

ONTARIO COURT OF JUSTICE

DATE: 2021 09 28 28
COURT FILE No.: Ottawa 21-R17382

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

JAKE GARVIN

Before Justice Robert Wadden
Plea on May 3, 2021; Submissions on August 23, 2021
Reasons for Sentence released on September 28, 2021

Ms. Tara Dobec Counsel for the Crown
Mr. Neil Weinstein Counsel for the Defendant

WADDEN, J.:

SENTENCE

[1] On January 20, 2021 the police attended the apartment of Jake Garvin in response to his mother's call for a wellness check after threats he had made to kill his dog, himself and others. There had also been repeated calls by a neighbour reporting sounds of animal abuse from inside Mr. Garvin's apartment. Upon arrival the police found a filthy apartment and on closer inspection found Mr. Garvin's severely beaten dog dead on the floor.

[2] A search of the apartment found a 16 gauge sawed-off shotgun, separated into three parts, and eleven shotgun shells, all hidden inside a large bin of flour.

[3] For over a year preceding this, Mr. Garvin had been sending repeated harassing and threatening texts to his parents, threatening to torture and kill them, including threatening to get a shotgun and shoot them. He also threatened to hurt or kill his own dogs, threats which escalated towards January 2021.

[4] Mr. Garvin has pled guilty to nine offences, including possession of a prohibited firearm (s. 95(2)), possession of a shotgun with a defaced serial number (s. 108), criminal harassment against his parents (s. 264), uttering threats to kill his dogs (s. 264.1), two counts of causing pain and suffering to his dog Bane (s. 445.1), resisting arrest (s. 129), mischief (s. 430) and breach of a non-communication order (s. 145). The facts underlying all these offences are set out in a detailed Agreed Statement of Facts, filed as an exhibit.

SENTENCING POSITIONS OF THE CROWN AND DEFENCE

[5] Mr. Garvin is before me for sentencing. He has been in custody since his arrest on January 20, 2021, a total of 252 days.

[6] The Crown seeks a jail term of 6 years, less pre-sentence custody. Counsel for Mr. Garvin suggests that a sentence of 2 ½ years would be appropriate, less pre-sentence custody. Counsel suggests that enhanced credit should be given for pre-sentence custody since Mr. Garvin has served that time during the pandemic.

BACKGROUND OF JAKE GARVIN & PSYCHIATRIC REPORT

[7] A psychiatric assessment of Mr. Garvin was prepared by Dr. Wood of the Royal Ottawa Mental Health Centre and was filed as an exhibit on this sentencing hearing. It provides thorough information about the background and psychiatric status of Mr. Garvin.

[8] Mr. Garvin is a 22 year old single man, who was adopted as an infant by Denise and Mark Garvin. Prior to his arrest he was living in his own apartment and was supported by Ontario Disability Support Program (“ODSP”), supplemented by work in the restaurant industry that was sporadic during the pandemic lockdowns. He has a Grade 8 level education, having had trouble at school that led to his

expulsion in Grade 9 and low motivation to continue after that. He had a good employment history in the food industry, including holding a job for two years before being laid off due to pandemic restrictions.

[9] Mr. Garvin's psychiatric history dates back to his childhood, when he was assessed with Fetal Alcohol Spectrum Disorder ("FASD"). He had numerous psychiatric hospital admissions, including at the Royal Ottawa and Center for Addiction and Mental Health ("CAMH"). He was noted to have had auditory hallucinations and paranoia, as well as psychosis associated with substance abuse. He was found to have impaired judgment, emotional instability, poor impulse control and deficits in social and adaptive functioning. He was last admitted to the Royal Ottawa in January 2016, when he left against the advice of staff, who recommended a longer stay. Pharmacy records indicate he has not taken prescribed psychiatric medication since 2016.

