PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v. Greenlaw*, 2018 NSPC 67

Date: 20180918
Docket: 8201494, 8201496, 8201498, 8281644
Registry: Dartmouth

Between:

HER MAJESTY THE QUEEN

v.

JARED RODNEY GREENLAW

DECISION

JUDGE: The Honourable Jean M. Whalen

DECISION: September 12, 2018

CHARGES: That on or about the 14th day of December, 2017 at or near Middle Sackville, Nova Scotia, did unlawfully break and enter a place, to wit., a residence of Colin Isaac George Allen, situate at 55 Hanwell Drive, Middle Sackville, Nova Scotia, and did commit herein the indictable offence of theft, contrary to section 348(1)(b) of the *Criminal Code*;

AND FURTHER that he at the same time and place aforesaid, did with intent to commit an indictable offence and did have his face masked, contrary to section 351(2) of the *Criminal Code*;

AND FURTHER that he at the same time and place aforesaid, did without lawful authority confine Colin Isaac George Allen, contrary to section 279(2) of the *Criminal Code*;

AND FURTHER that he on or about the 21st day of December, 2017, at or near Halifax, Nova Scotia, did unlawfully have in their possession

for the purpose of trafficking, Cocaine, a substance included in Schedule I of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and did thereby commit an offence contrary to section 5(2) of the said *Act*.

COUNSEL: Bryson McDonald, for the Provincial Crown
Grace Jothiraj, for the Federal Crown
Alfred Seaman, for the Defence

By The Court:

Facts:

[1] Mr. Greenlaw and another "unknown" male committed a "home invasion" on December 14, 2017. An Agreed Statement of Facts was filed with the court as Exhibit "1":

> 1. On December 14th, 2017, at 9:49 PM, Sackville RCMP were dispatched to a report of a home invasion at 55 Hanwell Drive in Middle Sackville.
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> 2. 55 Hanwell Drive is a single-family dwelling and the residence of Colin Allen.
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> 3. Police arrived at 55 Hanwell Drive at 9:55 PM where they were met by a visibly shaken Mr. Allen.
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> 4. Mr. Allen's residence was cleared by police and the suspects were no longer present.
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> 5. Mr. Allen informed police that he was expecting some friends to come over that evening. At around 9:00 PM, Mr. Allen, who was home alone at the time, heard the doorbell ring. Mr. Allen noted that the party outside were concealing the identities by holding a wrapped Christmas present up to their face. As soon as Mr. Allen released the deadbolt, the door was pushed open.
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> 6. Two masked individuals then entered Mr. Allen's residence. The first being initially described by Mr. Allen to be a shorter male with bluish jacket and the second as a taller male with a brown mask.
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> 7. The shorter male with the bluish jacket was later identified as Jared Rodney Greenlaw ("Mr. Greenlaw"). The second male has yet to be identified by police ("Suspect #2").

8. Mr. Allen reported that upon entry, he was pushed by the males. Suspect #2 then proceeded to place Mr. Allen in a choke hold and choked Mr. Allen to the point where he thought he was going to lose consciousness or as he described it, "choked out".

9. Mr. Allen informed the assailants that he would cooperate and that he did not want any trouble.

10. Mr. Allen was zip tied following the choke hold. Zip ties were used to tie his hands behind his back and to secure his legs.

11. Mr. Allen was then carried downstairs by the assailants where they retrieved some wire from Mr. Allen's home office. The wire was then used to further restrain Mr. Allen.

12. Once tied up, the assailants asked Mr. Allen where he kept the money in residence as they stated that they knew he had money in his residence. Mr. Allen informed the two assailants as to the location of the money in his residence.

13. It was at this point that Mr. Greenlaw left and went upstairs to rummage through drawers in the bedrooms. Mr. Allen reported hearing Mr. Greenlaw opening the upstairs drawers. Suspect #2 remained with Mr. Allen in the basement. The assailants then swapped places with Mr. Greenlaw remaining downstairs to guard Mr. Allen while Suspect #2 went upstairs to search for money and property.

14. Mr. Allen reported that Suspect #2 was wearing black gloves, but could not recall if Mr. Greenlaw was wearing gloves.

15. Upon the return of Suspect #2 to the basement, both assailants told Mr. Allen to count to 200 and then left the residence via the front door.

16. Mr. Allen was eventually able to free his hands from the restraints. He then crawled upstairs to the kitchen where he was able to cut the remaining restraints. He then went to his neighbor's residence to call police as the assailants had also taken his phone.

17. Mr. Allen noted that approximately $1,100.00 in a combination of Canadian and American currency was missing from his residence in

addition to his cell phone.

18. RCMP forensic officers were called into the scene to collect evidence. Forensic officers retrieved the zip ties and other material used to restrain Mr. Allen. This evidence was collected so that it could be analyzed for DNA evidence.

19. Mr. Allen informed police that he had a surveillance system, but could not access the footage right away because that could only be done with his phone.

20. The following day, December 15, 2017, Mr. Allen called police investigators to inform them that he had purchased a new phone and now has access to the surveillance footage. He further claimed to know one of the responsible parties upon review of the footage.

21. Police investigators met with Mr. Allen at his residence on December 15 where they viewed the surveillance footage.

22. The footage showed that at 9:28 PM a silver or grey Toyota Matrix pulled up to the front of Mr. Allen's house and parked. Two males then exited the car. The first was Mr. Greenlaw wearing a blue jacket and a red and white stocking cap. Suspect #2 is taller and wearing a brown jacket with a red and white striped stocking cap and is holding a present.

23. The video picks up to the two male assailants pull down their stocking caps prior to ringing the door bell, thus concealing their identities. The stocking caps were actually balaclavas/ski masks.

24. The video captures Mr. Greenlaw's face and likeness prior to him concealing his face with the balaclava.

25. Video then shows the two males forcefully entering the residence and audio picks up what sounds to be a struggle from inside the residence.

26. At 9:43 PM, the two male assailants are seen leaving the residence while one of them is heard yelling "run." The two then return to the Toyota Matrix they arrived in and left the scene.

27. On December 15, 2017, Mr. Allen looked through the Facebook profile of his ex-girlfriend, Melissa Elkins, as she was an individual who came to mind when he was canvassing who may be responsible. Ms. Elkins was also employed by Mr. Allen and they had not communicated since April of 2017, when Mr. Allen sold the store where Ms. Elkins worked. The only time that Mr. Allen had any contact with Ms. Elkins after the store was sold was approximately a month and a half prior to the home invasion when Ms. Elkins texted Mr. Allen looking for money as she was claiming to be abused. Mr. Allen declined to give her money.

28. Ms. Elkins Facebook profile picture was of her and a male, who Mr. Allen immediately recognized to be Mr. Greenlaw following review of the surveillance footage. Mr. Greenlaw was tagged in the photo and Mr. Allen further confirmed Mr. Greenlaw to be one of the two individuals involved after he reviewed Mr. Greenlaw's Facebook profile.

29. Mr. Allen informed police of the developments on December 17, 2017, and provided a second statement to police. Police reviewed the surveillance footage provided to them by Mr. Allen reviewed the Facebook profiles of Mr. Greenlaw and Ms. Elkins and agreed that Mr. Greenlaw was one of the two males responsible for the home invasion.

30. Police executed a search warrant of Mr. Greenlaw's residence in Halifax on December 22, 2017. Mr. Greenlaw was arrested at the residence. Police recovered a shot gun during the search.

31. Ms. Elkins was also at the residence during the search and was arrested for drug and weapons offences. She provided a warned caution statement to police where she denied knowledge of the home invasion, but did say she knew where Mr. Allen resided as she had been to his residence. She further stated that Mr. Greenlaw was aware that she had dated Mr. Allen in the past and that she may have informed Mr. Greenlaw of Mr. Allen's wealth.

