

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Laffin, 2013 NSSC 136

Date: 20130425

Docket: CRH 351861

Registry: Halifax

Between:

Her Majesty the Queen

v.

Steven Elliott Laffin

Judge:

The Honourable Justice Felix A. Cacchione

Heard:

April 25, 2013, in Halifax, Nova Scotia

Written Decision:

April 30, 2013

Counsel:

Susan MacKay, for the Crown
Brad Sarson, for Mr. Laffin

By the Court: (Orally)

[1] **THE COURT:** Mr. Laffin, is there anything you would like to say before I sentence you?

[2] **MR. LAFFIN:** Yes, thank you Your Honour. Your Honour this morning earlier today you had made statements about me not knowing myself, not knowing myself very well. And I believe you are correct Your Honour. I don't know myself very well anymore, as well as I thought I did obviously which is why I have been meeting with a counsellor at the facility, the chaplain there, meet with him on a one on one basis, just to help me to sort through and help discover who I am and help me with problems that I had been facing up until my...leading to my arrest.

[3] I am sorry for the damage I have done. I used...I used to think the value of a man, Your Honour, was measured in his wealth, and his money and his possessions and since coming to the jail, since my arrest I have since discovered this isn't true. The value of a man is measured in the effect he has...is measured in the effect he has on the people he has around him, I believe, Your Honour and the effects I have had on people have not been good. This how I...this is how I know how little I have become worth and how low I have fallen from who I used to be as a child growing up.

[4] I am sorry for Ms. Gazzard and to her family and to Nadine's family as well for everything I have done Your Honour, and there is nothing I can do to change those, but I believe that with time I can change who I become back to who I should be, and Your Honour, I am not beyond...I am not beyond redemption. So I ask the Court not to give up on me either. Thank you Your Honour.

[5] **THE COURT:** Thank you Mr. Laffin. Just have a seat sir.

COURT'S DECISION

[6] Mr. Laffin I credit you for attempting to find out more about yourself by working with the chaplain at the Institution, but I would suggest that you need a lot more help than the chaplain can give you. I think you really do have to seek some sort of psychiatric assistance to understand what led you to commit the

offences that you are being sentenced on this afternoon and the murder for which you were sentenced earlier this morning.

[7] The facts surrounding the commission of these offences and Mr. Laffin, for the record, pled guilty to kidnapping, a life imprisonment offence; aggravated assault, a 14 year maximum offence; uttering death threats, a 5 year maximum sentence offence; and unlawful confinement, a 10 year maximum sentence offence.

[8] There is a nexus in time and place with respect to all of these offences so that any sentence to be imposed are concurrent to each other and concurrent to a life sentence that has been imposed. The *Criminal Code* does not allow for a sentence to be made consecutive to a life imprisonment offence.

[9] The factual background here is that on August 16th Mr. Laffin picked up Ms. Gazzard looking to engage in some sexual activity with her. Ms. Gazzard was struggling with an addiction. Her addiction led her to work the streets and that is what she was doing that night because the addiction was so strong and her craving for drugs was so strong. Mr. Laffin picked her up. At some point he attempted to choke her by putting her arm around her throat. There was a struggle. Ms. Gazzard screamed. Mr. Laffin put his hand on her mouth. He tried to choke her with his hands. Ms. Gazzard passed out. When she woke up her hands were tied behind her back with, I believe it was duct tape. Mr. Laffin then taped her mouth and head. He smashed her head into a rock on the ground. Told her that she was the second one that he had done this to and if she did not have any money he would kill her.

[10] What is unnerving about the factual situation was Ms. Gazzard's testimony that while doing this and saying these things to her Mr. Laffin did not appear angry. He did not appear upset. It appeared to Ms. Gazzard that her crying had some sort of an arousal factor for Mr. Laffin. Her shoes were removed. Her pants were partially removed. He put tape over her nose. The next thing that Ms. Gazzard recalls was being in the trunk of a car. Had it not been for her wherewithal in remembering the safety latch on the inside of a vehicle, safety trunk latch, one is left to speculate as to what would have occurred to her.

[11] Given what Mr. Laffin had done some few weeks previously, it is scary to think of what could have happened. But that did not happen. Ms. Gazzard managed to escape. She was rescued, if one can use that word, by some people who heard her banging at their door, took her in, police were called and the actions of Mr. Laffin in then going to the police and presenting them with this story of finding a bloody half-naked women on the road and putting her in his car, really leads me to question what Mr. Laffin is all about. I said it this morning, I think it is quite scary.

[12] Ms. Gazzard's injuries took some weeks to heal. She has had recurring nightmares about the incident. She is fearful, constantly looking over her shoulders and has a fear that Mr. Laffin will return to finish what she believes he started on that evening.

