

IN THE PROVINCIAL COURT OF NEWFOUNDLAND AND
LABRADOR
JUDICIAL CENTRE OF CORNER BROOK

Citation: *R. v. White*, 2012 PCNL 1310A00454

Date: August 3, 2012

HER MAJESTY THE QUEEN

V.

KIRK WHITE

Before: The Honourable Judge Wayne Gorman

Place of Hearing: Corner Brook, NL.

Hearing Date: July 24, 2012.

Summary: The offender was sentenced to a period of six months imprisonment followed by twelve months of probation for offences contrary to sections 145(2)(a), 264.1(1)(c) and 445(1)(a) (two counts) of the *Criminal Code of Canada*, RSC 1985.

Appearances:

Ms. L. St. Croix counsel for Her Majesty the Queen.

Mr. J. Luscombe counsel for Mr. White.

CASES CONSIDERED: *R. v. Knott*, 2012 SCC 42, *R. v. May*, 2012 ABCA 213, *R. v. Hodder*, [2012] N.J. No. 155 (P.C.), *R. v. Lewis*, [2011] N.J. No. 305, *R. v. Leggo*, [2012] N.J. No. 26 (P.C.), *R. v. Dureksen*, 2012 MBCA 41, *R. v. Squires*, 2012 NLCA 20, *R. v. Tuglavina*, [2011] N.J. No. 25 (C.A.), *R. v. Barrett*, 2012 NLCA 46, *R. v. Clarke*, [2001] N.J. No. 191 (P.C.), *R. v. Brown*, [2004] A.J. No. 201 (P.C.), *R. v. Connors*, [2011] B.C.J. No. 168 (P.C.), *R. v. Richardson* [2006] EWCA Crim 3186 *R. v. W.E.*, (2010), 251 C.C.C. (3d) 213 (N.L.C.A.), *R. v. Nasogaluak*, [2010] 1 S.C.R. 206, *R. v. Ipeelee*, 2012 SCC 13, *R. v. Briand*, [2010] N.J. No. 339 (C.A.), *R. v. Johnson*, 2012 ONCA 339, *R. v. Rawn*, 2012 ONCA 487, *R. v. Squires*, 2012 NLCA 20, *R. v. Zeller*, [1998] A.J. No. 351 (P.C.),

R. v. Matte, 2012 ONCA 504, *R. v. Barnes*, [2005] B.C.J. No. 1934 (C.A.), *Butler v. Whalen*, [1984] N.J. No. 254 (D.C.). *R. v. Gamble*, [2008] S.J. No. 429 (Q.B.), *R. v. Fowlie*, [1998] N.B.J. No. 539 (Q.B.), *. v. Munroe*, [2010] O.J. No. 2579 (C.J.), *R. v. Rabeau*, [2010] A.J. No. 567 (P.C.), *R. v. Lyver*, [2011] N.J. No. 320 (P.C.), *R v. A.B.*, 2012 MBCA 25, *R. v. Wicker*, [2007] A.J. No. 566 (P.C.), *R. v. Philpott*, [2011] N.J. No. 71 (S.C.), *R. v. Gale*, [2006] N.J. No. 87 (P.C.), *R. v. Hutchings*, 2012 NLCA 2 and *R. v. Cox*, [2009] N.J. No. 333 (P.C.).

STATUTES CONSIDERED: The *Criminal Code of Canada*, RSC 1985.

**JUDGMENT OF GORMAN, P.C. J.
(SENTENCE)**

INTRODUCTION:

[1] Mr. White has pleaded guilty to the offences of killing and injuring animals kept for a lawful purpose, uttering a threat and failure to appear in court, contrary to sections 145(2)(a), 264.1(1)(c) and 445(1)(a) (two counts) of the *Criminal Code of Canada*, RSC 1985. Mr. White threatened to kill his former girlfriend's two cats and then killed one and injured another. He subsequently failed to appear in court as required. The Crown proceeded by way of summary conviction in relation to each count. The sole issue for determination is the imposition of an appropriate sentence. For the reasons that will follow, I have concluded that a period of six months incarceration followed by twelve months of probation is an appropriate sentence in this case. Let me explain my reasons for this conclusion by commencing with a review of the circumstances of the offences committed by Mr. White.

THE CIRCUMSTANCES OF THE OFFENCES

[2] On June 10, 2010, Mr. White became upset with his former girlfriend (Ms. Deborah Harding) because they were forced to leave their apartment as a result of financial concerns. He called her at work and threatened to kill her two cats.