32. RCMP Forensics sent the zip ties used to secure Mr. Allen off to Ottawa for analysis. Lab analysis came back with the DNA of two males, one of them being Mr. Allen, and the other an unknown male.

> 33. Police then obtained and executed a DNA warrant for Mr. Greenlaw. The DNA material seized during the execution of the warrant was sent off to the RCMP lab where it was determined that Mr. Greenlaw's DNA was a match to that of the unknown male DNA from the zip ties.
>
> 34. Mr. Allen is a productive pro social member of society as a small business owner. He is not known to police and has no known criminal involvement.

[2] Mr. Greenlaw pled guilty to three counts on a multi-count information, and in particular:

a) Court 2: 348(1)(b) *Criminal Code* - Break and enter into a dwelling house and committing robbery;

b) Count 4: 351(2) *Criminal Code* - Unlawful confinement;

c) Count 6: 279(2) *Criminal Code* - Having his face masked.

[3] On August 28, 2018, Mr. Greenlaw pled guilty to s. 5(2) of the *Controlled Drugs and Substances Act*.

> On December 21, 2017, members of the Halifax Regional Police and RCMP General Investigation Section executed a search warrant pursuant to s. 487 of the *Criminal Code* at 15 Margate Dr, Halifax. Mr. Greenlaw was inside the home at the time the warrant was executed.
>
> Police located and seized the following items:
>
> a. 75.7g of cocaine located inside a clear Ziploc sandwich bag, located inside a shaving kit in the basement of 15 Margate

Drive;

b. A digital scale heavily contaminated with powder cocaine, located in the same area as the cocaine;
c. Blue baggies with gold crowns printed on them, located in the same area as the cocaine.

Position of the Parties

[4] The provincial Crown is seeking the following, referring to cases: *R. v. Fraser* 1997 NSCA 210; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500; *R. v. P.J.H.*, 2000 NSCA 7; *R. v. Matway*, 1996 ABCA 63; *R. v. Ross* (1999), 138 Man. R.(2d) 75; *R. v. Pelley*, 2006 SKCA 60; *R. v. Wright* (2006), 83 O.R.(3d) 427 (ONCA); *R. v. J.A.L.*, 2005 CanLII 47835 (NLPC); *R. v. Doyle*, 2008 NSSC 380; and *R. v. Halsey*, 2017 NSSC 141:

a) Count 2: Break and enter (robbery) - seven years;

b) Count 4: Unlawful confinement - four years, concurrent;

c) Count 6: Face masked - four years, concurrent;

d) Mandatory victim fine surcharge;

e) Ancillary orders:

1. DNA s. 348(1)(b) and s. 279(2);

2. Firearm Prohibition 348(1)(b) life;

3. Forfeiture Order - the shotgun.

[5] The federal Crown is seeking two years consecutive on the s. 5(2) *CDSA* citing the principles of general deterrence and totality. They are also seeking a Forfeiture Order for items seized. Cases supplied include: *R. v. Stokes* (N.S.C.A.) (1993), 236 NSR (2d) 66 (QL); *R. v. P.K., 2012* MBCA 69; *R. v. Smith*, 2012 NSPC 82; *R. v. Huskins* (1990), 95 N.S.R (2d) 109; *R. v. Dawe* 2002 NSCA 147; *R. v. Steeves*, 2007 NSCA 130; *R. v. Knickle*, 2009 NSCA 59; *R. v. Conway*, 2009 NSCA 95; *R. v. Butts*, [2010] N.S.J. No. 346; *R. v. Connolly*, 2014 NSPC 68; and *R. v. Way*, 2015 NSSC 14.

[6] The Defence, citing parity, totality and rehabilitation, referred to the following cases: *R. v. PJB*, [1999] NJ No. 290; *R. v. Newhook*, 2008 NLCA 28; *R. v. Anderson*, [1998] NSJ No. 271; *R. v. Strickland*, [2006] NJ No. 252; and *R. v. MacLennan*, [2016] NSJ No. 554, seeks:

a) Court 2: 384(1)(b) - four years;

b) Court 4: 351(2) - two years, concurrent;

c) Court 6: 279(2) - two years, concurrent;

d) *CDSA* 5(2) - one year, consecutive;

e) Three years to pay the mandatory victim fine surcharges; and

f) The ancillary orders are not contested.

Victim Impact Statement

[7] A victim impact statement was filed and read into the record by Crown Counsel:

> I would like to express how this incident has impacted my life in such a way that it will never ever be the same. Since being victimized by Jared Greenlaw and suspect #2 I live my life in a completely different way than ever before. I no longer feel safe in my house, public places, and day to day life. I was always a carefree person that saw good in people and until someone showed me otherwise I had no reason to think different. I have never been in any kind of trouble in my life which made this even more disturbing for me because I couldn't figure out why someone would do such a thing to another person.
>
> December 14, 2017 approximately 9:29pm, a date and time itched in my memory forever. Approximately 15 minutes it took these two people to change my life forever. Assaulted, robbed, and tied up in my own home. After this happened it took me over two months to stay at my house alone, I no longer answer a knock at the door, any family or friends now have to call before coming to my house. When they arrive they call again and I check my window or camera before actually unlocking the door. I no longer have gatherings at my house because I feel anxious and uneasy when people are showing up throughout an evening without notice. If I go to a friend's place for an evening I lock their doors just so I can rest a little easy and try to enjoy the evening. I sometimes wake up throughout the night with the flashback of being tied up with two masked men stood over me. When I was tied up I honestly thought they were going to kill me. Once they got me to the basement this was when the fear of being killed really intensified, I was thinking they wanted me downstairs to shoot me or kick me in the head until I was dead. The level of fear I was going through at this time was beyond anything I ever experienced, I actually thought my life was going to end that night. I was thinking about all my family and if anyone would figure out who killed me and why, how long would it take for someone to find me dead in my house and who could these

people be. This is something that will never leave me and it has changed me forever.

In total I was robbed of approximately $1,500, two tractor trailer rings, a high school graduation ring and my cell phone. Money can easily be replaced, the three rings had significant sentimental value that can never be replaced. My cell phone had almost 2000 pictures on it, much of which were memories that are now lost forever, along with the pictures on my phone contained a lot of information relating to my businesses such as passcodes, passwords, and financial access to name a few. This caused me a great deal of time and headache to change all of these codes, passwords and program access.

The feeling of being violated, assaulted, tied, and robbed in your own home is something no one should have to experience, your home should be where you feel the safest. I no longer feel safe, I have constant fear something could happen again especially knowing one suspect is still not caught. Obviously this person knows who I am and where I live which is a very disturbing feeling, it's so disturbing to me I am considering selling my home and moving somewhere else to try and feel safe again. These two individuals has taken away my sense of security, my ability to trust anyone, and my right to live without fear.

It's one thing when an individual makes a decision that impacts only their life but through the direct action of these two individuals they have implemented a impact on my life that will last forever. I have explored options for professional help to try and deal with the psychological effects of this. I have changed many aspects of my life because of this fear and I will never feel secure again.

Pre-Sentence Report (Circumstances of the Offender)

[8] A Pre-Sentence Report was prepared by probation services. The Defendant is 35 years of age. He suffered grief and trauma early in his life wherein his father and step-father died before he was 14. There was domestic violence within the home of his biological father.

[9] Despite that, he played sports until leaving the family home at 16 to live on his own. Between 2004 and 2009, Mr. Greenlaw had two separate relationships which resulted in three children. The last relationship ended in 2017.

