

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Ford*, 2021 NSSC 374

Date: 20211217

Docket: Syd. No. 502521

Registry: Sydney

Between:

Her Majesty the Queen

v.

James William Ford

Defendant

Sentencing

LIBRARY HEADING

Judge: The Honourable Justice Patrick J. Murray

Heard: September 13, 2021 in Sydney, Nova Scotia

Oral Decision: December 16, 2021

Subject: Criminal Law; Sentencing

Facts: [1] The Defendant was charged with armed robbery. A guilty plea was entered on September 13, 2021. This was not an early guilty plea but occurred several months before his trial.

[2] Mr. Ford's presentence report is generally positive. Crown and Defence submitted a joint recommendation for sentence.

Issue: [3] Is the joint recommendation for Sentence appropriate?

Result: [4] The Court accepted the joint recommendation put forth by Counsel. The sentence imposed up Mr. Ford was as follows:

- a. a two (2) year period of custody in a Federal Institution;
- b. a one (1) year period of probation to follow the two (2) year custodial sentence;
- c. a DNA order as robbery is a primary designated offence - Section 487.05(1) *Criminal Code of Canada*;

- d. a mandatory prohibition order pursuant to Section 109(1) of the *Criminal Code of Canada* for a period of 10 years;
- e. a stand alone restitution order in the amount of \$911.60 in favour of Subway restaurant for the following losses:
 - i. Loss of sales due to the restaurant being closed for police investigation - \$782.68;
 - ii. Cash stolen from the cash register - \$85.00;
 - iii. Wasted food product due to the loss sales - \$43.92;

[5] All ancillary orders sought were granted.

Caselaw:

R v. Anthony-Cook, 2016 SCC 43; ***R v. Morton***, 2011 NSCA 303; ***R v. Johnson***, 2007 NSCA 102(N.S.C.A); and ***R v. Dykeman***, 2019 NSSC 361.

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Counsel: Glenn Gouthro, for the Crown
Douglas MacKinlay for the Defendant, Mr. Ford

By the Court:

Introduction

[1] The Defendant, James William Ford, has plead guilty to the offence of robbery, while armed with an offensive weapon contrary to section 3441(b) of the *Criminal Code of Canada*.

[2] The offence was committed at the Subway restaurant on Commercial Street, in Glace Bay, at approximately 10:30 a.m. on August 10, 2019. Mr. Ford is presently 36 years old, and was 34 at the time the offence.

Facts

[3] At the time, there was a single employee working at the restaurant. Mr. Ford had first entered the washroom and returned to the front of the store. He yielded a knife and spoke in a threatening manner. The money taken was handed over by the employee placing the till containing the cash on the counter, that was between her and the Accused. Mr. Ford took the cash from the till with one hand, while holding the knife in the other. No one else was present. He fled from the store with the money. He later turned himself into police.

[4] Mr. Ford was charged on August 21, 2019 and his trial was scheduled for December 13 - 15, 2021. He entered a guilty plea on September 13, 2021. This was not early guilty plea but is an admission of guilt that occurred several months before his trial.

[5] Mr. Ford grew up in a family of five. He raised and lived with his family at the home of his grandparents. He has a good relationship with his siblings and is particularly close to his sister, Tiffany. She believes Mr. Ford is a good person and a social person, whom for a time chose the wrong path. He ended up being addicted to drugs and associated with persons who were similarly involved. She remains supportive of him, as he attempts to move forward and put this matter behind him.

Prior Record

[6] In terms of a prior record, there is a breach in December 18, 2019 for failure to comply with a recognizance or undertaking, for which Mr. Ford was given a conditional discharge with 12 months probation and community service.

[7] Apart from this, he has no criminal record and since that offence was committed after the present charge, he had no prior criminal record at the time of this offence. He also has a son who is 10 years of age and living with his maternal grandfather. Mr. Ford raised his son as a single parent until his son was 9 years old. Unfortunately, Mr. Ford currently has no contact with him.

Pre-Sentence Report

[8] Mr. Ford's presentence report is generally positive. He has been in a stable relationship with his common law spouse, Lorraine Bryden, for two and a half years. They have been cohabitating for the last several months. They have no children together but she has three children. She describes Mr. Ford as a good man who is good to her children. She states in the presentence report "there has been no use of any substances during the time of their relationship and she reports the offender continues to be involved in an opiate-replacement program". She is also very supportive. She states he has started to find employment and is not the same person as committed this offence.

[9] Having read the presentence report, there are a few things that stand out. First, it seems Mr. Ford's past involvement with drugs resulted in a relapse that was directly related to this offence. This, of course, is not any defence or excuse for committing this serious crime.

[10] Second, he has a plan or goal which consists of two parts: 1) to further his education; and 2) finding good employment and settling in the local area.

[11] Mr. Ford is also very remorseful for what occurred and wishes to apologize for the trauma experience he caused to the female employee at Subway.

