1987. The appellant and her co-accused, Peter Geoffrey Pople, were his parents. The appellant was 19 and Peter Pople was 25. The child lived with them from the time of his discharge from the hospital after his birth on September 2, 1987, until his return to the hospital at 7:40am on November 5, 1987, suffering from various injuries.

The baby had a fractured collar bone on the right side. Based on the callus build-up, this injury was probably two to three weeks old but, at most, one month old. There were fractures to ribs involving the fourth, fifth, sixth, seventh and eighth ribs on the left side from the armpit down. On the same side there were other fractures, near the spine, of the fifth, sixth, seventh, eighth and probably the ninth and tenth ribs. On the right side, there were similar injuries involving the sixth,

seventh, ninth, tenth, and eleventh ribs. These fractures were about the same age as the broken collar bone.

In addition, the eleventh vertebra had a compression fracture. This fracture could not be aged as there was no callus build-up in this type of injury.

[49] In the case of *R. v. T.L.* [2000], O.J. No. 5750 the Ontario Superior Court of Justice imposed a sentence of five years on the following facts:

She suffered extensive bruising to her face, cigarette burns on her body, loose teeth, arm and pelvic fractures and a torn esophagus. These injuries were so severe, she may have died if not for the intervention of the child's doctor.

The trial judge at sentencing stated “perhaps this is not a case of stark horror but it comes awfully close to it”.

[50] In the case of *R. v. Santana* [1995], O.J. No. 2141 the Ontario Court of Justice imposed a sentence of four years, in addition to nine months of remand, on the following facts:

The accused had a criminal record.

The child suffered serious permanent injuries

The trial judge found that the accused intended to inflict the harm that was done.

On arrival at the Sick Children's Hospital, emergency surgery was performed, and for a period of two years her life hung in the balance. She had sustained massive injuries to her brain. She was left with only half a brain. On further investigation by an ophthalmologist, it was discovered that there were innumeral retinal hemorrhages. In addition, there was a white cloudy space in one eye. Blood had filled that space. This apparently was caused by the application of extreme force and shaking. It appears now that there is some retinal nerve damage which may, not necessarily will, but may cause impairment to her vision.

[51] These cases are quite distinguishable on the facts and the offender in this case.

[52] The 2nd objective in section 718 is "to deter the offender and other persons from committing offences". I believe it is fair comment that individual deterrence must be less of a factor in mentally ill offenders. As well stigmatization can play a role in specific deterrence, and to some degree general deterrence.

[53] There has been much stigmatization in Ms. MacDonnell's case notwithstanding the mental illness factor. The events of the past 2 ½ years, and future events, will act as sufficient personal deterrence. As for general deterrence in this type of case, there is only so much the Court can do. As I stated earlier, I am satisfied that the public will see this case for what it is.

[54] The third objective in section 718 is ‘to separate offenders from society, where necessary’. I have considered this objective in crafting a sentence for Ms. MacDonnell.

[55] The fourth objective in section 718 is “to assist in rehabilitating offenders”. Ms. MacDonnell’s sentence must reflect a healthy attempt at rehabilitation. It is a well established principle that the purpose of sentencing is to protect society and the most effective way of doing that is through rehabilitation. Ms. MacDonnell’s rehabilitation will equate with improved mental health through therapy, counselling and support. I must bear in mind that duration of incarceration adds little to rehabilitation. If too long it can retard recovery.

[56] Section 718.01 has specific application to this case. It states:

718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

I have considered this section in crafting a fit sentence for Ms. MacDonnell. Yet it is a matter of discretion as to what that translates into in terms of incarceration, or for that matter, penalty generally.

[57] Sentencing is an individualized process. In some cases denunciation and deterrence involves incarceration, sometimes not. If it translates to incarceration, the amount is a matter of discretion. I am satisfied that the sentence I have crafted for Ms. MacDonnell respects section 718.01.

[58] Section 718.1 also has application to this case: It states:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Application of this principle avoids the danger of vengeance seeping into the sentencing process. It keeps the Courts focus on the gravity of the offence and the moral blameworthiness of the offender.

[59] The Supreme Court of Canada stated in *R. v. M.* (C.A.) 1996 1 S.C.R. 500 where retribution was assimilated into proportionality:

Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender; the consequential harm caused by the offender; and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment and nothing more.

[60] Section 718.2 sets forth several other sentencing principles. I will address those that apply in Ms. MacDonnell's case. Subsection (a) states as follows:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

shall be deemed to be aggravating circumstances.

[61] I find the following aggravating factors to be present:

- The abuse was perpetrated on a very young and vulnerable child.
- Ms. MacDonnell as a parent was in a position of trust and authority to R..
- The consequences of Ms. MacDonnell's actions on R..

[62] I find the following mitigating factors to be present:

- Ms. MacDonnell's psychiatric illnesses
- The fact that R. made a full recovery.
- The absence of a criminal record
- The fact that Ms. MacDonnell cared for many special needs children without anything similar occurring.
- The guilty plea.
- She has been on judicial interim release for 2 ½ years without incident.
- She has complied with all assessments and treatments.
- She has a support network in the mental health community.
- Her husband has stuck with her through the entire process.
- There is evidence of some progress in dealing with her mental health issues.

Obviously throughout this ruling the issue of Ms. MacDonnell's mental health has played an important role. I am satisfied that it is entirely appropriate to rely on that focus as long as it is not to the exclusion of other factors.

[63] In *R. v. L.M.*, [2008] 2 S.C.R. 163 the Supreme Court of Canada cited the following commentary with approval:

22 [The] objectives of denunciation, deterrence, separation from society, rehabilitation, reparations and retribution are all quite general, and there is no precise standard that can be applied to rank them. At first glance, this is desirable, since the sentencing process is fundamentally an individualized one in that sentencing process is fundamentally an individualized one in that sentences will necessarily vary from one offender to another in light of the particular emphasis that will be placed on one or the other of the objectives in order to arrive at the appropriate sentence, having regard to all the circumstances, in each case.

[64] The Crown seeks a DNA order pursuant to section 487.051. Aggravated assault is a primary designated offence. I will sign such an order.

[65] The Crown also seeks a ten year weapons prohibition pursuant to s. 109 of the **Criminal Code**. While I see no factual basis for such an order, the **code** makes it mandatory for offences with a maximum penalty of more than ten years. Consequently I will sign such an order.

[66] On the conviction for aggravated assault I sentence Ms. MacDonnell to two years in a Federal Institution. On the failure to provide the necessities conviction I sentence Ms. MacDonnell to one year to be served concurrently for a total of two years incarceration. It is my recommendation that this sentence be served at the Truro facility so that there will be minor disruption to her treatment.

[67] In addition I am placing Ms. MacDonnell on probation for three years to commence upon expiration of the sentence of imprisonment.

[68] The following conditions shall apply:

- Keep the peace and be of good behaviour.
- Appear before the Court when required to do so by the Court.
- Notify the Court, probation officer, in advance of any change of name, address, employment or occupation.
- To have no contact with any child under the age of fifteen years except with the consent of a probation officer.
- Report to a probation officer at Halifax/Dartmouth within 7 days from the date of expiration of your sentence of imprisonment, and when required, as directed by your probation officer.

- Remain within the Province of Nova Scotia unless you receive written permission from your probation officer.
- Make reasonable efforts to locate and maintain employment or an education program as directed by your probation officer.
- Attend for mental health assessment and counselling as directed by your probation officer.
- Participate in and cooperate with any assessment, counselling or program directed by the probation officer.

[69] I believe that the probation officer is best equipped to direct Ms.

MacDonnell to appropriate treatments.

J.