

CANADA / JUDGMENT

R v Wright

2024 NSPC 45

COURT

Nova Scotia Provincial Court

DECIDED

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R v Wright Court Provincial Court Date 2024-09-26 Citation 2024 NSPC 45 Docket 8678591, 8678592, 8678597, 8678598 Judge/Registrar/Adjudicator Atwood, Del W. (Honourable Judge) Document Type Decision Decision Content PROVINCIAL COURT OF NOVA SCOTIA Citation: R v Wright, 2024 NSPC 45 Date: 20240926 Docket: 8678591, 8678592, 8678597, 8678598 Registry: Halifax Between: His Majesty the King v. Jelani Courtenay Wright SENTENCING DECISION Judge: The Honourable Judge Del W. Atwood Heard: 2024: 28 March; 3 & 12 April; 24 May, 13 August; 26 September in Halifax, Nova Scotia Charge: Sections 129, 145, 344, and 733.1 of the Criminal Code Counsel: William Mathers for the Nova Scotia Public Prosecution Service Cameron MacKeen for Jelani Courtenay Wright By the Court: Synopsis

- [1] Jelani Courtenay Wright is to be sentenced for charges of robbery, § 344 of the Criminal Code [Code] (case 8678591), resisting a peace officer, § 129 of the Code (case 8678592), breach of probation, § 733.1 of the Code (case 8678597), and breach of a release order, § 145 of the Code (case 8679598). The robbery count is an indictable offence, and the prosecution proceeded by indictment on the hybrid charges. Mr Wright elected to be tried in this Court, and pleaded guilty.
- [2] The prosecution seeks a two-year sentence going forward, after allowing for a remand credit; defence counsel seeks a time-served sentence and a period of probation or a conditional-sentence order [CSO].
- [3] For the following reasons, I suspend the passing of sentence and place Mr Wright on probation for 24 months. The Court will grant the mandatory ancillary orders, and place on the record an allocation of Mr. Wright's remand credits. Circumstances of the offences and history of court proceedings
- [4] The prosecution read into the record a statement of facts in accordance with § 723-724 of the Code.
- [5] On 7 April 2023 at 1115 hrs, Mr Wright was escorted out of the Shoppers Drug Mart retail store on Spring Garden Road in Halifax; he was subject to a probation order and a release order not to go there. Mr Wright walked toward the Park Lane Mall. At that very moment, the 87-year-old victim was using an ATM at the Spring Garden Road branch of TD Canada

Trust to make a \$300 withdrawal. Mr Wright saw the victim with the cash and asked if he could have some. Mr Wright then grabbed the cash from the victim and started to run away. In doing so, Mr Wright dragged the victim—who was using a walker—to the ground. The victim was not injured. Police officers located Mr Wright a short distance away; they arrested him, but he took off. Police re-apprehended him quickly after telling him to stop or he would be tased. Mr Wright still had some of the cash in his possession; police seized it and returned it to the victim. There might have been eighty dollars missing; Mr Wright told me that the cash the police found on him was all that he had taken from the victim.

