Provincial Court of Newfoundland and Labrador

Grand Bank

file numbers 0805A-0076 & 0805A-0095

Between	Her Majesty the Queen
and	Christopher Tobin

Decision on sentence

On February 24, 2005, at approximately 7:08 p.m., Constable Loder received a call from dispatch to go see Jackie Tobin, the Accused's mother, at Black Duck Cove. She had apparently made a complaint about Ms. Power, who is the mother of the Accused's infant son, which complaint alleged that the infant was not being treated appropriately.

Constables Loder and Drugea went to Black Duck Cove, met with Mrs. Tobin, and then with Ms. Power. When they went to the latter's residence, they noted that there were holes punched in the walls of the place, and that there was clear evidence that earlier holes punched through the drywall had been patched.

The infant appeared to be well taken care of, but it was obvious that some sort of violent episode had taken place in the premises.

A statement was taken from Ms. Power. She said that the Accused had arrived there at approximately 6:30 p.m. that evening, and had become enraged when he saw that she and the infant were eating, without him. The Accused threw food at Ms. Power, and then punched and kicked her. Then he picked up a cigarette roller, and threw it at a kitten, striking the animal, and cutting its lip open.[1] The Accused then tore a door off its hinges, and threatened to kill Ms. Power if she went out that evening.

Ms. Power further advised the police that, in early January, the Accused had been at her place[2], and had told her to get him a cup of tea. When she responded that he could get his own cup of tea, he got up and punched her in the face.

Further, in February, the Accused got frustrated in his apparently unsuccessful attempt to microwave some hot dogs, and took out that frustration by punching and damaging Ms. Power's microwave oven.

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[1]Constable Loder subsequently saw blood on the kitten's upper lip area.

[2] The Accused was, at the time, prohibited from having any contact with the Complainant by a condition of a probation order, which also required him to keep the peace and be of good behavior.

In light of the history provided to them, the police arrested the Accused, held him overnight, and brought him before me on February 25, 2005. I released the Accused, with strict bail conditions, including a condition that he was not to leave his mother's house unless she was with him. This reflected the fact that his mother's house is only a short walk from Ms. Power's place, as well as the history of his having been at Ms. Power's place while under a court order to stay away from her and her residence.

On March 14, 2005, the Accused's mother called the police, and reported that the Accused had left her house while she had been in the shower. The police eventually found the Accused, brought him to court, he pleaded guilty to these offences, and he was remanded into custody by consent pending sentence.

On March 23, 2005, the foregoing agreed facts were provided to the court in support of his guilty pleas, convictions were entered, and submissions heard on sentence. I reserved the decision on sentence to consider the matter, and the Accused has remained in custody since then.

The positions of the parties

The Crown tendered the criminal record of the Accused, as well as copies of Informations relating to his earlier convictions. These demonstrate a

prior history of violence towards the current Complainant, or what Counsel called “a cycle of violence”. Given the history, and the apparently escalating nature of these crimes of violence, the Crown suggested that the Accused should be incarcerated for a period of between six to nine months.

The Accused admitted the “cycle of violence” history, but reminded the Court of the fact that the Accused had pleaded guilty at the first opportunity[3], and suggested that a sentence of six months in jail, followed by probation for two years, would achieve the principles of sentencing.

Both parties agreed that a firearms prohibition would be appropriate.

Victim Impact

We had the benefit of a victim impact statement from Ms. Power, the mother of the Accused’s infant son, and the victim of his assaults and threat. This clearly shows the heart break and disappointment of a young mother, trying desperately to cope with the unpredictable and volatile Accused, while living with the “sly looks and ridicule” of her neighbors in the small town of Black Duck Cove.

The Accused’s antecedents

[3] While an early guilty plea usually carries significant mitigating value, this is diminished when the Accused has violated his judicial interim release conditions, and is then faced with either waiting for his trial on remand or admitting his guilt and proceeding to sentence.

The Accused is no stranger to the Court. He has been convicted in the past for burglary (twice), theft (four times), mischief by damaging property (four times), assault (twice), breach of undertaking or recognizance(twice), and breach of probation(ten times).

For these antecedents, the Accused has in the past been sentenced to non-custodial dispositions with probation, as well as various terms of incarceration. Most recently, in May of 2004, the Accused was sentenced to a total term of four months in jail for a series of offences in relation to Ms. Power, including uttering death threats, damage to property, and related breaches of probation.

Arriving at an appropriate sentence

It is unnecessary to here reproduce the provisions of Part XXIII of the Criminal Code. Suffice it to say that sentences are meant to be proportionate, and appropriate to the offender and the offence. In striving for proportionality of sentence, the court must balance the goals of sentencing by considering the interests of the offender, the victim, and society. This in turn incorporates elements of protection of the public, general and specific deterrence, rehabilitation of the Accused, and denunciation of domestic violence.