[10] At the time of his arrest in January 2021 he was admitted to hospital on a Form 1 but no major mental illness was diagnosed. At the time, Mr. Garvin attributed his difficulties to excessive consumption of alcohol. During his interviews with Dr. Wood, Mr. Garvin admitted having used a wide variety of drugs in the past, and said he was consuming 26 ounces of hard liquor and three grams of cannabis a day by the time of his arrest.

[11] Dr. Wood diagnosed Mr. Garvin with bipolar disorder, FASD and related borderline and antisocial personality traits and disorders relating to his abuse of alcohol, cannabis and other drugs. He noted that his additional stressors included his social isolation and COVID-19 pandemic restrictions, including his loss of employment and social structure.

PRIOR CONVICTIONS

[12] Mr. Garvin has no adult criminal record but has numerous convictions as a youth. At age fourteen he was found guilty of mischief and assault with a weapon; at sixteen he was convicted of assault with a weapon, uttering threats and possession of a weapon, theft under, criminal harassment, possession of drugs and

breaches of recognizance. His father, Mark Garvin, was the victim of the assault with a weapon charge. Mr. Garvin was incarcerated as a youth for 76 days of custody.

SENTENCING PRINCIPLES

[13] Of the offences before me for sentencing, the maximum penalty for the offences under ss. 95(2) and 264 are ten years. The animal abuse offences under s. 445.1, as well as the offences under ss. 264.1 and 108, and have a maximum penalty of five years. The offences under ss. 129, 145 and 430 have a maximum penalty of two years. None of the charges have a minimum penalty, as the previous minimum sentence of three years for s. 95(2) was struck down by the Supreme Court of Canada in *R. v. Nur* 2015 SCC 15.

[14] The principles of sentencing set out in s. 718 of the *Criminal Code* state that “The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society ...”, and go on to state that specific objectives of sentencing are to “denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct; ... to deter the offender and other persons from committing offences; ... [and] to promote a sense of responsibility in offenders.” An overarching principle is, as stated in s. 718.1 of the *Code*, that “A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.”

AGGRAVATING AND MITIGATING FACTORS

[15] There are numerous aggravating factors present in this case. Mr. Garvin inflicted severe violence on his dog, a nine-month old puppy, to the point of killing it. This abuse was long and protracted, occurring over many weeks, and amounted to torture. This was not a matter of negligent acts on the part of Mr. Garvin. His texts to his father show that he was aware of what he was doing.

[16] The harassment of his parents is serious. It took place over a time period of nearly two years, from April 2019 to February 2021. The text messages sent to his father include explicit threats to shoot his parents and his landlord, and dozens of messages directed at the father in abusive and demeaning language. Mr. Garvin's messages include explicit threats over a lengthy period of time to hurt his own dogs, speaking of them in demeaning language. The fact that Mr. Garvin has a youth record for violence, committed against his father, is an aggravating factor.

[17] The possession of a prohibited firearm is serious. It was a single-shot 16 gauge shotgun with the barrel cut down to 395 mm, with the serial number obliterated. It is a sawed-off shotgun and therefore a prohibited weapon. When it was found in Mr. Garvin's apartment it was in three pieces and it was easily reassembled by the officer testing it. It was in poor condition with rust and pitting over the metal components, but was in working order and did not have any mechanical issues. The officer testing it loaded one of the ammunition rounds found with it and fired the gun. Both the shotgun and ammunition were in good working order.

[18] Mr. Garvin's counsel highlights the poor condition of the gun, the circumstances in which it was stored and the fact that it is a single shot weapon as mitigating factors, distinguishing it from the handguns referred to in many other cases. While I recognize these issues were present with Mr. Garvin's shotgun, it also has to be noted that this gun was a functioning firearm found with eleven rounds of ammunition and in the circumstances there was a high level of danger that it might be used. Mr. Garvin was threatening violence against his parents, specifically threatening to shoot his father. He was in an ongoing dispute with his landlord, and told the Court Psychiatrist that he had bought the gun due to his paranoia about his landlord. Mr. Garvin's actions against his dogs demonstrate his propensity for serious violence. During the period he was inflicting severe violence on his dogs, uttering threats of violence towards his father and in conflict with his landlord, he went to the effort to purchase a prohibited firearm and eleven rounds of ammunition. On the evidence before me it is clear that, in the frame of mind that Mr. Garvin had at the time, there was a significant risk he would use the gun. These are circumstances that make the possession of this prohibited firearm a serious offence.