[10] The Defendant's mother confirms the traumatic event of his step-father and father's passing. She feels he would benefit from "grief" counselling. She states she was "blindsided" by this matter, but he has family support.

[11] Mr. Greenlaw reports that after his relationship ended his depression worsened, he lost his house, he was laid off from his job of 13 years, and he began abusing cocaine. Mr. Greenlaw also reports that it has been very difficult not seeing his children.

[12] Mr. Greenlaw began using marijuana in high school and subsequently lost interest in high school. He did complete his GED in 2002, and has obtained various work related certifications.

[13] His ex-girlfriend confirms that she has custody of all three children; she was completely shocked by the charges before the court. She confirms that she and Mr. Greenlaw separated in 2017 due to the Defendant's depression and insecurity. She expresses the view that he needs long term counselling. She was also surprised by his drug use after the separation, yet she described him as intelligent, hard-working and a good father.

[14] Mr. Greenlaw expressed the desire to engage in therapy as soon as possible. He has participated in numerous programs while on remand including substance

abuse, anger management, the garden program, the dog program, Alcoholic Anonymous and the Crossroads Prison Ministry. He has been described as a "model" inmate by the Program Officer at Northeast Correctional Facility.

[15] Mr. Greenlaw took full responsibility for his actions, saying he had been abusing cocaine, crack cocaine and not sleeping. He understood the harm he has caused. When I asked him if he had anything to say he told me that he would apologize if Mr. Allen were present; drugs took over his life, and that he was disgusted with himself.

What is an Appropriate Disposition?

[16] In *R. v. Hanlon*, 2016 NSPC 32, beginning at paragraph 21, Judge Tax states:

> [21] The fundamental purpose and principles of sentencing are set out in sections 718-718.2 of the *Criminal Code***.** Parliament has stated that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing "just sanctions" which are focused on one or more of the objectives set out in section 718 of the *Code***.** In this case, the Crown Attorney submits that the primary sentencing purposes should focus on denunciation of the unlawful conduct, specific deterrence of Mr. Hanlon and general deterrence of other like-minded individuals.
>
> [22] Defence Counsel does not take serious issues with those primary sentencing purposes, but submits that the court should also consider a sentence that would best assist in the rehabilitation of the offender… In that regard, Parliament has also stated in section 718.2(d) of the *Code* that "an offender not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances and in section 718.2(e) of the *Code* that "all available sanctions other that imprisonment that are reasonable in the circumstances should be considered for all offender,

> with particular attention to the circumstances of the aboriginal offenders."…
>
> [23] Section 718.1 of the *Criminal Code* contains the fundamental principle of sentencing which requires the Court to ensure that the sentence is proportionate to the gravity or seriousness of the offence and the offender's degree of responsibility of the offence.
>
> [24] Section 718.2(a) of the *Criminal Code* requires the Court that imposes a sentence to take into account the principle that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.
>
> [25] Finally, I must also be mindful of the principle of parity as started in section 718.2(b) of the *Code* which requires me to consider the sentence should be similar offenders for similar offences committed in similar circumstances. This sentencing principle reminds the court to consider a range of sentence for each particular offence and to impose sentences which are similar to the circumstances of the case and the offender, bearing in mind that for each offence and for each offender, there will be some elements that are unique.

[17] Mr. Greenlaw has entered guilty pleas to four offences which occurred on two separate dates. It will be important in this case to consider the sentencing principle of totality set out in s. 718.2(c) which reminds the Court to take into consideration that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

[18] At paragraph 27 in *R. v. Hanlon*, 2016 NSPC 32 Judge Tax states:

> [27] In all sentencing decision, determining a fit and proper sentence is highly contextual and is necessarily an individualized process which depends upon the circumstances of the offence and the particular circumstances of the specific offender. On this point, the Supreme Court of Canada stated, in *R. v. M.(C.A.)*, [1996] 1 SCR 500 at paras. 91

> and 92, that the determination of a just and appropriate sentence requires the trial judge to do a careful balancing of the societal goals of sentencing against the moral blameworthiness of the offender and the gravity of the offence while at the same time taking into account the victim and the needs of and the current conditions in the community.

Aggravating Factors

[19] Section 718.2(a) of the *Criminal Code* requires the court to take into account relevant mitigating and aggravating circumstances which relate to the offence and the offender. I find the following aggravating factors:

a) This was a planned and premeditated home invasion and s. 348.1 of the *Criminal Code* applies. Mr. Greenlaw wore gloves, a balaclava and brought zipties. He concealed himself behind a box wrapped in Christmas paper.

b) Mr. Greenlaw relied on information from Ms. Elkins who had dated Mr. Allen in the past. Ms. Elkins said she knew where Mr. Allen lived and of his wealth.

c) Mr. Greenlaw and suspect #2 asked Mr. Allen where his money was, as they knew it was somewhere in his residence.

d) Mr. Allen was pushed by the males and then placed in a choke hold by Suspect #2. Zipties that had Mr. Greenlaw's DNA on them were used to secure his hands and legs and he was carried to the basement where wire was used to further restrain him.

e) Both Mr. Greenlaw and Suspect #2 took turns rummaging through Mr. Allen's home. This home invasion lasted approximately 15 minutes.

f) $1,500.00 in cash, three rings and a cell phone were taken. None of those goods has been recovered.

g) Mr. Allen did not know Mr. Greenlaw, he is a small business owner with no criminal history. Mr. Allen has suffered extreme trauma, he thought he was going to die. Because Suspect #2 has never been caught, Mr. Allen is fearful and is considering selling his home.

h) Mr. Greenlaw was motivated to get money to buy cocaine to support his habit.

[20] With respect to the *Controlled Drugs and Substances Act* matter:

a) 75.7 grams of cocaine was seized from Mr. Greenlaw's house and the Crown describes him as a "street level dealer".

b) Mr. Greenlaw was also on probation at the time he committed these offences.

Mitigating Factors

[21] Mr. Greenlaw has a limited record consisting of a mischief offence for which he was sentenced to probation on November 14, 2017. An uttering threats and an

impaired charge from the 5th of March, 2003 for which he received a fine and driving prohibition. A common assault on the 16th of May 2002 for which he received a probation order of one year, a breach of probation on the same day for which he received a fine. Lastly, a possession over from the 4th of February 2002 for which he received 12 months probation.

[22] Mr. Greenlaw changed his plea to guilty, sparing Mr. Allen from coming to testify which can be extremely difficult.

[23] I also find that Mr. Greenlaw is remorseful, and that he has taken steps to rehabilitate himself.

[24] While I acknowledge that Mr. Greenlaw was under the influence of "hard drugs" at the time which mitigates to some extent his moral culpability for his conduct, it does so only to a slight degree because of the trauma inflicted upon Mr. Allen and because the impairment was self-induced.

Reasons

[25] In accordance with s. 726.2 of the *Criminal Code*, what follows are my reasons for imposing the sentence that I view as a "just and appropriate" and "a fit and proper sentence" for this offender and for these offences.

[26] The Nova Scotia Court of Appeal has repeatedly and consistently emphasized that crimes of violence, particularly homes invasions, will require significant custodial sentences.

[27] The offence of break and enter with intent to commit an indicatable offence is a very serious offence, particularly when it involves a private dwelling.

[28] In Nova Scotia, as in other jurisdictions, the range of sentences imposed for break and enters and committing an indicatable offence, in the context of a home invasion is broad. In Nova Scotia, the range is from a suspended sentence with Probation to several years of incarceration, depending on the mitigating and aggravating circumstances surrounding the offence and offender.

