

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Bowden*, 2014 NSSC 141

Date: 20140415

Docket: CRH 419824

Registry: Halifax

Between:

Her Majesty the Queen

v.

Troy Jerimiah Bowden

SENTENCING DECISION

Judge: The Honourable Justice Glen G. McDougall

Sentencing Date: April 15, 2014, in Halifax, Nova Scotia

Counsel: Perry Borden, for the Crown
Geoffrey Newton, for the Accused

By the Court:

[1] We are here today on matter of sentencing involving Troy Jerimiah Bowden. I will start my comments, Mr. Bowden, by first telling you about an experience that I had just a few weeks ago when I presided over a criminal Judge and Jury trial.

[2] The accused, a young fellow – younger than you, decided to thrust a knife in another gentleman’s chest. Unlike you neither the offender in that particular case nor the victim got off as well or were as lucky as you and Mr. Brien. That gentleman died and the Jury convicted this young 20-year-old man of second degree murder. I sentenced him to life imprisonment as I am obligated to do under the *Criminal Code*.

[3] There is one thing I recall when the Chief Medical Examiner for the Province was be cross-examined by defence counsel – a very young, very bright and very intelligent criminal defence counsel and despite his youth, a very experienced criminal defence counsel, and the knife in that particular instance went right through the gentleman’s sternum, through his heart and into his liver. He didn’t have a chance, quite frankly, he was dead within seconds but defence counsel suggested to the Chief Medical Examiner that if it had of been an inch or so the other way then it would have hit his lung – which is obviously what happened to Mr. Brien. What I recall the Chief Medical Examiner saying was “sir, it is always a matter of inches.”

[4] Indeed, Mr. Bowden, you could be facing a very more serious charge of murder as opposed to attempted murder and the aggravated assault of which you eventually pled guilty. I am glad that I do not have to sentence you to live imprisonment. I do not enjoy, even when I have no choice, sending young men such as yourself — young men who probably if given the opportunity have a lot of potential and could make, I think, positive contributions.

[5] In your case, based on the comments that I have read in the pre-sentence report you have a daughter and it would appear that you realize that as a father you cannot really play much of a role in her life and development if you are going to be in jail.

[6] You are going to have to decide eventually what you want to do with your life if you get released from the Penitentiary. I would hope that you start making decisions that reflect not only your good and positive qualities but reflect what is in

the best interest of your dependant child as well. She deserves to have a father and if you can turn things around she deserves to have a father such as you who can provide for her and present as a positive role model to her. I hope you do eventually become that positive role model for her.

[7] If not, given your track record, it is rather unenviable given the fact that at age 15 you started with criminal activities for which you were eventually held accountable. You continued after you reached the age of 18. You are almost 23 now and you have continued with criminal activities. Some of the offences for which you have been convicted in the past or pled guilty to – I'm not exactly sure how they were disposed of – they are extremely serious.

[8] This offence, aggravated assault using a knife to injure someone, you are getting pretty close to the ultimate offence which is causing someone's death. I hope it does not get to that. I hope the progression ends after you serve your sentence here.

[9] Otherwise you may be faced with not only a sentence for an offence, the Crown has shown a willingness to commence applications to have offenders such as yourself declared dangerous offenders. If you are declared a dangerous offender – I have two on the go right now – one with a gentleman, again younger than you at only 20. If I determine that he is a dangerous offender I can sentence him to an indeterminate term which means he can be in jail for the rest of his life.

[10] You are on a slippery slope. Words from me, encouragement from Mr. Newton and other family members, that is one thing but it is you that has to make up your mind as to what you want to do with the rest of your life. I cannot tell you, I can encourage you and make recommendations, but ultimately the decisions are yours. I hope and think that you realize this.

[11] You are an intelligent young man who has had a very difficult upbringing but there comes a time when you have to put the past behind you and not continue to, in effect, relive the past or worse still perpetuate the past by inflicting violence on someone else.

[12] You are going to have to find a way, maybe it means participating in programs while you are incarcerated to try to deal with any anger management issues that you

might have. If programs are being recommended to you while you are serving your sentence while you are in the penitentiary I hope that you would look upon them as positive opportunities or an opportunity to do something positive in your own life and take full advantage of them. I have prepared some comments and I am prepared to give those now.

[13] Troy Jerimiah Bowden was charged on a six-count Indictment:

1. that he on or about the 4th day of August, 2013 at, or near Dartmouth, in the County of Halifax in the Province of Nova Scotia, did unlawfully attempt to murder Patrick Brien, contrary to Section 239 of the Criminal Code.

2. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did unlawfully assault Coral Wiseman, contrary to Section 266 of the Criminal Code.

3. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did unlawfully wound, or endanger the life of Patrick Brien thereby committing an aggravated assault contrary to Section 268(1) of the Criminal Code.

4. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did in committing an assault on Patrick Brien use or threaten to use a weapon, to wit, a kitchen knife contrary to Section 267(a) of the Criminal Code.

5. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did unlawfully have in his possession a weapon, to wit, a kitchen knife for the purpose of committing an offence, contrary to Section 88(1) of the Criminal Code.

6. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did while bound by a Probation Order issued on the 12th day of January, 2012, did wilfully fail without reasonable excuse to comply with such order, to wit, "keep the peace and be of good behaviour", contrary to Section 733.1(1)(a) of the Criminal Code.

[14] A plea of "guilty" was earlier entered on Counts 3 and 6.

[15] "Not Guilty" pleas were entered on Counts 1, 2, 4 and 5.

[16] The Court will proceed to sentencing on the two counts that Mr. Bowden pleaded "guilty" to. The other four counts will be dealt with prior to the conclusion of this sentence hearing.

FACTS

[17] The facts of this case are as read into the record by Crown counsel earlier this afternoon and which have been agreed to by Defence counsel.

[18] Defence counsel also relies on this recitation of the facts to support the joint recommendation for a sentence of 36 months less remand credit of 8 months and a further remand credit at the rate of 1.5 days to 1 for the additional time spent on remand after February 27, 2014 which is the day Mr. Bowden was originally scheduled to be sentenced before me.

[19] I am not going to review those facts - Mr. Borden has done a very capable job of reciting those facts as I indicated earlier.

[20] The Criminal Code has a number of provisions that deal with the purpose and principles of sentencing. They are found in ss. 178 to 718.3. Specifically, s. 718 states:

718. 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 acknowledgment of the harm done to victims and to the community.

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

718.2 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 or 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;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

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

[21] Section 718.3 deals with punishment generally and I will not recite it here in its entirety other than to say that the Court has considered the general intent of this particular section in reaching its decision today.

AGGRAVATING FACTORS:

[22] There are a number of aggravating factors associated with this case including:

1. The level of violence exhibited by the offender and the resulting grave injuries to the victim, Mr. Patrick Brien;
2. The significant prior criminal record of the offender;

3. While taking responsibility for his criminal act, the author of the Pre-Sentence Report indicated that the offender, and I quote, "did attempt to deflect some blame towards the victims and his friends indicating that it was a situation that got out of hand".

MITIGATING FACTORS:

[23] There are also certain mitigating factors that come into play including:

1. The fact that Mr. Bowden was arrested the next morning after the assault without incident;
2. The offender has accepted responsibility for his acts by pleading "guilty" and thereby saves court time by alleviating the need to have witnesses testify and by doing so shield those individuals and especially the victim, from re-living what must have been a rather horrific experience;
3. After attempting to deflect some of the blame towards the victim and his friends the offender, to his credit, expressed some remorse indicating to the author of the PSR that he realized what he had done was wrong.

PRE-SENTENCE REPORT:

[24] I will now look at the Pre-Sentence report prepared to assist the Court in reaching the appropriate sentence in this particular case. I have highlighted some portions of that PSR.

[25] First of all, Mr. Bowden is relatively young - he's only 22 years of age. Mr. Bowden advised the author of the Pre-Sentence Report that he has been involved in a relationship with Amanda Yurchak for approximately four years and as a result of this union, they have a two year old daughter. Although they do not reside together, they maintain contact and he expects the relationship will resume upon his release. He also notes he has a good relationship with his daughter and wishes to be actively involved in her parenting.

[26] Mr. Bowden also stated his plans for the future are to complete his Grade 12 education.

[27] Prior to his remand, Mr. Bowden indicated he was employed in the construction business with his father. He stated he would like to resume his construction job upon release and is focused on securing employment so he can support his family.

[28] And as an aside, hopefully the relationship that you have with your father continues to progress in a positive direction, and again, that might assist you in putting behind you some of the things that you would rather forget, I'm sure, of your childhood.

[29] Again, I quote from the Pre-Sentence Report:

When asked about his peer group, he [that being Mr. Bowden] stated while some of his friends have been involved in the Criminal Justice System in negative activities, he has some friends who are not and tends to spend more time with his positive friends, including his common-law partner. With his free time he stated his likes to hang out with his children and play basketball.

[30] Mr. Bowden also stated to the author of the Pre-Sentence Report that his noted goals for the future are, again, to secure employment and to completed his Grade 12 education - things that I think I would encourage as well, Mr. Bowden. They are very applaudable objectives and hopefully you'll have some success, or at least attempt to have success, with regard to both education and finding stable and remunerative employment.

OFFENDER'S PRIOR CRIMINAL RECORD:

[31] The offender, Mr. Bowden, who is not yet quite 23 years of age, has a fairly extensive criminal record which goes back to the time when he was only 15 years of age.

