

2011 CarswellOnt 3104

R. v. Wright

Her Majesty the Queen and Omari Jabari Wright, Accused

Ontario Superior Court of Justice

Marrocco J.

Heard: April 20, 2011

Judgment: April 20, 2011

Docket: None given.

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Counsel: D. Wright, for Crown

S. Pieters, for Accused

Subject: Criminal

Criminal law.

Marrocco J.:

1 Mr. Omari Wright is before the Court for sentence. I heard submissions concerning sentence on a previous occasion, and subsequent to hearing those submissions, both counsel forwarded some additional material which they thought it would be helpful for me to have.

2 In imposing sentence, I am having regard to the principles of sentence set out in s.718, 718.1 and 718.2 of the *Criminal Code*. In that regard, I think it might be appropriate to set out the circumstances which mitigate and aggravate sentence. I will deal first with the circumstances in mitigation.

3 In this case I have the evidence of Mr. Wright's sister, Sharifa Wright, which spoke to Mr. Wright's commitment to his church and to his sense of remorse. I accept her evidence. There is also a letter from the Access Community Church of God 7th Day which speaks to Mr. Wright's participation in the affairs of the church over the last two years.

4 There is also a letter from the Church of God (Seventh Day) Fellowship Centre. This letter is quite helpful because it is dated February 1, 2011, and it speaks to a presentation that Mr. Wright made to that congregation and community in 2008 about the foolishness of a mo-

mentary lapse of judgment and the disappointment it causes. The Minister outlined the fact that Mr. Wright had met with him on a regular basis since that presentation and asserted a genuine belief, the Minister did that is, that Mr. Wright was remorseful and willing to use his experience as a guide for others.

5 I was also provided with what I believe to be Mr. Wright's actual remarks that evening in 2008. In those remarks Mr. Wright indicated that growing up in Kingston, Jamaica, required him to be both tough and smart. He pointed out it was not possible to make complaints to authorities because that created even more difficulties than the difficulty you were reporting. He commented on the fact that he had lost a dear friend whom he said had made the mistake of being nice to the wrong people. Apparently not only was his friend killed but also his friend's girlfriend. Mr. Wright indicated in his remarks that he had taken a wrong path and that he was reaching out to others in an attempt to help them avoid the mistakes that he had made.

6 On a different level, I have an assessment from the Prometheus Institute over the signature of Dr. Albert de Goias. This assessment is dated October 24, 2008, and was updated on February 22, 2011. The report describes Mr. Wright as an intelligent and spiritual man. The report described him in 2008 as a person showing a genuine sense of remorse for his foolish behaviour. This report also refers to the fact that a high school friend of Mr. Wright's in Jamaica was murdered. The death of this person was devastating to Mr. Wright, and it was while he was in this devastated state of mind that he committed the offences which bring us all together today.

7 This report also speaks to Mr. Wright's marriage in 2009, although the report itself relies upon Mr. Wright's description of the marriage. It does not appear that the Institute made any independent inquiries in that regard. However, Sharifa Wright confirmed that her brother was behaving in a responsible manner toward his wife and his child. In this regard, the Prometheus Institute indicates that Mr. Wright is anxious to ensure that his son does not make the same mistake that he did.

8 Overall, both the 2008 report and the 2011 report express optimism about Mr. Wright's insight and understanding and commitment to living a law abiding life. I accept these reports as an accurate assessment of Mr. Wright.

9 Mr. Wright is employed as a senior quality control administrator with Dufferin Construction. In a letter dated February 1, 2011, the quality control manager indicated that as a result of Mr. Wright's diligence and competence, he had been recently promoted. This letter followed up on a letter dated August 16, 2010, confirming Mr. Wright's position with that company. Letters from MNA Engineering Ltd. and Gazzola Paving Limited also have been filed and are in a similar vein. Counsel also tendered a letter from the Professional Engineers Ontario dated June 21, 2010, which indicated that Mr. Wright had passed the professional practice exam which is an important step toward Mr. Wright becoming a licensed engineer.

10 Other members of Mr. Wright's family also communicated in writing, and their letters are exhibits. I received a request to show leniency to Mr. Wright from his older sister, Safiya Wright, who is living in Tokyo.

11 I also received a letter from Mr. Wright's wife and the mother of his son. They met in 2006 on a spring break in Florida. They were both undergraduate university students. Mr. Wright was in his final year at McMaster, and his wife was in her third year at McGill. Her letter speaks not only to the disruption to their family but also the financial implications of Mr. Wright's absence. One cannot help but be affected by her observations.

12 The Court ordered a pre-sentence report. That report describes Mr. Wright as a 28 year old first offender. Consistent with the other evidence, it indicates that Mr. Wright has accepted responsibility for what he did and has expressed remorse. The report also indicates that Mr. Wright is a candidate for community supervision should the Court impose such a sentence.

13 Finally, I should acknowledge that there were other letters of support filed by counsel for Mr. Wright which I have read and upon which I have placed some reliance.

14 I find as a fact that Mr. Wright is genuinely remorseful for what he did. I also note in mitigation that the proceeds of the robbery were recovered and as well that Mr. Wright spent one month in pre-trial custody and three years under virtual house arrest, both of which are circumstances in mitigation.

15 There are circumstances, however, which aggravate this offence and the sentence to be imposed for it. Balanced against the evidence to which I previously referred is the fact that this was a home invasion.

16 The victim filed a victim impact statement in which she says that she still has nightmares about what happened. She still feels the need to look over her shoulder. She now barely trusts anyone. This is understandable because the victim was a stranger to Mr. Wright. Mr. Wright got into the apartment because a girl whom he had met was staying there.

