

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Crawley*, 2022 NSSC 199

Date: 20220720

Docket: CRH 505889

Registry: Halifax

Between:

Her Majesty the Queen

v.

Andriko (“Andre’ko”) Jamal Crawley

SENTENCE DECISION

Judge: The Honourable Justice Jamie Campbell

Heard: June 29, 2022, in Halifax, Nova Scotia

Counsel: Rick Woodburn and Scott Morrison, for the Crown
Godfred Chongatera, for the Defence

By the Court (Orally):

[1] Andriko Crawley is being sentenced for his part in the assault of Stephen Anderson at the Central Nova Scotia Correctional Facility in Burnside on December 2, 2019.

[2] After two trials 12 people were found guilty of aggravated assault and one of obstruction. The person found guilty of obstruction has been sentenced, *R. v. Nagendran*, 2022 NSSC 14. Five of the people found guilty of aggravated assault have been sentenced, *R. v. Ladelpha*, 2021 NSSC 352, *R. v. McIntosh*, 2021 NSSC 351, *R. v. Clarke-McNeil*, 2022 NSSC 63, *R. v. Mitton*, 2022 NSSC 123, and *R. v. Hardiman*, 2022 NSSC 198. Mr. Ladelpha was sentenced to 6 years, Mr. McIntosh to 5½ years, Mr. Clarke-McNeil to 6 years, Mr. Mitton to 6 years, and Mr. Hardiman to 6 years.

[3] Mr. Crawley is being sentenced as an individual. His sentence should not be set only in reference to those sentences, but the sentencing principle of parity must be acknowledged. Mr. Crawley was one of the people who entered Stephen Anderson's cell where the assault took place. He was there with Austin Mitton, Kevin Clarke-McNeil, Matthew Lambert, Wesley Hardiman, Colin Ladelpha, and Kirk Carridice who arrived a few seconds later. Mr. Crawley's personal circumstances are unique to him. But fairness would require some explanation for why his sentence should be different when he participated in the same offence in the same way as the others. That is not to suggest that parity is presumed to be the governing or most important factor. It is nevertheless a factor to be addressed directly in the circumstances of this case in which a group of people were involved in the commission of the same offence at the same time.

Criminal Record

[4] Mr. Crawley has a criminal record. He is 35 years old, and he got involved with the adult criminal justice system when he was about 20 years old. He has a total of 34 criminal convictions. They include 5 convictions for violent offences. Two of those are robbery.

[5] In January 2013 he was charged with possession of a firearm while prohibited, possession of a prohibited weapon and unauthorized possession of a firearm. He was sentenced to 2 years less a day for those offences.

[6] In January 2014 he was charged with mischief and assaulting a police officer. There was another charge of assaulting a police officer from March 27, 2014. For those offences he was sentenced to time served but appears to have been on remand for some time before the sentence date of May 22, 2015. On July 17, 2017, he was charged with resisting or obstructing a police officer and again was sentenced to time served.

[7] On March 13, 2018, he was sentenced for possession of drugs and failure to comply and again received a sentence of one day, time served.

[8] When this event happened in Burnside Mr. Crawley was on remand with respect to charges of unlawful confinement, threats, and assault. Those charges were eventually dismissed but Mr. Crawley remained on remand for this charge. He has been on remand with respect to this matter since the assault on December 2, 2019.

Background

[9] Both a pre-sentence report and an Impact of Race and Culture Assessment (IRCA) were prepared with respect to Mr. Crawley's circumstances. Mr. Crawley told the writer of the pre-sentence report that he has a good relationship with both of his parents. He was raised by his mother in East Preston and later moved to Dartmouth. He would visit his father on weekends. He could not recall being the victim of any kind of physical, emotional or sexual abuse.

[10] Mr. Crawley has two children. His father is raising his young son and his mother is raising his daughter.

[11] Mr. Crawley's mother says that he has mental health issues, and she says that his conflict with the law is mainly due to his mental health. She says that he was diagnosed with Bipolar Disorder, Paranoid Schizophrenia, personality disorder, and sleep issues. She said that it was always a struggle to get him to take medication. Mr. Crawley does not agree with his mother's assessment.

[12] Mr. Crawley has a Grade 11 education. He enrolled in the Dartmouth Work Activity Program where he learned carpentry skills. He was in the concrete business from a young age and apprenticed with his grandfather. He had his own concrete business before he was incarcerated.

[13] Mr. Crawley would like to join a company with his cousin upon his release. His cousin is willing to hire him when he gets out.

[14] Mr. Crawley's upbringing seems to have been generally unremarkable. His parents were separated but he continued to have a good relationship with both and there were no issues of abuse or neglect. He had the opportunity to attend school of course but like many people found that he preferred to get out into the workforce. He was able to do that apparently with some success.

