IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR

Citation: *R. v. Normore*, 2019 NLCA 50
Date: August 12, 2019
Docket Number: 201601H0065

BETWEEN:

ALEX NORMORE — APPELLANT

AND:

HER MAJESTY THE QUEEN — RESPONDENT

Coram: Fry C.J.N.L., Welsh and Goodridge JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador, Corner Brook General Division (201504G0027)

Appeal Heard: May 23, 2019
Judgment Rendered: August 12, 2019

Reasons for Judgment by: Welsh J.A.
Concurred in by: Fry C.J.N.L. and Goodridge J.A.

Counsel for the Appellant: Self-Represented
Counsel for the Respondent: Sheldon Steeves

Welsh J.A.:

[1] On March 9, 2016, Alex Normore was convicted of and sentenced for the following offences committed when he unlawfully entered a dwelling house: attempt to commit murder; uttering a threat to cause death; possession of a weapon for a purpose dangerous to the public peace; break and enter into a dwelling and committing an indictable offence therein; and theft of a motor vehicle. Mr. Normore appealed both his convictions and sentence. While it is rare to separate these aspects of an appeal, in this case, the appeal against conviction was heard first, with the convictions being affirmed by the Supreme Court of Canada (2018 SCC 42). Mr. Normore's appeal against sentence is now before this Court.

[2] In an oral decision on May 27, 2016, the trial judge sentenced Mr. Normore to nine years imprisonment, less credit for time served prior to the convictions. Mr. Normore appeals on the basis that the sentence is harsh in comparison to similar cases and that the trial judge erred regarding the issue of mental illness.

BACKGROUND

[3] The offences all occurred on March 1, 2014 when Mr. Normore entered the residence of Mr. Thomas, his former employer, at approximately 7:00 a.m., woke Mr. Thomas who was in bed, and attacked him with a large flashlight. In the decision giving reasons for the convictions, the trial judge explained (2016 NLTD(G) 43):

> [43] … Mr. Normore went uninvited to Mr. Thomas' house early in the morning of March 1, 2014 and entered his bedroom. He had removed the flashlight from his knapsack prior to entering the dwelling. With the flashlight, he inflicted injuries and bruises to Mr. Thomas' arm and legs. Some of the swings of the flashlight did not result in contact with Mr. Thomas.
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> [44] While a flashlight would not generally be considered a murder weapon, this flashlight was approximately three feet long and heavy, and its metal structure encased six regular batteries. The attempt by Mr. Normore was rendered difficult in that Mr. Thomas was 59 years of age, in apparent good health, with a stature of six feet. However, had Mr. Normore been able to disable his victim while he lay in a vulnerable position on the bed, it would not have been inconceivable that Mr. Normore could have bludgeoned him to death.

[4] In his oral sentencing decision, the trial judge summarized facts relevant to the question of sentence. After entering Mr. Thomas' bedroom:

> … Mr. Normore said:
>
> > "I don't have a gun but I'm going to kill you anyway."
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> After striking and intending to strike Mr. Thomas further, Mr. Thomas was able to escape. Approximately two weeks prior to the incident, Mr. Normore attempted to obtain a rifle which the R.C.M.P. had seized sometime previously. As well, written material found at Mr. Normore's apartment indicated that he wished to do harm to Mr. Thomas. Upon leaving Mr. Thomas' residence, Mr. Normore took possession of Mr. Thomas' vehicle which was parked in the driveway with the keys left inside. The most serious charges which Mr. Normore has been convicted of are the attempted murder and the break and enter into a dwelling house, and committing an indictable offence. Both charges have a maximum of life imprisonment. …
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> There are aggravating circumstances in this case. The offence involved the intrusion into a dwelling house at a time when the victim was most vulnerable. He had had no contact with Mr. Normore for approximately two years. The intention to kill Mr. Thomas involved planning and deliberation. The impact on the victim was severe and according to the Victim Impact Statement would cause lasting psychological scars including intense fear and depression.
>
> Mr. Normore has a documented criminal history dating back to approximately 2002 and 2003 involving one charge of assault and others involving uttering threats. …

[5] I would note that Mr. Normore's criminal record must be considered in context. The record indicates that, on 2003/04/11, Mr. Normore was convicted of one count of assault, two counts of uttering threats, one count of mischief relating to property, and one count of failure to comply with a condition of an undertaking. For all these offences he received a suspended sentence and twelve months probation. This is a dated criminal record for offences which, given the sentences imposed, were not considered to be serious. While the trial judge mentioned Mr. Normore's criminal record in his decision, there is no indication that this factor materially affected the sentence.

