Court of Queen’s Bench of Alberta

Citation: R v Admussen, 2022 ABQB 406

Date: 20220613
Docket: 181549163Q1
Registry: Calgary

Between:

Her Majesty the Queen

Crown

- and -

Taylor Leigh Admussen

Accused

Reasons for Decision
of the
Honourable Mr. Justice Colin C.J. Feasby

Introduction

[1] Ms. Admussen participated in a home invasion and pleaded guilty to robbery (*Criminal Code*, s 344(1)(b)), unlawful confinement (*Criminal Code*, s 279(2), and break and enter for the purposes of committing theft (*Criminal Code*, s 348(1)(b)/334). The home invasion resulted in physical harm to the victim and the theft of money, firearms, and a vehicle. By any measure this was a serious crime. The Court of Appeal, recognizing the seriousness of home invasions, has set the starting point sentence at 8 years.

[2] The reasons that follow explain why in the present case Ms. Admussen should be sentenced to less than the starting point sentence. Ms. Admussen at the time of the home invasion was 19-years old and under the control of her 28-year-old drug-dealing boyfriend, whose associates carried out the home invasion. Ms. Admussen’s vulnerability and lack of agency as well as her lack of participation in the violent acts of the home invasion distinguish her

from the type of home invasion participants considered by the Court of Appeal in setting the starting point sentence. Ms. Admussen's sentence is also informed by the positive presentence reports and her potential for rehabilitation.

[3] The facts set out in these reasons are drawn from the Agreed Statement of Facts and from the Alberta Health Services Forensic Assessment & Outpatient Services (FAOS) Report and the Alberta Justice Presentence Report, both of which were entered as exhibits by agreement.

Ms. Admussen

[4] Ms. Admussen has had a difficult life. For much of her first 10 years, she lived with her grandparents because her mother was struggling with substance abuse and her father was absent. Sometime during those 10 years she was taken away from her grandparents and placed in a foster home for a period. She reports being sexually assaulted by a family member when she was six-years old.

[5] After leaving the care of her grandparents, Ms. Admussen lived with her father. At 16 she left home and dropped out of school. The following year when she was 17, Ms. Admussen's grandmother passed away unexpectedly. This marked the beginning of Ms. Admussen's life spiralling out of control.

[6] When she was 17, Ms. Admussen was raped by a stranger and her drug and alcohol use escalated. For the next several years, she was a daily user of methamphetamine and occasional user of other drugs, including MDMA and cocaine.

[7] At 18, Ms. Admussen met the man who would become her boyfriend and the architect of the home invasion at the heart of this case. This man was 10-years older than Ms. Admussen and involved in drug-dealing. He was physically, emotionally, and verbally abusive toward Ms. Admussen. She reports that at various times he beat her up, tried to stab her, and caused her to miscarry as a result of his violence.

[8] Though not in the evidential record, counsel for Ms. Admussen advised that while she was with her boyfriend and in the period leading up to the home invasion, she was periodically involved in sex work. The Crown did not object to this submission.

[9] The picture revealed by the presentence reports is of a young woman who was extremely vulnerable and fell under the coercive control of an older man. This control was maintained in various ways including through threats of violence and actual violence. The Crown acknowledged in its written submission that "it is clear from the FAOS report that Taylor Admussen was subject to pressure, and was vulnerable as a result of her addictions and relationship dependence."

[10] Following her arrest, Ms. Admussen served 152 days in the Edmonton Remand Centre. During her incarceration at the Edmonton Remand Centre, Ms. Admussen has quit drugs "cold turkey." She has now maintained her sobriety for almost three years. Her relationship with her abusive boyfriend also ended with her arrest and incarceration. She is now in a stable relationship and enjoys the support of her new partner's family. The Presentence Report explains that Ms. Admussen "presents with employment, support from her family, and a stable living situation. She appears willing and eager to work on change and move forward living a prosocial life." The FAOS Report concludes that she is a low risk to re-offend.

The Offences

[11] The victim was known to Ms. Admussen's boyfriend and, according to her, the victim used to sell drugs for him.

[12] Approximately a month prior to the home invasion, Ms. Admussen was directed by her boyfriend and/or her boyfriend's associates to strike up an online relationship with the victim.

[13] Ms. Admussen understood that the purpose of her striking up an online relationship with the victim was to enable her boyfriend's associates to gain information that would assist them in robbing the victim. She did not report the plan to rob the victim to the police or do anything to stop it from happening.