[15] The IRCA in this case is a remarkable piece of work. The IRCA Accessor notes that Mr. Crawley's first name is spelled "Andre'ko". The IRCA sets out historical facts and information about the history of African Nova Scotians. It speaks in practical terms about the experience of African Nova Scotians. And it specifically relates that general experience to Mr. Crawley's own life.

[16] As noted in the pre-sentence report Mr. Crawley's mother is from East Preston and his father is from North Preston. He grew up in East Preston with his mother and other important members of his family were his maternal grandfather and maternal great grandfather. He has 5 siblings but none with the same biological father and mother.

[17] When Mr. Crawley was about 16 years old, he reported that his mother gave him an ultimatum of "school, work or you're not living here". He was homeless for a brief time living under the overpass in Cole Harbour. That only lasted about a month and a half, and his mother allowed him to come home. His family has tried to be supportive, and he has lived with aunts, uncles, grandparents, and anyone else who would take him in. The IRCA notes that this resulted in a "fracturing of his living condition with family members, especially his maternal grandfather". Mr. Crawley said that he wore out his welcome with extended family and was "a lot to handle".

[18] Mr. Crawley's father was not particularly involved with the family and may have suffered from mental health issues. Mr. Crawley's mother did her best to raise him and recognizes some of his challenges that relate to mental health and racism. It was when he started school that Mr. Crawley started to feel like he was being treated differently.

[19] Mr. Crawley was able to go to a predominantly Black daycare in East Preston. His experiences with racism started when he went to public school. He felt that he was being treated unfairly. He moved around to different schools,

sometimes because of a family move, sometimes because he was expelled, and sometimes for sports. The interruption is noted by the IRCA as impacting his ability to develop trusting relationships with teachers.

[20] Mr. Crawley could not recall having had any Black teachers during his early years in school. He did not graduate High School. He felt left behind academically and was embarrassed when he had to go to a special class. He felt that teachers did not care about how well he was doing in school. His mother said that he was diagnosed at the age of 5 with ADHD and a learning disability. He was put on medication which appears to have created other problems.

[21] While in school Mr. Crawley experienced racist name calling and fights as early as Elementary School. Those fights escalated as he got older. In Junior High he found that the ADHD medication made him drowsy and triggered mood swings. He became more frustrated and agitated in school because he could not understand some subjects. Once he got into Junior High and High School there were more Black students and some Black teachers who he found to be supportive.

[22] Mr. Crawley's mother said that she was concerned about how her son was doing in school. She sought support from the IWK. "While, seeking support Ms. Crawley felt her hands were tied and no one was concerned with programs to support her Black son. Racism was real for Ms. Crawley, and she felt defeated." (p. 16)

[23] Ms. Crawley was concerned about her son and asked for an additional assessment to be performed, when he was in Junior High. That assessment did not happen. There was a long waiting list for children of all races but the IRCA notes that the wait time greatly impacted African Nova Scotian students "because of systemic racism and barriers they are already experiencing in the school system." (p. 16)

[24] The IRCA says that the fact that Mr. Crawley experienced challenges with racism and discrimination at school, the lack of available and regular psychoeducational testing, limited access to resources in school and not completing High School, are gaps that impacted the opportunities that were available to him. While that was not to excuse his behaviour, it provides background as to why a child at such a young age became involved negatively with the justice system.

[25] Health issues may also have contributed to Mr. Crawley's educational challenges. He has bipolar disorder and Mr. Crawley told the IRCA Accessor that

the medications he was receiving were damaging more than helping. The IRCA concluded that as a child Mr. Crawley experienced learning challenges and mental health challenges that seemed to have been left undiagnosed properly until he was a young adult and began to get into trouble. He has not had access to therapeutic supports. His mental health diagnosis is unclear. Because of his fear and mistrust, as well as negative side effects of medications, he is not currently taking any medication. And Mr. Crawley's separation from his children is impacted his mental health.

These factors seemed to have crippled Mr. Crawley's ability to make pro social choices, and when he is having mental health challenges, he is more likely to be involved with the criminal justice system, than seeking mental health support.
(p. 19)

[26] Because of his level of education Mr. Crawley has had a hard time finding gainful employment. That is made worse by his criminal record and mental health issues. While he was fortunate enough to get work with his grandfather, his grandfather commented on Mr. Crawley's poor work ethic. He sometimes would not get out of bed to go to work and his grandfather felt that he got caught up with the wrong people. He was a hard worker when he did come to work though. He also learned quickly. But his lack of success in getting work meant that he started to look for other financial ways to survive.