- [6] On that date, Mr Wright was subject to two court orders: • a probation order dated 12 December 2022 that prohibited him from entering any Shoppers Drug Mart retail location in HRM (order 2399639, an exemplification tendered by the prosecution as Exhibit 1); and • a release order dated 30 March 2023 with an identical prohibition (order 2346420, an exemplification tendered by the prosecution as Exhibit 2).
- [7] Mr Wright remained in custody until 28 July 2023, when he was admitted to bail on a release order. He ended up back in custody on 18 September 2023, was eventually denied bail, and his release order was revoked. Circumstances of Mr Wright
- [8] The Court has the following sources of information about Mr Wright: • a presentence report [PSR] dated 24 May 2024, which included a summary of Mr Wright’s criminal record; • a series of exhibits (Exhibits 3-6) tendered by the prosecution: 2 earlier PSRs, a 2023 impact-of-culture-and-race assessment [IRCA], and a JEIN report which amplifies the record found in the PSR; • sentencing submissions of counsel heard on 13 August 2024; and • Mr Wright’s brief allocution to the Court made pursuant to § 726 of the Code.
- [9] Following consultation with counsel between 28 March 2024 and 12 April 2024, Mr Wright expressly declined to have an IRCA prepared for this sentencing hearing. Defence counsel explained to the Court that an IRCA had been prepared for Mr Wright in 2023 for an earlier sentencing hearing on charges unrelated to those before the Court today. In that earlier proceeding, it became known through a member of Mr Wright’s family that a significant volume of information Mr Wright had provided to the IRCA author was substantially inaccurate. Essentially, Mr Wright is not a reliable source of autobiographical information. Instead of an IRCA, Mr Wright sought a PSR and the Court ordered one.
- [10] The PSR, itself, proved problematic, as Mr Wright provided the author of the report with fictitious information about a family relationship. This nearly upended proceedings on 24 May 2024: a new prosecutor had to assume carriage of the case, who intimated that it might be necessary to subpoena a number of justice-system participants—including members of the judiciary—to rebut Mr Wright’s controversial statement in the PSR; defence counsel was concerned that he might have to withdraw his services. This got sorted out when Mr Wright retracted the statement. I wish to remark briefly that I feel I could have case-managed the situation better than I did. It seems to me that, when persons with proven records of fabricating their life stories turn around and do just that in sentencing hearings, the court

process should be able to navigate around those hazards without too much trouble. This is not to minimize the negative consequences that can arise when persons who are being sentenced provide false biographical information to courts or justice-system officials; *R v George*, 2016 NSCA 88 at ¶ 16 is a case in point. I believe that the prosecutor was simply seeking to make an emphatic point in talking about subpoenaing judges, as it was not something that would have been legally admissible. Still, the prosecutor was correct in seeking to draw to Mr Wright's attention the predicament that he had created for himself. In the result, the Court adjourned the sentencing hearing at defence request to 13 August 2024, which prolonged Mr Wright's detention, to his detriment.

- [11] Even Mr Wright's educational background is uncertain. The PSR states that Mr Wright struggled with his grades at Citadel High School; however, the prosecutor told the Court that Mr Wright had, in fact, attended Halifax Grammar School; one of the earlier PSRs confirms this.
- [12] The prosecutor tendered PSRs that had been prepared for Mr Wright in 2017 (Exhibit 3) and 2021 (Exhibit 4), as well as the 2023 IRCA (Exhibit 5). These reports serve to solidify the point that Mr Wright tends to fabricate his personal circumstances when in a tight spot, and will seek to portray an impoverished, unstable and insecure upbringing, rife with adverse childhood experiences, when, in fact, his childhood and adolescence were, in reality, stable and secure. Mr Wright's tendency to make things up about himself is not a fault factor: it does not render his offences as more serious or make his moral culpability greater. However, it does make the sentencing project more challenging, as it is rendered harder to identify precisely what Mr Wright needs to stay out of conflict with the law, and what he is willing to do to accomplish that objective.
- [13] Mr Wright's life is not totally opaque. There are some things in the most recent PSR that are not controversial.
- [14] Mr Wright is now 27 years old. He has the strong support of his immediate family, especially his mother. She informed the PSR author that Mr Wright was diagnosed at 20 years of age with schizophrenia, and that he experiences chronic substance-use disorder; he might have been sexually abused during his childhood. Mr Wright's mother has arranged rehabilitative programming for him in the Annapolis Valley once he is no longer in custody; she believes that he needs to "eliminate drugs so his mental health will improve."
- [15] Mr Wright told the author of the PSR that he regretted his actions (he said the same thing in his allocution), and was willing to accept counselling or programming. He appeared to project some level of blame onto the victim for having taunted him. Criminal record