[14] The plan evolved from a simple robbery to Ms. Admussen being used to gain access to the victim's home. She explains that she did not want to participate in the home invasion, but she was afraid of her boyfriend and his associates who were all much older than her. She also says that she was afraid of what her boyfriend and his associates might do to her family, especially her younger sibling, if she did not comply.

[15] Ms. Admussen was instructed to engineer an invitation to the victim's home so that she could later provide her boyfriend's associates with access to the victim's home. The understanding was that Ms. Admussen was to party with the victim and have sex with him. Once the victim was sufficiently intoxicated or asleep, she was to alert her boyfriend's associates and let them into the victim's apartment.

[16] Ms. Admussen's boyfriend told her that she "had to do it" and she was unable to resist his direction. The Crown in its written submissions stated that "there is no reason to disbelieve her that her actions were in response to the directions of others."

[17] After maintaining an online relationship with the victim for several weeks, Ms. Admussen told the victim that she would like to meet him in person. Ms. Admussen went to the victim's residence early in the morning of October 9, 2018.

[18] Ms. Admussen and the victim drank alcohol and consumed cocaine before having sexual intercourse. As soon as the victim fell asleep, Ms. Admussen sneaked down to the front door of the victim's apartment building to let her boyfriend's associates in and brought them up the elevator to the victim's apartment.

[19] Once in the apartment, Ms. Admussen's boyfriend's associates went into the victim's bedroom, held a knife to his throat, and smashed a ceramic figure on his head. The victim was confined with zip ties. The victim was threatened with death, his right eyeball was cut with a knife, and a gun was pointed at him, all over a period of about three-hours.

[20] Throughout the violent phase of the home invasion, Ms. Admussen was in a different room and did not participate in the violence against the victim.

[21] The attackers stole several firearms and ammunition, cash, credit and debit cards, a laptop, and a 2018 Dodge Ram truck.

[22] The victim did not seek medical care nor did he file a victim impact statement. Despite these omissions, there can be no doubt that this must have been a traumatic episode for the victim.

Crown and Accused Positions on Sentence

[23] Both the Crown and counsel for Ms. Admussen recommend sentences less than the 8-year starting point for home invasions. The Crown and counsel for Ms. Admussen agree that there are some mitigating factors and no aggravating factors. As noted above, the Crown recognizes that Ms. Admussen was vulnerable and that she participated in the home invasion at the direction of others who held significant influence over her.

[24] There is also little disagreement between the Crown and Ms. Admussen with respect to factors relevant to determining her sentence. The disagreement between the Crown and Ms. Admussen's counsel is a matter of judgment as to how far to depart from the starting point sentence.

[25] The Crown's written submissions ask for a sentence of between 5 and 8 years. At the sentencing hearing, the Crown clarified that it was only seeking a sentence of 5 years. The Crown maintains that a five-year sentence is necessary despite mitigating factors because of the seriousness of home invasions generally and the seriousness of the particular home invasion in issue. The Crown put particular emphasis on the planning that went into the offences.

[26] Counsel for Ms. Admussen proposed a sentence of one-year followed by three years of strict probation. He submitted that the Court should view her as less culpable than others convicted of the same offences in comparable cases because she was vulnerable and subject to the influence or control of others involved in the offences. Counsel for Ms. Admussen also submitted that significant weight should be given to the positive presentence reports and her obvious efforts to turn her life around. In particular, he submitted that a long custodial sentence would jeopardize the progress that Ms. Admussen has made in rehabilitating herself.

Sentencing Principles

[27] The objectives of sentencing are set out in *Criminal Code* s 718. The objectives of sentencing are:

(a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[28] The fundamental principle of sentencing is proportionality. The *Criminal Code* s 718.1 provides that "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender." *Criminal Code* s 718.2 sets out additional principles applicable to sentencing, including that a sentence should be "increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender" and that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances."