[13] Ms. Gazzard, I think that you should rest easy because he is not going anywhere fast. Do you understand that?

[14] **MS. GAZZARD:** Yes.

[15] **THE COURT:** I think that you have to move on. You are fully aware of the issues that you have to deal with. Being fearful of him is not one of those issues anymore. So you can focus on the other ones.

[16] **MS. GAZZARD:** It just made me stronger I think. Oh, it has made me stronger.

[17] **THE COURT:** Mr. Laffin, as I indicated this morning from the Pre-sentence Report, is noted to be 38 years of age with a Grade 12 education. He has a prior record as an adult for robbery, theft under, failure to attend and assault causing bodily harm. Mr. Sarson, in his submissions, referred to an application to vary a conditional sentence order which bound Mr. Laffin, and in his submissions pointed out the fact that Mr. Laffin has the ability to be a productive member of society. Comments from his employer as a carpenter were that he was an excellent worker and there is nothing to contradict that. But there is also a dark side to Mr. Laffin. He has shown that through his callous behaviour in this case and in the offence with respect to Nadine Taylor.

[18] Mr. Laffin, according to the Pre-sentence Report has a good relationship with his mother and his siblings. It is noted that his father passed away when Mr. Laffin was 16. He described himself as the good one in the household. He was fortunate that there was no physical or sexual abuse in his household. He left there when he was 23, was married twice and has one child from his second marriage. Neither of his former spouses have had any contact with him and he has had no contact with his son.

[19] The report indicates that he had no difficulties in school. He worked the Casino in both Sydney and Halifax and also as a carpenter. He blames his current difficulties on a gambling addiction. I spoke of that earlier this morning, and I reiterate what I said then, which is that those remarks really are an excuse and an example of the lack of insight that Mr. Laffin has into his behaviour. He did complete anger management and self awareness courses while incarcerated. He also says that he has a long fuse and does not lose control if angry.

[20] He has accepted responsibility for these offences. He has entered a plea of guilty and I take that as a mitigating factor. He has been on remand since August 16, 2010. That is a period of, in my calculation, 32 months. He should be credited for some of that time and he will be credited for 2 months between the August and October dates of 2010. The rest of the sentence will be on a go forward basis.

[21] The Crown seeks a sentence of 12 years. It acknowledges in its brief that such a sentence is typical for offences of attempted murder and higher than those for aggravated sexual assaults, but says that the facts here are extremely serious and therefore deserve a sentence higher than the range which has been set out by Appellate Courts for the offences for which Mr. Laffin has pled guilty.

[22] This Court cannot lose sight of the fact that Mr. Laffin was not convicted of attempted murder or aggravated sexual assault. He pled guilty to aggravated assault, confinement, kidnapping and uttering threats.

[23] The Crown's brief refers to a number of cases and I will deal with those. In the *Abrosimo* case (2006 BCPC 646), that case involved a beating about the face and head while the victim was handcuffed. A handgun was used. There was a sexual assault while the victim was bound and gagged. A second incident in that same case involved an 11 year old girl whose mouth and eyes were taped shut.

She was sexually assaulted, including penetration. The accused there had prior offences for threats, breach of the peace, theft, break and enter and committing sexual assault, together with a number of parole violations, possession of weapons for purpose to dangerous to the public peace. A number of convictions for that, and for assault. That case really can be distinguished from the one before this Court.

[24] The Crown also cited *The Queen and Chong*, [2000] B.C. 359) where the accused pled guilty to kidnapping, unlawful confinement, extortion and administering a noxious substance. The victim in that case was drugged, forced to perform oral sex, held for ransom for 12 days, bound, blindfolded and had duct tape over her mouth the entire duration of her confinement.

[25] The case of *The Queen and P (D.W.)* (1988), 126 C.C.C. (3d) 475 involved a 9 year old child who was viciously attacked and sexually assaulted. She was left for dead in a field. The accused there was convicted of attempted murder and aggravated sexual assault. Six years on each count concurrent was raised to 10 years on appeal. The complainant in that case was told by the accused that he would rape her. He choked her into unconsciousness and sexually assaulted her.

[26] In the present case the defence suggests that the 12 years sentence sought by the Crown is outside the appropriate range and submits in its stead that 7-9 years is in the range. He argues that credit for remand time should be on a one-to-one basis.

[27] What this Court must do, is bound to do, is to sentence the offender for the offences for which he has pled guilty and for the circumstances of those offences. One can speculate that Ms. Gazzard could well have been killed given Mr. Laffin's previous conduct with Ms. Taylor, but that would be speculation. This is a very serious offence. There is no downplaying it whatsoever, but the Court is bound by case law and a range of sentences imposed for similar offences, similar offenders and similar circumstances.

