

ONTARIO COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

John James Rodney HILL

Before Justice Lesley M. Baldwin
Heard on November 13, 2012 and February 27, 2013
Reasons for Sentence released on March 26, 2013

L. Jago **for the Crown**
D. Hotz **for the offender John James Rodney Hill**

BALDWIN, J.:

Guilty Pleas:

[1] On November 13, 2012, John James Rodney Hill pled guilty to three counts as follows:

- 1) On or about the 28th day of June 2012 at the Town of Halton Hills, he did break and enter a certain place, to wit: a dwelling house at 38 Park Avenue and did commit therein the indictable offence of Robbery contrary to s. 348 (1)(b) of the *CCC*;
- 2) And further that, on or about the 28th day of June 2012, in the Town of Halton Hills, without lawful excuse he did without lawful authority confine Margaret Hagan contrary to section 279 (2) of the *CCC*;
- 3) And further that, on or about the 28th day of June 2012, in the Town of Halton Hills, he did assault Constable Paul Rudall with intent to resist the lawful arrest of himself contrary of section 270 (1)(b) of the *CCC*.

[2] All facts were read in and acknowledged on the guilty plea including 4 other

counts as follows:

- 4) Assaulting Margaret Hagan contrary to section 266 of the *CCC*;
- 5) Assaulting Margaret Hagan with a knife contrary to section 267 (a) of the *CCC*;
- 6) Uttering a threat to Margaret Hagan to cause bodily harm contrary to section 264.1 (1)(a) of the *CCC*;
- 7) Carrying a knife for a dangerous purpose contrary to section 88 of the *CCC*.

[3] The Crown proceeded by Indictment on the Forcible Confinement and Assault Resist Arrest counts.

Circumstances of the Offences:

[4] At the time of the offences the Offender was 28 years of age and was of no fixed address.

[5] He had been an inpatient at the Homewood Health Centre in Guelph, Ontario from June 4th, 2012 until June 26th, 2012, when he discharged himself against medical advice.

[6] He had been wandering the streets after smoking marijuana when he decided to break into a house. He came upon the unlocked bathroom window at 38 Park Hill Avenue in Halton Hills sometime between 9 and 10 a.m.

[7] He entered the dwelling house to steal food, alcohol, clothing and cash.

[8] He drank some alcohol and ate food while in the house. He had a shower and changed into some men's clothing. He stole about \$100.00 in cash.

[9] Eighty-six year old Margaret Hagan had been watching TV in her house when she heard noises.

[10] She saw the Offender at the patio door with a stick and a knife in his hands.

[11] He repeatedly said he was not going to hurt her if she did what she was told.

[12] He refused to let her leave the house and ripped the phone out of the wall so that she could not call for help.

[13] He waved the knife at her.

[14] He kicked her dog.

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- [15] After a period of 4 to 5 hours, she was able to access a phone and call 911.
- [16] The Offender became angrier and placed furniture against the door to prevent her from leaving and the police from getting in.
- [17] As she tried to open the door for the police, the Offender put her in a chokehold, pulled her back from the door and kicked her.
- [18] He pushed her down some stairs and down onto her back.
- [19] He lay on top of her and had the knife to her throat. He told her not to go out or 'she'd had it'.
- [20] As she struggled to get away and let the police into the house, her hand came into contact with the knife and she was cut.
- [21] Police observed the Offender assaulting the victim through the front door window and they initiated a forced entry into the home.
- [22] Once inside the residence, the attending officers found the victim on the floor with the Offender straddling her and holding a large kitchen knife to her throat.
- [23] When the police entered there was a struggle with them.
- [24] Officer Rudall sustained a small cut to his hand, soreness to his wrist, knee and elbow.
- [25] After his arrest, the Offender gave an inculpatory statement to police.
- [26] He said that he had a bad day and night and that he had walked to Georgetown from Guelph and had been wandering the streets.
- [27] He said he had 4 children and was estranged from his spouse.
- [28] He looked for a house to break-in to. At approximately 8:30 or 9:00 a.m. he got into the house through a sliding window.
- [29] He grabbed food, took money from the closet, and had a shower.
- [30] He took a knife from the kitchen approximately 8 inches in length and a broomstick.
- [31] He saw the elderly lady and started barricading the place for protection.
- [32] He tried to unplug the phones and told her that he wasn't going to let her leave.
- [33] He moved the elderly lady and she fell.
- [34] He admitted that he had a knife to her throat.

