

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Dykeman*, 2019 NSSC 361

**Date:** 20191202

**Docket:** *CRP*, No. 484492

**Registry:** Pictou

**Between:**

Her Majesty the Queen

v.

Bryan Anthony Dykeman

**Judge:** The Honourable Justice N.M. Scaravelli

**Heard:** October 21, 2019 in Pictou, Nova Scotia

**Oral Decision:** December 2, 2019

**Counsel:** J. Patrick Young, for the Crown  
Colin Strapps, for the Defence

**By the Court:**

**ORALLY**

**FACTS:**

[1] Bryan Anthony Dykeman appears for sentencing today.

[2] Mr. Dykeman pled guilty on October 21, 2019 to three counts under the *Criminal Code*. Robbery with a firearm or imitation thereof (s. 344(1)(b)), carrying a weapon for a dangerous purpose (s. 88(2)), and carrying a concealed weapon without authorization under the *Firearms Act* (s. 99(2)). The robbery charge is a straight indictable offence. The Crown elected to proceed by Indictment on the other two charges.

**CIRCUMSTANCES OF THE OFFENCE:**

[3] On August 30, 2018, Mr. Dykeman entered a pharmacy located on Foord Street, Stellarton, Nova Scotia. He was wearing dark clothing. He had dark skin and was wearing a hood, white rim sunglasses and a black ball cap. It is acknowledged that the hood was down for at least a portion of the time. Mr. Dykeman produced what turned out to be a black imitation handgun and directed

the Pharmacist to give him drugs, specifically Oxycodone and Ritalin. He obtained several bottles of narcotics. According to the Crown, \$886.68 worth of Hydromorphone and \$11.28 worth of Ritalin. Mr. Dykeman discarded the hoodie, glasses and hat after leaving the pharmacy.

[4] Mr. Dykeman was subsequently publicly identified following release of a picture from a security video. On September 1, 2018, he turned himself into the Police. He was cooperative with the Police and gave a full statement.

**CIRCUMSTANCES OF THE OFFENDER:**

[5] A Pre-Sentence Report was prepared for the Court. Mr. Dykeman is a 38 year old first time offender. He has Grade 9 education. He is attending school while in custody at the Northeast Nova Scotia Correctional Facility working towards his GED math.

[6] Mr. Dykeman is unemployed. He reports being healthy overall, however, notes he was born with a club foot which has caused painful episodes over the years. He is currently taking a number of medications including medication for ADHD, anxiety and heartburn. He is aware that he has substance abuse issues and reports being on drugs at the time of these offences. He has been in contact with the Opioid Treatment Program in Truro and advises he will schedule an

appointment once released from custody. He indicated his wish to be put on Subotone prior to being released from custody.

[7] Mr. Dykeman reports having dealt with systemic racism for much of his life and identifies its impact on his formative years as having been significant.

[8] He has two children from a prior relationship with whom he maintains regular contact. The report notes that he accepted responsibility for his actions and expressed remorse for the victims, as he has expressed here today.

[9] A Cultural Impact Assessment was prepared by Sonya R. Paris, MSW, RSN and Alanna M. MacLean, MSW, RSW. The report deals with the issues of race and ethnicity/culture.

[10] Mr. Dykeman identifies racially and culturally as a black Nova Scotian. His birth mother is Caucasian and his birth father is African Nova Scotian and Aboriginal.

[11] The report sets out the historical fact that African Nova Scotians have always been discriminated against and continue to face discrimination. It points to the over-representation of African Canadians in the Criminal Justice System.

[12] Mr. Dykeman's father moved away from Nova Scotia prior to his birth. His mother subsequently married his step-father. His difficulties began when he started school in Upper Musquodoboit, Nova Scotia where there were no other African Canadians in the area. Other children began to call him "the N word" and other derogatory names. It was then, at approximately 10 years of age, that his mother disclosed that he was of mixed race. Following a move to the Cole Harbour, Nova Scotia area with his mother, he was targeted by black and white youth at school. He was looked upon as not being black enough to be among black kids and not white enough to be among white kids in school. As a result of being treated differently in the community, he acted out and had conflict in school with both teachers and his peers. He had to deal with racial aggression on a daily basis. By Grade 9, Mr. Dykeman quit school as he was no longer able to endure the discrimination. He ultimately became involved with substance abuse which led to his difficulties in Society. His history had an impact on his mental health.

**POSITIONS ON SENTENCING:**

[13] The Crown submits that the appropriate sentence for the offence of robbery is four years imprisonment. For the offence of possession of a weapon, 90 days concurrent. For the offence of carrying a concealed weapon, 90 days concurrent.

[14] Mr. Dykeman seeks a sentence of time served, 458 days, or the equivalent of 687 days with enhanced credit for time spent in pre-trial custody. Alternatively, sentence should be between two and three years imprisonment.

**PURPOSE OF PRINCIPLES OF SENTENCING:**

[15] The purpose and principles of sentencing are set out in Section 718, 718.1 and 718.2 of the *Criminal Code*. The Courts have constantly confirmed the principles of denunciation and deterrence are of prime importance in cases of this nature, and particularly robbery with a firearm or imitation thereof. The sentence must be proportionate to the gravity of the offence and a degree of responsibility of the offender. Aggravating and mitigating circumstances are to be considered by the Court. I am also required to consider the rehabilitation of the offender. A sentence should be in a range imposed on similar offenders under similar circumstances.

**AGGRAVATING FACTORS:**

[16] There was an unsophisticated plan to commit the offence.