[29] I am mindful that premeditated, well planned and executed home invasion where violence is inflicted upon the occupants usually carries a significant period of federal incarceration. Indeed, it is arguable that Parliaments' concern about the nature and gravity of these types of offences being committed in communities across the country was the impetus for the amendment of the *Criminal Code* which enacted s. 348.1 of the *Criminal Code***.**

[30] In an unreported decision by Judge Hoskins, *R. v. Kenneth Parsons* (NSPC), he states:

> In the *R. v. Harris* [2000] N.S.J. No. 9, Chief Justice Glube, in delivering the judgment of the Nova Scotia Court of Appeal's, at paras. 57 to 62 wrote:
>
> > **57** I would reject the submission of counsel for the appellant that, in *Fraser*, this Court established a range of 6 to 10 years for sentences in all cases of home invasion robberies. Pugsley, J.A. stated:
> >
> > This court has approved a range of sentence of between

six to ten years for robberies of financial institutions and private dwellings. [Citations omitted.] (Para. 22.)

58 Later at paragraph 27, he stated:

> I consider that house invasion robbery of this type should attract a sentence greater than that imposed for armed bank robbery. [Emphasis added.]

59 At paragraph 33, Justice Pugsley stated:

> I agree with the following comments of the Alberta Court of Appeal in *R. v. Matwiy* (S.B.) and *Langston* (J.D.) (1996), 178 A.R. 356; 110 W.A.C. 356; 105 C.C.C. (3d) 251 (Alta.C.A.) at p. 263:
>
> > We are of the view that the home invasion robbery merits a higher starting-point sentence than the armed robbery of a bank or commercial institution. While offences of violence are abhorrent wherever they occur, offences which strike at the right of members of the public to the security of their own homes and to freedom from intrusion therein, must be treated with the utmost seriousness. Individuals 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 arise in injuries or not, are almost always terrifying, traumatic experiences for the occupants and the residents, often leaving them with a total loss of any sense of security.
> >
> > The starting point in *Matwiy* was 8 years for home invasion robberies.

60 At paragraph 34, Justice Pugsley in *Fraser* repeated again:

> As I have indicated, this court has placed a bench mark of six to ten years for robberies of financial institutions and private dwellings. While I consider an invasion of a

> private dwelling of this type should attract a sentence greater than that for robbery of a financial institution, Mr. Fraser's plea of guilty, his remorse, and the other circumstances detailed in the pre-sentence report, are factors to be considered.

61 He then varied the sentence of Mr. Fraser to 6 years for the robbery. (See also: *R. v. Stephenson* (1998), 169 N.S.R. (2d) 159 (para. 25)).

62 These statements in *Fraser* do not settle a range for home invasion robberies of 6 to 10 years. One must look at the individual case and the mitigating and aggravating factors and determine what the appropriate sentence should be. In *Shropshire*, at paragraph 47 and 48, and in McDonnell, at paragraph 15, the Supreme Court relied on two decisions from Nova Scotia and stated:

> I would adopt the approach taken by the Nova Scotia Court of Appeal in the cases of *R. v. Pepin* (1990), 98 N.S.R. (2d) 238, and *R. v. Muise* (1994), 94 C.C.C. (3d) 119. In *Pepin*, at p. 251, it was held that:
>
> ... in considering whether a sentence should be altered, the test is not whether we would have imposed a different sentence; we must determine if the sentencing judge applied wrong principles or (if) the sentence is clearly or manifestly excessive.

Further, in *Muise* it was held at pp.123-24 that:

> In considering the fitness of a sentence imposed by a trial judge, this court has consistently held that it will not interfere unless the sentence imposed is clearly excessive or inadequate...
>
> ...
>
> The law on sentence appeals is not complex. If a sentence imposed is not clearly excessive or inadequate it is a fit

> sentence assuming the trial judge applied the correct principles and considered all relevant facts.... My view is premised on the reality that sentencing is not an exact science; it is anything but. It is the exercise of judgment taking into consideration relevant legal principles, the circumstances of the offence and the offender. The most that can be expected of a sentencing judge is to arrive at a sentence that is within an acceptable range. In my opinion, that is the true basis upon which Courts of Appeal review sentences when the only issue is whether the sentence is inadequate or excessive.
>
> ...
>
> Unreasonableness in the sentencing process involves the sentencing order falling outside the "acceptable range" of orders; this clearly does not arise in the present appeal.

[31] Later at paras 81 to 82 Glube C.J. commented:

> 81 These types of offences (home invasion) require denunciation by society, deterrence of the accused and others from committing this type of offence, and protection of the public as the primary considerations of sentencing those who choose to invade the sanctity of the home of another and do violence through intimidation, terrorism or actual assault.
>
> 82 In my opinion, the sentencing judge made no error in principle, he considered all relevant factors, he did not place undue emphasis on any factor, and the sentence is not "demonstrably unfit" or "clearly unreasonable" considering the horrific nature of the assault and the circumstances surrounding the whole robbery. Protection of the public and deterrence are paramount and absolutely necessary in this case. I would find the sentences imposed were within the range, were not manifestly excessive and were fit sentences.

[32] Then Judge Hoskins at page 11 goes on to say:

In *R. v. Fraser* (S.A.) (1997), 158 N.S.R. (2d) 163 (C.A.), the Nova Scotia Court of Appeal emphasized that general deterrence is the most important consideration in a home invasion offence. The case involved an entry into an elderly person's home, during which the offender wore a mask and brandished a plastic knife, demanding money. Pugsley J.A. said, for the Court:

> 20 The primary objective in sentencing for this type of offence is protection of the public and that can best be obtained by imposing sentences that emphasize deterrence.
>
> 21 The extent to which Parliament considers these offences to be serious is reflected in the penalties applicable - 10 years for wearing a mask with intent, and life imprisonment for robbery.
>
> 22 This Court has approved a range of sentence of between six to ten years for robberies of financial institutions and private dwellings (*R. v. Brewer* (1988), 81 N.S.R. (2d) 86, *R. v. Leet* (1989), 88 N.S.R. (2d) 161).
>
> 23 Mr. Fraser's age, and his previous unblemished record, while factors, should not materially lessen the length of the sentence. The Court must always consider the opportunity to reclaim the individual when fashioning a sentence, but that objective, must in cases of this kind, yield to the primary object of protection of the community (*R. v. Helpard* (1996), 145 N.S.R. (2d) 204 at 207).

[33] And further at page 11 Judge Hoskins states:

In *R. v. Best* [2006] N.S.J. No. 419, Chief Justice MacDonald, in delivering the judgment of the Nova Scotia Court of Appeal emphasized the paramountcy of general and specific deterrence, denunciation and protection of the public in imposing a sentence for a home invasion. In doing so, he stated:

> 36 In situating this sentence it is instructive to review this Court's decision in *R. v. Harris* (2000), 181 N.S.R. (2d) 211.

> There, Harris, who was 20 years old at the time of the offence, appealed a 15 year sentence for robbery running concurrently with a 14 year sentence for assault. The offender and an accomplice broke into an elderly couple's home. The wife suffered a broken hip when knocked to the floor. The husband was beaten with a cane. Harris pled guilty at the first opportunity. In dismissing the appeal, this Court commented that home invasion offences require a focus upon denunciation, general and specific deterrence and protection of the public. The Court found that sentence to be neither demonstrably unfit, nor clearly unreasonable.
>
> 37 In addition to citing *R. v. Harris, supra*, the judge, carefully reviewed the facts of the offences, the principles and purposes of sentencing and addressed both proportionality and parity. He was especially aware of the totality principle and noted that the he might have to modify the total that would result from fixing sentence for each of the five individual offences if the resulting sentence would be unjust. . . .

