R. v. Hill, [2016] O.J. No. 7351

Ontario Judgments

Ontario Court of Justice
Windsor, Ontario
M.A. *Rawlins* J.

Heard: February 1, 2016.

Oral judgment: February 1, 2016.

No. 15-17281

[2016] O.J. No. 7351

Between Her Majesty the Queen, and Michael Hill

(89 paras.)

Counsel

C. Houle, Counsel for the Crown.

A. Ammar, Counsel for the Accused.

REASONS FOR SENTENCE

M.A. RAWLINS J.

- 1 Thank you, stand up Mr. Hill. Now is your opportunity, Mr. Hill, to say anything if you so wish. You are not required to, but this is your opportunity.
- 2 MR. HILL: No, Your Honour.
- 3 THE COURT: Okay.
- **4** Now, Mr. Hill, I look at your record and it is not an enviable record. You have had difficulties with the law before. You have spent extended times in custody and yet nothing seems to, even the kindness of these people to assist you, has seemed to deter from what I will call his straying.
- **5** The Crown, this is more than straying. The Crown characterized it as a despicable act. And what makes it despicable is we in society recognize certain groups as having need for nurturing and care; the elderly, the young, the animals, okay, who cannot, who depend on ready bodied adults to take care of them to survive and in letting them down in any way, be it merely depriving them of one meal, is a hardship for them. Going to the extents that

you did, for what I understand the \$60 fee that was given to you to take this animal to the Humane Society to put it up for adoption, is an animal's life really worth only \$60 to you? I say that because I think, I can't recuse myself because we're all animal lovers, we're all dog lovers and I've got my dog that's now going to be seven the same way you were getting rid, or they were getting rid of that dog, from a family who had given birth to a child who then they recognized was massively allergic to the dog and their loss was my gain because I got a wonderful dog out of and it was a wonderful dog to begin with. And had you looked, had you extended it, you probably could have, still could have kept the \$60 and found a family for that dog instead of doing what you did.

- **6** Now, the maximum sentence that is available under this, and the Crown did proceed by indictment, is five years and I want people to understand according to law the maximum sentence is saved for the worst offender in the worst circumstances. So you say, well, what could be worse than this? Well, what if he did it again. What am I supposed to say? Well, you got five years the first time, so you know what, you get five years the second time. And then what if he did it again? Well, this is your third time and you can only get five years because that is the maximum sentence. So you have to look at those factors. He has never done this before, okay? So five years is out of the question.
- 7 It is the same as if you have kids at home and the first time they come home late from curfew you say, okay fine, you are grounded for the weekend. You do not ground them for the rest of their lives because where do you go from there? You have nowhere to go.
- **8** So you start at one level and then you increase until the person finally gets it that this is not acceptable behaviour and anything that contravenes the *Criminal Code* is not acceptable behaviour, because this whole book I have with all these sections could read down to one thing, do unto others as you would have them do unto you. That is that whole book. You don't want to be knifed, don't knife somebody. You don't want to be hit, don't hit somebody. You don't want to have your dog taped up or you will be deprived of something, don't do it to somebody else.
- **9** That is all that book is and for some reason you seem to have trouble, after looking at your record, in understanding that. And these people saw worth in you, that's the saddest part. They saw worth in you and they said, we are going to try to help this man. We know about his background, we know about the number of years he's spent incarcerated, but we will give him a chance and that is how you repay them? And the difficulty you are going to have going forward is as you have seen by the petition and the number of the members of the public that are here today, people take this very seriously and wherever you go people will it seriously. So you are going to have a real hurdle to get over the fact that this is what you have done. I do not think it is impossible because that is another thing we believe in, in rehabilitation. The Esipu's believe in rehabilitation, the criminal justice system believes in rehabilitation. You have a whole life ahead of you. You can do good. You can turn it around, but you have got to understand that acts of this nature, I am sure you have found it difficult in incarceration, make it difficult even among your peers of the criminal class. They do not accept this type of activity either.
- 10 So with respect to this matter there is a joint position. It is unusual, I will tell you why it is unusual, because even given your record it is at the very highest end of the spectrum for a first offender of this nature and it is penitentiary because we had everything from zero to five years available to us and despite the fact that there is nothing of this nature or violence of this nature on your record you are going to go to jail for two years.
- 11 It will be followed by 3 years' probation as well as an order pursuant to section 447.1(a) which prohibits you from owning or having the custody or control or residing in the same premises as an animal or bird for the period of 25 years commencing on today's date. That is the maximum allowed in the *Criminal Code* and it will be the maximum. So that prevents anything of that nature from happening.
- **12** In addition to the two years there is a victim fine surcharge, since it is indictable, for \$200. You have six months to pay.
- 13 And I have taken into account with respect to the two years, pre-sentence custody in the amount of, and I have