[27] Mr. Crawley experienced the loss of an important person in his life when he was only 7. He is the great grandson of Rev. Dr. Donald Skeir, who inspired and motivated African Nova Scotians and others through his ministry of social justice. He also lost a close friend to murder in 2009.

[28] Prison has been a particularly difficult experience for Mr. Crawley. It has effected both his physical and mental health. While in prison he has been stabbed, broke his shoulder, and spent nine months in closed confinement. He feels that he did not receive adequate medical treatment. And says that he still struggles with the effects of having been required to live while in the "hole".

[29] Mr. Crawley said that he felt like he always had to find ways to survive when incarcerated. He also talked about survival on the streets and hustling and finding ways to beat charges. The IRCA noted that this may suggest a "criminal disposition" but the fact that he has experienced marginalization in education, health and employment contributes to that disposition.

[30] The IRCA Assessor offers several recommendations regarding sentencing. They include having Mr. Crawley meet with a Black doctor from the Nova Scotia Brotherhood for a current assessment of his health. They suggest that he get referrals to a mental health clinician and those services should be provided in a way that is culturally responsive. He could benefit from a program that would help him get his Grade 12 education and he should be able to explore programs that provide basic work skills. He should attend anger management programs and a program like 902 Man Up that can offer intensive peer support. Upon his release he will need help with housing to reintegrate into the community.

[31] The IRCA provides information and insights into Mr. Crawley's life. He is neither a victim nor purely a product of his circumstances. But his background and his experiences have helped to shape him into the person he is. His education, mental health and employment opportunities have been influenced by the community in which he has grown up. He was not abused or neglected as a child or adolescent, but he was not given the opportunities than many others have. In addition to the lack of opportunity he was subjected to racism in its many forms.

[32] When considering a sentence that is appropriate for Mr. Crawley and proportionate to the crime that he has committed and to his moral culpability or blameworthiness that context must be considered.

Burnside Incident

[33] Mr. Crawley was one of the people who entered Stephen Anderson's cell where the assault took place. Stephen Anderson was seriously wounded. At the trial it was found that there was no reasonable inference that could be made other than that those who entered that cell did so with the intent of assaulting Stephen Anderson and causing him bodily harm. They did not enter the cell to talk with him or even to threaten him.

[34] That was a planned and coordinated attack. Different groups performed different roles. It was done within a jail. That is significant. Prison culture cannot be permitted to replace the rule of law. The safety of inmates and staff requires that the rule of law run to the internal working of correctional facilities of all kinds.

Sentencing Principles

[35] There have been other cases that have addressed sentencing in individual assaults within a prison. They can range from 3.5 years to 10 years in length. All

stress the importance of deterrence. *R. v. McNeil*, 2020 ONCA 595, *R. v. Laverdiere*, 2020 ABCA 290, *R. v. Slade*, 2007 NBQB 415, and *R. v. Thompson* 2017 NBQB 81.

[36] Setting a sentence for an offence of this kind does not involve simply finding cases that are the same in some respects and different in others. The offence of aggravated assault is a broad spectrum one. It covers a broad range of offences, from a relatively minor stab wound to a case in which the victim is very close to death. It can happen in a broad range of circumstances, from bar fights to premediated gang beatings.

[37] Deterrence and denunciation must be the primary purposes of the sentence in crimes of violence. An assault within a jail takes the aggravated assault to another level. Serious injuries take it further. Coordinated activity resulting in a gang assault take it even further. Open defiance of the authorities seeking to intervene, as part of the coordinated effort take this case to a level more serious than the other prison assaults provided as examples.

[38] In any sentencing several factors remain in tension with each other. They are not necessarily contradictory, but they can pull in different directions. They are not merely a checklist of factors. Courts must consider the potential for rehabilitation. That may suggest a shorter sentence of incarceration. But the crime may be one that requires denunciation and deterrence, which cries out for a substantial punitive jail sentence. Similarly situated offenders should be treated similarly. But no two offenders commit the exact same offence, in the exact same way, with the same personal circumstances. A person may have a long criminal record, but it may be, in part, a function of the condition of that person's mental health. A person may be a member of a racialized group and the history of racism and marginalization of those groups as well as their overrepresentation in jails is a factor. Another person may not be a member of a racialized group but may come from an economically disadvantaged family. Parity in sentencing exists in tension with those considerations.

[39] A person should be sentenced in a way that is proportional to their degree of moral blameworthiness. Deterrence may be a factor in crafting an appropriate sentence, but it should never descend to the point of making an example of a person.

[40] Courts must keep all those tensions in mind. A list of sentencing factors may make it easier to explain what is being considered but it loses some of the nuance.

Each factor exists in tension with all or some of the others and it is not possible to assign a percentage weight to each of them. Sentencing is not done by algorithm.

