

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Wright, 2004 NSSC 278

Date: 20040202
Docket: CR 195253
Registry: Halifax

Between:

In the Matter of Her Majesty the Queen

v.

Cory Wright

Judge: The Honourable Justice David W. Gruchy

Heard: February 2, 2004, in Halifax, Nova Scotia

Written Decision: February 17, 2004

Counsel: Rick Woodburn, for the Crown
Peter Mancini, for the Defence

Gruchy, J.

[1] On November 13, 2003, Cory Wright entered guilty pleas to three counts of a seven count indictment. Those counts were, in effect, as follows:

- (1) that on April 20th, 2002 he attacked Ghazal Ali with a knife, contrary to s. 267(a) of the *Criminal Code*, assault causing bodily harm;
- (2) at the same time and place he committed an aggravated assault and endangered the life of Matthew Barton, contrary to s.268 of the *Criminal Code*; and
- (3) on July 22, 2002, he resisted arrest by Constable Christine Fraser, contrary to s. 129(a) of the *Criminal Code*.

[2] For the aggravated assault conviction Mr. Wright may be sentenced for a term not exceeding 14-years; for assault causing bodily harm, a sentence not exceeding 18 months; and for resisting arrest a sentence not exceeding two years. As the Crown has not called evidence on Counts 1, 2, 5 and 6 of the indictment they will be dismissed for want of prosecution.

[3] Crown counsel and counsel for Mr. Wright have agreed on the facts giving rise to these charges.

[4] I have reviewed and received the Victim Impact Statements from Matthew Barton and Ghazal Ali. Mr. Barton was seriously physically wounded and will probably bear physical and emotional scars for the rest of his life.

[5] The wounds inflicted upon Mr. Barton by Mr. Wright very nearly killed him. He received fourteen stab wounds in his back, face, neck, stomach and hands. He required serious surgery. He received a permanent injury to his facial muscles and eye. Other physical aspects of his injuries continue to bother him. Mr. Barton has said, and I accept, that he has been emotionally scarred.

[6] At least partially as a result of these injuries Mr. Barton has ceased to operate his own barber shop and he is now afraid to be alone, especially when walking at night. He is afraid to work alone. He faces further surgery as a result of his injuries. He says his personality has been permanently changed as a result of this incident.

[7] Ghazal Ali was also a victim of the same attack. She was merely accompanying Mr. Barton from his barber shop to her car when Mr. Wright attacked Mr. Barton as described in the Agreed Statement of Facts.

[8] She says that as a result of the attack on that night she was left with a permanent, horrifying descriptive, vivid, visual picture of rage and violence up-close. Her experience has made a permanent impression upon her and her actions in preserving the life of Mr. Barton will, I am sure, remain with her for the rest of her life.

[9] Ms. Ali also received painful stab wounds to her back and upper left shoulder. She also required surgery and suffers daily pain from the stab wounds and scars.

[10] I have read and considered carefully the pre-sentence report which indicates that Mr. Wright was born on April 25th, 1983. According to the report Mr. Wright is an intelligent individual who has now completed his Grade 12 G.E.D. He had a stable family background which he chose to desert.

[11] No explanation or reason for his behaviour at the time of the incident has been put forward to me which arose from his family background.

[12] He has no criminal record. He claimed to the author of the pre-sentence report that he had been “kicked out” of his home when he was fifteen years old, but his mother essentially denies such an allegation. There are some differences in the respective positions of Crown and defence counsel in this regard. His mother says that her son chose to leave his home as a result of a disagreement and that she had in fact made attempts to find him and have him return to his home.

[13] Mr. Wright left school in Grade 10 voluntarily. I have no indication before me of what he did to support himself from the time he left his home until this incident.

[14] He completed his Grade 12 G.E.D. while at the Central Nova Scotia Correctional Facility awaiting. Reports from that facility indicate he is considered to be an intelligent, quiet individual with a nice personality. Indeed, a teacher at that facility has said that she feels he has the potential to go to university.