Chief among these, at this stage, is protection of the public, including

Ms. Power.

It is fair to say that the Accused has demonstrated that he is incapable of serving a sentence in the community. Neither the probation authorities nor his own mother have been able to prevent him from re-offending.

The fact of the matter is that the Accused is continuing to lash out violently, at the mother of his son[4], her kitten, her microwave oven, and the walls and door of her apartment, and has threatened to kill Ms. Power. This leaves the Court with the impression that, if he is not stopped, he will sooner or later very seriously hurt someone. And, predictably, that someone will probably be Ms. Power.

It might be that the Accused will never gain that insight necessary to address his problems. However, the court remains optimistic that the Accused will eventually able to see the danger posed by his violent outbursts, and deal with the problem. In the interim, however, the Court must protect society from any repetition of this kind of dangerous behavior.

And so the time has come where the Accused, despite his relatively

[4] Twice since Christmas, once because she would not get him a cup of tea, and then, more recently, when she started eating a meal without him. It is important to note here that there is no suggestion that the Accused was under the influence of alcohol or drugs: he was sober both times that he assaulted Ms. Power, and when he punched holes through the walls of her apartment, tore the door off its hinges, and when he beat up her microwave oven.

young age, must be incarcerated, to protect society, including Ms. Power, and for his own good. Absent insight into his volatile temper and the risk posed by his violent outbursts, he will likely continue to pose a danger to Ms. Power for the foreseeable future. The fact that he said, at one point during the sentencing proceedings "I'm just pleading guilty to get it over with"[5] leaves the Court with no confidence that he recognizes that he has a serious anger problem which needs to be addressed.

In Crocker, [1991] N.J. No. 303, Chief Justice Goodridge said:

> "Sentences for threats to cause bodily harm range up to one year although frequently it has been ordered that the sentence be served concurrently with sentences imposed for other crimes committed in conjunction with the threat."

In Murphy, NOS. 1304A-0371 & 01078, an as yet unreported decision, dated March 24, 2005, my friend and colleague Judge Gorman described the Accused's having punched a hole in the complainant's wall as follows:

> "the circumstances surrounding the section 430(1)(a) offence are of a violent and intimidating nature".

[5]That comment precipitated a break in the proceedings, during which his counsel met with him, and confirmed the guilty pleas, and their concomitant admission of wrongdoing.

In the case at Bar, sometimes the Accused has struck out at Ms. Power personally. Additionally, he has punched holes in her walls, injured her kitten, tore a door off of its hinges, and beat up her microwave oven. As with Murphy, these are violent and intimidating actions by the Accused, leaving the complainant terrified of him and his explosive temperament.

In Bates, (2000), 146 C.C.C. (3d) 321, the Ontario Court of Appeal increased a sentence for a bad tempered man who had repeatedly been violent to his girlfriend. At paragraph 30 of that decision, the Court said as follows:

> "The courts have been made increasingly aware of the escalation of domestic violence and predatory criminal harassment in our society. Crimes involving abuse in domestic relationships are particularly heinous because they are not isolated events in the life of the victim. Rather, the victim is often subjected not only to continuing abuse, both physical and emotional, but also experiences perpetual fear of the offender."

At paragraph 38, in discussing a repeated pattern of violent behavior in a domestic situation, the Court said as follows:

> "The fact an offender shows any propensity toward this kind of conduct, regardless of his unblemished past, is cause for great concern

and for a very careful and judicious approach to sentencing. Factors such as the absence of a prior criminal record and expressions of remorse, which must necessarily be considered on sentencing, should not be given undue weight in the sentencing of this offence. The focus of sentences must be to send a message to the offender, and the public, that harassing conduct against innocent and vulnerable victims is not tolerated by society and most importantly, the Court must insure, as best it can, that the conduct of the offender never happens again recognizing that, if it does, a far more serious offence could be committed. The principles of sentencing must be applied with this focus squarely in mind."

Of course, the Accused at Bar is not a first offender: he has already established a history of assaulting the Complainant, and of repeatedly damaging her property.

At paragraph 32 of O'Donnell, [2002] N.J. No. 333, Judge Gorman said as follows:

"Females, in particular, are in extremely vulnerable positions in relation to their male spouses. General deterrence and protection of the public must be the primary sentencing principles applied in offences of this

nature. The sentence imposed in this case must attempt to protect other spouses, from such violence, by clearly stating that significant sentences will be imposed for such offences."

In Foley 1994 St. J. No. 4086, Halley, J., said

" Spousal assault has now been recognized by the courts as a serious criminal offence. In sentencing for such assaults the courts generally conclude that the paramount sentencing principle is general deterrence."