[29] The Court of Appeal has provided guidance for sentencing in the context of offences that constitute home invasions. In ***R v Matwiy***, 1996 ABCA 63 the Court set the starting point sentence for home invasion at 8-years. The Court explained at para 30 the sentencing guideline applies to "[a] mature individual with no prior record" who:

> (a) plans to commit a home invasion robbery (although the plan may be unsophisticated), and targets a dwelling with intent to steal money or property, which he or she expects is to be found in that dwelling or in some other location under the control of the occupants or any of them;
>
> (b) arms himself or herself with an offensive weapon;
>
> (c) enters a dwelling, which he or she knows or would reasonably expect is occupied, either by breaking into the dwelling or otherwise forcing his or her way into the dwelling;
>
> (d) confines the occupant or occupants of the dwelling, even for short periods of time;
>
> (e) while armed with an offensive weapon, threatens the occupants with death or bodily harm; and
>
> (f) steals or attempts to steal money or other valuable property.

[30] A starting point is just that, a starting point. Brown and Martin JJ, writing for the majority in ***R v Parranto***, 2021 SCC 46 at para 37 explained that starting points are "not straitjackets." The task of a trial judge, according to Brown and Martin JJ, is to "demonstrate why the sentence is proportionate to the moral blameworthiness of the offender and the gravity of the offence" (para 40). They further explain that "[d]eparting from a range or starting point is appropriate where required to achieve proportionality" (para 40).

[31] Chief Justice Wagner in ***R v Lacasse***, [2015] 3 SCR 1089 at para 58 wrote that "[t]here will always be situations that call for a sentence outside a particular range." He went on to explain that "everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case." Wagner CJC expressed this concept using different words in ***R v Pham,*** [2013] 1 SCR 739 at para 8 where he said that a court must have regard to the "correctional imperative of sentence individualization."

[32] A proportionate sentence may combine custodial and non-custodial elements. The Supreme Court of Canada explained in ***R v Knott***, [2012] 2 SCR 470 at para 43:

> The sentencing objectives set out by Parliament in ss. 718 to 718.2 of the *Criminal Code* are best achieved by preserving – not curtailing – a sentencing court's arsenal of non-custodial sentencing options. Probation orders, where available and appropriate, serve that purpose well: They afford sentencing judges the flexibility to opt for shorter prison terms followed by community supervision, rather than the longer prison terms that they would have otherwise unnecessarily imposed to achieve the same ends.

[33] Much to the same effect as ***Knott***, the Court of Appeal in ***R v Wesslen***, 2015 ABCA 74 at para 37 held: "...the judicious use of probation orders, in conjunction with slightly shorter sentences for an aggregate period over two years, can meet the twin goals of rehabilitation and protecting society."

Application of the Sentencing Principles

Gravity of the Offence

[34] The Court of Appeal made it clear in ***Matwiy*** that home invasions "must be treated with the utmost seriousness" (para 26). Indeed, home invasions must be treated more seriously than armed robbery of a bank or commercial institution because "[i]ndividuals in their own homes have few of the security devices available to commercial institutions. They are often alone, with little hope that help will arrive. Such offences, whether they result in injuries or not, are almost always terrifying, traumatic experiences for the occupants of the residence often leaving them with a total loss of any sense of security" (para 26).

[35] An important distinction between home invasions and armed robberies of dwellings where occupants are present is advance planning. Ms. Admussen, though not the author of the plan, was certainly aware of it, and Ms. Admussen knew, or ought to have known, that violence was inevitable in the execution of the plan.

[36] While Ms. Admussen was aware of the plan and all that it entailed, consideration must be given to her role in the home invasion. There are important differences between the actions of Ms. Admussen and the elements of a home invasion described in ***Matwiy*** and reproduced above in these reasons at para 29. Ms. Admussen was not armed, did not confine the victim, or threaten the victim with death or bodily harm. To be sure, Ms. Admussen's boyfriend's associates did all those things to the victim. But Ms. Admussen was not present in the room when the victim was confined, threatened, and assaulted.

[37] The gravity of the offences committed by Ms. Admussen is significant, but it is not the same gravity contemplated by the Court of Appeal in setting the starting point in ***Matwiy***. Ms. Admussen's participation was essential to making the home invasion possible, but she was not armed and was not one of the people who threatened or assaulted the victim. The gravity of Ms. Admussen's actions weighs in favour of a sentence less than the 8-year starting point.

Responsibility of the Offender

[38] Ms. Admussen did not advance a defence of duress. Indeed, counsel for Ms. Admussen conceded that Ms. Admussen had some agency and that she could have stopped the home invasion plan by going to police. But it is nevertheless clear that she was vulnerable and under the influence and control of her boyfriend. Her participation in the home invasion was to a significant extent coerced. An important question for sentencing is to what extent may her coercion and reduced voluntariness be taken to account?