17 It is also an aggravating factor that the firearm was loaded, cocked and ready to fire. It is also an aggravation that Mr. Wright was licensed to carry that firearm. It is also an aggravation that Davonie Senior, who was the co-accused and Mr. Wright's younger cousin, was 16 years of age. I find, however, that Mr. Wright was not in a position of authority as far as his cousin was concerned. It was not clear to me that Mr. Wright's cousin was genuinely influenced by him.

18 I found Mr. Wright guilty of three offences: robbery while armed with a firearm; using a firearm while committing a robbery; and careless storage of a firearm. Robbery while armed with a firearm carries a minimum punishment of four years. Using a firearm while committing a robbery carries a minimum punishment of one year. No minimum punishment is provided for the careless storage of a firearm.

19 Counsel for Mr. Wright submits that the four year minimum sentence required for the offence of committing a robbery while armed with a firearm serves the goals of denunciation, general and specific deterrence and rehabilitation.

20 The Crown submits that a starting point for sentencing in this type of case is eight years. The Crown relies on a decision of the Alberta Court of Appeal called *R. v. Matwi*

(1996), 178 A.R. 356, [1996] 105 C.C.C. (3d) 251 (C.A.). This case refers to the fact that victims of home invasions feel a loss of safety, that the offence strikes at the security of one's home. The decision points out that homes, generally speaking, have fewer security devices than businesses and that the victims are often alone, although this was not the case here in this case that I am dealing with. The Court observed that such offences are almost always terrifying, traumatic experiences which leave the victims with a total loss of security and certainty. The Court's observation about the loss of security resonates in the victim impact statement filed as an exhibit on the sentencing proceedings. Finally, the Alberta Court of Appeal indicated that a home invasion merited a higher starting point in the sentence range than armed robbery of a commercial institution. The range in Alberta for a mature individual who has an offensive weapon starts at eight years for a home invasion.

21 Home invasions have been dealt with by the Court of Appeal in Ontario. Specifically, in *R. v. Wright*, which has no connection with Mr. Omari Wright whom I am sentencing, 83 O.R. (3d) 427, the Court makes certain observations which are helpful to me in the case with which I am dealing. I should point out that this is a case to which both counsel referred in argument as well. This is a decision in 2006 of the Ontario Court of Appeal. Mr. Wright, that is the appellant in that case, appealed from a sentence of eight years. He pled guilty to charges of robbery with a firearm and being disguised with intent to commit an indictable offence. The offences took place in the context of a home invasion.

22 At paragraph 23 the Ontario Court of Appeal indicated that sentencing dispositions for home invasion cases range from four or five years to 11 to 13 years. The Court indicated that even higher sentences may be imposed in situations involving kidnapping, the infliction of serious injuries, sexual assault or death. None of those circumstances pertain in the matter before me.

23 Blair J., who gave the Court's decision, indicated that home invasion cases call for a particularly careful examination of the circumstances, including the nature and severity of the criminal acts perpetrated in the course of the home invasion as well as the situation of the offender. Without in any way underestimating the terrifying experience that I am sure the victim experienced, suffice to say the aggravating circumstances of kidnapping, the infliction of serious injury, sexual assault or death do not pertain in this case.

24 At paragraph 24 in his decision, Blair J. indicates that the objectives of protection of the public, general deterrence and denunciation should be given priority and that a stiff penitentiary sentence is called for.

25 To sum up, in that case dealt with by Blair J., the home invasion involved robbery with a firearm, the appellant in that case had pleaded guilty, the appellant in that case had a minor criminal record, and the Court upheld an eight year sentence.

26 The case of *R. v. Mann*, 2010 ONCA 342 was also referred to by both counsel. That case was decided in 2010. It is also a decision of the Ontario Court of Appeal. In that case the appellant entered a dwelling house with a loaded firearm and robbed the occupants who were in the business of selling liquor from unlicensed premises. The appellant and an accomplice

threatened to kill the victims if police were called.

27 At paragraph 22 MacPherson J. indicated that the range of sentence for a home invasion varies from four to five years at the low end to 11 to 13 at the high end. He reiterated that priority should be given to the sentencing objectives of deterrence and denunciation. His Lordship stated that a lengthy penitentiary sentence is quite often warranted.

28 In *R. v. Mann*, the case to which I was just referring, there was no plea of guilty. Mr. Mann had a serious criminal record for violent offences. In fact, this was his fourth conviction for robbery. His pre-sentence report was bleak. In that case the Court upheld a 12 year sentence.

29 I should make one other observation, and that is that I do not believe that the principle that disparity of sentences imposed on co-accused should be avoided has any application in this case. Davonie Senior, who, although a young offender, can be, for sentencing purposes at least, looked upon by me as a co-accused, was sentenced as a young offender. He received a sentence of one year. There was an erroneous impression when Davonie Senior was sentenced which was that Mr. Wright was the person carrying the loaded gun and that Davonie Senior was going to testify truthfully for the Crown and identify Mr. Omari Wright as the armed robber.

30 When I balance the aggravating factors in this case with Mr. Wright's background, I come to the conclusion that a sentence of six years provides meaningful public denunciation of Mr. Wright's conduct without removing him from society for so long that he is unable to continue rehabilitating himself, helping his family and providing guidance for his young son. Were it not for Mr. Wright's exemplary background, the sentence would have been considerably higher.

31 Accordingly, I sentence Mr. Wright to six years on count number 1, six years concurrent on count number 2, and six months concurrent on count number 3.

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MR. WRIGHT: Thank you, Your Honour. Will there be a DNA order and a lifetime weapons ban as well?

THE COURT: So ordered. Anything further?

MR. WRIGHT: Nothing further from the Crown.

THE COURT: Court is adjourned.

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