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it here, 95 days, that is 55 days at, no sorry, that is the wrong one, sorry. The presentence custody was, turn the page, sorry, Westlake, Hill, someone is going to have to refresh my, I think it was three months, it is at 1.5, or is it not?

- 14 MR. AMMAR: I think it was 60 days, he was arrested on December 18th.
- 15 MR. HILL: Forty-five.
- **16** THE COURT: So it is, but it was at 1.5. We have to give it at 1.5, so it is 55 days today's date from the time he was arrested? You can tell me the credit in a minute. We will go on to the probation. The terms of your probation upon your release sir:
- 17 You will keep the peace and be of good behaviour. Oh sorry, I have got to get the probation book, statutory terms.
- 18 You will appear before the court when required to do so.
- **19** You will notify the court or probation officer seven days in advance of any change of name or address and promptly notify the court or probation officer of any change in employment or occupation.
- **20** Reporting, you will report in person to a probation officer within two working days of your release from custody, that is sub (2) sorry, and after that at all times and places as directed by the probation officer or any person authorized by a probation officer to assist in your supervision.
- 21 You will cooperate with your probation officer. You must sign any releases necessary to permit the probation officer to monitor your compliance and you must provide proof of compliance with any condition of this order to your probation officer upon request.
- **22** You will, sub (6), you will not contact or communicate in any way directly or indirectly by any physical, electronic, or other means the named complainants in this matter and that would be Mr. Esipu, his first name is, sorry, do you have it there Madam Clerk?
- 23 MR. HOULE: Adam.
- 24 THE COURT: Adam?
- 25 MR. HOULE: Yes.
- 26 THE COURT: And it is E-S-P-I-U?
- 27 MR. HOULE: E-S-I-P-U.
- 28 THE COURT: I-P-U and Ms. Hem's first name was?
- 29 MR. HOULE: Jessica.
- 30 THE COURT: Jessica Hems.
- 31 MR. HOULE: Two 'S's'
- 32 THE COURT: Is there anyone else?

- 33 MR. HOULE: No, that's all.
- **34** THE COURT: Nor will you attend at any place where you know any of these named persons above to live, work, go to school, frequent or place you know that they may be.
- **35** I will reinforce what is in section, the prohibition order, that you will abstain from owning or having the custody or control of or residing in the same premises as an animal or bird and that is for the same three year period.
- **36** We will move onto counselling. Here I signed the form, Madam Clerk. You were asking for a weapons prohibition as well, were you not?
- 37 MR. HOULE: I was, yes.
- **38** THE COURT: Okay, I will do a weapons section nine, you will not possess any weapons as defined by the *Criminal Code*, for example a b-b-gun, pellet gun, firearm, imitation firearm, cross-bow, prohibited or restricted weapon or device, ammunition or explosive substance or anything designed to be used or intended for use to cause death or injury or to threaten or intimidate any person.
- **39** Counselling, you will attend and actively participate in all assessment counselling or rehabilitative programmes as directed by the probation officer and complete them to the satisfaction of the probation officer. I am going to tick the section that says, For psychiatric or psychological issues and other.' The reason I do that is it was said in the petition and there have been studies to the effect that and I am not saying that you are, that persons who have become serial killers start with small animals and then work their way up to humans, okay? So there is obviously some issues there that if you could subject this animal to this without concern about whether the animal is going to die. I really think they have to be addressed.
- **40** You shall sign any release of information form as this will enable your probation officer to monitor your attendance and completion of any assessments, counselling or rehabilitative programmes as directed.
- **41** You shall provide proof of your attendance and completion or any assessments, counselling or rehabilitative programmes as directed.
- **42** There is a section of the Code dealing with not to communicate while he is in custody.
- 43 MR. HOULE: Yes, I have one other probationary term that I'd like you to consider as well please, Your Honour.
- 44 THE COURT: Okay, I don't, I think it's 487, it's that one that you do in bail court...
- **45** CLERK OF THE COURT: I'll check, Your Honour.
- **46** THE COURT: ...not to communicate while he is in custody. No, that's the search warrant section, 468, it's the one they use in the bail court because my non-association only begins once he's on probation.
- 47 REPORTER'S NOTE: Discussion between the court and the clerk.
- **48** THE COURT: Pursuant to section 743.21, you shall not associate or communicate directly or indirectly with the same parties, Ms. Hems and Mr. Esipu. That covers you while you are in custody.
- 49 The prohibition, you were also seeking a prohibition order pursuant to section...
- 50 MR. HOULE: No, what I was going to ask you to consider was when Hr. Hill is placed on probation when he's