[17] The offender had an imitation firearm in his possession.

[18] There was an unsophisticated attempt to disguise himself during the robbery.

**MITIGATING FACTORS:**

[19] The offender entered an early guilty plea. He accepted responsibility and expressed remorse.

[20] The offender was cooperative with the Police.

[21] The offender does not have a prior criminal record.

**SENTENCING RANGE:**

[22] The Crown submits the usual starting point for a robbery sentence in Nova Scotia is three years imprisonment as stated in **R. v. Morton, 2011 NSCA 303**. It provided the Court with further sentencing decisions in support of its recommended sentence, namely: **R. v. Bowman [2013] N.J. 383 (Prov. Ct.); R. v. Greene, 2016 NSSC 332; R. v. Taylor [2017] O.J. 139; R. v. Speidel [2013] ABCA 163; and R. v. Fuller, [2017] O.J. 6741.**

[23] In **Morton**, a Subway restaurant was robbed at knife point by two individuals. Morton was convicted of robbery after a six day trial. In affirming the lower Court sentence of three years imprisonment, the Court of Appeal affirmed

the usual starting point for the offence of robbery to be three years except where circumstances warranted considerations of leniency.

[24] In the Nova Scotia decision of **Greene** cited by the Crown, the 61 year old offender attended a convenience store with a firearm and threatened to shoot the clerk. The offender and an accomplice stole money from the cash register as well as cigarettes. The offender was on probation at the time of the offence and subject to a firearm Prohibition Order. He had 43 prior convictions including property and violence based offences. He was sentenced to a global sentence of 4.5 years imprisonment.

[25] Nova Scotia decisions provided on behalf of Mr. Dykeman include **R. v. Benoit, 2007 NSCA 123; R. v. Izzard, 1999 CanLii 18558 (NSCA); R. v. Piercy, 2014 NSPC 94; and R. v. Sanford, 2018 NSSC 336.**

[26] In **Benoit**, the offender robbed an individual at knife point on a public bus in Halifax. He held the tip of the knife against the victim's leg and threatened to stab him if he ratted on him. The Court of Appeal determined that the circumstances of the offence committed by an 18 year old with a substantial criminal record called for a sentence in the range of two to three years and imposed a sentence of two and one-half years.



[27] In **Izzard**, three men entered a convenience store wearing disguises. One had a knife with an eight to ten inch blade. A clerk was bound with duct tape. The men stole cash, lottery tickets and cigarettes. Mr. Izzard maintained a watch outside with a flashlight and drove the getaway car. At 22 years of age, he had a criminal record for break and enters, one as a youth and one as an adult. The Court of Appeal overturned the lower Court's sentence of one year incarceration followed by two years probation. In imposing a sentence of two years incarceration, followed by two years probation, the Court stated that cases of robbery with violence called for a benchmark of three years occasionally going as low as two years.

[28] In **Sanford**, the 48 year old offender entered a small pharmacy in a rural community wearing a mask and brandishing a firearm. He robbed the store of five bottles of opioid pills. In addition to the charge of robbery using an imitation weapon, the offender was charged with breaches of recognizances and possession of hydromorphone. The offender did not have a criminal record and entered a guilty plea. He was sentenced to two years imprisonment.

**DECISION:**

[29] It is clear that the need of denunciation and deterrence is a primary consideration for the offence of robbery. It is incumbent upon the Court to discourage crimes of this nature that make victims, such as Pharmacists, vulnerable to such attacks.

[30] Our Courts have consistently stated that the usual starting point is three years imprisonment, with some cases going as low as two years. The **Morton** decision relied upon by the Crown cites the decision of **R. v. Johnson, 2007 NSCA 102** which in turn cites the Court of Appeal decision in **Izzard** where the Court stated:

17 For many years, this Court has consistently viewed robbery with violence and armed robbery as cases requiring strongly deterrent sentences. The cases referred to a minimum benchmark sentence of three years and occasionally going as low as two years.

[31] These cases establish that the starting point can be moderated as circumstances dictate.

[32] The Cultural Assessment is relevant in highlighting the systemic discrimination suffered by the African Nova Scotian community. The assessment of Mr. Dykeman's background has assisted the Court in providing context to what brought him before the Court. However, it does not diminish his degree of

responsibility for his actions. Criminal behaviours are often a product of deep social issues.

[33] I have determined that the circumstances surrounding this offence and offender calls for a period of imprisonment exceeding two years. Mr. Dykeman has a long history of substance abuse. However, up until 38 years of age, he has no prior criminal record. I take from this that he does not appear to possess the criminal elements of a person expected to reoffend. The Crown has acknowledged that he is likely to lead a productive life.

[34] Having weighed all of the relevant factors, I determine a fit and proper sentence to be 28 months imprisonment for the offence of robbery.

[35] For the offence of possession of a weapon, 90 days imprisonment concurrent.

[36] For the offence of carrying a concealed weapon, 90 days imprisonment concurrent.

[37] 28 months converted to days is 851 days. The accused has been on remand since September 1, 2018. He has 458 days of pre-sentence custody as of today's date. He is entitled to 1.5 days credit for every day served, totalling 687 days pre-

sentence credit. As a result, the remainder of his sentence to be served on a go-forward basis is 164 days.

[38] I also order the following ancillary orders:

- DNA Order under section 487.051(1) for the primary offence of robbery;
- A weapon Prohibition Order under section 109;

[39] The parties have agreed to a Restitution Order payable to the pharmacy in the amount of \$1,186.43. Restitution is to be paid fully within one year.

Scaravelli, J.