[28] In the *Mills* case, [1998] B.C.J. No. 2105 which involve a kidnapping for ransom, a 4-6 year sentence was imposed. In the case of *R. v. R.J.W.*, [2002] N.S.J. No. 558 a taxi driver who was shot in the back of the head, the original charge there was attempt murder. The accused pled guilty to aggravated assault.

A sentence of 7 years 9 months was imposed. In *The Queen and Silvea*, [1988] N.S.J. No. 327 involved a brutal assault on a pizza delivery person which resulted in the victim becoming a spastic quadriplegic. A 9 year sentence was imposed in that case. In the case of *R. v. McQuad*, [1997] N.S.J. No. 20, again a brutal beating. A number of people beat. A young man, left him with life threatening injuries and permanent disabilities. An 8 year sentence was imposed at trial and was upheld on appeal.

[29] I have considered the principles of sentencing set out in ss. 718, 718.1 and 718.2 of the *Criminal Code*. Factors to be stressed in this case are denunciation, deterrence, both specific to Mr. Laffin and general deterrence. As well, the need to separate Mr. Laffin from society. That, in the circumstances of this case, together with what I heard this morning, make that a necessity. That is separating him from society.

[30] I am mindful that rehabilitation should never be lost sight of. Mr. Laffin has indicated both personally and through his counsel that he has made efforts to gain some insight into his behaviour by working with a chaplain at the Institution and I urge him to continue to do so. I also urge him to get some psychiatric assessment so that he can get a better insight into his behaviour.

[31] Any sentence this Court imposes must be similar to sentencing imposed on similar offenders in similar circumstances. In this case the sentence proposed by the Crown, in my opinion, is outside the range of sentences for similar offenders in similar circumstances. Mr. Laffin has not pled guilty to attempt murder. He has not pled guilty to aggravated sexual assault. Some of the cases I have referred to involved those offences and the sentences imposed there were less than what the Crown is seeking here.

[32] I cannot lose sight of the fact that any sentence I impose must run concurrently to his life sentence. He has to serve 13 years before he can even apply for parole. Unless there is a real change in Mr. Laffin I have serious doubts that a Parole Board would even consider him after he has served his 13 years.

[33] I cannot lose sight of the fact either that Mr. Laffin did not pled guilty to aggravated sexual assault and should not be sentenced to a tariff that applies to offences of attempt murder and aggravated sexual assault.

[34] This is a very difficult sentencing. Mr. Laffin has shown by his behaviour an inability to control himself with respect to marginalized women. He has also been sentenced to life imprisonment.

[35] If you would stand please Mr. Laffin.

[36] With respect to the offence of kidnapping Melissa Sue Gazzard with intent to cause her to be confined against her will, the sentence of this Court is that you be imprisoned for a period of 4 years. With respect to the sentence that you did commit an assault on Melissa Gazzard that endangered her life and you committed an aggravated assault on her, the sentence of this Court is that you be sentenced to a period of 9 years incarceration, concurrent to any other sentence you are presently serving. With respect to uttering threats, there will be a sentence of 2 years concurrent. And with respect to the unlawful confinement another 2 years concurrent. All sentences are concurrent to each other and concurrent to your life sentence.

[37] The total sentence therefore is one of 9 years in a federal institution on a go forward basis.

[38] There will be an order under s.109 of the *Criminal Code* prohibiting you from possessing any prohibited firearms, restricted firearms, weapon, prohibited device or ammunition for life.

[39] Mr. Laffin, I do hope that you are not trying to deceive yourself into believing that your actions were just an aberration, that you really have to work hard to examine who you are, why you did what you did and you certainly will have long enough to think about that.

[40] Anything further counsel?

[41] **MR. SARSON:** Did Your Lordship waive the Victim Fine Surcharge?

[42] **THE COURT:** Yes I did. If I didn't mention it, I am waiving it. He is in no condition to pay a Victim Fine Surcharge.

[43] **THE COURT:** Anything further counsel?

[44] **MS. MACKAY:** I don't think so. Thank you.

[45] **MR. SARSON:** No My Lord.

[46] **COURT:** Is the Crown seeking a DNA order, Ms. MacKay?

[47] **MS. MACKAY:** No My Lord. We already have DNA confirmed in the data bank. Thank you.

[48] **THE COURT:** With respect to the other counts on the indictment. There was the count of attempted murder.

[49] **MS. MACKAY:** And the Crown is offering no evidence on those other counts.

[50] **THE COURT:** And that is the only other count. The attempt murder is dismissed for want of prosecution.

Cacchione, J.