[3] The police were contacted and they found in the garage of Ms. Harding's apartment two pillow cases that were tied at their top. The pillow cases were blood stained. Inside were one dead and one injured cat. The dead cat had its paws broken.

[4] Mr. White was scheduled to appear in this Court on December 14, 2010, but he failed to appear.

THE CIRCUMSTANCES OF THE OFFENDER

[5] Mr. White is forty years of age. He is enrolled in an Adult Basic Education program.

[6] Mr. White has twenty prior convictions. These include convictions for the offences of uttering threats, assault, break and entry, assault with a weapon, failure to appear in court and several breaches of court orders. The pre-sentence report notes that Mr. White's previous convictions "consist primarily of violence and non-compliance to court orders." Mr. White's criminal record illustrates a pattern of violent behavior over an extended

period of time. In *R. v. Squires*, 2012 NLCA 20, it was held that ordinarily a criminal record "will be viewed as an aggravating factor leading to a more serious punishment rather than as a factor that tends to limit or lessen punishment." In *R. v. Barrett*, 2012 NLCA 46, it was held, at paragraph 35, that a "criminal record is often quite relevant on sentencing in that it may show the offender to be a scofflaw, or lead to an inference that he or she has not been rehabilitated or otherwise learned from past mistakes."

[7] The pre-sentence report concludes that "Mr. White is not an appropriate candidate for community supervision." It notes that he "has not followed through with previously recommended interventions, has a poor record of reporting and historically, has been non-compliant with court orders."

THE LEGISLATION KILLING OR INJURING AN ANIMAL KEPT FOR A LAWFUL PURPOSE

[8] The offence of killing or injuring an animal kept for a lawful purpose is found in section 445(1)(a) of the *Criminal Code* and its penalty provision, when proceeded with by way of summary conviction, is found in section 445(2)(b). Those provisions state as follows:

(1) Every one commits an offence who, wilfully and without lawful excuse,

(a) kills, maims, wounds, poisons or injures dogs, birds or animals that are not cattle and are kept for a lawful purpose.

(2) Every one who commits an offence under subsection (1) is guilty of

(b) an offence punishable on summary conviction and liable to a fine not exceeding ten thousand dollars or to imprisonment for a term of not more than eighteen months or to both.

[9] In *R. v. Clarke*, [2001] N.J. No. 191 (P.C.), I noted that the “manner in which we treat animals may be considered as a reflection of our own humanity, or lack thereof. It has been suggested that intentional cruelty to animals is an indicator of a ‘potential for increasing violence and dangerousness’ against people (see the Federal Department of Justice's 1998, Consultation Paper, Crimes Against Animals).” In *R. v. Brown*, [2004] A.J. No. 201 (P.C.), at paragraph 31, it was noted that protection of animals “is part of our criminal law because a person's treatment of animals, like the treatment of children, the infirm or other vulnerable parties, is viewed as a barometer of that person's treatment of people. As with all other criminal offences, harming animals amounts to harming everyone.”

[10] The offence of killing or injuring an animal kept for a lawful purpose was contained in the *Criminal Code*, 1892, at section 501. At that time it stated:

1. Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred dollars over and above the amount of injury done, or to three months' imprisonment with or without hard labour, who wilfully kills, maims, wounds, poisons or injures any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or kept for any lawful purpose.

2. Every one who, having been convicted of any such offence, afterwards commits any offence under this section, is guilty of an indictable offence, and liable to a fine or imprisonment, or both, in the discretion of the court.

[11] As a result of *An Act to amend the Criminal Code*, S.C. 1930, c. 11, this provision was repealed and re-enacted as section 537. At that time, the provision referred to “attempts to kill” and the penalty prescribed when the Crown proceeded by way of summary conviction was a fine “not exceeding five hundred dollars over and above the amount of injury done, or to one year's imprisonment with or without hard labour.”

[12] The element of killing an animal was re-introduced by *An Act to amend the Criminal Code*, S.C. 1931, s. 28.

[13] As a result of the enactment of the *Criminal Code*, 1953-54, c. 51, the penalty provision for killing or injuring an animal kept for a lawful purpose was amended so that it became “punishable on summary conviction.” At that time, the maximum period of imprisonment which could be imposed for an offence punishable on summary conviction was six months. The present penalty provision was enacted by *An Act to amend the Criminal Code (cruelty to animals)*, S.C. 2008, c. 12. As can be seen, the maximum penalty available has been significantly increased by Parliament.

