

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. M.C.R., 2004 NSSC 10

Date: 20040109
Docket: CR210034
Registry: Halifax

Between:

Her Majesty The Queen

v.

MCR

Restriction on publication: It is ordered that there shall be a ban on the publication of all medical, psychological, pre-disposition and pre-sentence reports presented to this court, including the Family Division, except those parts or portions of these reports specifically quoted in the sentencing decision.

Editorial Notice

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

Judge: The Honourable Justice David W. Gruchy
Heard: January 9, 2004, in Halifax, Nova Scotia
Oral Decision: January 9, 2004
Written Decision: January 16, 2004
Counsel: Rick Woodburn, for the Crown
Eric G. Taylor, for the Crown
Chandrashakhar Gosine, for the Respondent

Gruchy, J.:

[1] The law concerning jointly recommended sentences is clear, if the sentence recommended is within an acceptable range then the Court while not bound to do so will normally accept the recommendation.

[2] I am prepared to do so in this case, but I want to make some remarks about the case as a whole. I have to say that in my years on the bench, this case is probably one of the saddest. I have before me now a boy of 17 years who has pleaded guilty to the attempted murder of his mother.

[3] This is a crime about which it has been said, and I quote “There are few crimes more serious than attempting to murder someone”. See *R. v. Cope* (1987) 59 Saskatchewan Reports 161.

[4] This boy while age 16 years attacked his mother with a baseball bat and attempted to murder her. The Crown and Counsel for this boy have agreed on the basic facts of the case and have outlined them to me in their submissions. I accept and am bound by that agreement.

[5] For the purposes of this decision I need not repeat the facts as stated in the court before me. I must apply the principles of sentencing as Parliament has set them forth in the *Criminal Code*. At the risk of repeating submissions made to me I feel it necessary to set forth some of those principles. Section 718 says that:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[6] The section continues:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Certain other sentencing principles are then set out by the *Code* and those which are relevant to my considerations today are as follows:

A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence of the offender, and, without limiting the generality of the foregoing. ...

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

And

(e) all available sanctions other than imprisonment that are reasonable in the circumstances shall be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[7] Those are the words of the *Criminal Code* which I must apply to this boy for having committed such a terrible offence. But, who is this boy? His name which I have suggested is not to be published until further notice is M. C. R.. He was born

in Halifax on [...] 1986. His mother was and I am informed, still is, a crack cocaine addict. M. was probably born with a crack addiction. His mother and his father lived together for about a year after he was born but then separated. While he was in his father's custody, this little boy lived chiefly with his paternal grandfather until he was about seven years old.

[8] At that age he was moved into his father's and his father's common law spouse's home and was cared for chiefly by his so-called step-mother. Difficulties arose however and he moved from time to time to his godfather's home, to his grandmother's home and then to his mother's, who by this time was living with another man. He seems, at 13, 14 and 15 years of age to have simply moved around from pillar to post, at his whims and at the whims of those adults who ought to have been protecting and raising him. This boy says, and I believe him, that when he reached 14 years of age nobody had any real influence or control over him or where he lived and I add, what he did.

[9] Prior to this offence of attempted murder, he had brushes with the law consisting of convictions for break and enter, theft on July 10, 2001 and a

conviction for breach of probation on December 9, 2002. He has been on remand in the Nova Scotia Youth Facility since July 8, 2002.

[10] I would like members of the public who become aware of this boy and of this sentence to attempt to put themselves in the shoes of a 16 year old with M.'s background and complete lack of guidance.

[11] I pose these questions to you. Where were you when you were that age? Had you had that apparent lack of guidance which M. had, and if so, would you have acted in the same manner? I venture to say that none of us can answer that question with any degree of certainty.

[12] M. had virtually no useful education. His social skills were virtually non-existent. Here are a few of the observations that M. has said about himself and what others have said about his background and his future. I emphasize that his mother was and apparently is a crack addict. He had difficulty in his relationship with his step-mother. He rarely got along with his mother and was in constant argument with her about drug matters. He says he got along well with his paternal grandparents and his godfather. He has been in trouble at the Youth Facility for

breaking rules. He has isolated himself at that facility and has not made friends there and has been assaulted there by other boys. He has not put any real effort into progress to better himself. His instructors have found him difficult to work with. On a more positive note his family and friends who have visited him at the Youth Facility including his father, his step-mother and his grandmother, all feel that he has shown a more positive attitude while there and is making some progress. Some of them have said the boy has expressed regret and remorse for this offence.

[13] M. has also made a statement to me this morning in which, in a sense he expressed the same regret. His mother, although she could not be contacted for the pre-sentence report as reported, at a transfer hearing she said she had maintained contact with her son. She was fairly positive about his progress at the facility, but said that he should not return to his father and should continue to get help at the facility.

[14] His paternal grandmother who now resides in a seniors' complex felt that M.'s godfather might possibly provide a good home for him when he is released.

She had visited him at the facility and had noticed an improvement in him and that he had expressed remorse for his actions.

[15] Other friends and relatives who have kept in touch with M. have noticed an improvement in him since he has been at the facility. M.'s teachers and instructors are much more guarded in their assessment of him.