[34] Judge Hoskins continues at page 12:

> Now I realize that the facts in our case are not nearly as gruesome as those in *Harris* and *Best*. Furthermore, no case is ever the same and it would be dangerous to generalize. However, while the specifics of each case must be assessed, serious jail time for this type of offence is generally required. For example, in *R. v. Wright,* [2006] O.J. No. 4870, the Ontario Court of Appeal explained:
>
> > 24 In my view, however, "home invasion" cases call for a particularly nuanced approach to sentencing. They require a 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. Whether a case falls within the existing guidelines or range - or, indeed, whether it may be one of those exceptional cases that falls outside the range and

> results in a moving of the yardsticks - will depend upon the results of such an examination. I agree with the British Columbia Court of Appeal in *A.J.C.* (at para. 29), however, that in cases of this nature the objectives of protection of the public, general deterrence and denunciation should be given priority, although of course the prospects of the offender's rehabilitation and the other factors pertaining to sentencing must also be considered. Certainly, a stiff penitentiary sentence is generally called for.

[35] And further at page 12, Judge Hoskins started:

> In *Best*, Chief Justice MacDonald found that the appropriate range of sentence for Mr. Best was three years imprisonment. In reaching that conclusion, he considered the summary of cases submitted by the Crown on Appeal as being of assistance, as they are here as well. He wrote:
>
> > 55 The Crown offers the following examples to assist this Court in determining whether ninety days' incarceration to be served intermittently was manifestly inadequate in these circumstances:
> >
> > > (i) *R. v. Campeau*, 2009 SKCA 4: Two accused knocked at the victim's front door at 1:30 a.m. Victim #1 tried to close the door. The co-accused barged in. Victim #1 anticipated harm and barricaded himself in the washroom. Both accused kicked at the door and threatened him. Victim #2 tried to call 911. The co-accused wrestled her to get the phone while the accused continued to kick the bathroom door exhorting victim #1 to come out. The accused called victim #1 a rat and never harmed victim #2. The co-accused struck and pulled victim #2's hair. The assault resulted in a hairline fracture to her nose, bruises, and psychological trauma. The accused had thirty priors including four break and enters. On appeal, his sentence was increased to forty months' incarceration;
> >
> > > (ii) *Goulette*: The victim awoke to being beaten by the accused. He suffered a broken nose and bruises, as well as

$2,000.00 damage to his computer. Accused's record had a ten year gap. He was sentenced to nine months' incarceration, after twenty-one months' credit for remand. The provincial Crown brought a fresh evidence application, as it was unaware of a possession for the purpose of trafficking conviction just preceding this conviction. Regardless of the fresh evidence, the sentence was adjusted to sixty-six months' incarceration. Thirty months as the aggregate sentence was considered too low for a home invasion to properly address denunciation and deterrence;

(iii) *R. v. Oulton*, 2004 NBCA 21: Two co-accused disguised with weapons entered the house of the victim. They put a gun to the head of the victim and uttered threats. There were no injuries. Six years' incarceration was confirmed on appeal;

(iv) *Joyce*: The victim was asleep when two masked intruders entered his home, beat him, and stole $200.00. In an attempt to escape, he suffered a severe wound to his thigh at the hand of the accused. The co-accused, who pleaded guilty early and had a less significant role and record, received six years' incarceration. The accused received eleven years;

(v) *McCowan*, [2009] M.J. No. 95: The accused and his wife were substance abusers. His wife had a relapse and began a sexual relationship with the victim. The accused broke into the victim's home, entered the bedroom, and struck the victim eight to ten times with his fists. Severe injuries [including traumatic brain injury] resulted in permanent disabilities. Offender had a very good Post-Sentence Report. An effective sentence of five and one-half years' incarceration, due to the positive Post-Sentence Report, was affirmed on appeal, [2010] M.J. No. 165;

(vi) *Morash*: The accused was part of a group who had a

bad encounter with others. A fight broke out at a crashed party. Victim #1 was struck with a bottle. He and victim #2 were badly beaten. The accused had served the equivalent of one year in remand. He was sentenced to a period of incarceration of six years and eleven months. This was affirmed on appeal;

(vii) *R. v. Forrester*, 2004 BCSC 1310: Two accused went to the victim's house in a dispute over a bicycle. They were armed with bats and disguised with balaclavas. They assaulted the occupants. The accused received five years' incarceration for aggravated assault, and two years' concurrent for break and enter. The accused was of aboriginal heritage with no record at the time. He was gainfully employed and made use of his pre-trial time to further his education. Rehabilitation and specific deterrence, however, given the level of violence, took second place to denunciation and deterrence;

(viii) *R. v. Ross*, 2009 BCSC 1831: A twenty-three year old aboriginal offender with no record broke into a house with three others and assaulted the occupants with bats. The offenders pleaded guilty. The accused participated in persistent counselling and was of otherwise good character. But for the remand for which he received thirty-three months' credit, the Court would have sentenced him to forty-five months' incarceration. The net sentence was one year's incarceration on a go forward basis;

(ix) *R. v. Mack*, 2001 BCCA 688: A twenty year old native suffering from fetal alcohol syndrome, with a record, used an iron to beat a female victim when he broke into her house. He was high at the time. He spent twenty-three months on remand. The Court of Appeal took the view that a nine year period of incarceration as a starting-point was not outside the range. After a proper reduction of the net sentence following a recalculation of remand credit, he received five years' incarceration. Notably, Justice Esson

would have dismissed the appeal; and Justice Huddart, while agreeing with the net result, would have started at a higher point;

(x) *Sharphead*: There were few clear findings of facts. What could be gleaned was that the accused was one of three who broke in and knifed a victim. The accused did not testify. He did admit his involvement to the police. The PSR was mixed, and included expressed remorse and efforts to stay positive. He was a First Nations offender with alcohol issues. The Court of Appeal adjusted the sentence to three years' incarceration for break and enter and commit aggravated assault, concluding that the trial Judge erroneously overemphasized the youth and lack of record of the offender. Consequently, he ignored the host of aggravating features which cried out for denunciation and deterrence.

[36] And lastly Judge Hoskins stated:

After reviewing these cases, Chief Justice MacDonald noted that:

> These cases depict a range of 3 to 11 years' imprisonment, Of course, all are fact specific. Here the following considerations would lead me to the three-year mark:
>
> -Mr. Best's positive pre-sentence report;
>
> -His cooperation with the authorities to date, including turning himself in when he heard he was being investigated;
>
> -His strong family support;
>
> -The fact that he has no criminal record to speak of;
>
> -His post-sentence report confirming his apparent abstinence from both drugs and alcohol;

-The fact that he is awaiting further counselling.

[37] In their Factum, Defence counsel referred to *R. v. PJB,* [1999] NJ No. 290 stating:

> The offender and his partner were in a custody dispute with the two victims. The offender broke in the back door of the victims' home at night, carrying a loaded 12-guage shotgun. The two children were home at the time. The male victim jumped the offender; they struggled, and the male victim was injured and threatened before subduing the offender. The offence had a severe and continuing psychological impact on the victims, who had to change their careers and lifestyles. The offender had a previous conviction for a break and enter. He received concurrent two-year sentences of incarceration for the home invasion and the s. 85(1)(a) weapons offence, reduced to 18 months in consideration of over 3 months' remand. The Court of Appeal refused to interfere with this sentence. The court's comments at paragraphs 47, 52, and 53 are helpful:
>
> > **47** There are not a great many more criminal acts that could be described as being more serious, unless it was a similar premeditated effort that in fact resulted in serious injury to or death of a person. The appellant deserves no credit for the fact that such an injury of death did not occur on that occasion. He ended up in a struggle with W.R. over the shotgun., during the course of which the shell in the magazine could have been inserted in the chamber and the gun discharged, with injury to or death of a person being a potential consequence.
> >
> > **52** Clearly the 18 month sentence imposed in this case is on the low end. It may be sufficiently low that it strains the lower limit of the range of sentences for offences arising out of the invasion of a home carrying a firearm, particularly where there was a prior conviction for break and entry. As well the danger to other inherent in such actions., and the actual impact on the victims here, speak loudly to the need for deterrence, general and specific.

