

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Barron*, 2021 NSSC 216

Date: 20210628

Docket: CRAT No. 491506

Registry: Antigonish

Between:

Her Majesty the Queen

v.

James Timothy Cecil Barron

DECISION ON SENTENCING

Restriction on Publication: s. 539(1) CC
This publication ban expired on November 16, 2020.

Judge: The Honourable Justice N.M. Scaravelli

Heard: June 28, 2021, in Antigonish, Nova Scotia

Oral Decision: June 28, 2021, in Antigonish, Nova Scotia

Counsel: Jonathan Gavel, for the Crown
Godfred Chongatera, for the Defence

By the Court:

[1] James Timothy Cecil Barron was charged on a three count Indictment. Overcoming resistance for the purpose of committing the indictable offence of theft pursuant to Section 246(a) of the *Criminal Code*; aggravated assault contrary to Section 268(1) of the *Criminal Code*; and robbery contrary to Section 344(b) of the *Criminal Code*.

[2] Following a three day trial, Mr. Barron was acquitted of all the charges but was found guilty of the included offence of assault causing bodily harm (*R. v. Barron*, 2021 NSSC 14). He appears for sentencing.

Circumstances of the Offence

[3] On May 6, 2018, Mr. Barron attended a graduation party for his sister at a private residence in Antigonish, Nova Scotia where he consumed whiskey that contained a high alcoholic content. Later that evening, he was discovered in a prone position in the front seat of a SUV located at the residence of Dr. Faisal Rahman, a short distance from the party. When confronted by Dr. Rahman, Mr. Barron repeatedly requested “the car keys”. Receiving no satisfaction, Mr. Barron, who was in an intoxicated state, repeatedly assaulted Dr. Rahman by punching and choking

him. The assault ended when Dr. Rahman's spouse encountered the scene and yelled at Mr. Barron. Dr. Rahman suffered serious injuries including a fractured nose and loss of teeth.

[4] A number of months after the assault, Mr. Barron's car keys were found in Dr. Rahman's SUV.

Circumstances of the Offender

[5] The court received a Pre-Sentence Report, a Victim Impact Statement, as well as supportive letters from Mr. Barron's friends and family. Mr. Barron also filed a letter with the court. Although he maintains he has no recollection of committing the offence, he expressed remorse to Dr. Rahman for his actions. Mr. Barron is presently 33 years of age. He is single and resides in a residence in Halifax owned by his parents. He is currently enrolled in the metal fabrication program at Akerley Campus of the Nova Scotia Community College where he is maintaining marks at about 90% through COVID protocols.

[6] Mr. Barron has a history of epilepsy for which he takes medication. Mr. Barron reported he no longer consumes alcohol following the subject offence.

[7] Mr. Barron does not have a prior criminal record.

Victim Impact

[8] Dr. Rahman's Victim Impact Statement is dated June 4, 2018. In addition to his physical injuries, the assault on his home property caused fearful psychological effects to Dr. Rahman and his family.

[9] The Crown recommends a suspended sentence with a three year probation order containing strict conditions. The Crown also seeks ancillary orders.

[10] Mr. Barron seeks a conditional discharge. In the alternative, he seeks a suspended sentence with a period of probation of 18 months.

[11] The court is directed by the purpose and principles of sentencing set out in Section 718 of the *Criminal Code*.

Aggravating Circumstances

[12] Dr. Rahman suffered an unprovoked brutal attack outside of his residence which is an aggravating factor where there is a heightened expectation of privacy.

[13] The assault occurred in the presence of Dr. Rahman's spouse. His children observed his condition immediately after the assault.

Mitigating Circumstances

[14] Mr. Barron does not have a prior criminal record.

[15] He complied with restrictive release conditions for a substantial period of time.

[16] He has improved his personal circumstances by upgrading his education towards a skilled trade.

[17] He has expressed remorse for his actions.

[18] He has strong family support.

Sentence

[19] I have reviewed cases submitted by the Defence in support of a conditional discharge. However, crimes of violence bring forward the principles of denunciation and deterrence. In recommending a suspended sentence, the Crown recognized the somewhat unique circumstances of the case as set out in the court's decision. Given the nature of the offence, I find that a conditional discharge is not in the public interest. It does not serve the principles of denunciation and deterrence.

[20] As stated by our court, in appropriate circumstances, denunciation and deterrence can be achieved by a suspended sentence that carries substantial consequences (*R. v. Barrons*, 2017 NSSC 216). I agree with the Crown that in order

for a suspended sentence to properly carry the principles of denunciation and deterrence, it should be of considerable length and sufficiently restrictive.

[21] The assault, while serious, was somewhat impulsive and fueled by alcohol. In this case, the principles of denunciation and deterrence can be achieved by suspended sentence with a period of probation carrying strict conditions. This allows Mr. Barron to continue his rehabilitation efforts.

[22] Therefore, I suspend the passing of sentence and place Mr. Barron on probation for a period of 24 months with the following conditions:

- To comply with statutory requirements, to keep the peace and be of good behaviour;
- To report to Probation Services within 7 days and as required;
- A curfew between the hours of 11:00pm and 6:00am daily, with compliance checks, beginning June 28, 2021 and ending December 28, 2021;
- Not possessing or consuming alcoholic beverages;
- Not entering or being in any premises where alcohol is the primary product of sale including liquor stores, taverns, pubs, beverage rooms, night clubs, and licensed pool halls, beginning June 28, 2021 and ending December 28, 2021;
- Undergoing an assessment regarding alcohol consumption and taking any counselling as recommended as a result;

- Undergoing and successfully completing anger management programming;
- Taking all medication prescribed by a medical professional in accordance with that prescription;
- No contact or communication with Dr. Faisal Rahman or members of his immediate family;
- No going to or being within 100 metres of Dr. Rahman's place of residence, work, or any place Dr. Rahman is to be found (except attendance at Dr. Rahman's place of work in the case of medical emergency).
- To pay restitution in the amount of \$146.55 to Dr. Faisal Rahman.

[23] There will also be the following ancillary orders:

- Primary designated DNA Order pursuant to Section 487.051 of the *Criminal Code*;
- Mandatory Section 109 firearms/weapon Prohibition for 10 years.

Restitution

[24] Dr. Rahman seeks a stand alone restitution order. Dr. Rahman estimates his medical and dental expenses at \$20,000.00. Further, as a Psychiatrist working on a contract basis, he estimates loss of income at \$25,000.00. As a result, the Crown recommends a restitution order in the amount of \$45,000.00.

[25] In *R. v. Kelly*, 2018 NSCA 24, the Court of Appeal discussed relevant factors for considering restitution orders including the following:

- Orders for compensation should be made with restraint and caution;
- Means of the offender;
- A restitution order should not be used as a substitute for civil proceedings;
- It is not the function of criminal court to interpret documentation in order to calculate the amount of money sought. The loss should be capable of ready calculation.

[26] Documents submitted in support of a request for restitution do not support a claim of \$45,000.00. The dental costs in excess of \$7,000.00 appear to be insurable as claims were made to Dr. Rahman's insurance agency. There is no clear calculation of net costs to Dr. Rahman, certainly not approaching \$20,000.00.

A letter from Dr. Rahman's contract employer confirms only loss of income from missed work without quantification.

[27] The only readily calculable expense is the ambulance bill in the amount of \$146.55 for which there will be an order for restitution as a condition of probation.

Scaravelli, J.