[14] In *R. v. Connors*, [2011] B.C.J. No. 168 (P.C.), at paragraphs 49 and 51, Quantz, P.C.J. in considering the increased penalties prescribed by Parliament for violations of section 445(1) of the *Criminal Code* indicated that in “increasing the penalties Parliament did conclude that the previous maximums were wholly inadequate and failed to represent the prevailing views in society as to the seriousness of these offences...To fulfill Parliament's intention in making these more serious offences requires in this case that a longer period of incarceration be imposed than in the majority of cases decided prior to the amendments.”

[15] It has been held that an increase in a statutory maximum is a “clear indication to sentencing courts of the seriousness with which the criminal conduct addressed by the changes is viewed by contemporary society” (see

R. v. Richardson [2006] EWCA Crim 3186, at paragraph 4). However, it is important not to overemphasize legislative changes in imposing sentence. In *R. v. W.E.*, (2010), 251 C.C.C. (3d) 213 (N.L.C.A.), the Court of Appeal, in considering the minimum penalty prescribed by Parliament for the offence of possession of child pornography, cautioned judges against reading "too much" into Parliament increasing a mandatory minimum period of imprisonment for a specific offence when imposing sentence for it.

THE PRINCIPLES OF SENTENCING

[16] Section 718 of the *Criminal Code* states that the fundamental purpose of sentencing "is to contribute...to respect for the law and the maintenance of a just, peaceful, and safe society." This is to be achieved by imposing sentences which have, among other objectives, the objectives of separating offenders from society, where necessary; of denouncing unlawful conduct; of general deterrence; of rehabilitation; and of promoting a "sense of responsibility in offenders, and acknowledgement of the harm done to victims and the community."

[17] Section 718.2(b) of the *Criminal Code* states that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances." This provision requires an analysis of what is commonly referred to as the range of sentence for a specific offence.

[18] Section 718.1 of the *Criminal Code* states that any sentence imposed must be “proportionate to the gravity of the offence and the degree of responsibility of the offender.” This is the fundamental principle of sentencing in Canada.

[19] In *R. v. Nasogaluak*, [2010] 1 S.C.R. 206, at paragraphs 40 to 42, the Court considered section 718.1 of the *Criminal Code* and indicated that “the principle of proportionality is central to the sentencing process.” In *R. v. Ipeelee*, 2012 SCC 13, the Supreme Court of Canada indicated that the *Criminal Code* lists “a number of principles to guide sentencing judges” and that the “fundamental principle of sentencing is that the sentence must be proportionate to both the gravity of the offence and the degree of responsibility of the offender.” The Court also indicated in *Ipeelee* that the sentencing principle of proportionality “is intimately tied to the fundamental purpose of sentencing -- the maintenance of a just, peaceful and safe society through the imposition of just sanctions. Whatever weight a judge may wish to accord to the various objectives and other principles listed in the *Code*, the resulting sentence must respect the fundamental principle of proportionality. Proportionality is the *sine qua non* of a just sanction.”

[20] Section 718.2(a) of the *Criminal Code* indicates that a "sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender." In **R. v. Briand**, [2010] N.J. No. 339 (C.A.), the Court of Appeal stressed the importance of considering an offender's personal circumstances in applying section 718.2(a) of the *Criminal Code*. In **R. v. Rawn**, 2012 ONCA 487, the Ontario Court of Appeal, at paragraph 29, indicated that "a fit sentence must be ascertained on an individual basis." In **R. v. Knott**, 2012 SCC 42, the Supreme Court of Canada indicated that sentencing judges "must retain as much flexibility as the *Criminal Code* permits in crafting individualized sentences that respect the principles and purposes of sentencing set out by Parliament in the *Code*" and that "the purpose and principles of sentencing set out in the *Criminal Code* are meant to take into account the correctional imperative of sentence individualization."

[21] Section 718.2(d) states that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances" and section 718.2(e) states that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders." In **Knott**, it was held that in "appropriate cases, probation orders

serve that purpose as an effective and efficient alternative to unnecessary institutional confinement.”

[22] In *R. v. Johnson*, 2012 ONCA 339, the Ontario Court of Appeal considered the principles of sentencing set out in the *Criminal Code* and indicated that any sentence imposed must be “fair and rational – both to the offender and the community” (at paragraph 23):

The system must be seen to be fair and rational – both to the offender and the community – and its integrity must be preserved. Just as a sentence cannot be unduly harsh and excessive, neither can it be overly lenient or unresponsive to other purposes and principles that underpin the sentencing regime – denunciation, deterrence, the promotion of a sense of responsibility in offenders and acknowledgement of harm done to victims and the community, and the protection of the public: *Criminal Code*, s. 718.