> **53** While the sentence is on the low end, it is not so low however that this court could justify intervening to increase it.

[38] In *R. v. Newhook*, 2008 NLCA 28:

> The Court of Appeal imposed a global sentence of 44 months' imprisonment, taking into account 16 months' pre-sentence custody, on three informations. The first was an assault. On the second information, Newhook was convicted of being unlawfully in a dwelling, assault, and mischief. He first assaulted the victim outside a club, then when she returned to her home later that morning she found the accused asleep in her bed. He had broken in, causing damage to the door frame. She asked him to leave, and he jumped up and began screaming at her. He struck her in the face so hard she thought her jaw was broken. She fell down and pretended to be unconscious. After about ten minutes she attempted to call police, but he grabbed the phone from her, grabbed and shook her, and struck her on the right thigh. He left two hours later. The third and final information involved the same victim. He was convicted of break and enter, assault and assault with a weapon, and kidnapping (plus two breaches). The offender cracked the home's door frame and broke the door down. The victim was in the bathroom and "saw the door facings go flying across the room. She then saw the Respondent standing in the doorway with a hatchet." He rushed toward her, pushed and slapped her two to four times. He said he had been watching her house for the past three hours and called her a whore. He put a handcuff on her wrist and hauled her to the bedroom, where he ordered her to get dressed. He then dragged her to a trail behind her property, carrying a hatchet. They reached his home, where he threatened her several times and refused to let her leave. She eventually escaped and called police.

[39] At paragraph 11 of that same Factum, Defence counsel states the Court of Appeal considered the appropriate range of sentence for these offences to be between the low end of the range (18 months, per *PJB)* and the five-year sentence imposed in *R v Anderson* (1998, 168 NSR (2d) 393 (NSSC), which it considered to

have involved more serious aggravating factors. For the break and enter, the Court of Appeal imposed a three-year sentence, concurrent to nine months for the assault with a weapon and four months for the assault.

[40] Distinction: That was not a home invasion robbery case.

[41] In *R v Anderson,* [1998] NSJ No. 271, the offender was convicted of break and enter, two counts of assault with a weapon, and breach of probation. He knew that his wife and his friend were together in his friend's house. At 4:30 am, after having cut the phone lines, he broke in and beat the two victims with a flashlight. He received five years for the break and enter, 18 months consecutive for the assault on his wife, and a concurrent 18 months for the assault on his friend. Aggravating factors included the "stealth" and planning involved; his lengthy criminal record and "flagrant disregard for authority" and court orders; the fact that he was on probation at the time; the fact that he cut the phone lines to prevent calling for help; the domestic nature of the assault; and the fact that the male victim was beaten until "practically incapacitated and incapable of defending himself", requiring round-the-clock care.

[42] Distinction: The case was not a home invasion "robbery" and health and age was a mitigating factor.

[43] In *R v Strickland*, [2006] NJ No. 252, the Court held that "the invasion of a person's home must be considered to be one of the most serious offences committed under our criminal law." (at 10). However, it sentenced the accused to three years' prison for the break and enter into his ex-girlfriend's apartment, with a consecutive

sentence of three months for assaulting her. He was not armed. The court described the behavior as "shocking and offensive" (at 11).

[44] Distinction: Not home invasion robbery; the defendant is 22 years old; and, he broke in to be with his girlfriend.

[45] In *R v Kenneth Parsons*, NSPC 2018, unreported decision of Judge F.P. Hoskins, the accused smashed down the door of the victim and dragged her around her apartment by her hair, yelling at her for cigarettes and money. The attack lasted a few minutes with him throwing the victim around the apartment, threatening to kill her, and demanding money and cigarettes. He left the apartment when she locked herself in the bathroom. He did not successfully steal anything. He had a previous conviction for break and enter but otherwise a limited, unrelated record. He was in his early 30's and hadn't taken any steps while on remand to better himself. The Crown had argued that this was a premediated home invasion but was unable to prove premeditation. The Judge stated in his decision that the sentence would have been higher had premeditation been proven. The sentence was 54 months (4.5 years) jail minus remand credit.

[46] Distinction: Case at bar was planned/premediated.

[47] Later at paragraph 15 of the Defence Factum, Finally, a sentence as low as three years was recently administered in Nova Scotia for a home invasion robbery. In *R v MacLennan*, [2016] NSJ No. 554, the accused broke into the victim's home intending to rob him to pay off a drug debt. The victim was home, and the accused grabbed his wrist and neck, threatening to beat his head in with a hammer and to kill

him. He demanded money but left without stealing anything when another man entered and inquired if everything was alright. Justice Atwood of the Nova Scotia Provincial Court characterized this as a home invasion and robbery and sentenced the accused to three years' imprisonment. The home invasion in this case was clearly pre-meditated and profit-motivated, and although the victim was not injured, the accused was found to have used violence- with "a substantial risk for lethality" against the victim.

[48] Distinction: Mr. Greenlaw stole cash, rings and a phone; the defendant in the case did not have a criminal record.

[49] Defence counsel argues the cases relied upon by the Crown can be distinguished. In *R. v. Fraser*, 1997 NSCA 210, 1997 CarswellNS 7, the accused was 19 years old and did not have a criminal record. He and another masked man had entered the home of an 83-year-old woman. The accused had been carrying a knife, which he had held close to the victim for almost 30 minutes while his accomplice ransacked the victim's home. The accused ultimately pleaded guilty to charges of theft, taking a motor vehicle, robbery, and having his face masked with intent to commit an indictable offence. The accused told the probation officer that he had committed the robbery as a means of getting money to get high. He also stated that he had scared himself during the robbery, and that he felt guilty because of his actions. The judge sentenced the accused to three years' imprisonment for the robbery, to six months' imprisonment for having his face masked, which was concurrent to the robbery, to one year for theft, which was consecutive to the robbery, and to six months for the joy riding, which was concurrent to the sentence for theft. The Crown applied for leave to appeal, and appealed the sentences imposed

with respect to the convictions of robbery and the accused having his face masked. The Appeal was allowed in part.

[50] The headnote stated:

> The primary objective to consider in sentencing an accused for the offence of robbery is the protection of the public which can best be obtained by imposing sentences that emphasize deterrence. The robbery was a premeditated attack on a vulnerable victim conducted in an atmosphere of violence and intimidation. It was appropriate to consider the profound effect that such a robbery had on the victim. The accused's guilty plea and remorse were also considered. The sentencing judge erred in imposing a sentence that was demonstrably unfit, excessively and manifestly lenient, and clearly unreasonable; it did not appropriately reflect general deterrence. Accordingly, a term of incarceration of six years was substituted for the conviction of robbery. The sentence of six months imposed concurrently with respect to the accused masking his face was affirmed. A prohibition was also imposed under s. 100(1) of the *Criminal Code* for 10 years.