[35] He admitted fighting with the officers.

[36] The Offender told the officers that he wanted to go back to Homewood.

[37] (note: Full details of all the offences was set out in the Forensic Psychiatric Report dated January 28, 2013, prepared pursuant to an Order made under s.22(1) of the *Mental Health Act* and marked as an Exhibit. The Report was acknowledged as being accurate and true at the sentencing hearing and its contents are to be considered as part of these written reasons for sentence.)

Victim Impact Statement

[38] The Victim Impact Statement was written by Ms. Hagan's adult son with whom she now resides. He writes that his mother has only 20% of her vision and she is legally blind.

"My mother is very nervous when in the home alone – her fear reached the point where she couldn't stay in her daughter's home in Georgetown. She now lives with me in Toronto.

Her sleep and diet have been severely impacted to the point that she has little continuous sleep waking each night.

She is occasionally irritable and really not herself.

*She is now wary of the door knocking and usually won't open it.
She sustained bruises as a result of the offences."*

Circumstances of the Offender:

Criminal Record

[39] The Offender has 3 entries on his Youth Record for Possession of Stolen Property; Breach of Recognizance and Fail to Appear Court.

[40] On May 30, 2002 (Guelph) he was sentenced as an adult to 30 days jail and probation for one year on charges of Fail to comply with Recognizance and Unauthorized Possession of a Prohibited or Restricted Weapon;

[41] On March 26, 2004 (Belleville) he was sentenced to 60 days after serving 14 days of pre-trial custody on charges of Possession of Stolen Property and Break Enter and Commit;

[42] On December 17, 2007 (Guelph) he was given a suspended sentence and probation for 2 years for Assault on his spouse;

[43] On April 4, 2009 (Guelph) he was given a suspended sentence and probation for 9 months for Failing to Comply with Probation.

Pre-Sentence Report

[44] Because the Offender was admitted to St. Joseph's Centre for Mountain Health Services pursuant to a Court Ordered Forensic Mental Health/Risk Assessment, the author of the report was unable to meet with the Offender.

[45] The Report notes that based on Ministry Records dated March 4, 2008, the Offender's mother, Phyllis Hill, described the Offender as a "hyper" child. He was raised by Ms. Hill and his step-father.

[46] Ms. Hill stated that the Offender had never been the victim of any abuse during his formative years.

[47] In 2007 his mother and step-father reported ongoing anger issues from childhood including tantrums, punching walls, having a short fuse and being explosive. He has a long history of opposing all rules.

[48] Ministry records show a lengthy history of not following rules within the familial home, as well as not following direction from his probation officer and counselling programs. He has a history of failing to comply with Court Orders.

[49] He has problems with substance abuse and mental health.

[50] He has a history of deception with probation services, counsellors and police.

[51] He did not graduate from high school and did not complete his GED during past probation supervision.

[52] His employment history appears to be sporadic working in unskilled positions.

S. 22(1) Mental Health Act Assessment Report prepared by Dr. Gary A. Chaimowitz, Forensics Program, St. Joseph's Healthcare, Hamilton, dated January 28, 2013

Background Summary:

[53] The Offender's mother described him as being a difficult child with behavioural difficulties starting about the age of three. He destroyed family property.

[54] At age five he was diagnosed with ADHD. Medications made his behaviour worse.

[55] According to the Offender, he began to shoplift at the age of seven or eight and by the age of sixteen he was breaking into homes. He was suspended from school for misbehaviours and he admitted to being cruel to animals as a young adolescent. He tried to suffocate his younger sister when she was only one year old. He acknowledged setting fires.

[56] The Offender claims that he was physically and sexually abused by his step-father. There was, however, no police or CAS involvement with the family. This information has not been corroborated and is denied by his mother.

[57] The Offender was expelled from school for truancy and using cannabis. He left school in grade ten.

[58] He has a limited work history and has been fired from positions in the past.

[59] The Offender reports being in a generally unstable and, at times, turbulent relationship for approximately eight years with his ex-common-law spouse Ashley Young. They have four children together, who are currently all under the age of six.

