IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. G.L.J.P., 2004 NSSC 8

Date: 20031201
Docket: CRSK 11025
Registry: Kentville

Between:

Her Majesty the Queen

Informant

v.

G. L. J. P.

Defendant

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Restriction on publication: Section 486(3) of the **Criminal Code** applies and may require editing of this judgment or its heading before publication. The subsection provides:

> (3) Subject to subsection (3.1), where an accused is charged with an offence under section 151, 152, 153, 155, 159, 160, 170, 171, 172, 173, 271, 272, 273, 346 or 347, the presiding judge or justice may make an order directing that the identity of the complainant or of a witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way.

Judge:	The Honourable Justice Allan P. Boudreau
Heard:	December 1, 2003 in Kentville, Nova Scotia
Written Decision:	January 14, 2004
Counsel:	Darrell I. Carmichael, for the Crown Robert C. Stewart, Q. C. for the Defence

By the Court (orally):

[1] This is my decision in the sentencing of G. L. J. P.. G. P. has been convicted of five offences committed over a period of approximately three hours on the morning of November 9, 2001.

[2] The offences are all serious in nature, but there can be very little argument that the more egregious offences in the circumstances of this case are count number two, aggravated assault, and count number three, using a weapon while committing a sexual assault. Both of these carry maximum fourteen year terms of imprisonment. Count number one, assault with a weapon and count number four, unlawful confinement, both carry ten year maximum terms of imprisonment. Count number five, uttering a death threat, carries a maximum term of five years.

[3] The facts of these offences are as laid out in my written decision of September 19, 2003. I agree with the defence that these are the facts to be considered on this sentencing. Nevertheless, certain aspects of the case can be summarized as follows: Mr. P. and Ms. M. had had a relationship over several months. There had been some rocky times. Ms. M., on the morning of November 9, 2001 had decided to end the relationship for good and she conveyed this message to Mr. P. after dropping her children off at school and on their way back to her house. Mr. P. was obviously very upset about this situation and he testified at trial that he felt he had been used. Mr. P. slashed Ms. M.'s face with a large kitchen knife, saying “You think you're going to live your life without me?” Thereafter there was a struggle over the knife with Ms. M. grabbing onto the blade to avoid further injury to herself. During this altercation she suffered a large cut to her face, severing her upper lip, as well as very serious tendon damage to one hand. The incident then continued for some three hours until Ms. M. jumped out of Mr. P.'s moving car on the main street through New Minas.

[4] In between, Ms. M. was confined to the house, told to stay away from the windows. Mr. P. also raped Ms. M. over a chair during this time and threatened to kill her, himself or both of them. All the time while he had possession of or control of one or two knives.

[5] Mr. P. has been in custody on remand since November 9, 2001, approximately two years. The Crown seeks to have Mr. P. sentenced to a

minimum total of fifteen years imprisonment, less four years for time spent on remand.

[6] The defence is suggesting that an appropriate net sentence is two years in a federal institution. This, the defence contends, would equate to a sentence of slightly in excess of six years considering the time spent on remand, and possibly more if time credited for remand is calculated at a ratio of more than 2:1. I can state right at the beginning that I am not persuaded that I should consider time spent on remand at a ratio of more than 2:1. The present case is clearly not similar to the circumstances of the offender in the Alberta case of *R. v. Buggins* cited to me by the defence. In fact the evidence on this sentencing is that Mr. P. was able to take courses in anger management and self-discovery, as well as commence G.E.D. upgrading courses while on remand. He was also chosen as range representative by his fellow inmates on two occasions. I am therefore going to consider credit for remand time at the usual 2:1 ratio.

[7] The evidence before me on this sentencing is comprised of the two psychiatric reports prepared by staff of the East Coast Forensic Hospital, the Pre-sentence Report and the Victim Impact Statement. Mr. P. also submitted eleven letters from family, relatives and some acquaintances or friends. Counsel for both Crown and the defence presented full and helpful arguments for their respective positions and Mr. P. made an able and eloquent plea on his own behalf at the end of the sentencing hearing.

[8] A portion of Ms. M.'s Victim Impact Statement was read by her at the beginning of the sentencing hearing. It is abundantly evident from her statement that she has been very seriously affected, not only physically, but also emotionally, and as one would expect she is not the only one affected emotionally by her ordeal. Her children and close relatives are also seriously affected. All of them live under the cloud created by this serious incident. It is no wonder that they experience all kinds of emotions such as anxiety, fear, anger and depression. In medical terms this is usually called “Post Traumatic Stress Disorder”, but the medical term does not always do justice to the situation. Hearing the details of how people's lives are actually affected on a daily basis certainly brings the images and the emotional pain to life. There is no sentence which can totally remove this ordeal from Ms. M.'s and her children's minds. These emotional effects probably

last most of a person's life, especially when a victim such as Ms. M. has the physical injuries as a daily reminder.