[39] Martin JA in ***R v Hennessey***, 2010 ABCA 274 at para 105 accepted, in dissent, that "evidence of duress may be taken as a mitigating factor in sentencing where such evidence is proven by the offender on a balance of probabilities." Justice Martin, however, was of the view that the accused in ***Hennessey*** was not entitled to rely on "duress or fear" as a mitigating factor because the accused failed to warn police when he had an opportunity to do so.

[40] The Ontario Court of Appeal in ***R v Olvedi***, 2021 ONCA 518 at paras 15 and 37 considered coercion short of duress in the context of an appellant convicted of delivering drugs. The Court noted that the trial judge considered threats from a drug dealer and a physical assault by one of the drug dealer's "goons" and that this coercion "reduced the appellant's moral blameworthiness" for the purposes of sentencing even though a defence of duress was not advanced at trial.

[41] Trial courts have recognized that coercion short of duress may be a mitigating factor in sentencing: ***R v Basit***, 2014 BCSC 868 at para 29; ***R v Ebanks***, 2012 ONSC 5002 at para 14; ***R v Holder***, 1998 CanLII 14962 (ON SC) at para. 30; ***R v Johnstone***, 2014 ABQB 647 at para 16.

[42] The Alberta Court of Appeal in ***R v Bunbury***, 2018 ABCA 346 and in ***R v Sargent***, 2016 ABCA 104 appears to have accepted the idea that coercion short of duress can be a mitigating factor in sentencing, but in both cases the Court of Appeal determined that as a factual matter coercion was absent or the level of coercion was insufficient to be a mitigating factor. Berger JA, dissenting in ***Sargent***, disagreed with his colleagues' version of the facts and would have sustained the trial judge's decision to give weight to evidence of coercion short of duress as a mitigating factor in sentencing.

[43] The law that emerges from the cases cited in the preceding paragraphs is that coercion that is insufficient to establish the defence of duress may be considered as a mitigating factor in sentencing. Coercion short of duress may be considered as a mitigating factor where the defence of duress failed at trial (***Ebanks***), where the defence of duress was not raised at trial (***Olvedi***), or where the accused pleaded guilty (***Johnstone; Basit***). The accused must prove on a balance of probabilities that there were threats or other forms of coercion to participate in the offence that reduced the moral blameworthiness of accused. The accused is not required to establish all the elements of the defence of duress.

[44] Ms. Admussen was only 19-years old and was in a relationship with an abusive older man at the time of the offence. She was also, at that time, dependent on drugs. The presentence reports leave little doubt that she was coerced into participating in the home invasion by her boyfriend and her boyfriend's associates. Indeed, the Crown's written submissions concede that she was "vulnerable as a result of her addictions and relationship dependence," "subject to pressure," and accepted that "her actions were in response to the directions of others."

[45] The presentence reports detail both an immediate threat from Ms. Admussen's boyfriend saying that she "had to do it" and a pattern of violent behaviour by Ms. Admussen's boyfriend that gave rise to a reasonable apprehension on her part that he would harm her if she did not comply with his command. Given that the presentence reports were entered into evidence by agreement and the Crown did not object to the content of the presentence reports in either written or oral submissions, I accept the facts stated in those reports as true.

[46] The coercion applied to Ms. Admussen to participate in the home invasion reduces her moral blameworthiness. Together with other mitigating factors, the coercion applied to Ms. Admussen justifies a significant departure from the 8-year starting point sentence for offences that constitute a home invasion. At the same time, it must be observed that Ms. Admussen is not blameless. Her counsel conceded that she had some agency and could have alerted police to the home invasion before it occurred or even during its early phases. Given that she was the person who facilitated access to the victim's home, an essential role in this home invasion, a significant sentence is warranted.

[47] Parity is an important principle in sentencing. In particular, similarly culpable co-accuseds should receive similar sentences (see, for example, ***R v Mohamed***, 2022 ABCA 153 discussing parity in the context of an offence similar to a home invasion). However, in the present case no information was available to the Court with respect to what happened to the other participants in the home invasion. Regardless, none of the co-accuseds are similarly situated to Ms. Admussen for the reasons set out herein.