The Sentence

[41] Mr. Crawley is an African Nova Scotian. The principles as set out in *R. v. Anderson*, 2021 NSCA 62, must be followed. It is not enough for trial judges to simply say that we have “considered” the information set out in an IRCA. The way that information has been taken into account must be shown.

[42] Because the factors to be considered in sentencing act in tension with each other it can be difficult to isolate one from the others to show how factors from the IRCA are considered. Proportionality and parity are different concepts. The first relates to the gravity of the offence and the moral culpability of the person who commits it. Parity relates to the idea that similarly situated people should receive similar sentences for committing similar offences. It is difficult to address proportionality without at the same time holding the idea of parity in one’s mind. An adjustment on proportionality will have an impact of the consideration of parity. When concepts operate in tension several may be affected by one adjustment.

[43] In this case, the principle of proportionality must be addressed. That involves the consideration of the gravity of the offence and the moral culpability of the offender. The Court of Appeal in *Anderson* did not make as clear a distinction between those aspects of proportionality as the Ontario Court of Appeal did in *R. v. Morris*, 2021 ONCA 680. The Court of Appeal in *Morris* held that the seriousness of the offence is essentially immutable. Some offences must be treated as grave or serious and it does not matter who commits them. The context or circumstances of the offender will influence the determination of proportionality but that does not make the offence itself less serious.

[44] In a case like this one, in which several people perform almost the same act in the commission of the crime, it becomes challenging to see how for some it may be less serious or grave than for others. Their personal circumstances must be considered when determining moral culpability. The offence itself is the same act. But in this situation, it is neither necessary nor particularly helpful to draw a theoretical line under the concept of gravity to maintain a clear distinction between gravity and culpability when both are part of the single concept of proportionality.

[45] The offence is objectively serious. Mr. Crawley's involvement is toward the serious end. He was one of the people who entered Stephen Anderson's cell. But his personal circumstances are such that his moral culpability is reduced. He has had limited opportunities with respect to mental health treatment, education and employment. He has been subjected to racist treatment throughout his life. That does not diminish his ability to make choices and nor does it excuse him from the consequences of the choices that he has made. But it does provide context for the kinds of choices that Mr. Crawley has had to make.

[46] Mr. Crawley has neither a positive educational record nor a positive work record to put before the court as a mitigating factor. The lack of those things is not an aggravating factor but at the same time their absence should be considered within the context of Mr. Crawley's life. He has not had the opportunity for mental health treatment that some people might have had. His treatment as an African Nova Scotian has contributed to a lack of trust in those who may have tried to offer him support. Racism may have played some part in his lack of educational success. And that has contributed to limiting his opportunities for work. Those things then all operate together to foster an attitude that of fending for himself. It may have led to some extent to behaviours that have got him in trouble with the law.

[47] Mr. Crawley has a criminal record. While that can be considered in sentencing a judge must be conscious of the fact that African Nova Scotian males are incarcerated in disproportionate numbers. Their higher rate of incarceration leads to even higher rates of incarceration. It becomes a cycle.

[48] Denunciation and deterrence are important factors in the sentencing of serious violent crimes. Making those statements through incarceration comes at the cost of making those rates of over incarceration even worse.

[49] The principle of parity is a principle of fairness. But equal and fair are not always the same thing. That principle provides that similarly situated people be treated similarly for the commission of similar crimes. Mr. Crawley's personal circumstances, particularly those set out in the IRCA, should inform what similarly situated means. The impulse to sentence people to the same sentence for the same crime should be restrained by the understanding that many African Nova Scotians are not similarly situated with others. Parity should not be allowed to act as a kind of super factor to level out the sentences.

[50] Even with those considerations however, there is no way to deny the seriousness of this offence. Restraint in sentencing cannot be used to justify a

demonstrably unfit sentence that does not reflect the seriousness of the crime and the moral culpability of the offender. A sentence of less than 5 years in this case would fail to recognize the seriousness of the crime.

[51] Andriko Crawley is sentenced to 5 years. That would be 1,825 days without regard to leap years. He has been in custody on this charge from December 2, 2019 to July 20, 2022, which is a total of 961 days. Credit for remand should be given at one and a half days for each day served, which is a total of 1,441 days. To complete a 5 year term of imprisonment the calculation would be 1,825 days, less remand credit of 1,441, for a total of 384 days, so the go forward sentence is one year and 19 days.

[52] A copy of the IRCA should be sent to the institution in which Mr. Crawley is placed and the recommendations for programming should be followed to give him the best opportunity to prepare himself for life in the community when he is released.

[53] The s. 109 firearms prohibition and DNA order will be signed.

Campbell, J.