[60] The Offender does not know the whereabouts of Ms. Young, nor has he had any contact with the children since his admission to Homewood Health Care Centre in June 2012.

[61] The Offender has a history of abusing street drugs and prescribed medications. He started abusing marijuana in high school and then proceeded to use cocaine, ecstasy, alcohol, Percocet and Oxycontin.

[62] The Offender reported that when he was a teenager and under the influence of substances he would “seriously hurt animals” such as cats and dogs or watch as his friends “killed animals”. He “felt bad because he loved animals”, and that “I didn’t want to hurt them”, “it was the drugs and alcohol.” He admitted to stealing to sustain his drug habits.

Psychiatric History:

[63] The Offender’s first documented psychiatric admission was in 2007 when he was approximately 23 years old.

Homewood Health Centre, Guelph, Ontario

Admission: April 30, 2007 to May 22nd, 2007

Discharge Diagnosis: Adjustment Disorder with depressed mood and disturbance of conduct, Intermittent Explosive Disorder, Alcohol Abuse, Cannabis Abuse, Amphetamine Abuse, ADHD.

He was discharged with medical prescriptions and community supports but he failed to follow up with same.

Homewood Health Centre, Guelph, Ontario

Admission: June 4th, 2012 to June 26th, 2012

Discharge Diagnosis: Substance Induced Psychotic Disorder, Cannabis Dependence, Intermittent Explosive Disorder, ADHD combined type.

On June 26th, 2012, he was angry and agitated and he discharged himself against medical advice.

Oakville-Trafalgar Hospital, Oakville, Ontario

Admission: July 3rd, 2012 to July 5th, 2012

The Offender was transferred to the hospital from Maplehurst Correctional Facility on a Form 1 after he presented as anxious, restless, agitated and unpredictable. He described hearing voices for about 4 weeks prior to admission. While in detention he was smearing and eating feces and drinking urine. He attempted to hang himself.

[64] He was stabilized in hospital and diagnosed on discharge with withdrawal symptoms, intense anxiety, agitation and possible psychotic symptoms.

[65] The Offender currently has no source of income.

[66] The Offender has no professional support network.

Summary of Mental Status Examination:

[67] The Offender remained psychotic in the initial phase of his hospital admission, presenting with thought disorganization, grandiose ideation, distractibility, a subjective experience that his thoughts were racing, episodes of agitation, irritability and an altercation with a co-patient requiring staff intervention. He experienced auditory hallucinations and felt an external force was either pushing him to do things or restricting him from doing things.

[68] During the course of his hospital admission his mental status improved with antipsychotic medications. His medications on discharge are

- (1) Flupenthixol Decanoate 20 mg q2weekly (injectable antipsychotic);
- (2) Olanzapine (Zydis) 10mg twice daily (oral antipsychotic); and
- (3) Epival 500 mg twice daily (mood stabilizer).

Summary of Psychological Assessment Report:

- [69] His cognitive functioning falls in the borderline range (4th percentile).
- [70] His immediate memory and attention skills suggest impairment with both falling at or below the 1st percentile.
- [71] According to test results he reads at the grade 4 level.
- [72] The Offender admits to long standing polysubstance abuse. When under the influence of alcohol, or other substances, he admits that he can become rather hostile, angry, and violent.
- [73] “He has low self-esteem and his self-deprecation prevents him from asserting himself or achieving any level of success. He reports feeling cheated and misunderstood in life. ...it is his general view that his abusive childhood has prevented him from achieving his full potential...he displays a tendency to act in a passive-aggressive manner and will withdraw into fantasy solutions or become moody and anxiously depressed to protect himself against loss of support. He has difficulty trusting others and consequently acts out impulsively and obstructively, which serves to reinforce his negative beliefs. He is emotionally rather fragile and the slightest disappointment or loss will trigger a negative reaction. And, without the appropriate skills to manage his experience, he engages in self-destructive behaviour.”
- [74] Test results suggest the presence of Depression, Substance Dependency, Alcohol Abuse and Antisocial Personality Disorder.