THE POSITIONS OF THE PARTIES

[23] Both counsel submitted that a period of incarceration was appropriate.

THE CROWN

[24] The Crown sought a global sentence of seven to eight months incarceration followed by a period of probation. The Crown also sought a firearm/ammunition prohibition for a period of ten years, a DNA order and a animal/bird custody, control, or residing with order for a period of ten years pursuant to section 447.1(1)(a) of the *Criminal Code*.

[25] Ms. St. Croix submitted that the sentencing principles of denunciation and deterrence should be given primary emphasis. She referred to section 718.2(a)(ii) of the *Criminal Code* and argued that the relationship which existed at the time of the offences between Mr. White and Ms. Hutchings constitutes an aggravating factor in sentencing. However, in *R. v. Squires*, 2012 NLCA 20, it was held that the "rationale underlying section 718.2(a)(ii) is directed to the vulnerability and dependency, particularly from an emotional, financial and psychological perspective, presumed to arise from the domestic relationship between married or common-law spouses. The relevance of this factor is heightened where physical or psychological abuse results in a sense of powerlessness making escape or leaving the relationship difficult..."

[26] Ms. St. Croix referred to *R. v. Zeller*, [1998] A.J. No. 351 (P.C.) and *R. v. Brown*, [2004] A.J. No. 201 (P.C.).

[27] In *Zeller*, the accused pleaded guilty to unlawfully killing a dog. He had killed the dog after an argument with his spouse. The trial judge indicated that the accused threatened to kill the dog and then "obtained a shovel from the back yard, went over to the puppy and struck it on the head. The puppy immediately went down. While its legs were shaking the

accused continued to strike it with the shovel, striking its head until it was dead.” The trial judge imposed a period of sixty days incarceration.

[28] In *Brown*, the offender killed her neighbor’s dog. The trial judge indicated that she “entered the garage where Ziggy and Peppy were and shot Ziggy once through the side of the head from left to right, and from slightly behind. Ziggy did not die immediately; he survived at least ten minutes.” A suspended sentence and probation was imposed.

MR. WHITE

[29] Mr. White submitted that a period of ninety days incarceration, to be served on an intermittent basis, followed by a period of probation should be imposed. Mr. White took no exception to the ancillary orders sought by the Crown. Mr. Luscombe referred to Mr. White’s pleas of guilty and his steps to improve his education. Mr. Luscombe submitted that the Court must place emphasis on rehabilitation.

[30] In *R. v. Matte*, 2012 ONCA 504, the Ontario Court of Appeal considered the sentencing principle of rehabilitation and noted, at paragraph 48, that it “requires effort on an offender’s part. It cannot be force fed to the unwilling. It ill lies in the mouth of the unwilling to complain that rehabilitation should have been accorded a prominent place in the sentencing

decision, particularly where, as here, the offender complaining has been unswerving in his resistance to rehabilitative efforts for several years.”

[31] Mr. Luscombe referred to *R. v. Barnes*, [2005] B.C.J. No. 1934 (C.A.) and *R. v. Gamble*, [2008] S.J. No. 429 (Q.B.).

[32] In *Barnes*, the accused pleaded guilty to two counts of killing cats contrary to section 445(1)(a) of the *Criminal Code*. The trial judge imposed a period of six months imprisonment, concurrent, in relation to each offence. The British Columbia Court of Appeal indicated that the offender “had beheaded the cats on two separate occasions, mutilated their bodies, and buried them. When dug up, their bodies were headless; one of the cats had a distended anus.” The sentence imposed by the trial judge was affirmed by the Court of Appeal.

[33] In *Gamble*, the offender had killed a dog, contrary to section 445(1)(a) of the *Criminal Code*, by running over the dog with her truck. The trial judge imposed an absolute discharge. On appeal, the sentence imposed was varied to a conditional discharge.

SENTENCING PRECEDENTS-GENERAL PRINCIPLES

[34] In *R. v. Tuglavina*, [2011] N.J. No. 25 (C.A.), the trial judge in imposing sentence indicated that the concept of range of sentence had been “overruled by the Supreme Court of Canada many times.” The Court of

Appeal disagreed. It concluded that the "sentencing judge erred in failing to give any consideration to the representations of Crown counsel respecting the appropriate range of sentences." In *R. v. Lewis*, [2011] N.J. No. 305 and *R. v. Leggo*, [2012] N.J. No. 26 (P.C.), I noted that "trial judges in this Province must follow sentencing precedents in imposing sentence." In *R. v. Hodder*, [2012] N.J. No. 155 (P.C.), I made similar comments. In *R. v. Oake*, [2010] N.J. No. 94, the Court of Appeal indicated that a judge has a duty "to impose sentences in line with precedent, noting always that for each offence and each offender some elements are unique."