[19] The mitigating factors to take into account are Mr. Garvin's plea of guilty, his youth, his mental health issues and his prospects for rehabilitation in the community upon completion of his sentence.

[20] Mr. Garvin has pled guilty to the nine offences before me. This is an indication of remorse and an acknowledgement of his wrongdoing. It has saved considerable court time and avoided the necessity of having witnesses, including his parents, attend at trial.

[21] The psychiatric diagnosis of Mr. Garvin provides some insight into his actions, citing reasons for his paranoia and lack of self-control. Dr. Wood notes that Mr. Garvin suffers from FASD and bipolar disorder. The effects of his mental illness could be mitigated with treatment, and there is a course of treatment recommended for Mr. Garvin, both in custody and after release. The report also notes that Mr. Garvin has had some periods of stability in the community, including holding a restaurant job for two years prior to losing it due to the pandemic. There is the prospect that if Mr. Garvin were to follow treatment he could find stability in his life.

[22] However, the psychiatric report also notes areas of concern. Mr. Garvin's psychosis and paranoia were largely affected by his substantial consumption of drugs and alcohol, issues that were identified during his hospital admissions as a teenager. He has a poor history of compliance with psychiatric treatment, having discharged himself from hospital in 2016, and with following a medication regime, having ceased taking prescribed medication at the same time. In order to mitigate his risk in the future Mr. Garvin would have to commit to treatment for his mental health issues and addictions. As stated by Dr. Wood; "If Mr. Garvin does not follow through and meaningfully participate in the above recommendations, he would be viewed as being a high risk of reoffending in a similar manner in the future."

APPROPRIATE SENTENCE

[23] I have to keep in mind that in sentencing Mr. Garvin, I am dealing with a young man who is receiving his first adult convictions and his first significant jail sentence. As noted in *R. v. Borde* (2003) 63 O.R. (3d) 417, (C.A.) in dealing with a youthful offender; “Where, as here, the offender has not previously been to penitentiary or served a long adult sentence, the courts ought to proceed on the basis that the shortest possible sentence will achieve the relevant objectives.” See also *R. v. Ijam* 2007 ONCA 597.

[24] It is clear that a penitentiary sentence must be imposed for the serious offences before me.

[25] For the offences of animal abuse, the authorities have made it clear that “cruelty to animals is incompatible with civilized society” (*R v. S.E.A.* 2015 ABCA 182). Parliament criminalized this in s. 445.1 of the *Criminal Code*, and in 2008 it increased the maximum penalty from 6 months to 5 years. The Ontario Court of Appeal stated, in *R v Wright* 2014 ONCA 675, that this increase in penalty signalled “an added determination by Parliament to deter and punish those who would engage in acts of cruelty to animals”. Similar acts of severe animal abuse, including *R. v. Helfer* [2014] O.J. No. 2984 (O.C.J.) and *R. v. Hill* [2016] O.J No. 7352 (O.C.J.), have received sentences of two years in the penitentiary.

[26] The facts of Mr. Garvin’s beating and killing of his dog are horrific, and are high on the range of the seriousness of the offence. He repeatedly told his father that he was training his dogs to be aggressive, and spoke degradingly of them if they did not meet his expectations. He repeatedly made threats to harm them in his messages to his father. He inflicted such severe beatings on his dog Bane that a neighbour was distressed and recorded the noise and called authorities. On the recording, entered as an exhibit, Mr. Garvin can be heard beating his dog and the dog yelping and crying in pain. Mr. Garvin caused a serious wound to Bane in December 2020, requiring veterinary treatment. He continued the abuse into January, leading to the point where

he confined his dog within the apartment and beat him to death. This was prolonged abuse.