Risk Assessment

- [75] “Mr. Hill is a High risk-needs individual, which translates to there being a 76 percent chance of him re-offending within one year of release. Mr. Hill’s criminal record, poor employment record, financial situation, substance abuse, psychiatric issues, along with his unstable housing situation and poor family relationships are identified as his primary risk factors. In order to ameliorate risk, treatment addressing each of these areas is highly recommended.”
- [76] The Offender has been assessed as being a “High risk to act out aggressively”.
- [77] “In terms of historical risk factors, Mr. Hill’s age at first violent incident (harming animals as a child), employment problems, substance use problems, diagnosis of antisocial personality disorder, and early maladjustment issues are of concern. With respect to the clinical items, Mr. Hill’s lack of insight, negative attitudes, symptoms of major mental illness, impulsivity, and unresponsiveness to treatment are the identifiable risk factors. It is noted that each of these areas appears to be stable and managed in a supervised hospital setting. In terms of risk management, the fact that he does not have

any specific long term plans, has very little social support in the community, and demonstrates poor stress management skills are cause for concern.”

[78] In his summary, Dr. Chaimowitz concludes that the Offender has a psychotic illness, namely Schizoaffective Disorder, Bipolar type; he also meets the criteria for the diagnosis of Antisocial Personality Disorder and Cannabis Dependence as per the DSM 1V-TR.

[79] Dr. Chaimowitz repeats that Mr. Hill presents as a high risk to re-offend.

[80] “When under the influence of substances and when off of his medications, his risk to re-offend or become violent would be acute.”

[81] Dr. Chaimowitz makes 5 recommendations as to how Mr. Hill’s risk to re-offend can be addressed when he is returned to the community which include continuing with his antipsychotic medication regime; psychiatric health services; abstaining absolutely from consumption of non-medically prescribed drugs and alcohol; counselling to address anger management, problem solving, and vocational skills.

Position of the Parties:

Ancillary Orders

[82] The parties agree that a DNA Order on the count of Break/Enter and commit Robbery is required.

[83] The parties agree that a s. 109 Weapons Prohibition Order for Life is required.

[84] The parties agree that the circumstances of these offences constitute a Home Invasion as defined in the case law and which is a mandatory aggravating sentencing factor as set out in s. 348.1 of the CCC.

Crown Position

[85] The Crown submits that a sentence in the 8 year range is required to address all relevant sentencing principles in this case.

[86] The Crown submits that the 9 months of pre-trial custody served can be deducted from their proposed range.

[87] The Crown requests that the Court consider delaying the Offender’s parole eligibility period until half of his sentence has been served pursuant to section 743.6 of the CCC.

Defence Position

[88] Defence counsel submits that a sentence of 4 years over and above the pre-trial custody served would address the sentencing principles in this case.

[89] This position is advanced based on the Offender’s age, non-extensive criminal record, his guilty plea and expression of remorse, his inculpatory statement to the police, the fact that this was not a pre-meditated home invasion and the fact that the Offender was cooperative with the Forensic Assessment and is now stabilized on antipsychotic medications.

Case Law:

[90] The following cases were referred to by counsel in their submissions:

R. v. Wright [2006] O.J. No. 4870 (OCA)

A sentence of 8 years was upheld by the Ontario Court of Appeal.

The Offender pled guilty to charges of robbery with a firearm and being disguised with intent to commit an indictable offence. The offences occurred in the context of a home invasion. The sentencing judge concluded that the five to eight year range for home invasions referred to by the Court in *R. v. Wang* and *R. v. Ferreira* had subsequently moved up to something in the range of seven to ten or eleven years on the basis that “the Court is having to recognize that this kind of offence merits greater punishment.”

At the time of sentencing, the appellant was 27 years of age. He had a prior criminal record involving three convictions for theft under \$5,000.00, one conviction for attempted theft under \$5,000.00, and one conviction for failure to attend. He was strongly supported by his friends and family who described his conduct as “out of character”. The appellant expressed remorse. The sentencing judge gave priority to the objectives of deterrence and denunciation.

The Ontario Court of Appeal noted that the courts had moved away from the notion of a firm “range” of five to eight years imprisonment for crimes involving home invasions given the myriad of circumstances in each individual case. The cases referred to reflected a gamut of sentencing dispositions in “home invasion” cases from as low as four or five years, to as high as 11 to 13 years. Home invasion cases require careful examination of the circumstances of the particular case in question, of the nature and severity of the criminal acts perpetrated in the course of the home invasion, and of the situation of the individual offender.