SENTENCING PRECEDENTS-KILLING OR INJURING AN ANIMAL KEPT FOR A LAWFUL PURPOSE

[35] The only sentencing precedent in this Province for an offence committed pursuant to section 445(1)(a), which I could locate, was *Butler v. Whalen*, [1984] N.J. No. 254 (D.C.). In that case, the accused shot and killed another person's dog. Judge Seabright imposed a \$100.00 fine. On appeal, an absolute discharge was granted.

[36] In *R. v. Fowlie*, [1998] N.B.J. No. 539 (Q.B.), the offender was convicted of killing his horse. A ninety day intermittent sentence was imposed.

[37] In *R. v. Munroe*, [2010] O.J. No. 2579 (C.J.), the offender was convicted of two counts under section 445.1(1)(a) of the *Criminal Code* "for

causing unnecessary suffering to each of Abbey and Zoe” and one count under section 445(1)(a) of the *Criminal Code*. A period of twelve months imprisonment was imposed in relation to each count to be served on a concurrent basis.

[38] In *R. v. Rabeau*, [2010] A.J. No. 567 (P.C.), the offender killed a puppy by hitting it in the head with a wooden club. A conditional discharge and twelve months of probation was imposed.

[39] In *Connors*, the accused pleaded guilty to breaching section 445.1(1)(a) of the *Criminal Code*. The offender killed a dog he was looking after. An examination of the dog “disclosed 10 broken ribs, a broken jaw and orbital bone, missing teeth, a lacerated liver and lacerations to the tongue.” The trial judge imposed a period of five months incarceration. In doing so, Quantz, P.C.J. indicated, at paragraphs 40 and 41, that “the wilful infliction of unnecessary pain and suffering on animals violates one of the basic tenants of our society and is deserving of punishment. It is also conduct which most members of our society find repugnant and morally reprehensible...The objectives of sentence to be emphasized in this case are denunciation and deterrence without losing sight of the offender's prospects for rehabilitation.”

SENTENCING PRECEDENTS-UTTERING A THREAT TO KILL A PERSON'S ANIMAL

[40] In *R. v. Lyver*, [2011] N.J. No. 320 (P.C.), the offender was convicted of an offence contrary to section 264.1(1)(c) of the *Criminal Code*. He threatened to kill his neighbour's dog. I suspended sentence and imposed a period of twelve months probation.

[41] In *R. v. Philpott*, [2011] N.J. No. 71 (S.C.), the accused was convicted of the offences of assault with a weapon and uttering a threat to cause death or bodily harm involving his brother. The facts were described as follows:

Gilbert Philpott, in response to his brother unplugging his stereo while he was trying to listen to it, picked up a bread knife and, in an attempt to get his brother to leave his apartment, swung the knife at him cutting both of his brother's hands. His brother was holding up his hands by his face at the time attempting to fend off any assault. The brother required stitches to his hands and had surgery for an injury to his left hand thumb. While medical treatment for injuries was required, there was minimal time spent at the hospital totaling approximately one day.

[42] Justice LeBlanc imposed a period of fifteen months incarceration, which included a period of one month incarceration for the uttering a threat offence. Judge LeBlanc agreed with the proposition that the range of sentence for threats uttered in non-intimate relationships extended from a discharge to six months imprisonment.

SENTENCING PRECEDENTS-FAILURE TO APPEAR IN COURT

[43] In *R. v. Gale*, [2006] N.J. No. 87 (P.C.), I considered the appropriate range for the offence of failing to appear in Court and concluded, at paragraph 64, that “the range of sentence for the offence of failing to appear in court is one to two months imprisonment. An offender with a related criminal record, or a consistent pattern of failing to appear in court, may receive a period of imprisonment greater than two months.”

[44] In *R. v. Cox*, [2009] N.J. No. 333 (P.C.), Judge Porter considered the range of sentence for the offence of failure to appear in court and imposed a period of three months imprisonment upon the offender for failing to do so in that case.