[27] In all the circumstances, a sentence of two years jail on the animal abuse offences is necessary to denounce Mr. Garvin's actions and be consistent with similar sentences for animal cruelty.

[28] The firearms offences involve possession of a prohibited weapon and must be denounced in the clearest terms. It was noted in *R. v Molin* [2015] O.J. No. 6074 (S.C.J.) that "Possession of a prohibited, loaded firearm does raise the possibility of imminent violence; indeed, it can serve no other purpose than one involving violence or intimidation ...". As stated in *R v. Fenton* [2017] O.J. No. 5308 (S.C.J.), while "some distinction should be made between offences involving semiautomatic handguns and those involving sawed-off shotguns, both types of offense are very serious and require significant sentences that emphasize the principles of denunciation and general deterrence." (That offender received three years for possession of a sawed-off shotgun in circumstances where he threatened to shoot someone).

[29] In *R. v. Nur*, the Court held that for the vast majority of firearms offences where the person "is engaged in truly criminal conduct and poses a real and immediate danger to the public" a sentence of three years may be appropriate. Although the *R. v. Nur* Court had referred to those who carry handguns in public, I find that the circumstances in which Mr. Garvin possessed the gun brings him within this category of offenders. Mr. Garvin's gun was disassembled and hidden, but it was easy to put back together and the ammunition was readily accessible. He had threatened to shoot his father, mother and landlord, and was in the midst of a period where he was demonstrating severe violence and aggressiveness in his actions with his dogs. Given the risk posed by Mr. Garvin at the point he was in possession of the gun, the difference between a handgun and a sawed-off shotgun in these circumstances is small. These firearms offences were committed in the context of possession by a violent individual who had uttered specific threats to kill identifiable people; they could justify a sentence higher than the three year range. However, taking into account the mitigating factors,

including the youthfulness of Mr. Garvin and his plea of guilty, it is my view that a sentence of three years consecutive on the firearms offences should be imposed.

[30] The offences of criminal harassment, breach of conditions and resist arrest are serious and would justify further jail time on their own. The criminal harassment against the parents is particularly odious, given the violent and abusive nature of the communication to the father. This is aggravated by the fact that Mr. Garvin had already been convicted as a youth for violence against his father. The contact continued, to a limited degree, even after Mr. Garvin was put under a court order to cease communication. The parents are justifiably afraid of Mr. Garvin. These offences are worth a further six months of jail, even taking into account all of the mitigating factors.

[31] I am mindful, though, as noted above, of the principles of sentencing a youthful offender and of the principles of totality. I cannot impose a sentence that is so long as to be crippling of Mr. Garvin's prospects for rehabilitation. Considering these principles, the further sentences will be concurrent to the sentences imposed for the other offences.

[32] The appropriate total sentence for Mr. Garvin is 5 years jail, less credit for pre-sentence custody. The term of five years is a substantial jail term that reflects society's denunciation of the offences of cruelty to animals and possession of a prohibited firearm but recognizes that Mr. Garvin is a youthful offender, receiving his first penitentiary sentence, and that he has prospects for rehabilitation if he takes treatment for his addictions and mental health issues.

CREDIT FOR PRE-SENTENCE CUSTODY

[33] In calculating the credit to be given for pre-sentence custody, I note that Mr. Garvin has been in custody for 252 days, about 8 ½ months. Following *R v Summers*, 2014 SCC 26, credit is to be given at a rate of 1.5 to 1, which equals 378 days, or approximately 12 ½ months. Counsel for Mr. Garvin asks me to consider further credit, pursuant to *R. v. Downes* (2006) 79 O.R.(3d) 321 (C.A.), due to the harsh circumstances of serving pre-sentence custody during the pandemic. He notes that Mr. Garvin has been subject to lengthy periods of

confinement without privileges, has not had the opportunity to participate in any programming and has himself contracted COVID-19 while in jail.