In Janes, [1999] N.J. 18, at paragraph 10, Green, J.A., as he then was, said:

“The appellant is, in respect of Ms. Bull, a persistent repeat offender who in the past was given the benefit of lesser sentences and probation orders, all of which he breached. The current offences are, in that sense, both a continuation and a culmination of previous criminal behaviour in relation to the same victim, a behaviour which has not been deterred by previous sentencing treatment. It was necessary therefore for the sentencing judge to look at them in the context of the appellant's overall criminal history and to fashion a sentence that addressed that reality.”

These words apply equally to the Accused at Bar: he continues to assault and threaten Ms. Power, and to intimidate her, despite earlier efforts by the Court to correct his violent behavior.

In R. v. H.J.P. (1995), 133 Nfld. & P.E.I.R. 20 (N.F.C.A.), Mr. Justice Steele commented upon the effect that a related criminal record has upon the application of the sentencing principles of proportionality, rehabilitation and deterrence. At paragraph 14, he wrote:

> "A criminal record surely indicates diminished prospects for rehabilitation. Furthermore, a criminal record, and particularly where the offences are similar, is the omen that immediately alerts the sentencing judge to the reality that the offender has become a serious threat to the community. How great the risk of course, depends on the nature of the offences and the circumstances..."

I am of the view in this case that the Accused has demonstrated that he is a significant threat to the community, and especially towards Ms. Power. As mentioned above, the only appropriate sanction for this offender and these offences is a lengthy period of incarceration, followed by stringent probation conditions.

I have concluded that the Accused should serve a sentence longer than

that recommended by counsel. This Accused is not yet at the stage where the three year sentence upheld by our Court of Appeal in Janes would be appropriate. However, while the six to nine month sentence range as suggested by counsel would not, in my view, properly address the principles and goals of sentencing, I remind myself that the Accused is still a young man, and that the Court should always remain optimistic about the prospects of rehabilitation of an accused person. I have therefore reduced his total sentence to one year in jail.

This is arrived at by first calculating the individual sentences appropriate for the offences committed, and then making some of the sentences concurrent, even though they might be correctly considered as separate criminal adventures, so as to achieve a reduced sentence. The individual components of that exercise follow:

Count	Date	Offence	Sentence
1	24/02/05	266	four months jail
2	24/02/05	264.1	four months, concurrent
3	24/02/05	430(4)	four months, concurrent
4	24/02/05	445	four months, concurrent
5	01-15/01/05	265	three months, consecutive

6	01-15/12/04	267	withdrawn
7	18/02/05	430(4)	three months, concurrent
8	01-15/01/05	733.1	three months, concurrent
9	01/12/04-04/02/05	733.1	four months, consecutive
10	01/12/04-15/12/05	733.1	withdrawn
11	01/12/04-15/12/05	733.1	withdrawn
12	14/03/05	145(3)	thirty days, consecutive

Following his release from custody, the Accused will be subject to probation for two years. In addition to the statutory conditions, including a condition to keep the peace and be of good behavior, the Accused must abide by the following conditions of his probation order:

1. Report to adult probation in person within three working days of his release from custody.

2. Report to adult probation in person not less than twice per calendar month for the duration of his probation order.

3. Attend any and all counseling as directed by adult probation, including, but not limited to, counseling for anger management.

4. Abide by a curfew, to be in his residence, between the hours of nine o’clock at night and six o’clock in the morning, every day, except when given

prior written permission to be outside of the residence by his probation officer. Such permission may be granted for him only to attend school, to go to work, or to attend counseling. In light of the fact that these events will rarely occur between 9:00 p.m. and 6:00 a.m., it is expected that the Accused will not be granted this written exception from the curfew often. On those rare occasions when he has been granted written permission to be outside his residence after the curfew, he must carry a legible copy of the probation order and a legible copy of the written permission from the probation officer on his person at all times that he is outside his residence.

5. The Accused is prohibited from the use, possession, or consumption of alcohol and any drug which has not been prescribed for him by a licensed physician.

6. The Accused is prohibited from entering any licensed liquor establishment.

7. The Accused is prohibited from contact or communication, direct or otherwise, with Beverley Ann Power, unless otherwise specifically permitted to do so for the purposes of custody or access to their son, by order of this Court or of the Supreme Court of Newfoundland and Labrador.

8. The Accused will remain within the Province of Newfoundland and Labrador for the duration of his probation order.

For the next five years, the Accused is prohibited, pursuant to section 110 of the Criminal Code, from possession of any firearm, ammunition, or explosive substance.

An order is granted for collection of suitable sample of bodily fluid for D.N.A. purposes.

As requested, the victim fine surcharges are waived due to the Accused's impecunious situation.

Finally, it is ordered that a copy of this decision be provided to Ms. Power, so that she is aware of the restrictions placed on the Accused, and will be able to take the necessary steps to alert the police if the Accused does attempt to contact her.

Order accordingly.

Dated at Grand Bank, NL, this 31st day of March, 2005.

Porter, PCJ

Crown Counsel N. Smith

Counsel for the Accused M. Evans