

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Bowser*, 2019 NSSC 154

Date: 20190510

Docket: CRH No. 468459

Registry: Halifax

Between:

Her Majesty the Queen

v.

Gregory Howard Bowser

SENTENCING DECISION

Judge: The Honourable Justice James L. Chipman

Convictions

Entered: December 18, 2018

Oral Decision: May 10, 2019

Written Decision: May 10, 2019

Counsel: Cory Roberts, on behalf of the Provincial Crown
Peter Planetta, on behalf of Mr. Bowser

By the Court (orally):

INTRODUCTION

[1] Following a judge and jury trial late last year, Gregory Howard Bowser was convicted of three counts of common assault (*Criminal Code*, RSC 1985, c. C-46, s. 266). The sentencing was scheduled for today and the Court received the following materials in April and May:

- ▶ Pre-Sentence Report (PSR)
- ▶ Victim Impact Statement
- ▶ Briefs and authorities

[2] From the evidence at trial and the jury verdict, I have determined the circumstances of the offences are as set forth below.

FACTS

[3] The first assault occurred in July, 2016. When the complainant, Du Preez Steyn and Mr. Bowser were standing in their bathroom by the mirror, Mr. Steyn touched Mr. Bowser's arm. Mr. Bowser responded with a punch which the jury must have determined did not cause bodily harm.

[4] The second and third assaults arose from a November 4, 2016 incident. A necessary implication of the jury's verdicts is that the jury found that the Crown failed to prove that the offender used a weapon to assault the victim (broom handle) and that the Crown failed to prove that the assaults caused bodily harm to the victim (broken toe). Based on the victim's testimony and the implications of the jury's verdict, I find the following facts with respect to the assault on November 4, 2016:

- ▶ The offender and the victim were in an argument;
- ▶ The victim tried to leave and take his keys with him;

- ▶ The offender tried to prevent the victim from leaving with his keys by ripping the keys from the victim's hands;
- ▶ The offender punched the victim in the face with his hands; and
- ▶ The offender assaulted the victim with his elbows.

POSITIONS OF THE PARTIES

Crown

[5] The Crown seeks a jail sentence of 60-90 days followed by 12 months probation with various conditions along with ancillary firearms prohibition and DNA orders. The prosecution emphasizes that the assaults arose out of a relationship as the victim and Mr. Bowser were living together at the relevant times. The Crown makes the following argument at para. 25 of its' brief:

Recognizing that Mr. Bowser has been convicted of multiple counts of common assault rather than the more serious assault causing bodily harm, the Crown is seeking what is often described as a "short and sharp" jail sentence for the offences before the Court, far less than the full sentences discussed in the cases above.

Defence

[6] The Defence says this case should be characterized as a crime of intimate partner violence at the low end of the range. Mr. Bowser emphasizes several mitigating factors and asks for an order of community supervision followed by a conditional discharge or, alternatively, a 12 month suspended sentence.

VICTIM IMPACT STATEMENT

[7] Mr. Steyn's May 3, 2019 Victim Impact Statement emphasizes his upset with what happened at the hands of Mr. Bowser in the summer and fall of 2016. Mr. Steyn believes Mr. Bowser should receive treatment and rehabilitation.

CHARACTER OF THE OFFENDER GLEANED THROUGH THE PSR

[8] Mr. Bowser is a relatively youthful offender at 28 years of age. He has an unrelated record referable to a driving over .08 charge from a decade ago. The PSR

is generally positive. It speaks of a person who is insightful and embarrassed with his role in what has occurred. Mr. Bowser's acceptance of responsibility appears to be genuine.

[9] Mr. Bowser enjoys good family supports, as both parents are in his life; in particular, he has a good relationship with his mother. He has a solid employment history, though he has not been working recently.

[10] On p. 4 of the PSR under the heading "Offender Profile", Mr. Bowser discusses his thoughts on the offences before the Court. While he does state that the complainant played a role, the remainder of his comments show insight and remorse. The author, Probation Officer Sheldon A. Larkin, recounts that Mr. Bowser is mortified and feels terrible about his actions. He has demonstrated a high level of maturity in discussing his faults and understands the areas in which he has to improve. In my view, these comments augur well for Mr. Bowser's prospects of rehabilitation.

MITIGATING FACTORS

[11] There are several mitigating factors present; namely:

- ▶ Remorse and acceptance of responsibility;
- ▶ Lack of prior record;
- ▶ Relative youth;
- ▶ Family supports;
- ▶ Insight and sincerity regarding self-improvement.

DISCUSSION AND ANALYSIS

[12] In imposing an appropriate sentence, the Court is guided by the purposes and principles of sentencing set out in Section 718, 718.1 and 718.2 of the *Criminal Code*.