- [16] The prosecutor tendered as Exhibit 6 a detailed report of Mr Wright's prior findings of guilt as an adult, mostly involving non-violent offences: • One case of break and enter; • 63 cases of theft; • One case of fares fraud; • 14 cases of property damage/interference; • 24 cases of breach of probation (including 2 involving breaching youth sentences after turning 18); • 22 cases of breach of bail; • 2 cases of resisting police.
- [17] Mr Wright has a fairly short record from 2017 for what might be classified as violence-related offences: • One case of uttering threats; • One case of possessing a weapon for a dangerous purpose.
- [18] He has a youth record which, while admissible, is so distant in time as to have little effect.
- [19] Mr Wright has received custodial sentences: • 8 August 2016: 1 day time served; remand credit not recorded in the sentence order; • 27 April 2021: 1 day time served; remand credit not recorded in the sentence order; • 9 November 2021: 1 day time served after a 14-day remand credit; • 15 February 2022: 1 day time served after a 150-day remand credit; • 12 December 2022: time served after a 295 day remand credit; • 13 December 2022: a 90-day intermittent sentence; and • 4 January 2024: time served after a 240 day remand credit (five of the offences dealt with on that day occurred after the offences that are the subject of this proceeding).
- [20] Mr Wright was subject to a 90-day CSO, imposed 12 April 2019; there is no record of any breach allegations having been brought against Mr Wright while that sentence was running. Statutory range of penalty
- [21] None of the charges before the Court carries a mandatory minimum penalty.
- [22] When prosecuted by indictment, the § 129, 145 and 733.1 counts carry maximum potential penalties of two-years' imprisonment. The maximum sentence for robbery is life imprisonment. A court may not impose a discharge for robbery in virtue of the restrictions in § 730 of the Code. However, suspended sentences would be legal outcomes for each of Mr Wright's offences: § 731(1)(a) of the Code.
- [23] Given the amendments to the Code carried into effect through SC 2022, c 15, § 14 (in force 17 November 2022 by Royal Assent), a CSO would be a legal outcome in this case. Comparator cases and parity
- [24] Parity requires that similar offenders who commit similar offences in similar circumstances receive similar sentences. A consistent application of proportionality will lead to parity. Conversely, an approach that assigns the same sentence to unlike cases can achieve neither parity nor proportionality: *R v Friesen*, 2020 SCC 9 at ¶ 32 (CanLII); *R v Butcher*, 2020 NSCA 50 at ¶ 159 (CanLII).
- [25] I have considered the following comparator cases: Case name Citation Summary R v Johnson 2007 NSCA 102 (CanLII) This case was provided to the Court by the prosecution. A 19-year-old male with a significant youth record used a disguise to carjack a motorist; he

threatened to stab the victim, and forced the victim to drive several blocks, then stole \$500. The sentencing judge imposed a 2-year-less-a-day CSO. The NSCA increased the sentence to three years. The NSCA referred to a “usual starting point” of three-years’ imprisonment for robbery. *R v Morton* 2011 NSCA 51 (CanLII) This case was provided to the Court by the prosecution. A 30-year-old Black female was convicted of two counts of robbery and one count of breach of bail. The robberies involved theft at knifepoint of money from a fast food restaurant. A three-year sentence for robbery (with an 8-month credit for remand time) was affirmed. The NSCA reiterated the 3-year starting point. *R v John* 2023 BCPC 117 (CanLII) This case was provided to the Court by defence counsel. A young Indigenous male (with a history of intergenerational trauma and profound neurodevelopmental disorders) tried unsuccessfully to snatch the purse of a pedestrian. He pleaded guilty to robbery. At ¶ 35 of the decision, the Court found that the range of penalty for robbery not resulting in injury or involving the use of a weapon was 12-18 months based on an array of reported cases. The court imposed a time-served sentence (given a 431-day remand credit) with a 24-month term of probation. *R v Klopp* 2010 ABPC 119 (CanLII) This case was provided to the Court by defence counsel. Ms Klopp was a 40-year-old female who was on probation for impaired driving; she pushed the elderly victim to the ground in a purse-snatching attempt. The victim suffered life-altering injuries. Ms Klopp had developed a crack-cocaine dependency. The offence led to the breakup of her family. The Court allowed a 20-month remand credit, and imposed a time-served sentence with a 2-year term of probation. *R v Thompson* 2003 BCCA 308 (CanLII) This case was filed by defence counsel. A 30-year old male with no record and a history of substance abuse grabbed the purse of a woman who had just left an ATM. The sentencing judge imposed a 12-month prison term followed by a 2-year term of probation. On appeal, the prison sentence was reduced to 3 months given the significant rehabilitative progress Mr Thompson had made since being charged. *R v Nerling* 2011 ABPC 371 (CanLII) A female adult with a record for property offences and a history of substance abuse struggled with the elderly victim, trying to steal a purse. The victim fell into a snowbank, but was not injured. The Court suspended the passing of sentence and placed Ms Nerling on probation for a term of three years. *R v Bulat*