[32] His record indicates that he has committed some very serious criminal offences, first as a youth, and later as an adult.

[33] These offences include convictions for assault with a weapon; regular assault on several different occasions; possession of stolen goods having a value of less than \$5,000; possession of a weapon for a dangerous purpose; two different counts of robbery; mischief; resisting arrest and obstructing a police officer; theft under \$5,000; and numerous instances of failing to attend court as directed or breaching probation or terms of a recognizance, and failure to comply with various sentencing provisions while a youth.

[34] All in all, it is a very unenviable record, Mr. Bowden, for such a young man.

[35] All of this culminates in the charges that are before the Court today.

SENTENCING RECOMMENDATION:

[36] The Crown and Defence have jointly recommended a sentence of three years less credit for remand amounting to a total of 311 days, and this includes credit of 1.5 days for each day on remand after February 27, 2014, which leaves 784 days left to be served. This equates to approximately 26 additional months.

[37] In addition to this, counsel have recommended a sentence of 30 days on the breach of probation offence to be served concurrent with the sentence for aggravated assault.

[38] Section 268(2) of the Criminal Code states that:

(2) Every one who commits an aggravated assault is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

[39] Again, before I proceed, I'm going to offer Mr. Bowden - I'm going to offer you the opportunity, if you wish to address the Court, to do so. You do not have to say anything, but if you do wish to say anything, I'd be happy to listen to you.

MR. BOWDEN: I'd like to say I plan to take every opportunity when I'm doing my time that I'm serving.

THE COURT: Good, I think that is a good attitude. I'm not sure that I would have a positive attitude given the fact that I'm going to be spending more time in jail, but

if you're going to be there, I guess, make the best of it. Okay, thank you, Mr. Bowden.

[40] Mr. Bowden, I am prepared to accept the joint recommendation of counsel, if not for the fact that both Crown counsel, Mr. Borden, and Defence counsel, Mr. Newton, are very experienced and very capable criminal lawyers, I would likely not accept the recommendation. I would likely have given you a much longer sentence of incarceration given your track record, but I'm satisfied that Mr. Borden and Mr. Newton both have a better handle, a better understanding and appreciation for all of the circumstances of this case and based on their collective good judgment and experience in recommending the three years as the appropriate disposition, I am prepared to accept it.

[41] You are indeed fortunate, sir, that you have such good representation in the person of Mr. Newton and I think you are very fortunate that you came up against a very reasonable and very experienced Crown counsel as well, who was prepared to also agree with the joint recommendation of three years.

[42] And again, in addition to the three year sentence on Count No. 3, I also sentence you to a sentence of 30 days on Count No. 6 and, of course, this latter sentence is to be served concurrently with the first and by that I mean it will be served at the same time, it's not an additional 30 days to be served consecutive to the larger sentence.

[43] You will receive the credit for remand totalling 311 days and, again, based on my calculations that means there is a balance of 784 days left to be served. I will also grant the request from Crown for a DNA Order and a s. 109 Weapons Prohibition Order for ten years. Both of those Orders will be prepared by Crown counsel and submitted in due course so that they can be initialled and issued by the Court.

[44] I am also prepared to accept the submission and the recommendation of Defence counsel to, in this particular instance, waive the victim fine surcharge given your current financial situation and the fact that you have been on remand for some time - I don't expect you would be in any position to pay that fine in any event, if I can refer to it as a fine - yes, it is a fine.

[45] Counsel, is there anything that I am neglecting to deal with? Of course, we have to deal with Counts 1, 2, 4, and 5, so I guess at this juncture, Mr. Borden, if you could indicate for the record what the Crown's position is in regard to those four counts.

MR. BORDEN: There was a not guilty plea, My Lord, so Crown will be offering no evidence on the remaining counts.

THE COURT: Okay, and Defence counsel then?

MR. NEWTON: Motion for dismissal please, My Lord.

THE COURT: Okay I will, then, grant the motion for dismissal on Counts 1, 2, 4, and 5. Again, the only matters that Mr. Bowden has been sentenced on are Counts 3 and 6 - the two that he earlier pleaded guilty to. Mr. Newton - anything else I've neglected to deal with here today?

MR. NEWTON: Not from Defence's perspective, My Lord.

THE COURT: Mr. Bowden, don't take this personally, I hope never to see you again in this courtroom or any other courtroom in this building. Perhaps the next time I see you, you will be out having stroll with your daughter, playing basketball with her and other young people, and be the type of father that you have the potential of becoming. I wish you luck with that and you'll have to spend a little bit of time before you get that opportunity, but when it comes I hope you take full advantage of it. Good luck.

McDougall, J.