[13] The Crown has provided the Court with a number of sentencing decisions referable to **assault causing bodily harm**. Accordingly, I am drawn to the Defence's submissions as articulated at p. 3 of his brief:

The Appropriate Sentence

It is respectfully submitted that the Crown's submissions miss the mark in the range suggested, as well as the comparables provided. For instance, the Crown relies upon *R. v. MacDonald*, 2003 NSCA 36 and quotes from para. 26 in their brief, adding emphasis and fairly noting some antiquated wording. However, it appears lost on the Crown that the following passage is crucial to the reasoning in *MacDonald*:

Men who assault their wives are abusing their power and control which they so often have over the women with whom they live. The vulnerability of many such women is increased by the financial and emotional situation in which they find themselves, which makes it difficult for them to escape. Such women's financial state is frequently one of economic dependence upon the man. Their emotional state militates against their leaving the relationship because of the abuse they suffer causes them to lose their self-esteem and to develop a sense of powerlessness and inability to control events.

[14] In my view, the Defence cases are more helpful as they deal with s. 266 and I draw particular reference to: *R. v. Leonard*, 2018 NLSC 92; *R. v. Agra*, 2018 NSPC 34; *R. v. Ranspot*, 2017 BCPC 101; and, *R. v. Adams*, 2009 ABQB 160.

[15] In *Leonard*, Justice Stack noted the sentencing ranges for common assault at para 2:

2 Pursuant to the *Criminal Code*, R.S.C. 1985, c. C-46 (the *Criminal Code*), sentences for common assault range from a conditional discharge to a sentence of incarceration. Because the circumstances of each assault differ, sentencing is largely dependent on the facts of the case. I will now explain the sentence that the offender will receive after taking into account the sentencing principles established in the *Criminal Code*.

[16] In *Leonard*, Justice Stack went on to impose a suspended sentence and 12 months probation. In *Agra*, Judge Scovil had to consider, "a serious domestic assault designed to instill fear in his spouse" (para. 19). The facts were quite egregious, as set out in para. 4:

4 The incident in question arose when Mr. Agra threatened to cut Mrs. Agra's cheek with a knife he held to her face unless she told her friend what was going on between Mrs. Agra and her friend's husband. Mrs. Agra declined to advised to her best friend and in the ensuing struggle Mrs. Agra received a scratch on her cheek. She was not sure at trial whether that scratch was as a result of Mr. Agra's fingernails or from the knife. Mr. Agra was consequently convicted of common assault as opposed to assault with a weapon. The threat was the basis for the conviction under section 264.1 of the *Criminal Code*.

[17] Judge Scovil sentenced Mr. Agra to a conditional discharge and an 18 month period of probation.

[18] In *Ranspot*, Judge Giardini granted a conditional discharge and placed the offender on probation for 16 months. In *Adams*, Justice Wilson upheld the sentencing judge's granting of a 1 year conditional discharge.

DISPOSITION

[19] I have considered all of the written and oral arguments along with Mr. Bowser's words of remorse. I have borne the facts in mind that are in keeping with the jury's verdict to convict on three counts of common assault. On balance, I cannot think that jail time is an appropriate option. Indeed, I am of the view that the Crown's recommendation reflects a situation that is simply not present here.

[20] To state the obvious, there are no convictions for assault causing bodily harm. What we have are the three common assaults in relation to a same sex relationship of relatively short duration. While I cannot think that the public interest would be served by a conditional discharge, I am of the view that a 12 month suspended sentence is appropriate along with 12 months probation and ancillary orders. In particular I hereby order:

1. Suspended sentence for a period of 12 months on each of Counts 1, 2 and 4, concurrent;
2. Probation for a period of 12 months with the mandatory conditions plus the following additional conditions:
 - ▶ Report to a probation officer at Halifax by May 13, 2019 and when required, as directed by probation officer or supervisor;
 - ▶ not to take or consume alcohol, or other intoxicating substances;
 - ▶ not to take or consume a controlled substance as defined in the *Controlled Drugs and Substances Act* except in accordance with a medical prescription;
 - ▶ not to own, possess or carry a weapon, ammunition or explosive substance;

- ▶ have no direct or indirect contact or communication with Du Preez Steyn except through a lawyer;
 - ▶ not be on or within 25 meters of the place of residence, work or education of Du Preez Steyn;
 - ▶ attend for mental health assessment and counselling as directed by your probation officer;
 - ▶ attend for substance abuse assessment and counselling as directed by your probation officer;
 - ▶ attend for assessment and counselling in anger management as directed by your probation officer;
 - ▶ attend for assessment and counselling in a violence intervention program as directed by your probation officer (spousal or partner related);
 - ▶ attend for any assessment, counselling or a program as directed by your probation officer and participate in and co-operate with any assessment, counselling or program direct by your supervisor.
3. Firearms prohibition (s. 109(1)(a.1)(i)) banned for a period of **10 years** from possessing any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition and explosive substance; **and**, banned for **life** from possessing any prohibited or restricted firearm, prohibited weapon, prohibited device and prohibited ammunition.
 4. DNA order (s. 487.051(3)) (secondary)

[21] With respect to the DNA order, the nature and circumstances surrounding the commission of the offences in this case demonstrate that it would be in the best interest of the administration of justice to impose a DNA Order (see, *R. v. Hendry*, 2001 CarswellOnt 4566, [2001] O.J. No. 5084 (Ont. C.A.) at paras. 17-25).

Chipman, J.