[1996] AJ No 647 (CA) The ABCA affirmed a 90-day intermittent sentence for a mugging-style robbery that caused minor injuries to the victim. Mr Bulat was 18 years old and had taken significant rehabilitative steps. The Court affirmed that the usual range of sentence for less serious robberies would be 12-18 month. *R v Pawluk* 1990 ABCA 212 (CanLII) The ABCA reduced a sentence for a purse-snatching robbery from 9 months imprisonment to four. Mr Pawluk was only 18 years old and had no prior record. The Court described the circumstances of the offence as a “minimal robbery.” *R. v Sark* 2020 PECA 9 (CanLII) The PECA varied a sentence for robbery from 9 months to two years. Mr Sark was Indigenous, had experienced intergenerational trauma, and had a lengthy record. This was a violent robbery that left the victim requiring extensive reconstructive dental surgery. *R v JMO* 2017 MBCA 59 (CanLII) The MBCA described at ¶ 116 a street mugging as a robbery conducted in a public place, typically where the parties do not know each other, and

where the motive of the assailant or assailants is to steal the victim's property. The Court affirmed a 12-to-18 month range of sentence when there is no serious injury to the victim and the proceeds are modest. *R v Smith* 2014 NSPC 86 (CanLII) Mr Smith was an Indigenous person who had experienced childhood trauma, and had developed a substance dependency. He wore a mask and told two pharmacy employees that he had a gun. He demanded prescription pain killers. The Court imposed a time-served sentence after allowing a 12-month remand credit, along with a 2-year probation order. *R v Syliboy* 2018 NSPC 83 (CanLII) The Court imposed a jointly recommended 3-year suspended sentence. Mr Syliboy passed a note to a pharmacist: "I want hydromorphone, this is a robbery, I don't want violence." He got the drugs, left the pharmacy, and waited outside to be arrested. His aim was to get remanded to Burnside to be with his father. Mr Syliboy was a 46-year old member of the Sipekne'katik First Nation who had experienced profound intergenerational trauma. He had a record going back to his youth, and included an offence that had resulted in the death of a family member. In accepting the joint recommendation, the presiding judge stated at ¶ 18: "A truly restorative approach for Indigenous offenders would see more joint recommendation." *R v Hendsbee* 2009 NSPC 50 (CanLII) Mr Hendsbee stole \$400 from a service station while armed with a knife; he told the cashier that he was homeless and needed to buy food. The Court imposed a 21-month CSO after deducting a 3-month remand credit. Mr Hendsbee had no record and there were good prospects for rehabilitation; he had been honourably discharged from the military.

Sad life principle

- [26] The prosecution has argued that Mr Wright's authentic family history—which appears to have been one of relative stability and security, with access to adequate resources to have allowed Mr Wright to live, if not a privileged, at least a life mostly free of adverse experiences—should disqualify him from seeking sad-life leniency.
- [27] The sad-life principle was described in *R v Gloade*, 2019 NSPC 55 at ¶ 79-83 (CanLII). With respect, it is a legitimate issue whether this terminology is helpful. First of all, its usage may seem to trivialize or over-simplify what is often a complex array of interconnected vulnerabilities that may implicate a spectrum of circumstances: traumas, physical- or mental-health issues, chronic income/housing insecurity, aspects of cultural or racial discrimination, the lack of public-health resources or the inability to access them. This list is not exhaustive.
- [28] Further, people in need of public-health or social supports might decline to accept them, leading to a cascade of adverse effects. While it might seem perverse that a person in need of help would turn it down, the reasons might be entirely rational: persons navigating the public-health or social-services systems might not have developed good therapeutic alliances with caregivers or caseworkers because of transience, caseload overload, personnel reassignments and the like. I do not intend to dwell further on this, other than to make the point that "sad life" is not an informative descriptor; for that reason, I decline to use it. *R v Anderson*