Denunciation, Deterrence, and Rehabilitation

[48] The Court of Appeal's starting point sentence of 8-years for home invasions reflects, amongst other things, the imperative of denouncing and deterring home invasions. The home invasion that is the subject of this case was serious and the conduct of Ms. Admussen, though less morally blameworthy than the other participants due to her coercion, is nevertheless worthy of denunciation. Similarly, it is important for Ms. Admussen to serve a significant sentence to achieve the purposes of general deterrence. Others contemplating similar crimes need to know that they will face significant punishment.

[49] Sentencing also serves the purpose of specific deterrence. However, in the present case, specific deterrence is of less importance given that Ms. Admussen is at low risk to reoffend given that she has, to this point, resolved her substance abuse problem, separated herself from her former relationship, and established a stable life for herself. A sentence intended solely to deter Ms. Admussen from re-offending would serve no purpose.

[50] Ms. Admussen's youth and the progress that she has made since her arrest indicates that she is a good candidate for rehabilitation. She has already demonstrated over a period of more than two-years that she can be a productive member of society. The presentence reports, however, indicate that she has more work to do to rehabilitate herself and recommends a term of supervision to follow any custodial sentence to facilitate this process.

[51] The Crown cites ***R v Gandour***, 2018 ABCA 238 for the proposition that there must be evidence that the prospect of rehabilitation is real; it is not enough to express optimistic sentiments about education and employment (para 44). Ms. Admussen, unlike the accused in ***Gandour***, is employed in two jobs and has not breached the terms of her release. As noted, she has also stopped using drugs. The presentence reports are clear that her prospects of rehabilitation are good.

[52] ***Gandour*** also stands for the proposition that youth is not a mitigating factor where there is already "considerable prior experience in the criminal justice system" (para 42). Ms. Admussen, again unlike the accused in ***Gandour***, was not involved with the criminal justice system prior to the offences in this case. Ms. Admussen's youth is a mitigating factor and relevant to her potential for rehabilitation. Her youth also distinguishes her from the "mature" offender in the archetypal home invasion described in ***Matwiy***.

Appropriate Sentence for Ms. Admussen

[53] The preceding discussion shows that while Ms. Admussen committed serious offences, her moral blameworthiness is reduced by reason of her role in the offences and the fact that she was coerced to participate in the offences. There are also a number of mitigating factors that weigh in favour of a reduction of Ms. Admussen's sentence including her guilty plea, youth, lack of criminal record at the time of the offences, low risk of recidivism, and potential for rehabilitation. There are no aggravating factors. For all of the reasons set out herein, I conclude that the following sentence is appropriate:

(a) a penitentiary sentence of two-years and 228 days for each of the three offences to be served concurrently. The sentences shall be reduced by reason of pre-trial time served at the Edmonton Remand Centre (152 days x 1.5 = 228 days credit) to a penitentiary term of an even two-years; and

(b) a three-year non-custodial sentence of probation commencing after completion of the penitentiary sentence as follows:

i. keep the peace and be of good behaviour;

ii. regular reporting to a probation officer;

iii. live where approved by the probation officer;

iv. take any counselling or assessments as directed by the probation officer including, but not limited, to substance use and mental health;

v. sign any release or waiver of information as required by the probation officer;

vi. provide proof, in writing, of completion of any counselling directed to be taken by the probation officer;

vii. abstain from using, possessing or consuming any intoxicating substances;

viii. maintain employment and/or be engaged in school or vocational training;

ix. Five (5) hours of community service per week at an organization to be approved by the probation officer. If Ms. Admussen is in school in addition to being employed, the probation officer shall have the discretion to reduce the number of community service hours required per week; and

x. except as directed by the probation officer or as required by employment or community service approved by the probation officer, subject to a curfew of 8pm to 6am.

[54] Ms. Admussen's custodial sentence after giving credit for time served is twice the length proposed by her counsel. The total duration of the sentence after accounting for time served is equal to that sought by the Crown though it is divided between custodial and non-custodial phases. Consistent with ***Knott*** and ***Wesslen***, the non-custodial phase recognizes that Ms. Admussen poses little threat to society and is intended to facilitate her continued rehabilitation.

Heard on the 27th day of May, 2022.
Dated at the City of Calgary, Alberta this 13th day of June, 2022.

Colin C.J. Feasby
J.C.Q.B.A.

Appearances:

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