[51] *R. v. M.* (C.A.), 1996 CarswellBC 1000, the accused was sentenced to a term of 25 years after pleading guilty to numerous counts of sexual assault, incest, assault with a weapon and other lesser offences arising from a pattern of sexual, emotional and physical abuse inflicted on his children over a period of years. This case talks about the principles of sentencing, stating "The principle of proportionality requires that the quantum of sentence should be commensurate with the gravity of the offence and the moral blameworthiness of the offender.

[52] *R. v. Matwiy,* 1996 ABCA 63, 1996 CarswellAlta 148, the headnote stated:

The accused and two other men perpetrated a home invasion robbery using weapons, including a loaded gun, threatening to kill the occupants of the home and taking a sum of money. Accused had a lengthy prior record including numerous convictions for break and enter, and was on parole at the time of committing the offence. The sentencing judge imposed a 10-year sentence and issued an order under s. 741.2 of the *Code* that accused serve at least one-half of the sentence before being eligible for parole. Accused appealed. Held, the appeal was dismissed. The starting point for a sentence for a home invasion was 8 years imprisonment. That sentence was to be imposed where the offender was a mature individual with no prior record, who planned to commit a home invasion robbery and targeted a dwelling with intent to steal property, armed himself with an offensive weapon, forced his way into the dwelling knowing or expecting it to be occupied, confined the occupants and threatened them with death or bodily harm and stole or attempted to steal valuable property. Aggravating factors would include the use of actual force against the occupants, causing injuries, prolonged detention, terrorization, discharge of firearms, gang activity or concerted action, a prior record for violent offences and theft of substantial sums of money or valuable property. As accused participated in a gang-style raid involving three men, the crime was sophisticated and well-planned, accused had a lengthy record including numerous break and enter convictions and was on parole at time of offence. A loaded gun was used and discharged, and the sole mitigating factor was an early guilty plea. A sentence of 10 years was justified.

[53] In *R. v. Patrick Shane Ross* 1999 CanLII 439 (MB CA):

1 The accused pled guilty to a charge of break and enter a dwelling house and commit robbery, to unlawfully using a firearm while committing the robbery, and other related charges. He was sentenced to a term of imprisonment of four years for the robbery, one year consecutive on the firearms charge, and one year concurrent on the remaining charges, for a total of five years. The Crown appeals the sentence.

2 This "home invasion" occurred on February 8, 1998. The

accused, then aged 19 and accompanied by a young offender, forcibly entered the victims' residence. Both were wearing balaclavas and dark clothing. The two occupants awoke to find the invaders standing over them with the respondent pointing a rifle at them. The assailants demanded money; they indicated that if the victims cooperated they would not get hurt, but also asked the male victim a number of questions concerning whether he (the victim) believed in heaven or hell, which led the victim to believe that he was going to die. At one point the respondent pointed his rifle at the head of one of the victims and pulled the trigger twice. The gun did not fire. (Had it discharged, we would likely be dealing with a charge of murder.) The victims were terrified. After determining that there was little of value to steal from the home, both victims were forced onto the floor with their hands tied behind their backs and ankles taped together. The respondent threatened that if the victims attempted to watch the assailants leave he would return and shoot them. The assailants then stole the female victim's truck and fled.

3 The respondent was arrested one day after the incident and remained in custody until he was sentenced on October 5, 1998, almost eight months after the offence occurred.

[54] On appeal Mr. Ross was sentenced to 8 years in jail.

[55] In *R. v. Pelly*, 2006 CarswellSask 377, the headnote states:

the accused and his wife burst into house and stabbed occupant. The accused then broke into hotel suite, struck occupant repeatedly with hammer, stole some money and left. Both victims suffered serious injuries. The accused was convicted of robbery, armed robbery, and break and entry and theft in relation to dwelling house. The accused was declared to be a long-term offender and sentenced to a term of imprisonment of 6 years followed by period of community supervision of 6 years. Crown appealed the sentence. The sentence was varied. A global sentence of 15 years followed by 6 year period of community supervision was imposed. Sentencing judge placed too much emphasis

on rehabilitation and too little on deterrence, denunciation, and protection of public. The sentence did not adequately reflect the gravity of offences and the accused's degree of responsibility. Serious personal injuries were inflicted upon the victims. The accused acted deliberately with obvious forethought. The sentence failed to adequately reflect aggravating circumstances that offences occurred in context of home invasions. No mitigating circumstances existed in relation to the commission of the offence, and few existed in relation to the accused.

[56] In *R. v. Wright*, 2006 CarswellOnt 7721, the headnote states:

five men armed with handguns and wearing disguises committed a home invasion. The men forced the victim to take them into his home, where they gathered the family and sought to extract information to facilitate access to a safe at the victim's business. The accused and another held guns to the victim and threatened his family. The accused pled guilty to robbery with a firearm and being disguised with intent to commit indictable offence. The trial judge imposed a sentence of eight years of imprisonment. The accused contended the trial judge intended to place sentence at lower end of appropriate range, which accused contended was five to eight years. Accused appealed. Appeal dismissed. Trial judge correctly observed appellate courts have imposed sentences that exceed the five to eight year range for cases involving home invasions. Ranges are not fixed in law, unlike binding legal principles. Cases reflected gamut of sentences from as low as four years to as high as thirteen, with suggestion that even higher sentences may be reserved for situation involving kidnapping, serious injury, sexual assault or death. Home invasion cases call for particularly nuanced approach. Trial judge did not err in concluding range for home invasions has moved in recent years. Trial judge did not say that he was attempting to place sentence at low end of range, and that did not appear to have been his intention. This was more serious crime involving planning, forcibly confining and terrorizing a family at gunpoint.

[57] In *R. v. J.A.L.*, 2005 CanLII 47835 (NL PC);

[3] Mr. J.A.L. and Mr. Timothy Sheppard developed a plan to rob Mr. Kennedy. Mr. Kennedy is an elderly man who lives alone in Lake Harbour. He is seventy-five years of age, had health problems and difficulty with his mobility. On July 27, 2005 he was in the process of recovering from a "stroke". Mr. J.A.L. was aware of these health problems. He was also aware that Mr. Kennedy had a significant amount of cash on him as Mr. Kennedy had recently received an income tax rebate.

[4] The plan created by Mr. J.A.L. and Mr. Sheppard involved them going to Mr. Kennedy's residence and Mr. Sheppard entering first. Mr. Sheppard and Mr. Kennedy knew each other. Because Mr. Kennedy usually keeps his door locked, the plan was for Mr. Sheppard to unlock the door and for Mr. J.A.L. to then enter the residence. Mr. J.A.L. was to be masked and was to pretend to rob Mr. Sheppard. The hope was that this would frighten Mr. Kennedy into passing over his money. As will be seen, it did not.

[5] On July 27, 2005 at 7:30 p.m., Mr. Sheppard called Mr. J.A.L. and they agreed to commit the robbery. Mr. J.A.L. picked Mr. Kennedy up and they drove to an area near Mr. Kennedy's house and hid Mr. J.A.L.'s car. As planned, Mr. Sheppard entered Mr. Kennedy's residence. Mr. Kennedy locked the door after he did so. Mr. Sheppard unlocked the door. Mr. J.A.L. entered the residence. He was wearing a mark, gloves and he had socks over his shoes. He had a hammer and a pair of pliers. He pretended to threaten Mr. Sheppard. Mr. Sheppard gave Mr. J.A.L. $40.00 and urged Mr. Kennedy to give him money as well. Mr. Kennedy refused to do so. Mr. J.A.L. pushed the hammer against Mr. Kennedy's stomach, but Mr. Kennedy would not five up his money. Mr. J.A.L. laid the hammer down and tried to pull the wallet out of Mr. Kennedy's pocket. However, he could not get it out. Mr. J.A.L. then put a coat over Mr. Kennedy's head and punched him in the head twice, knocking Mr. Kennedy unconscious. The wallet was then taken and the money ($1,600.00) divided. Mr. J.A.L. pulled the phone out of the wall before he left.