- [29] Mr Wright is Black, which is a social context the Court must consider in the sentencing project. This was underscored in *R v Anderson*, 2021 NSCA 62 (CanLII) especially at ¶ 111, 114-115 [Anderson], and *R v Morris*, 2021 ONCA 680 at ¶ 75-107 (CanLII).
- [30] As in *R v Whynder-Ewing*, 2024 NSSC 217 at ¶ 13 (CanLII), I do not have the assistance of an IRCA to provide information about the impact of Mr Wright's race and culture on his moral culpability. However, it is well within the scope of judicial notice that anti-Black racism is the lived experience for the Black community in this country. Canada's criminal-justice system is implicated in it. In Nova Scotia in particular, the history of racial discrimination inflicted on members of the Black community was characterized at ¶ 125 of *Anderson* as antithetical to societal values of equality and inclusion. Furthermore, at ¶ 132-134, the Court identified the need to develop new, properly informed ranges of sentence that take into account the social context experienced by members of the Black community who come into contact with the criminal justice system. I have factored that guidance into this decision. General sentencing principles
- [31] I reviewed the general principles of sentencing in *R v Joyce*, 2022 NSPC 40 at ¶ 21-30 (CanLII); it is not necessary to repeat them as they are well known. Offence seriousness
- [32] The robbery count is the most serious of the charges facing Mr Wright. The victim was elderly and vulnerable. Robbery is one of the few offences in the Code that carries a potential life penalty, reflecting the judgment of the legislator that sentencing outcomes should emphasize denunciation and deterrence.
- [33] Nonetheless, it is important to observe that Mr Wright did not disguise himself, and did not resort to threats or the use of weapons. The victim was not harmed. The robbery was a crime of opportunity: there is no evidence of planning. While it has been said that the lack of aggravating circumstances is not a mitigating circumstance, the absence of characteristics of more dangerous robberies does help situate the seriousness of Mr Wright's conduct at the lower end of the spectrum; this was the analytical approach taken in *R v Brogan*, 1999 BCCA 278 at ¶ 10 (CanLII); the analysis proposed in *Brogan* assists sentencing courts in achieving the objective of proportionality through the proper classification of offence seriousness.
- [34] The resist-peace-officer charge falls at the lower end of the spectrum of offence seriousness: Mr Wright ran away, but stopped when police told him he would be tased.
- [35] The two breaches implicated identical conditions: do not go into Shoppers. There is no evidence that Mr Wright was stealing; rather, he was trespassing, and violating two Court orders, but not in a way that jeopardized public safety. These are lower-end-of-the-spectrum breaches. Mitigating circumstances
- [36] Mr Wright pleaded guilty; while he might not have done so at the first opportunity, there were a number of intervening complicating events which would explain the delay. Failure to consider a guilty plea as a mitigating factor can be an error in principle: *R v Friesen*, 2019

SCC 100 at ¶ 164 (CanLII) [Friesen]. While it has been suggested that a guilty plea offered in the face of overwhelming evidence will not necessarily attract so great a discount of sentence as one tendered in other circumstances (R v Layte, [1983] OJ No 2415 at ¶ 8 (Co Ct)), I find that it was substantially in the public interest that the vulnerable victim was not required to come to court to testify.