ANALYSIS

[45] As we have seen, Mr. White killed one cat and injured another. However, his rage and anger was also directed at his former girlfriend. As pointed out in *R. v. Wicker*, [2007] A.J. No. 566 (P.C.), at paragraph 37, in these type of cases “the attack on the animal is often connected to a domestic relationship incident, invariably involving the offender exacting revenge on the other member of the relationship by injuring the pet.”

[46] The acts of violence committed in this case by Mr. White are not isolated incidents and promoting Mr. White’s rehabilitation will be difficult.

Mr. White's criminal record illustrates that he will not comply with court orders and it has been held that this is a "strong indicator that [an offender] may not be willing or able to abide by any conditions of probation" in the future (see *R v. A.B.*, 2012 MBCA 25). This is a concern here because the imposition of an intermittent sentence requires the imposition of a period of probation (see section 732(1)(b) of the *Criminal Code*).

[47] In *R. v. Hutchings*, 2012 NLCA 2, the Court of Appeal indicted that the "first step in sentencing in the context of multiple convictions is therefore to determine the appropriate sentence for each individual offence, applying the full range of applicable sentencing principles. The sentences so arrived at should presumptively be imposed consecutively...The second step is to consider whether some or all of the offences are related in a manner such that they can be considered a single criminal adventure. If so, those that are so regarded should generally be made concurrent with the heaviest sentence arising out of that single criminal adventure."

[48] Based upon the circumstances of the offences and Mr. White's personal circumstances, I conclude that the following individual sentences are appropriate:

1. for the section 445(1)(a) offence in which the cat was killed, a period of three months imprisonment;

2. for the section 445(1)(a) offence in which the cat was injured, a period of two months imprisonment;
3. for the section 145(2)(a) offence, a period of one month imprisonment; and
4. for the section 264.1(1)(c) offence, a period of two months imprisonment.

[49] I have concluded that these periods of imprisonment should be served on a consecutive basis. I recognize that the two offences in relation to the cats are related, but they involve separate victims and Mr. White's offences do not constitute a "spree" (see *R. v. May*, 2012 ABCA 213, at paragraph 9). To impose concurrent sentences for the two section 445(1)(a) offences would result in the number of animal victims involved becoming irrelevant. As pointed out in *R. v. Dureksen*, 2012 MBCA 41, at paragraph 5, "it would be an error in principle for a sentencing judge to fail to take into account the fact that an accused has committed multiple offences":

As this court has said, it would be an error in principle for a sentencing judge to fail to take into account the fact that an accused has committed multiple offences (see *R. v. Wozny (C.P.)*, 2010 MBCA 115 at para. 70, 262 Man.R. (2d) 75). A sentencing judge must ensure that "while maintaining the essential principle of proportionality, the accused does not get a 'free ride'" (*R. v. Lagimodiere (S.M.E.)*, 2008 MBCA 137 at para. 26, 231 Man.R. (2d) 261). See also *R. v. N.A.S.*, 2007 MBCA 97, 220 Man.R. (2d) 43,

where Freedman J.A. explained (at para. 20):

If all offences after the first one are punished by sentences which are concurrent to the first, it will soon be observed by offenders that, once one offence has been committed, there is nothing to deter them from subsequent offences...

[50] If the periods of imprisonment imposed in this case are ordered to be served on a consecutive basis, this would result in a total period of eight months imprisonment. Considering the totality and proportionality principles of sentencing, I have reduced the total period of imprisonment imposed to six months. This is achieved by ordering that the period of imprisonment imposed for the section 264.1(1)(c) offence is to be served on a concurrent basis.

A PERIOD OF PROBATION

[51] Upon completion of the period of imprisonment imposed, Mr. White will be placed on probation for a period of twelve months. In addition to the statutory conditions which apply, Mr. White must:

- report to a probation officer in person as required;
- attend all counseling or treatment sessions arranged by his probation officer and abide by all directions specified by his probation officer;
- refrain from having any contact or communication with Ms. Deborah Harding and Mr. Ronald Payne; and

-refrain from the possession or consumption of alcoholic beverages.

A VICTIM SURCHARGE

[52] The imposition of victim surcharges would constitute an undue hardship for Mr. White. Thus, the payment of victim surcharges is waived.

OTHER ANCILLARY ORDERS

[53] As pointed out earlier, Mr. White takes no exception to a DNA order, a section 110 weapon/ammunition order (for ten years), or a section 447.1(1)(a) prohibition (for ten years) being issued. Accordingly those orders are hereby issued.

CONCLUSION

[54] For the reasons provided, Mr. White is sentenced to a period of six months imprisonment followed by a period of twelve months probation.

[55] Judgment accordingly.