[15] Mr. Wright is single and has no dependants. He probably abused drugs and alcohol prior to this incident. He has indicated to the author of the pre-sentence report and to some of his associates that he is very remorseful for his actions on the night in question. He has repeated that remorsefulness to me today.

[16] The author of the pre-sentence report expresses concern that he has not received any substance abuse counselling and expresses the view that he may benefit from mental health counselling. The author concluded that Mr. Wright is “not a suitable candidate for a period of community-based supervision”.

[17] Having committed the assault offences Mr. Wright then went on the run. From April 20, 2002 to July 22, 2002 Mr. Wright hid away - probably here in Halifax. On July 22nd, the police finally caught up to him in Halifax and he again ran but in so doing he unlawfully resisted Constable Kristine Fraser in her attempt to arrest him. He ran to London Ontario where he again committed some offences. On November 21, he was convicted of assault causing bodily harm, assaulting a police officer and of public mischief, by giving a false name to the police. For these offences he was sentenced to a period of seventy-four days plus one day. As

a result of his arrest in London, Ontario he was detained and then ultimately was returned to Nova Scotia.

[18] In imposing sentence I am required to consider the fundamental purposes of sentencing as set forth in s.718 of the *Criminal Code*.

[19] The purposes of sentencing are to foster crime prevention initiatives and respect for the law and to promote the maintenance of a just, peaceful and safe society.

[20] In doing so I must consider the objectives set forth in s.718 which I now do.

(a) I denounce in the strongest possible terms the actions of Mr. Wright in committing these offences herein. On the night of the attacks Mr. Barton merely asked Mr. Wright to leave his premises where a party had been held. I think it is clear that Mr. Wright had been drinking and undoubtedly drinking excessively. But that is absolutely no reason for his actions after he left the premises. When Mr. Barton left his barbershop he attacked him from the back in a vicious, cowardly manner. He is extremely fortunate that

he is not now facing life imprisonment for murder. He repeatedly stabbed Mr. Barton with a knife, including wounds to the throat which indicate to me at least a momentary intention to kill. When Ms. Ali attempted to intervene, he attacked her. Society cannot and will not tolerate actions such as these attacks.

(b) I have to consider two types of deterrence: Mr. Wright must be deterred from committing offences such as these again and society as a whole must be given the message that actions such as those of Mr. Wright will not be tolerated. In the circumstances before me today the deterrence of Mr. Wright must take the form of a penitentiary sentence. That sentence is designed to give the message to Mr. Wright that he must never again commit an offence of this nature, or for that matter any other offence. The length of the sentence will be designed to give the message to other persons that society will not tolerate criminal behaviour such as we are dealing with here today.

(c) In the circumstance before me I have concluded that it is necessary to separate Mr. Wright from society for a period of time. This separation is not only for the protection of society but also for the benefit of Mr. Wright. I am concerned especially in this regard as Mr. Wright has, since the principle

offences, resisted arrest and again became involved in a crime of physical violence.

(d) The period of incarceration which I impose considers especially the potential of rehabilitating Mr. Wright. He has potential for the future and as I have noted, people consider him to be an intelligent person with a pleasing personality. I sincerely hope that the penitentiary system will be able to develop his potential and to root out and treat the psychological or psychiatric reason for his behaviour.

(e) It is probably impossible for Mr. Wright to provide reparations for the harm he had done to his victims. I can only hope that incarceration will provide reparation to society and to the community.

(f) Mr. Wright has expressed remorse and I hope that is sincere. It is a little difficult to accept his sincerity however, because of his post-offence conduct. A period of incarceration will, I hope, tend to promote a sense of responsibility in Mr. Wright and to have him realize and to acknowledge the harm which he has done to his victims and to the community as a whole.

[21] The offences to which Mr. Wright has pleaded guilty were grave. They resulted in wounds to Mr. Barton which were a hair's breadth away from murder. Mr. Wright alone is responsible for his actions.

[22] Unlike another recent case in which I impose sentence (*R. v. Richard* or *R. v. M.C.R.*) I am not aware of a family background which would account for Mr. Wright's behaviour in these offences.