[16] A psychologist reported that in tests M. has scored in the high risk range as to his likelihood of re-offending violently. A former probation officer reported that she had difficulties with M. and that he had not benefited from probation and would not likely do so in the future. A police officer reported that M. is "well established in his criminal mind set, very manipulative and needs extensive assistance. He poses a serious threat to any community at this time." The concluding paragraph of the Pre-sentence Report reads as follows:

Appearing before Your Honour is a 17 year old M. R. who has plead guilty to one count of attempted murder contrary to Section 239(b) of the *Criminal Code*. Presenting problems for this youth are grounded in the difficult life in which he was born and subsequently raised. As previously reported by various mental health professionals, M. R. suffered cocaine addiction at birth, had inconsistent and inappropriate parenting throughout his life, had his education repeatedly disrupted from repeated relocations with various family members and then was basically left to his own devices at a very young age, turning to a mal-adapted street life at the age of 14. He also has been witness to and socialized in a self

reported criminal lifestyle to which he now relates. After spending 18 months remanded at the Nova Scotia Youth Facility M. R. is described by his family as 'more mature and more settled'. This writer sees changes in his level of anger and overall demeanour, although M. R. has taken responsibility and admitted remorse for his actions regarding this offence, he has not committed to the services and programs offered by the Nova Scotia Youth Facility and maintains his desire to be transferred to an adult system which may not offer a youth the opportunities necessary to put their life back as is necessary for this youth. However, no amount of programming offered at any facility will be of benefit if M. R. does not fully commit to a change in his current way of thinking and a lifestyle to which he has become accustomed.

[17] Dr. Joan Boutilier, a psychologist who examined M. with respect to this matter recommended and I will read it.

It is recommended that if the Court finds M. R. guilty of the current charges successful rehabilitation will be slow and difficult. That rehabilitation is most likely to be effective in a highly structured environment utilizing cognitive behavioural intervention strategies. That appropriate programming exists in both youth and adult facilities, but a youth facility is the preferred option because of the much more favourable client/staff ratio and the potential that this youth may be harmed in an adult facility. That M.'s case management plan involve a slow and gradual community re-integration component where transition to the community is carefully monitored through well supervised temporary absences and school or work placement. That upon his release to the community M. be subjected to intensive monitoring and supervision. That creative educational and vocational opportunities be made available to M. both during the transition and while he is being supervised in the community to offer him a meaningful alternative to the economic advantages of criminal activity.

[18] I recognize that M. wants to leave the Youth Facility but in his best interest I am not going to accede to that request. I frankly have a great feeling of foreboding about this boy. I sincerely hope I am wrong, but I feel he has been set

upon a road of criminal activities by those people who should have been responsible for him. It is a road which probably commenced when a greedy cocaine dealer pushed his mother into what eventually became an addiction. It is a road which the psychologists' reports indicate has been littered with criminal activity and lifestyle.

[19] But, I now return to the principles of sentencing as set forth in the *Criminal Code* and I will address each of those which are relevant. I have, of course, to denounce what M. did. I have to express my revulsion for a young boy who would attack his mother so viciously and attempt to murder her. I hope that the sentence which I pronounce today and which has been agreed to by counsel shall deter M. and anybody else from committing such an offence.

[20] It is necessary to separate M. from society in the circumstances. The evidence before me shows clearly that he has a potential for re-offending violently.

[21] I feel that his greatest hope of rehabilitation is in the Youth Facility and I sincerely hope that he will take advantage of all the facility offers.

[22] It is impossible for M. to provide reparation for harm done to his mother or to the community, except to follow the advice that I am giving him now and the advice that he will get in the future. I hope that the sentence will promote and give him an opportunity to develop a sense of responsibility and to acknowledge the harm that he has done to his victim.

[23] In passing this sentence I have attempted to consider all relevant aggravating or mitigating circumstances. I have considered his youth, I have considered the fact that he has pleaded guilty and I have considered the fact that he has expressed remorse. I have considered all of the various cases cited to me by counsel and I conclude that the sentence recommended by counsel is well within the appropriate range. A six year sentence for this boy, at his age, is a long sentence and I recognize that. I have considered such other available sanctions other than imprisonment that might be available and I am not aware of anything better than the one that has been proposed.

[24] I therefore accept the recommendations of counsel that six years less a credit of two years for time served is within the range of appropriate sentences and

I now impose that sentence. M. is still under the age of 18 years and will continue to be until October 6, 2004. Pursuant to and subject to the provisions of Section 76 of the *Youth Criminal Justice Act* and other sections of that *Act*, I order that M. shall serve his sentence in a youth custody facility. I am satisfied that it is in the best interest of M. and would not jeopardize the safety of others to serve such a portion of his sentence as is permissible in the Youth Custody Facility.

[25] The provisions of Section 76 and of the *Youth Criminal Justice Act* shall take effect and M. shall have his rights pursuant to that *Act*. I will grant the Firearms Order and I will grant the Order with respect to the taking of DNA.

J.

January 16, 2004

Halifax, Nova Scotia