Sentencing Principles

[12] In the sentencing process, when crimes of violence are committed, specific and general deterrence, as well as denunciation, must be recognized as the primary factors to be emphasized. The impact on society and harm done to the community, demands a sentence that is proportionate, to the gravity of the offence and to the degree of responsibility of the offender. There are important objectives that include protection of the public, and to maintain a just, peaceful and safe society.

[13] The relevant statutory provisions are contained in sections 718 - 718.2 which outline the principles of sentencing. Rehabilitation is one of these principles and it is obvious that Mr. Ford must continue on his road to recovery and rehabilitation in terms of his past drug use, in order to achieve these goals he has set for himself.

[14] The general rule of thumb, it seems is quite clear, robbery with violence will result in a period of incarceration of three (3) years more or less, in order to satisfy the principles and objectives referred to in the sentencing provisions earlier cited.

Position of Crown

[15] By recommending a lesser sentence of two (2) years, it appears the Crown has weighed and considered the positive factors of Mr. Ford's circumstances as well as the circumstances of the offence.

[16] The Crown reminds the Court in its sentencing submissions that to produce a weapon, in this case a knife, to an employee, twice demand they “open the cash register”, and “not fucking press anything” is intimidating and violent conduct. Upon his arrest, Mr. Ford denied involvement in the robbery to the police.

Position of the Defence

[17] The Defence submits that Mr. Ford is a good person and at the time of the offence was experiencing a relapse and had taken nerve pills. The Defence submits that Mr. Ford accepts full responsibility and is ashamed and extremely remorseful for his actions and very sorry to the Subway cashier that he scared that day.

[18] The Defence submits that Mr. Ford has a history of being employed and has no criminal record before the Court. Mr. Ford has suffered from addition issues and has taken several detox programs to overcome same.

[19] Mr. Ford is currently in a relationship. His partner, Ms. Lorraine Bryden, and her daughter, Ms. Gillian Bryden, wrote letters on Mr. Ford’s behalf, speaking to his character.

[20] Having reviewed the letter provide by Ms. Bryden to the Court. It appears Mr. Ford has been a wonderful addition to her family, and together they are a happy functioning unit. This court is unable to accede to her request for a conditional sentence, as pointed out by Crown counsel in reference to s 742.1(a) of the Criminal Code. The Court has however, considered the comments in her letter that he is a good person and step father to her children.

[21] The Defence submits that the joint recommendation does fall within the range of sentencing for an offence of this kind. Defence Counsel asks the Court to accept the joint sentence proposed by counsel.

Joint Recommendation Authorities

[22] In the Supreme Court of Canada case of *R v. Anthony-Cook*, 2016 SCC 43, the court held that the proper test here is the public interest test. That is the test in determining whether to accept a joint recommendation. The court held it is a stringent test that best reflects the many benefits that joint submissions bring to the criminal justice system.

[23] Applying this test, I should only depart from a joint submission on sentence if what is proposed would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[24] In the present case, I find that Counsel have jointly presented a recommendation to the Court that comes with a good deal of thought, time and effort. The plea bargain process is something the Court must respect in the same way as counsel must respect the Court’s obligation to impose a fit and proper sentence, in accordance with sentencing principles.

[25] In *Anthony-Cook*, the Court recognized this when it said:

Joint submissions on sentence - that is, when Crown and Defence counsel agree to recommend a particular sentence to the trial judge, are vitally important to the well-being of the criminal justice system, as well as the justice system at large.

Decision

[26] In the case of Mr. Ford, I am satisfied that the sentence recommended is just and reasonable. In these circumstances a 2 year period of incarceration for a young man at age 36, is a substantial sentence.

[27] Although Mr. Ford is a first time Offender, there is a need for both of general and specific deterrence. It sends a message to likeminded individuals that significant consequences await those who choose to commit crimes of violence.

[28] The sentence is in keeping with the caselaw provided to me by the Crown. Such cases include *R v. Morton*, 2011 NSCA 303; *R v. Johnson*, 2007 NSCA 102(N.S.C.A); and *R v. Dykeman*, 2019 NSSC 361. Defence counsel has stated that these cases are a fair representation of the sentencing range in these types of offences.

[29] Finally in terms of the ancillary orders that are part of the joint submission, they include a DNA Order; and a mandatory prohibition order pursuant to s. 109(1) for a period of 10 years; and a restitution Order in the amount of \$911.60. I will grant these orders and sign them when they are presented to me.

Conclusion

[30] The joint recommendation put forth by Counsel is hereby accepted. The sentence imposed up Mr. Ford is as follows:

- a. a two (2) year period of custody in a Federal Institution;
- b. a one (1) year period of probation to follow the two (2) year custodial sentence;
- c. a DNA order as robbery is a primary designated offence - Section 487.05(1) *Criminal Code of Canada*;
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iii. Wasted food product due to the loss sales - \$43.92;

[31] This concludes my decision.

Murray, J.