[6] Regarding Mr. Normore's mental health, the trial judge referred to the presentence report, and commented:

> According to … the presentence report, Mr. Normore suffers from paranoid schizophrenia and he has no insight into his condition. He has alluded that for the last several years he has been the victim of a conspiracy to kill and discredit him. As well he believes that the R.C.M.P. and the Justice system have been corrupted against him as part of this conspiracy. Therefore, Mr. Normore lacks insight and acceptance and responsibility and as such shows a lack of remorse.

[7] At trial, the Crown requested a global sentence in the range of eight to ten years. Counsel for Mr. Normore submitted a sentence in the range of six to eight years would be appropriate.

[8] The trial judge imposed the following sentences:

1. Attempted murder – nine years;

2. Break and enter and committing an indictable offence therein – five years;

3. Uttering threats – two months;

4. Carrying a weapon for a purpose dangerous to the public peace – two months; and

5. Theft of a motor vehicle – two months.

All the sentences were made concurrent to the sentence for attempted murder.

ISSUES

[9] At issue is whether the trial judge erred by imposing an unfit sentence.

ANALYSIS

[10] I begin with a summary of the approach to be taken in an appeal against sentence. In *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, Wagner J., for the majority, summarized:

> [44] In my view, an error in principle, the failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor will justify appellate intervention only where it appears from the trial judge's decision that such an error had an impact on the sentence.
>
> …
>
> [49] For the same reasons, an appellate court may not intervene simply because it would have weighed the relevant factors differently. …
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> > … Only if by emphasizing one factor or by not giving enough weight to another, the trial judge exercises his or her discretion unreasonably should an appellate court interfere with the sentence on the ground the trial judge erred in principle. …

> [51] Furthermore, the choice of sentencing range or of a category within a range falls within the trial judge's discretion and cannot in itself constitute a reviewable error. An appellate court may not therefore intervene on the ground that it would have put the sentence in a different range or category. It may intervene only if the sentence the trial judge imposed is demonstrably unfit.
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> [52] It is possible for a sentence to be demonstrably unfit even if the judge has made no error in imposing it. As Laskin J.A. mentioned, writing for the Ontario Court of Appeal, the courts have used a variety of expressions to describe a sentence that is "demonstrably unfit": "clearly unreasonable", "clearly or manifestly excessive", "clearly excessive or inadequate", or representing a "substantial and marked departure" … .
>
> [53] This inquiry must be focused on the fundamental principle of proportionality stated in s. 718.1 of the *Criminal Code*, which provides that a sentence must be "proportionate to the gravity of the offence and the degree of responsibility of the offender". A sentence will therefore be demonstrably unfit if it constitutes an unreasonable departure from this principle. …

[11] The range of sentence for the offence of attempted murder is three years to life imprisonment, although there have been instances of sentences below three years, including one case in which a suspended sentence was ordered (*R. v. Stringer* (1992), 96 Nfld. & P.E.I.R. 30, at paragraph 51).

[12] In the appeal now before this Court, the trial judge referred to two decisions in which a sentence of nine years imprisonment was imposed. In *R. v. Edwards*, 2015 ONSC 3308, Mr. Edwards, who had been under medical care for his mental health, randomly and without provocation stabbed two individuals within a short time. One of the victims suffered serious injuries. Based on a range of five to fifteen years, the judge imposed a sentence of nine years imprisonment for the attempted murder.

[13] In *R. v. White*, 2014 ONCJ 28, a nine-year sentence was imposed in the case of a seventy-two year old male who stabbed his spouse of fourteen years intending to kill her. He also set fire to her residence. Although Mr. White showed remorse, the brutality of the offence and a record of previous offences against the victim were important factors in determining an appropriate sentence.

[14] Other cases were submitted by Crown counsel in this appeal:

> (1) In *R. v. Alderman*, 2015 BCPC 221, a sentence of eight-years imprisonment was imposed after Mr. Alderman attempted "to take the

victim's head off with his bare hands" (paragraph 14 of the decision). That violent response was triggered when the victim, who had provided Mr. Alderman with a temporary place to stay, no longer felt safe and asked him to leave. The judge considered:

> [6] I agree that many of the Crown's authorities have aggravating factors that do not exist in the case at bar, namely, no weapon was used; this is not a domestic assault involving a spouse; the level of violence is … lower than many of the cases; but the possibility of death in my view was very high.

The judge accepted that Mr. Alderman suffers from borderline personality disorder, anti-social personality disorder, and schizotypal personality disorder. He imposed an eight-year sentence referring to the seriousness of Mr. Alderman's actions, his "cold and callous nature", and his "high risk to commit other violent offences" (paragraph 23 of the decision).

