

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Miller*, 2018 NSSC 6

**Date:** 20180112

**Docket:** CRP 452644

**Registry:** Pictou

**Between:**

Her Majesty The Queen

v.

William George Miller

**Judge:** The Honourable Justice James L. Chipman

**Heard:** January 12, 2018, in Pictou, Nova Scotia

**Written Decision:** January 16, 2018

**Counsel:** J. Patrick Young, for the Crown  
Pavel Boubnov, for the Defence

**Orally by the Court:**

**Introduction**

[1] By Indictment dated June 21, 2016, Mr. Miller was charged with these crimes:

COUNT 1

THAT on or about the 28<sup>th</sup> day of May, A.D. 2016 at, or near New Glasgow, Nova Scotia, did break and enter a certain place to wit: a dwelling house situated at 151 Elm Street, Apt. 1, New Glasgow, Nova Scotia and did commit therein the indictable offence of theft contrary to section 348(1)(b) of the *Criminal Code*;

COUNT 2

THAT on or about the 28<sup>th</sup> day of May, A.D. 2016 at, or near New Glasgow, Nova Scotia, did break and enter a certain place to wit a dwelling house situate at 151 Elm Street, Apt. #3, New Glasgow, Nova Scotia and did commit therein the indictable offence of theft contrary to section 348(1)(b) of the *Criminal Code*.

[2] On October 10, 2017, the date that was scheduled to be the first day of trial, Mr. Miller entered guilty pleas. The matter was adjourned to today's date to allow for the preparation of a Pre-Sentence Report ("PSR") and for the filing of sentencing submissions.

[3] On December 14, 2017, the Court received the PSR dated December 7, 2017, authored by Probation Officer Stephanie MacDonald. The PSR is brief because there is another PSR prepared on Mr. Miller (with respect to other offences), dated March 20, 2017. The Court has reviewed the March 20<sup>th</sup> PSR also prepared by Ms. MacDonald.

[4] On December 21, 2017, the Court received a brief from the Crown, copied to Mr. Miller's lawyer. The brief begins with this:

I am pleased to advise that the parties will be advancing a joint-recommendation as to sentence. The facts will not be in dispute. The joint recommendation will be for 3 years imprisonment on each charge, concurrent to each other (for a total of three years), but consecutive to time currently serving.

[5] Today the Crown handed up Exhibit 1, a JEIN printout with respect to Mr. Miller dated January 12, 2018 and Exhibit 2, a CPIC report dated November 23, 2015 documenting 62 prior convictions.

[6] In keeping with the direction of the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, I am satisfied the joint submission on sentence to be appropriate.

### **Agreed Facts**

[7] The Crown brief confirms the facts are not in dispute and read as follows:

1. William George Miller ("the Accused") has plead guilty to two counts of breaking and entering into a dwelling house. Both offences occurred on the same day, but they involve two separate residences. Both offences are straight-indictable offences.
2. The Accused was employed as a superintendent and general "handyman" of an apartment building owned by Goodman Heritage Properties. Rick Goodman, Q.C. is the President of that company. Consequently, the Accused had access to the tenants' apartments. He was in a in a position of trust. He collected rent, and performed whatever maintenance jobs were required of him.
3. The apartment building is comprised of two buildings joined together. The first building is located at 151 Elm Street, in New Glasgow, N.S. The second building is located at 171 Abercrombie Road, New Glasgow.
4. On May 28, 2016 Mr. Goodman was informed by Lindsay Cosh—a tenant—that she thought there was someone in Katelyn Kilmister's apartment (151 Elm Street, Apt. #1), which was located directly below her own apartment.
5. Ms. Kilmister left her apartment in April, 2016 to visit her brother who was in the hospital in Halifax. Before she left she gave Mr. Goodman permission to enter her apartment to retrieve a cheque for rent. At some point before she left, the Accused asked her how long she expected to be away from her apartment. She responded that she did not know—it could be weeks, or possibly months before she could return. The Accused asked her to give him a call before returning to town.
6. Ms. Kilmister returned to her apartment on May 28, 2016. When she opened her apartment door, she observed the Accused on her couch. He ran to the kitchen. He re-entered the room and explained that he was there

to repair her bathroom sink. There was nothing wrong her bathroom sink; it did not need repair. Then the accused went into the bedroom. She called the New Glasgow Police.