[91] *R. v. J.S. (a young person) [2006] O.J. No. 2654 (OCA)*

The Ontario Court of Appeal discusses what a home invasion offence consists of at paragraphs 32

through to 37:

Consistent with the theme outlined in para. 30 above, there appears to be general agreement in these authorities that the main features of home invasion include breaking and entering a dwelling place for purposes of committing a theft or robbery, knowing that (or being reckless as to whether) the home is being occupied, and using or threatening to use violence. The presence of weapons is often a factor, as is the confinement of the occupants of the home in some fashion.

For the offence to qualify as a home invasion, I would add to the foregoing that the entry to the dwelling need not be only for the purposes of robbery or theft - or result in those offences being committed. The crimes committed within the dwelling may include other offences involving violence against the person, as, for example, assault, sexual assault, or unlawful confinement.²

There is also widespread agreement in the authorities that such offences are very serious because they represent a violation of the sanctity of the home and of the sense of security people feel when in their homes -highly cherished values in our society - and because they are frequently perpetrated against vulnerable individuals. As Nordheimer J. observed, in *R. v. H.(P.)*, *supra*, at para. 73:

Home invasions are particularly threatening to individuals, because such robberies strike at the fundamental and natural desire and expectation that every person has, that is, to feel safe and secure in their own homes. Whatever may happen in the outside world, people have an innate feeling that their homes are their one inviolate sanctuary. See also *R. v. Matwiy*, *supra*, at 263.

In relation to sentencing, however, a word of caution is in order.

The label "home invasion" is elastic and can cover a broad range of offences. Judges have warned against generalizing across all home invasions when determining an appropriate sentence. One size does not fit all. See, for example, *R. v. Pakoo*, *supra*, Kroft J.A. at paras. 55-56; *R. v. Bernier* (2002), 177 C.C.C. (3d) 137 (B.C.C.A.) Southin J.A. at paras. 37-38; *R. v. C. (A.J.)* (2004), 186 C.C.C. (3d) 227 (B.C.C.A.) Finch C.J.B.C. at para. 1.

In *Pakoo*, Justice Kroft advised:

The use of the general description ("home invasion") alone is of no concern. The problem arises because once the label has been affixed, there is an assumption on the part of judges and others, that conviction will usually be followed by a sentence confined to [a certain range].

He concluded by expressing (at para. 65) his desire to assure that the sentence which we have imposed be seen as one based on cases with similar facts and the sentencing guidelines set forth in the Code, not simply on the "home invasion" label or the constraints that often come with it.

[92] *R. v. Pilon* [2012] O.J. No. 575 (OSCJ) C.T. Hackland, J.

In this case, the Crown applied to have the offender declared a Long-Term Offender pursuant to s. 753.1 of the CCC.

The offender was convicted of robbery, forcible confinement and choking resulting from a home

invasion which included an assault on an elderly woman. On the same day that he committed these offences, the offender committed two armed robberies.

At issue was whether there was a substantial risk that the offender would re-offend and how the totality principle should apply to the sentences for all the offences committed that same day.

The offender was 44 years old and had a long record of 52 convictions. There had been instances of serious violence, usually associated with impairment by drugs. During his many years of incarceration, there were a considerable number of disciplinary offences. He was diagnosed with anti-social personality disorder which inhibited pro-social behaviour and was a predictor of a tendency to engage in violent antisocial behaviour.

He had limited employment opportunities and lacked family support. Rehabilitation was not a consideration.

The offender was a career criminal and the home invasion cried out for a sentence reflecting society's revulsion at this cowardly conduct.

He was assessed at being a high risk to re-offend generally and a moderate risk to re-offend with violence.

He was designated a Long-Term Offender and sentenced to five years imprisonment followed by five years supervision. This sentence was consecutive to the 6 years he was sentenced to on the robberies.

[93] *R. v. Wilson* [2008] O.J. No. 5790 (OCJ) J. Kukurin J.

The 23 year old offender pled guilty to a pre-planned home invasion committed with others, and a number of other offences.