(2) In *R. v. McFarlen*, 2009 BCSC 1201, the judge imposed a sentence of nine-years imprisonment. Mr. McFarlen broke into the residence of his former common-law spouse. He disabled the telephone line which went dead as the victim was speaking to a 911 operator. The victim locked herself and her four year old child in the bathroom, but Mr. McFarlen chopped his way through the locked back door and the bathroom door with a splitting maul. He grabbed the victim by the throat and dragged her into the kitchen area. He struck the victim on the side of her head twice with the handle of the maul, pushed her to the floor and proceeded to choke her with his hands, then with his knee. The victim lost consciousness, suffered bruising and abrasions to her face and arm, and had a sore throat and continuing headaches. The judge found that Mr. McFarlen did not have "any major psychiatric disorder that would tend to reduce his culpability for his criminal conduct" (paragraph 42 of the decision). The judge considered aggravating factors: the victim was his former common-law spouse, Mr. McFarlen went to the victim's residence in defiance of a restraining order; and the attack took place in the presence of the victim's four-year old child.

(3) In *R. v. Best* (1998), 169 Nfld. & P.E.I.R. 141 (NLSCTD), John Best was convicted of aggravated assault and sentenced to seven years imprisonment. While under the influence of alcohol, Mr. Best and another individual broke into the victim's residence and beat him severely with a two inch by three inch wooden club. The offenders cut the telephone wire, forced open the front door and found the victim asleep in

> bed. The judge described the beating as "brutal and savage", and found that it ended only because the club broke.

[15] Considering the above case law, the nine-year sentence imposed in this case falls at the high end of the range when viewed in the context of similar offences committed in similar circumstances, while taking account of the factual differences. However, applying the principles described in *Lacasse*, it cannot be said that the trial judge erred in principle or imposed a demonstrably unfit sentence. It cannot be said that the sentence is clearly unreasonable, or manifestly excessive, or a marked departure from sentences imposed in similar cases.

[16] The trial judge took into account relevant factors: Mr. Thomas' vulnerable position; the nature of the weapon used which gave Mr. Normore the capacity to kill or seriously injure Mr. Thomas; the planning and deliberation Mr. Normore undertook prior to entering Mr. Thomas' residence, including an attempt to retrieve a firearm previously seized by police and written material found in Mr. Normore's residence indicating his wish to harm Mr. Thomas; the sudden, unprovoked nature of the attack; the serious psychological impact experienced by Mr. Thomas; and Mr. Normore's statement when he entered Mr. Thomas' bedroom that he intended to kill Mr. Thomas.

[17] On appeal, Mr. Normore submits that the trial judge erred in the manner in which he treated his mental health by using it as a factor to increase his sentence. An offender's mental health may be a mitigating factor or it may be relevant in assessing rehabilitation prospects, the likelihood to reoffend, or potential danger to the community. (See *R. v. Bourgeois*, 2018 NLCA 13, at paragraphs 25 to 27.)

[18] Mr. Normore took no steps to establish that he was suffering from a mental illness at the time of the offence, which may have reduced his level of blameworthiness. In fact, he submits he does not have a mental illness. In the circumstances, the judge found that Mr. Normore has no insight into the mental condition which has resulted in his belief that Mr. Thomas, the police and the justice system are conspiring against him. In such a circumstance, the protection of the community is a valid consideration in determining an appropriate sentence. The trial judge did not err in his consideration of this factor. Rather, as discussed in *Bourgeois*:

> [27] That said, in the situation where an offender's mental health does not warrant consideration as a mitigating factor as discussed above, it may, nonetheless, be

> relevant to determining an appropriate sentence if the mental health condition affects the assessment of rehabilitation prospects or likelihood to reoffend. In assessing those factors, reliance would properly be placed on the pre-sentence report or other relevant evidence or circumstances.

[19] In the result, I am satisfied that there is no basis on which to conclude that the trial judge erred in imposing a sentence of nine years imprisonment for the offence of attempted murder. The judge did not err in principle or in the assessment of relevant factors. The sentence is not demonstrably unfit, and falls within the range of sentence for similar offences committed in similar circumstances. Further, the sentences for the remaining offences have not been challenged. In the circumstances, it cannot be said that the total sentence was demonstrably unfit.

DISPOSITION

[20] Accordingly, I would dismiss the appeal.

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B.G. Welsh J.A.

I Concur**:**_____

D.E. Fry C.J.N.L.

I Concur**:**_____

W.H. Goodridge J.A.