SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Larade*, 2017 NSSC 135

Date: 20170519
Docket: Cr. No. 446416
Registry: Halifax

Between:

Her Majesty the Queen
v.
Justin Larade

Sentencing Decision

Judge:	The Honourable Justice Robert W. Wright
Heard:	May 19, 2017 in Halifax, Nova Scotia
Oral Decision:	May 19, 2017
Written Decision:	May 24, 2017
Counsel:	Erica Koresawa for the Crown Alfred Seaman for the Defence

Wright, J. (orally)

[1] On January 11, 2017 the accused Justin Larade entered a plea of guilty to a single count of aggravated assault, contrary to s.268(1) of the Criminal Code.

[2] Sentencing was put over until today to allow time for the preparation of a pre-sentence report, which is now in hand, and the possibility of obtaining a victim impact statement. None was forthcoming from the victim Curtis Lynds.

[3] A summary of the fact situation surrounding this offence was read into the record by the Crown and acknowledged by defence counsel. In brief, surveillance video from the jail revealed that Mr. Larade was one of five inmates who emerged from a cell, surrounded the victim in an open range, and attacked him, with all five of them delivering various punches and kicks. This continued after the victim went to the floor. The victim was apparently knocked unconscious and sustained a skull fracture and a severe head laceration requiring 40 stitches to close. The victim was then pulled into a nearby cell and left there while others cleaned up the blood. The victim was discovered about a half hour later by a corrections officer.

[4] The purpose and objectives of sentencing and the principles to be considered are set out in s.718 of the Criminal Code. Those to be emphasized in this case are the denunciation of unlawful conduct, the deterrence of the offender and other persons from committing offences, assistance in rehabilitating offenders and the promotion of a sense of responsibility in offenders.

[5] Section 718.1 contains the cardinal principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Also to be noted is s.718.2 which requires that the Court take into

consideration whether a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[6] For crimes of violence such as this one, courts across the country have repeatedly placed emphasis on the sentencing objectives of denunciation and deterrence, both general and specific. In many cases, this one included, those two sentencing objectives are to be balanced with the further objective of assisting in the rehabilitation of the offender.

[7] Before addressing these sentencing principles, I will first recap the highlights of the pre-sentence report prepared on May 3, 2017. It is, on balance, a generally positive report and provides some insight into Mr. Larade's personal background and circumstances.

[8] Mr. Larade is 27 years old and is currently single, although he has two young children from two different prior relationships. He pays child support for one of them where he shares a good relationship with his son's mother. He has a grade 10 education and reports that he was diagnosed with a non-verbal learning disability. At last word, he was living at his parents' home who continue to be very supportive of him, as is his sister.

[9] His parents, who were both interviewed, describe him as one who is influenced by who he is with at the time, that he can be short-tempered, and make really poor decisions. They described him as a good person until something sets him off and he does something without thinking and that is what gets him into trouble. Nonetheless, his parents say they continue to support him and always will.

[10] Mr. Larade is currently employed at a property rental company, completing floor work where he has worked for the past three years. His father is employed there as well. His manager reports having seen a great change in Mr. Larade's maturity and demeanour and says he would not hesitate in hiring Mr. Larade back if he receives a period of incarceration.

[11] Mr. Larade reportedly suffers from a chronic back condition for which he has a prescription for medical marijuana.

[12] All of the collateral contacts interviewed have indicated that Mr. Larade has matured and that his attitude and behaviour have changed accordingly. The probation officer concluded his report with the comment that if the court deems it appropriate, it appears that Mr. Larade would be a suitable candidate for a future period of community based supervision.

[13] Apart from this generally positive pre-sentence report, an important mitigating factor present here is Mr. Larade's guilty plea which demonstrates his acceptance of responsibility. He has also expressed his remorse to the Court.

[14] There are, however, a number of aggravating factors to be noted as well. First, Mr. Larade, together with four other inmates, gathered and swarmed the victim, attacking him as a group in a premeditated fashion. While the assault was not prolonged, it was a severe one, dangerously involving repeated blows to the victim's head which continued after the victim was on the floor. The fact that this occurred in a correctional institution is also an aggravating circumstance.

[15] Mr. Larade also has a criminal record which includes two prior assault convictions, one committed in 2011 (assault causing bodily harm) and an earlier

one in 2007 (assault with a weapon). For the 2007 offence, he received a six month conditional sentence. For the 2011 offence, he served six months imprisonment after being sentenced on January 20, 2014 which accounts for his incarceration at the time of this offence.

[16] As affirmed in **R. v. Anderson** [2001] NSJ No. 28, the range of sentence for aggravated assault runs from a suspended sentence to several years' incarceration, the maximum sentence under s.268(2) of the Code being 14 years. Such a wide range of sentencing is reflective of the wide range of circumstances in which this offence may be committed.

[17] The only case referred to this court in a fairly similar factual situation is **R. v. L(J.C.)** [2005] BCJ No. 2141, a decision of the British Columbia Provincial Court. In that case three offenders brutally attacked a fellow inmate in an open range causing him serious head injuries. They were sentenced to three, four and five years imprisonment respectively, commensurate with their degree of involvement and moral culpability in the attack.

[18] In the present case, Crown and defence counsel have presented to the court a joint sentencing recommendation of a term of imprisonment of two years, followed by a two year period of probation with the usual conditions for this kind of offence. The court is informed that this joint recommendation was negotiated over several months leading up to trial and that it is a true joint recommendation in every sense.

[19] The legal test to be applied with respect to a joint sentencing recommendation was recently clarified by the Supreme Court of Canada in **R. v. Anthony-Cook** [2016] SCJ No. 43. There, the court recognized that joint sentencing submissions are vital to an efficient justice system, stating (at para. 1):

> Resolution discussions between Crown and defence counsel are not only commonplace in the criminal justice system, they are essential. Properly conducted, they permit the system to function smoothly and efficiently.

[20] To that end, Justice Moldaver identified the test to be applied, in deciding whether to depart from a joint submission on sentencing, by stating that a sentencing judge may do so only when the proposed sentence would bring the administration of justice into disrepute or is otherwise against the public interest. This test is to be applied through the lens of reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions. Such is the high threshold to be met before a sentencing judge may depart from a joint sentencing recommendation.

[21] In the present case, I am satisfied that the joint sentencing recommendation of two years' imprisonment followed by two years' probation with conditions would not bring the administration of justice into disrepute, nor is it otherwise against the public interest. That sentence is hereby imposed on Mr. Larade accordingly.

[22] The agreed upon probation conditions are as follows:

(a) report to a probation officer at the location closest to your release within three days from the date of expiration of your sentence of imprisonment and thereafter as directed by your probation officer or supervisor;

(b) not to have in your possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance;

(c) have no direct or indirect contact or communication with Curtis Lynds;

(d) make reasonable efforts to locate and maintain employment or an educational program as directed by your probation officer;

(e) not to associate with, or be in the company of the following persons:

i. Jeremy Coleman,

ii. Andrew Hudder,

iii. Brandon Ward or

iv. Anyone you know to have a criminal record except incidental contact in an educational or treatment program or while at work.

[23] In addition to the probation conditions to be imposed under the joint recommendation, the following ancillary orders are to be issued as well:

(1) An order prohibiting Mr. Larade from communicating with Mr. Lynds pursuant to s.743.21(1) of the Code;

(2) An order for the taking of DNA samples pursuant to s.487.051(2) of the Code; and

(3) A firearms prohibition order for life pursuant to s.109(3) of the Code.

[24] Lastly, a victim fine surcharge is required to be imposed in the amount of $200, which is to be payable within one year after the expiration of the sentence of imprisonment.

J.