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released, can he be on a condition of probation to reside at a place approved of by his probation officer and that will...

- **51** THE COURT: So rather than just reporting where he is living and, because he's got to notify them within seven days of any change?
- **52** MR. HOULE: Yes, I understand that that will assist in the enforcement of the no pet provision, no animal provision once he's actually placed on probation.
- 53 THE COURT: Okay, so the residence condition, sub (3) Madam Clerk.
- 54 CLERK OF THE COURT: Yes.
- **55** THE COURT: Reside at a place, which means live, approved of by the probation officer and not change that address without obtaining the consent of the probation officer in advance.
- **56** MR. HOULE: Thank you.
- 57 THE COURT: Okay, so we'll do that one.
- 58 CLERK OF THE COURT: Thank you.
- 59 THE COURT: And the prohibition order you were seeking was pursuant to section...
- 60 MR. HOULE: One-ten.
- 61 THE COURT: ...110, 10 years?
- 62 MR. HOULE: Yes, please.
- **63** THE COURT: Pursuant to section 110 of the *Criminal Code* you're prohibited from possessing any firearms, ammunition, explosive substances, for a period of 10 years. Is this DNA eligible?
- 64 MR. HOULE: That's a good question, Your Honour, I don't believe that it is. I don't believe that it is.
- **65** THE COURT: Okay, even though it's proceeded by indictment.
- **66** CLERK OF THE COURT: With a five year sentence.
- 67 THE COURT: If you could just have a brief moment so it doesn't have to come back if it is.
- 68 MR. HOULE: Yes, that's a good point.
- 69 CLERK OF THE COURT: I don't have my chart, Your Honour, so I can't check.
- **70** MR. HOULE: Usually there's a chart here, I don't have the chart either.
- 71 THE COURT: You don't have the chart either. The Code. You can't help us Mr. Ammar, can you?
- **72** MR. AMMAR: I'm looking.

- 73 CLERK OF THE COURT: Hold on, Your Honour, here, I've got one right here.
- 74 THE COURT: You've got it, okay. The section we have is section 445.1, proceeded with indictably.
- 75 CLERK OF THE COURT: I don't see it. Just let me see here.
- 76 MR. HOULE: May I see Exhibit 1 please? Can I look at his record? His DNA may already be on file.
- 77 CLERK OF THE COURT: It is.
- 78 THE COURT: It probably is. It is on there apparently.
- 79 CLERK OF THE COURT: It is secondary, 445.
- 80 MR. HOULE: Secondary?
- 81 CLERK OF THE COURT: Secondary.
- 82 THE COURT: Are you asking me exercise my discretion?
- 83 MR. HOULE: Yes, please, thank you.
- **84** THE COURT: I will do so. I will order that you provide a sample of your blood with the DNA registry for future comparison. Are there any other terms or conditions which would be of assistance to your client?
- 85 MR. AMMAR: No, Your Honour, thank you.
- **86** THE COURT: On behalf of the public?
- **87** MR. HOULE: No, thank you.
- **88** THE COURT: Now, Mr. Hill, we believe in rehabilitation. Good luck to you. Take this as a wakeup call that things have to change and that they're going to change as of today, okay? Good luck to you, sir.
- 89 MR. HILL: Thank you.

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