[34] The process to follow in granting extra credit for pandemic conditions during pre-sentence custody was set out in *R. v. Marshall*, 2021 ONCA 344, in which the Court stated, at para. 50:

A “*Duncan*” credit is given on account of particularly difficult and punitive presentence custody conditions. It must be borne in mind the 1.5:1 “*Summers*” credit already takes into account the difficult and restrictive circumstances offenders often encounter during pretrial custody: [...]. The “*Duncan*” credit addresses exceptionally punitive conditions which go well beyond the normal restrictions associated with pretrial custody. The very restrictive conditions in the jails and the health risks brought on by COVID-19 are a good example of the kind of circumstance that may give rise to a “*Duncan*” credit: *R. v. Morgan*, 2020 ONCA 279.

[35] Mr. Garvin was in custody during a period when COVID-19 problems in the provincial jails were at their worst. There were outbreaks at the Ottawa-Carleton Detention Centre and other provincial facilities this spring, resulting in lengthy lockdowns and the inability to move prisoners. Mr. Garvin was housed at different institutions and his ability to proceed with plea and sentencing was at times impaired by the inability of the jail to deliver him to court.

[36] I am prepared to give an additional 2 ½ months of *Duncan* credit to Mr. Garvin due to the circumstances of his pre-sentence custody during the pandemic.

[37] The total amount of *Summers* and *Duncan* credit for Mr. Garvin’s pre-sentence custody will be 15 months.

CONCLUSION

[38] The total sentence to be imposed on Mr. Garvin will be five years, less pre-sentence custody. Mr. Garvin's sentence on each count will be as follows:

- | | |
|-----------------------------------|--|
| a. s. 95(2), Prohibited Firearm: | 3 years jail, less PSC of 252 days, credited for 15 months, for a remaining sentence of 21 months; |
| b. s. 108, Defaced Serial Number | 1 year concurrent |
| c. s. 445.1, January 2021 | 2 years consecutive |
| d. s. 445.1, December 2020 | 6 months concurrent |
| e. s. 264.1, Threats to Kill dogs | 6 months concurrent |
| f. s. 264, Criminal Harassment | 6 months concurrent |
| g. ss. 145, 129 & 430 | 30 days each, concurrent and concurrent |

[39] With credit for pre-sentence custody, Mr. Garvin will have a remaining 45 months to serve in a federal penitentiary.

[40] The federal corrections authorities should be provided with the psychiatric report of Dr. Wood, dated June 6, 2021 and note the recommendation for Mr. Garvin to be involved in the Integrated Correctional Program Model (ICPM) to receive treatment for his psychiatric and substance abuse issues.

ANCILLARY ORDERS

[41] The offences under ss. 264, 264.1, 445.1, 95(2) and 108 are secondary designated offences for the DNA databank, pursuant to s. 487.04 of the *Code*, as they are punishable by five years or more when prosecuted by indictment. An order for a sample of DNA will be made for each of those offences.

[42] Mr. Garvin will be prohibited from the possession of firearms, ammunition or explosive substances for life, pursuant to s. 109 of the *Criminal Code*.

[43] Given the severity of the animal abuse in this case, resulting in the wounding and death of his dog, Mr. Garvin will be prohibited from owning, having the custody or control of or residing in the same premises as an animal or a bird, for life, pursuant to s. 447.1 of the *Code*.

[44] Due to the length and severity of the criminal harassment, Mr. Garvin will be prohibited from having any contact with Mark or Denise Garvin during the custodial period of his sentence, pursuant to s. 743.21 of the *Code*.

[45] Finally, there will be an order for the forfeiture and destruction of the firearm, ammunition and other weapons seized.

Released: September 28, 2021

Digitally signed by Justice Robert
Wadden 

Justice Robert Wadden