- [37] Mr Wright is only 27 years old; he has expressed a willingness to participate in rehabilitative programing, and he has strong family support to keep him motivated. The Court must not impose a sentence that would crush his prospects for rehabilitation: R v Campbell, 2022 NSCA 29 at ¶ 56. Aggravating circumstances
- [38] The victim was elderly and vulnerable to physical harm as he used a walking aid. Although the Court did not receive a victim-impact statement, I am satisfied beyond a reasonable doubt from the circumstances of the robbery offence that the level of victim impact would have been substantial, so that the criteria in ¶ 718.2(a)(iii.1) are fulfilled. Mr Wright bears sole moral culpability for his conduct; the victim was in no way to blame
- [39] However, I am mindful that an offence cannot be aggravating of itself; otherwise, the principle of proportionality would be nullified: R v Johnston, 2011 NLCA 56 at ¶ 18-20.
- [40] I do not count the fact that Mr Wright was on probation and subject to a release order as rendering the robbery count more serious. This is because Mr Wright is to be sentenced for breaching his probation and release orders. He cannot be punished twice for the same wrongful conduct: R v Stewart, 2016 NSCA 12 at ¶ 27. Consecutive and concurrent sentencing
- [41] I dealt with these factors in R v Wilson, 2022 NSPC 43 at ¶ 34-35 (CanLII), and also in R v Graham, 2022 NSPC 42 at ¶ 28 (CanLII) with respect to the need to avoid goal-oriented sentences that would see the Court reasoning backward from a notional global sentence. The focus of the Court must be on the case-specific assignment of proportionate sentences for each count, in accordance with R v Adams, 2010 NSCA 42 at ¶ 23-28 (CanLII) [Adams]. Imposition of sentence—preliminary determination of a fit sentence for each offence
- [42] In my view, the following individual sentences are proportionate (this is a preliminary calculation and not the final sentence of the Court; remand credit remains to be dealt with):
- Robbery (case 8678591): a sentence of 365 days; this is at the lower end of the 12-18 month range described in the comparator cases involving offences resembling purse-snatching. The lower range is appropriate in this case, as Mr Wright has a minimal record for violence, did not disguise himself, did not resort to threats or the use of a weapon.
 - Resisting a peace officer (case 8678592): a sentence of 5 days. A shorter sentence is warranted as Mr Wright's resistance involved running from police; he did not get far on foot.
 - Breach of probation (case 8678597): a sentence of 10 days. Mr Wright went to a store he was prohibited from entering. However, there is no evidence of him engaging in shoplifting; his criminal conduct was the violation of a court order by trespassing.
 - Breach of release order (case 8678598): a sentence of 10 days, for the same reasons as in case 8678598. Consecutive or concurrent

sentences

- [43] I would impose consecutive sentences for each count: the robbery and the resist counts each required a separate deliberative step by Mr Wright. With respect to the breach offences, the violation of a court order will normally attract a consecutive sentence, even if the conduct that is the basis of the breach is connected directly to an offence for which a sentence is to be imposed: *R v Harvey*, [1993] NSJ No 211 (CA); *R v BLL*, [1989] NSJ No 12 (CA); *R v McKenna*, 2014 NSPC 99 at ¶ 8-10, *aff'd* 2015 NSCA 58 (CanLII); *R v Lewis*, 2012 NLCA 11 at ¶ 78 (CanLII).
- [44] This results in a total preliminary calculation of a 390-day sentence, which I believe achieves the objectives of denunciation and deterrence while remaining restrained, and is in conformity with the jump principle. Remand credit
- [45] Working from the remand-credit calculation presented to the Court by counsel on 13 August 2024, I calculate Mr Wright's current remand credit as 397.5 days.
- [46] This exceeds the total pre-credit sentence of 390 by 7.5 days.
- [47] The JEIN record will show the allocation of remand credit as follows:
- Robbery (case 8678591): 365 days
 - Resisting a peace officer (case 8678592): 5 days
 - Breach of probation (case 8678597): 10 days
 - Breach of release order (case 8678599): 10 days. Final sentence of the Court
- [48] Given that the time Mr Wright has spent on remand exceeds the total of the sentences that I consider proportionate in this case, the Court suspends the passing of sentence and places Mr Wright on probation for a period of 24 months with terms set out in a checklist I have provided to the clerk of the Court. As a probation order is primarily a rehabilitative sentencing tool—*R v Proulx*, 2000 SCC 5 (CanLII), [2000] 1 SCR 61, at ¶ 23— I believe that it is important that the Court not impose conditions that would set up Mr Wright for failure.
- [49] Given Mr Wright's income insecurity, I find the imposition of victim-surcharge amounts would constitute an undue hardship, and I decline to impose them.
- [50] There will be a primary-designated-offence-DNA-collection order and a lifetime weapons-prohibition order in relation to the robbery count, (case 8678591).
- [51] As the prosecution has offered no evidence on the remaining counts in the information, they are dismissed. *Atwood*, JPC

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