The aggravating factors of the home invasion were thoroughly considered. No victim impact statements were filed but the Court inferred that the victims were terrified at the time with no long lasting effects. "The only evidence of threats, aside from the obvious presence of weapons and the forced entry, were demands for money. The perpetrators took what they came for and left. It does not appear that they physically restrained the victims or that they damaged the premises."

The offender was sentenced to 4 years on the robbery alone after considering the totality principle on other offences.

I note that there was no Risk Assessment referred to in this case.

[94] *R. v. McNeil* [2007] O.J. No. 5096 (OCJ) L.M. Baldwin J.

Circumstances related to a home invasion offence were established.

The Crown had difficulties in proving the case where the victim of the home invasion was seriously injured. The offender was a 20 year old native.

Offender sentenced to 41 months on top of 10 months, 18 days pre-trial custody.

The Crown's application to delay parole ineligibility was granted given the offender's high risk to re-offend violently.

[95] *R. v. Clements* [1997] O.J. No. 5940 (OCJ) Jennis J.

The offender pled guilty to a home invasion offence where the victim sustained serious injuries.

Offender was sentenced to 6 years on top of 7 months pre-trial custody.

Decision:

Mitigating Factors

[96] This was a plea of guilt. However, the Crown had an overwhelming case given that this Offender was found by the police straddling the victim as she lay on the floor, while he held a large knife to her throat. It would not have been necessary for the Crown to call the victim to give evidence in this case if the matter had proceeded to trial.

[97] The Offender provided an inculpatory statement to the police which is considered as an early admission of guilt and expression of remorse.

[98] The Offender does not have an extensive criminal record, however, the record does not reflect the life-time of crime that this Offender has acknowledged being engaged in as per the Forensic Mental Health/Risk Assessment Report.

[99] The Offender cooperated with the Mental Health Assessment process and for the first time in his life, he is now stabilized on a regime of anti-psychotic medications.

Aggravating Factors:

[100] This was a Home Invasion offence that resulted in the forcible confinement of a vulnerable victim for 4 to 5 hours. This home invasion did not end until the police forced entry into the home.

[101] The 86 year old, legally blind victim in this case, continues to suffer trauma as a result of these crimes.

[102] The victim was put in a choke-hold, pulled backward, kicked down some stairs and to the ground. A large knife was held to her throat as the Offender straddled her. Her hand was cut as she struggled to get free and she sustained bruising. She was threatened with bodily harm.

[103] The Court of Appeal has stated that home invasion is a serious and increasingly prevalent crime in our society, normally warranting a lengthy penitentiary term which reflects the sentencing objectives of protection of the public, general deterrence and denunciation, see *R. v. Wright (supra)*.

[104] This Offender is at high risk to re-offend both generally and violently (see Risk Assessment section noted above).

[105] It is noteworthy that he had just 2 days before these offences, been in treatment at the Homewood Health Centre in Guelph. He discharged himself against medical advice from this protected setting and committed these horrific crimes.

[106] After careful consideration of all relevant sentencing factors as set out in sections 718, 718.1, 718.2 and 348.1 of the *CCC*, I have determined that a **total sentence of 8 years in the penitentiary is warranted which will be imposed on top of the 9 months of pre-trial custody that has been served to date.**

[107] The Information shall be endorsed as follows:

8 years (on top of 9 months of pre-trial custody) on the Break/Enter and Commit Robbery conviction;

8 years concurrent on the Forcible Confinement conviction;

6 months concurrent on the Assault Resist Arrest conviction.

Request for delayed parole ineligibility:

[108] I have determined that the parole board will be in the best position to judge the progress of this Offender as he serves his 8-year sentence. They will have current information as to how compliant he remains with his antipsychotic medications and how he behaves while incarcerated. I will leave it to them to determine when the time has come to safely release this Offender back into the community.

[109] On consent of counsel, I order that the Mental Health/Risk Assessment Report accompany Mr. Hill to the institution to assist them in managing this Offender.

Ancillary Orders:

- [110] There will be a s. 109 weapons prohibition for LIFE;
- [111] A DNA sample will be taken;
- [112] The Victim Fine Surcharges are waived.
- [113] The remaining counts are withdrawn at the request of the Crown.
- [114] I thank both counsel for their assistance in this matter.

Released: March 26, 2013

Signed: "Justice Lesley M. Baldwin"