SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Thompson, 2010 NSSC 106

Date: 20100318
Docket: CR. No. 316826
Registry: Halifax

Between:

Her Majesty the Queen

-and-

Chaze Lamar Thompson

Sentencing Decision

Judge: The Honourable Justice Robert W. Wright

Heard: March 18, 2010 in Halifax, Nova Scotia

Oral Decision: March 18, 2010

Written Decision: March 22, 2010

Counsel: Crown Counsel - Michelle James
Defence Counsel - Peter Planetta

Wright J. (Orally)

[1] On his scheduled trial date of March 1, 2010 the accused Chaze Lamar Thompson entered a plea of guilty to three counts set out in the indictment dated September 15, 2009 pursuant to a plea bargain negotiated with the Crown. The offences plead guilty to were that of robbery, contrary to s. 344 of the Criminal Code, wearing a face mask with intent to commit an indictable offence, contrary to s. 351(2), and breach of his recognizance by failing to keep the peace and be of good behaviour, contrary s.145(3). Sentencing was set over until today to give counsel time to work out an Agreed Statement of Facts, to finalize a joint recommendation on sentencing, and to give the victim of the robbery an opportunity to provide a victim impact statement (which she ultimately declined).

[2] At the sentencing today, counsel presented an Agreed Statement of Facts which reads as follows:

> On February 5th, 2009, at 3:10 p.m., three men entered the Aladdin Video store on Portland Street in Dartmouth. They were wearing black clothing, and had bandanas over their faces. Two were carrying firearms. One man stood guard at the door while the other two approached the clerk, Souad Youssef. One of the men who approached her had a firearm and pointed it at her, demanding that she open the till. The second man went behind the counter and started grabbing tobacco products. The man with the gun grabbed a quantity of chocolate bars. Two other people were in the store at the time of the robbery.
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> The lookout at the door took a phone call, told the other two to hurry up and hung up his phone. All three ran out of the store, a couple of minutes after they had entered. They were observed running across Portland Street and up Lakefront Road.
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> The investigation revealed that the parties involved were hiding at 54

> Lakefront Road in Apt. #1. This apartment belonged to Santina James, the sister of the accused. He was located inside, along with a young offender, Ms. James and her child. A search warrant was obtained, and a number of items were seized, including clothing consistent with that worn during the robbery, cash, tobacco and a firearm. Some of the tobacco was located in the toilet, as though someone had attempted to flush it. The firearm was disassembled - with one part hidden behind the refrigerator and the other located within the sofa.

[3] The principles of sentencing are set out in ss. 718, 718.1 and 718.2 of the Criminal Code. I need not recite them at length for purposes of this decision. Suffice it to say that the courts in this province have stated on numerous occasions that the sentencing objectives to be emphasized for robbery offences are denunciation and deterrence, both general and specific.

[4] The offence of robbery is a serious one. By its very definition, it includes a component of violence, or the threat of violence for the purpose of stealing. The gravamen of the offence and the sentencing objectives of denunciation and deterrence must be adequately reflected in fixing a fit and proper sentence to be imposed.

[5] Also to be taken into account is the prior criminal record of the offender. Mr. Thompson has committed a number of prior offences both as a youth and as an adult but none of such gravamen as to have resulted in jail time. His present incarceration on remand since his arrest for the subject offences represents his first period of custody.

[6] There is little in the way of mitigating factors present in this case other than

Mr. Thompson's acceptance of responsibility through his guilty pleas which eliminated the need for a trial. He is a youthful offender at age 20 but the court has little information about his personal circumstances beyond that in the absence of a pre-sentence report.

[7] Bearing these factors in mind, I now turn to a consideration of the joint recommendation on sentencing presented by counsel this morning. It has the following three components:

1. A global term of imprisonment of 4 years on the robbery offence, less credit for time served on remand on a 2 for 1 basis which translates into a reduction of 16 months. Counsel also recommend shorter sentences on the other two charges to be served concurrently;
2. The issuance of an order authorizing the taking of DNA samples under the provisions of the Criminal Code;
3. A lifetime weapons prohibition order under s. 109(3) of the Criminal Code.

[8] The obligations of a sentencing judge, when presented with a joint recommendation of counsel arising from a genuine plea bargain, were recently considered by the Nova Scotia Court of Appeal in **R. v. McIvor** [2003] N.S.J. No. 188. In essence, the sentencing judge is required to assess whether the joint recommendation on sentence is within an acceptable range, (i.e., whether it is a fit sentence) and if it is, there must be sound reasons for departing from it.

[9] The appropriate range of sentence for the crime of robbery was reviewed

fairly recently by the Nova Scotia Court of Appeal in **R. v. Bratzer** (2002) 198 N.S.R. (2d) 303 where the court stated (at para. 36):

> Armed robbery is a most serious crime meriting a severe sanction. Oland, J.A., noted in *Longaphy*, supra, that the decisions of this court support a starting point sentence in the two to three year range, for a single offence:
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> "[28] The position the court has consistently taken with respect to robbery was set out in *R. v. Leet* (1989), 88 N.S.R. (2d) 161: 225 A.P.R. 161 (C.A.), where Justice Chipman stated at [paragraph] 14:
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> 'Robbery is a very serious offence, carrying a maximum punishment of imprisonment for life. The sentencing court is thus left with a very wide discretion as to the penalty in any given case. Rarely is a sentence of less than two years seen for a first offence and terms ranging up to six years are commonly imposed. In the more serious robberies, including those committed in financial institutions and private dwellings, the range has generally been from six to ten years." ...
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> "[29] In *R. v. Izzard* (B.W.) (1999), 175 N.S.R. (2d) 288; 534 A.P.R. 288 (C.A.), Glube, C.J.N.S., writing for the court at [paragraph] 17 stated:
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> 'For many years, this court has consistently viewed robbery with violence and armed robbery as cases requiring strongly deterrent sentences. The cases refer to a minimum bench mark sentence of three years and occasionally going as low as two years."

[10] In agreeing to a joint recommendation of 4 years imprisonment, Crown counsel also informed the court that an additional factor taken into consideration was the assessment of the ability of the Crown to prove the identity of the accused where that element of the offence rested entirely on circumstantial evidence.

[11] Adding that factor to the mix as well, I am satisfied that the joint recommendation does fall within the acceptable range of sentencing outcomes,

given the general benchmarks set out in **Bratzer**. I therefore impose on Mr. Thompson the following sentence:

1. A global term of imprisonment of 4 years in respect of the robbery offence, less credit for time served on remand on a 2 for 1 basis which translates into a reduction of 16 months. In the result, Mr. Thompson is sentenced to a further period of incarceration of 32 months from this date forward;

2. A term of imprisonment of 1 year in respect of the offence of wearing a face mask with intent to commit an indictable offence, to be served concurrently;

3. A term of imprisonment of 3 months for breach of his recognizance, again to be served concurrently;

4. The imposition of an order authorizing the taking of a DNA sample from Mr. Thompson in accordance with the provisions of the Criminal Code;

5. The imposition of a lifetime weapons prohibition order pursuant to s.109(3) of the Code.

[12] In the circumstances, the defence request for a waiver of the victim surcharge is granted. It should also be noted that upon the imposition of this sentence, Crown

counsel stated that no evidence would be called on the remaining charges set out in the indictment, as a result of which they stand dismissed.

J.