7. Ms. Kilmister found an empty bottle of Smirnoff 750 ml. bottle of vodka, and an empty package of Phillip Morris brand cigarettes that did not belong to her. Her groceries were gone. She had bought food specifically for her daughter, and that was gone. She had canned food in the cupboard that the accused had also eaten, Following an inspection of the apartment, Mr. Goodman told police in his statement that, "...there was evidence that Bill was actually sleeping in her bed."
8. Ms. Kilmister observed that the molding around the back door was pried away. She concluded that the door could have been easily opened with a card or a flat object.
9. Ms. Cosh told police in her statement that she heard coughing from the apartment downstairs the evening of May 27, 2016 She could hear the fan on in the apartment. She heard a thump, and decided to contact her landlord, Mr. Goodman. Mr. Goodman called the New Glasgow police.
10. Mr. Goodman confirmed that the accused had no reason to be inside Ms. Kilmister's apartment—whether it was to perform maintenance repairs, or for any other purpose.
11. The New Glasgow Regional Police Services responded to the complaint at approximately 6:00 p.m. on May 28, 2016. Cst. Harvey Timmons and Sgt. Joseph DiPersio attended the scene. Sgt. DiPersio proceeded to the third floor apartment (Ms. Kilmister's apt. #1). He knocked on the door, but there was no answer. Lindsay Cosh called to the police members from the second floor, and asked to speak with them about the complaint. As Cst. Timmons was speaking with Ms. Cosh, Sgt. DiPersio heard the door to the upstairs apartment open, and then close shut.
12. Sgt. DiPersio went to the third floor apartment, and once again knocked on the door. There was no response. Cst. Timmons gained entry to the upstairs apartment by way of an emergency door through Ms. Cosh's apartment. Once inside Ms. Kilmister's apartment, the police members observed the Accused lying on the bed in the bedroom. He had an empty bottle of vodka beside him.
13. Sgt. DiPersio and Cst. Timmons placed the Accused under arrest at 6:19 p.m. on May 28, 2016. He was advised of his Charter rights, and given the police caution.

14. Sgt. DiPersio observed that the Accused displayed indicia of impairment by alcohol: he was unsteady on his feet, his speech was slurred, there was a strong odor of alcohol on his breath, and his eyes were bloodshot. Sgt. DiPersio was of the opinion that the Accused's was impaired by alcohol.
15. The Accused had also broken and entered into apartment no. 3, Megan Mahaney lived there at the time. Ms. Mahaney explained to police in her statement that she was away for the weekend of May 26-28, 2016. When she returned to her apartment on May 28, she observed her door was damaged; the door casing was on the floor of her apartment. One of her two cats were missing.
16. The accused has a related criminal record that contains prior convictions for numerous offences, including breaking and entering.

## **Offender Profile**

[8] Mr. Miller (dob: November 13, 1963) is 54 years of age. He is a pipe-fitter by trade. The March 20, 2017 PSR provides background regarding Mr. Miller's longstanding difficulties with alcohol:

With respect to alcohol, the subject stated that he is an alcoholic. Same advised that he began drinking heavily after his parents were killed in 1987 and has continued to do so up until 2012. The offender stated to this writer that all of his involvement with the criminal justice system has been a result of alcohol consumption. Same further advised that he has attended Pictou Detox on two separate occasions. The subject, while federally incarcerated, reports completing a program called NSAP – National Substance Abuse Program. He described this as a high intensity addictions program that is only offered in federal institutions. Same advised, in his opinion this program was the “gold stand” for addictions programs and found it very helpful. The defendant said that she had been successful in abstaining from alcohol “most of the time” for the past several years. However, he said that the man he had hired to work for him was “quite a drinker” and when they became good friends (2015), he noted that he started to drink more often. This was problematic and contributed greatly to his issues. In January 2016, the subject reported that he contacted Addiction Services and commenced sessions with a counsellor there and attended until his incarceration. The offender admitted to “being sneaky” and withholding the truth from his partner and in hindsight now realizes this was the start of his problems regarding alcohol. The subject is aware that he needs to gain control over this alcohol consumption if he wants to maintain his relationship with Ms. David and be successful in the future.

[9] The PSR prepared for today's sentencing notes Mr. Miller continues to have support from his female partner with whom he has been in a relationship for about seven years. In terms of his current status, the PSR concludes, as follows:

Since being at the Westmoreland Institution, the offender has successfully completed a high intensity alcohol program called ICPM. Same also attends Alcoholics Anonymous regularly and was recently approved to attend AA in the local community escorted by a community volunteer. The offender continues to express his intention of "never drinking again".

Overall, the subject believes he is doing well in the correctional setting and has earned the trust of the staff there.