[9] The principles of sentencing have now been codified in s. 718 of the **Criminal Code**. The overall or fundamental purpose of sentencing is still the protection of the public. The question is how that can be best achieved. The basic considerations of specific or individual, and general deterrence, as well as rehabilitation of offenders, are all included in ss. (a) to (f) of s. 718. Section 718.1 enunciates that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 also lists aggravating and mitigating factors and other considerations for sentencing courts. Section 718.2(c) appears to codify the totality principle.

[10] In this case there can be no doubt that the offences are very grave and that Mr. P. bears full responsibility for the offences. Nevertheless our Court of Appeal has said on several occasions that courts must not only sentence the offence but they must also consider the offender when imposing sentence. As I stated, these are very serious offences, but I must also consider the offender Mr. P. when I impose sentence.

[11] Mr. P. has no relevant criminal record. For the purpose of this sentencing he is a first-time offender. The Pre-sentence Report and the psychiatric reports do not indicate that Mr. P. cannot once again become a productive member of society. He had apparently been so most of his life before this incident. He had a fairly long marriage and he has two children. While there are indications that Mr. P. may be a manipulative individual the reports do not go as far as to say he has a serious psychopathy. Obviously there is something amiss for Mr. P. to have reacted the way he did when Ms. M. tried to put an end to their relationship.

[12] Mr. P., in his address to the Court, apologized to everyone for the predicament he caused for all parties involved in these proceedings, and to their relatives, but he does not accept responsibility for the offences, except for the fact that he was there at all. He says he used poor judgment by just being there, but he does not say anything about getting two large knives from the kitchen and then keeping Ms. M. basically terrorized for three hours.

[13] In this case the Court must try to find a balance between specific deterrence, general deterrence and rehabilitation. In my view all of these are important and relevant factors in this sentencing. As defence counsel said, it is the combination of all the offences which tends to raise the sentence for each individual offence in our minds, and I do not believe the Crown disagrees with that contention. In a case such as this it is difficult to isolate each offence because there is an ongoing incident and therefore one cannot clearly isolate these offences. They must be considered as part of the overall incident.

[14] There can be no question that Ms. M. went through three hours of terror, akin to torture of the worst kind. These kinds of acts must be denounced in the strongest terms. Others must also be deterred from such conduct, although it is controversial whether general deterrence is very effective as regards crimes of passion, which appears to have been at play with regard to these offences. In my view Mr. P. needs assessment and treatment to address why he reacted the way he did on November 9, 2001.

[15] In view of all the reports filed I cannot say that it is time to throw the key away on Mr. P.. I am sure that is the sentiment of many. The reports do not close the door on rehabilitation, although there are sceptical remarks about Mr. P.'s sincerity contained in those reports. Mr. P. had, and continues to have, obvious family and friend support, but that is not a very relevant factor in these circumstances. This did not prevent these offences and only assessment and treatment can reduce the risk of re-offending. Therefore, any sentence which Mr. P. receives must provide for ample opportunity for full assessment and whatever treatment may be necessary to prevent the recurrence of such offences.

[16] The offences themselves clearly place a total sentence at the upper end of the range for such offences. On the other hand, the fact that Mr. P. is a first-time offender and he has in the past and may once again be a law-abiding and productive member of society does not indicate that maximum sentences on these offences would be appropriate. I have given consideration to whether concurrent or consecutive sentences are more appropriate. While one must avoid the perception that one may get a “free ride” on certain offences because the sentences are concurrent, I am also not very comfortable with producing consecutive sentences below an acceptable range in these circumstances in order to have separate categories of “more serious” and “less serious offences”. The result is

that the ultimate sentence on each category would appear disproportionately low. I therefore consider this to be an appropriate case for concurrent sentences, recognizing fully that the overall circumstances and the duration of the incident, for example denying medical attention, medical treatment and raping Ms. M. during this prolonged period, are serious aggravating factors.

[17] In my view the appropriate sentences in this case are, and these will be all concurrent; three years on count number one, committing an assault using a weapon; count number two, aggravated assault, eight years; count number three, sexual assault while using a weapon, ten years; count number four, unlawful confinement, three years; count number five, uttering a death threat, two years. All to be concurrent, for a total sentence of ten years. However, I am mindful of the fact that Mr. P. has served approximately two years on remand and I will give him credit at a ratio of 2:1 of four years to be deducted from the ten year sentenced imposed as time already served.

[18] I am going to order the D.N.A. analysis requested by the Crown.

[19] With regard to the Firearms, weapons, ammunition prohibition, I am going to order a prohibition for fifteen years after his release from imprisonment.

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BOUDREAU, J.