[23] I am unaware of mitigating circumstances, except the fact that he has pleaded guilty and expressed remorse. Mr. Wright wrote the victim a letter which appears to express that remorse. Again it is a little difficult to accept that in the circumstances of this particular case.

[24] The fact the accused is still youthful must be considered, but not in mitigation. It is to be considered with respect to the possibility of rehabilitation.

[25] There are, however, a number of aggravating factors: The attacks on the victims were particularly savage. I do not know of a motive for these attacks on Mr. Barton or Ms. Ali; Each of the victims receive multiple stab wounds;

Injuries suffered by the victims and, especially Mr. Barton, were very serious; The accused continued the assault against Mr. Barton until he was eventually pulled away from his victim; The assaults on Mr. Barton and Ms. Ali were, as far as I can tell, totally unprovoked. The assault upon Mr. Barton was a cowardly attack from behind and was of gratuitous, vicious violence; It was an assault with a weapon signifying some measure of pre-meditation no matter how slight; He resisted arrest and ran to evade capture; He fled and remained on the loose until arrested in Ontario; His post offence conduct, the offences in London Ontario indicate to me that Mr. Wright may have a real and serious problem. He apparently has no respect for the law and/or he has a violent and uncontrollable temper or disposition; I cannot help but be aware that there appears to be a prevalence of violent assaults in Halifax at this time. I have no concrete evidence before me to this effect but this is my impression and one which I cannot help but be mindful of.

[26] By virtue of s. 718.2(b) of the *Code* the sentence which I impose should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[27] I have considered the range of cases submitted to me by the Crown and by the defence.

[28] In *R. v. R.J.W.*, [2002] N.S.J. 558; that case was to my mind a more serious case than that which is now before me. It was essentially an attempted murder case in which the accused ultimately pleaded guilty to aggravated assault, but the accused shot a taxi driver in the back of his head rendering him crippled for the rest of his life. *R.J.W.* was sentenced to a total of seven years and nine months incarceration.

[29] *R. v. Harris*, [2000] N.S.J. No. 9; dealt with a home invasion in which an eighty year old victim was badly injured and was an offence with planned violence. The consequences of this home invasion were disastrous for the victim. By this comment I do not mean to minimise in any way the harm which has been done to the victims herein.

[30] *R. v. A.D.* [unreported - N.S.P.C.)] was a case with some similarity in that it consisted of repeated stabbing of the victim. The victim there, however, was

disabled for the rest of his life and A.D. already had a record of property crimes.

He was sentenced to a total of twelve years.

[31] *R. v. Izzard*, [1995] N.S.J. 619 dealt with a crime in which the accused was sentenced to five years for an aggravated assault involving the crime and nine years imprisonment for robbery. There were signs in that case of premeditation and the accused had a substantial criminal record including crimes of violence.

[32] *R. v. Wenzel*, [1992] A.J. No. 30 dealt with a sentence arising from a guilty plea in which the victim was shot and was permanently disabled. The accused was sentenced to eleven years imprisonment, but I have to say that that crime showed a marked degree of planning and deliberation.

[33] *R. v. Fleming*, [1993] N.S.J. No. 469 is a Nova Scotia Court of Appeal decision that dealt with a violent masked robbery of attempted murder, in which the accused stabbed the victim repeatedly in the face and neck. In this case the accused had a related criminal record of seventeen offences, many violent. He was on parole at the time of the offence. He was sentenced to a period of twelve years.

[34] *R. v. Marshall*, N.S.C.A., [1986] N.S.J. No. 90 is a Nova Scotia Court of Appeal decision dealing with an attempted murder. This case also had to do with an armed robbery in which two persons were wounded, one of whom was very seriously wounded. There were in fact three victims and the accused was sentenced to a total of seven years.

[35] *R. v. Russell-Mayne* (1982), 51 N.S.R. (2d) 695 dealt with an attempted murder case and the accused was sentenced to twelve years.