This writer spoke with Ms. Claudette LeBlanc, Parole Officer at Westmoreland Institution, who confirmed that the subject is doing "exceptionally well" in the institution setting. Ms. LeBlanc confirmed that the defendant has completed a high intensity alcohol program, attends AA regularly and poses no behavioural concerns. Same advised that she has approved him and put his name forth to the director to attend AA bi-monthly in the community while escorted by a trained volunteer commencing January 2018. As well, she has put his name forth for the institution's community work program, where the subject would be placed in a work setting in the community (ie. food bank) and would work under the supervision of the work place supervisor. This work program is due to start in January 2018. Ms. LeBlanc was of the opinion that if the offender does well in the community for several months, then he will be prompted to apply for day parole and then full parole and feels he will be approved.

Regard the offence(s), the offender expressed his regret and noted that in hindsight he recognizes that he made a poor choice and feels strongly he would not make the same choice(s) in the future.

Before the court is a 54 year old man, who self admittedly is an alcoholic who needs to refrain from same at all times in the future. He is attempting to better himself while incarcerated and has gained the right to participate in the more "trusted activities and jobs" within the correctional institution. He appears to be making a sincere effort to better himself. He continues to have the support of his partner.

### **Purpose and Principles of Sentencing as Applied to Mr. Miller**

[10] The fundamental purpose of sentence is to protect society and contribute, along with crime prevention initiatives, to respect of the law and the maintenance of a just, peaceful and safe society. The objectives of sentencing are set forth in s.

718 of *Criminal Code*. These repeated principles are deterrence, denunciation, separation of the offender from society, rehabilitation, reparation to the victims and promotion of a sense of responsibility for harm to victims.

[11] Section 718.2(a) requires me to consider any aggravating factors or mitigating circumstances in my determination of the nature and extent of the sentence. As the Supreme Court of Canada noted in *R. v. Pham*, 2013 SCC 15, at para. 8:

In addition to proportionality, the principle of parity and the correctional imperative of sentence individualization also inform the sentencing process. This Court has repeatedly emphasized the value of individualization in sentencing: *Ipeelee*, at para. 39; *R. v. Wust*, 2000 SCC 18, [2000] 1 S.C.R. 455, at para. 21; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 92. Consequently, in determining what a fit sentence is, the sentencing judge should take into account any relevant aggravating or mitigating circumstances (s. 718.2(a) of the *Criminal Code*), as well as objective and subjective factors related to the offender's personal circumstances.

[12] For aggravating factors, suffice it to say Mr. Miller is a repeat offender with a lengthy criminal record which includes breaking and entering offences.

[13] With respect to mitigating circumstances, by pleading guilty, albeit late in the process, Mr. Miller has accepted responsibility for his actions. He has indicated his remorse and that he is willing to participate in programs (while incarcerated) to assist with his past alcohol addiction and for that he is to be commended.

### **Disposition**

[14] The Crown submits and the Defence agrees that the facts to which Mr. Miller has plead guilty warrant a sentence of 36 months custody. As well, they agree that there should be an ancillary order referable to DNA collection (s. 487.051 C.C.). Again this is presented as a joint recommendation in all respects, and the Court is prepared to impose the recommended sentence.

[15] For guiding law I point to *R. v. Zong*, (1986), 72 NSR (2d) (NSSCAD), *R. v. McAllister*, 2000 BCSC 223 (CanLII), *R. v. Adams*, 2010 NSCA 42, *R. v. Lacasse*, 2015 SCC 64 and *R. v. DeYoung*, 2016 NSSC 94. In my view, having regard to the relevant caselaw, statutory offences and circumstances of Mr. Miller, the

sentence warrants the joint recommendation of 36 months. In short, the sentence is proportionate and within the range.

[16] Having regard to all the factors, Mr. Miller, I sentence you as follows:

1. For the break and enter with intent, contrary to s. 348(1)(b) of the *Criminal Code*, to 36 months imprisonment on each charge, concurrent to each other for a total of 36 months;
2. The 36 months sentence shall be consecutive to Mr. Miller's time currently serving;
3. Also following the guilty pleas to the break and enters with intent charges, I order pursuant to s. 487.051 of the *Criminal Code* the taking of the number of samples of bodily substances from Mr. Miller that is reasonably required for the purpose of a forensic DNA analysis; and
4. There is a Victim Fine Surcharge in the statutory amount of \$200 for each of the two guilty pleas, for a total of \$400 to be paid within a period of five years.

Chipman, J.