[36] *R. v. Lydiard* (1982), 58 N.S.R. (2d) 357, was an attempted murder case and is to be distinguished from the instant case as well

[37] I have also considered *R. v. Moulson* (1998), N.B.J. No. 140; *R. v. Pitkeahly*, [1994] O.J.No. 546; *R. v. Opsitnik*, [1986] O.J. No. 83; and *R. v. Glover*, [2002] A.J. No. 77. Each has to be distinguished in various points from the instant case and each was much more serious for various reasons.

[38] It is clear that in attempting to arrive at the appropriate punishment for this particular offence I must look at the surrounding circumstances, I must consider

the seriousness of the crime and I must attempt to place the seriousness of this offence into the range demonstrated by the various cases reflecting the various degrees of seriousness. I must adjust the sentence to the range of sentences for a typical case on the basis of all the factors I have listed above. I obviously keep in mind as well the maximum sentence which Parliament considered appropriate for these offences.

[39] The principle of proportionality reflected by *Criminal Code* s.718.1 must be considered and in particular I refer to *R. v. Priest* (1996), 110 C.C.C. (3d) 289.

Proportionality and totality should be considered together. I am sentencing for a number of offences, two of which occurred simultaneously and the third resisting arrest was separate and apart from others. While the sentence for each offence must be considered individually, the cumulative sentences must fit in their totality.

[40] I keep in mind that the accused is young and any loss of freedom at his age will be severe and that he had no criminal record prior to this offence but now has a post offence record. The violence and gravity of the assault which he inflicted upon the victims in this case is such as to be overwhelming.

[41] Justice Cacchione of this Court, when dealing with a case of aggravated assault in *R. v. S.F.A.* (2001), 190 N.S.R. (2d) 240, said:

I have considered as well the *Queen v. Julian*, [1991] N.S.J. No. 84 and the sentences imposed in what has been commonly referred to as the Darren Watts beating, McQuaid, Smith, Dixon et al. Sentences of eight years were upheld in those particular cases for aggravated assaults where the victim was beaten and kicked by a group of assailants and left with some permanent serious brain injuries.

Having considered these and other cases not referred to at the present regarding the appropriate sentence for a charge of aggravated assault, I can only conclude what is patently obvious and that is that the fixing of a sentence is a highly subjective exercise.

[42] Justice Cacchione continued:

What is a just and appropriate sentence is really a delicate art which attempts to balance the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community.

[43] In that case Justice Cacchione imposed a six year concurrent sentence for aggravated assault and noted that particular case was a grossly cruel case and the accused had a prior criminal record.

[44] I now turn to the offence of resisting arrest. As the offence of resisting arrest is clearly separate and apart from the assaults, it will attract its own penalty and its resulting sentence will be served consecutively.

[45] I have concluded that a sentence of one year for resisting arrest to be served consecutively to the sentences for the assaults is appropriate.

[46] I will not attempt to interfere with the Correctional or Parole Services. I sincerely hope that the accused will be able to take advantage of all opportunities to further his education. I strongly recommend that he will be given every opportunity to do so. I also recommend that he receive psychological counselling with respect to anger management and hopefully to improve his self esteem.

[47] I sentence you as follows:

- (1) For the assault of causing bodily harm against Ghazal Ali eight months to be served concurrently with the sentence for the assault against Matthew Barton.

- (2) For the aggravated assault against Matthew Barton a period of sixty-six months in a federal institution, less credit of twenty-six months for remand time of thirteen months, actually served.

- (3) For the offence of resisting arrest a period of one month to be served consecutively to the sentences for the assault.

[48] I will grant the D.N.A. Order and I will grant the Firearms and Weapons Order as requested.

[49] Now in order to make it absolutely clear, you are imprisoned in a correctional facility for a term of sixty-six months less a credit of twenty-six months for your period of remand, plus one month for resisting arrest.

[50] Mr. Barton, I think you have a possible decent future ahead of you. I have not acceded to the request of the Crown to give you as much as they had asked. I think they had asked for an excessive period of time.

[51] I have to give you enough (a) to send out the message and (b) to give you an opportunity to forge for yourself a decent life ahead. I hope you will take advantage of all the opportunities that are given to you and I wish you good luck.

Gruchy, J.