[6] Mr. J.A.L. subsequently disposed of the hammer and his clothes.

[7] Mr. J.A.L. and Mr. Kennedy then drove to Stephenville. They were

looking for a "party", but apparently could not find one.

[8] The next day two people that looked after Mr. Kennedy came to his house. They noticed that his left eye was swollen and that he appeared to be confused. They tried to persuade him to go to the hospital with them, but he refused to go.

[58] The Court held:

[9] As can be seen from this review of the evidence, these offences involve what is commonly referred to as a "home invasion." This was obviously a planned robbery in which significant steps where take to avoid detection. Finally, this involved a brutal assault as an elderly man in his own home.

[59] He was sentenced to eight years.

[60] In *R. v. Doyle*, 2008 NSSC 380 CarswellNS 719, M.H. Robertson, J., stated (orally) at the following paragraphs:

[1] Mr. Doyle you have been charged and found guilty of the commission of the following offences of breaking and entry into the home of Mr. Stephen Drake Sr. located at 319 Duke Street in New Waterford, Nova Scotia and of theft pursuant to s. 334(b) of the *Criminal Code* and for aiding and abetting and counselling Mr. Jeffrey Wade MacIssac in the commission of these offences….

[8] This was a serious premeditated offence that ended up in the act of violence.

[10]… a home invasion against a vulnerable old man who now lives in fear…that a home invasion has been considered by various Courts of Appeal and they consistently imposed sentences that exceed five to eight year-ranges saying that ranges are not fixed in law, unlike binding legal principles, but run the gamut of sentences as low as four years and

as high as thirteen years.

[61] The accused was sentenced to 6 years in jail.

[62] In *R. v. Halsey,* 2017 NSSC 141, 2017 CarswellNS 423:

> Accused H and C broke into the house occupied by male complainant D, female complainant K, who was D's wife and third complainant who was their 13 year-year old son. H and C wore masks and gloves and they carried knives and they used threats of violence to intimidate complainants and get them to cooperate. Accused were in the house for 30 minutes…they were tied up and were placed into closet of master bedroom… were waned not to leave or to call police… if police were called accused told them they would come back to and kill them… C was 35 years old and he had substantial criminal record. C regarded his drugs use as a major contributing factor to his prior criminal offences and to offences for which he was being sentenced- C had a history of breaching court orders- He was 31 years old and he was addicted to drugs- H also had a criminal record- C sentenced to 9 years' imprisonment…H sentenced to 8 years imprisonment.

[63] In *R. v. Parsons,* an unreported decision by Judge Frank P. Hoskins, he stated at page 15:

> In light of all the foregoing, it would appear from the cases submitted by both Counsel, that there is a broad range of sentence for offences involving home invasions. This broad range exists because sentencing is highly contextual and necessarily an individualized process. As stated by the British Columbia Court of Appeal, in *Chudley:*
>
> There is no single offence of "home invasion". Instead, the term is used as a shorthand expression of describing a combination of offences involving breaking and entering a dwelling with the intent to commit a robbery, with knowledge or recklessness as to whether the dwelling

occupied. They also often involve the confinement, terrorizing or assault of the occupants: *Bernier* at paras. 87, 97. This Court has held that cation is required in suggesting a general range of sentences for home invasions because the term lacks precision and the combinations of crimes changed in each individual case will vary: *Bernier* at paras. 37, 81-82.

It would also appear from a review of the case law, that the upper end of the range of sentence for home invasions- sentences in the double digits- are reserved for cases with significant aggravating factors that include: offences that were premeditated, well-planned and involve the targeting of a particular home, usually coupled with the infliction of extreme violence against unsuspected occupants such as in the *Harris* case. In that case, the Nova Scotia Court of Appeal confirmed a 15 year sentence for a home invasion robbery involving premedication, extreme use of violence, limited remorse and little change of rehabilitation. Similarly, in *A.J.C.*, Finch C.J., stated that;

> In my view, the 15 year sentence imposed in *Jones*, supra, and the 14 year sentence effectively imposed in *Barton*, supra indicate the length of sentence which may well be appropriate in the most aggravated circumstances where a "home invasion" involves not only a break and enter to commit robbery, the terrorizing and confinement of victims, and the use of weapons to achieve these objectives, but also the infliction of serious injuries, sexual assault or death.

[64] In *Doyle*, Justice Robertson observed:

The Crown has submitted a series of cases that reflect society's abhorrence of crimes of this sort, a home invasion against a vulnerable old man who now lives in fear. The cases urge the Court to consider the aggravating circumstances which they suggest outweigh the ameliorating factors. In *R. v. Harris*,[2000] N.S.J. No. 9, there was a sentence of 15 years but I note that case reflected a high degree of violence against an elderly couple. *R. v. Wright,* 2006 CarswellOnt 7721, notes that a home invasion has been considered by various Courts

of Appeal and they consistently imposed sentences that exceed five to eight-year ranges saying that ranges are not fixed in law, unlike binding legal principles, but run the gamut of sentences as low as four years and as high as thirteen years. There is a suggestion that higher sentences should be reserved for more serious situations of confinement and serious personal injury. *R. v. Brace,* 2008 CarswellYukon 61, was on the low end of the scale and a sentence of three years was imposed. *R. v. Matwiy,* 1996 CarswellAlta 148, I note that the accused was an aboriginal offender. The starting point for a home invasion the court suggested was eight years. *R. v. Moore*, 2008 CarswellBC 673, the global sentence of eight years was imposed for a home invasion. *R. v. O'Keefe*, 2007 CarswellNfld 284, deals with the disparity of sentencing between a co-accused in a home invasion, Mr. O'Keefe was then sentenced to eight years, but the Court of Appeal reduced his sentence to six years. *R. v. Vickers,* 2007 CarswellBC 2764, Mr. Vickers received a ten-year sentence and the court noted that while rehabilitation in that case. *R. v. Fraser,* 2007 CarswellSask 593, the court dealt with the aggravating factors of a home invasion under section 348.1 of the *Criminal Code* and they spoke to a range of seven to two years recognizing the vulnerability of victims and in consideration of the degree of violence involved in the crime.

[65] At page 16 Judge Hoskins goes on to state:

In Nova Scotia, as in other jurisdictions, the range of sentences imposed for home invasion offense varies considerably. The range of a sentence for the offences of home invasion is very broad…

> …It is possible that the ranges should change, change to wider or narrower, and change in accordance with social circumstances. So, one cannot, in my view, be certain about the range merely from an examination of prior cases.

As stated by our Court of Appeal, in *R. v. A.N.* at para. 34 of that decision:

> Unless expressed in the *Code*, there is no universal range with fixed boundaries for all instances of an offence: *R. v. M.(C.A.),*

> para. 92; *R. v. McDonnell*, para. 16; *R. v. L.M.*, para. 36. The range moves sympathetically with the circumstances, and is proportionate to the *Code's* sentencing principles that include fundamentally the offence's gravity and the offender's culpability… Once the sentence occupies the range, is fit and is not clearly unreasonable…

It is worthy of note that in considering the parity principle, s. 718.2(b) of the *Code*, I am mindful of what the Supreme Court of Canada stated in *M.* (C.A.), at para. 92:

> It has been repeatedly stated that there is no such thing as uniform sentence for a particular crime. … Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic exercise.

In light of these comments, I have considered the numerous cases submitted by Counsel, as well as other in determining the range of sentence available for this particular type of home invasion offence. While these cases are helpful in determining the appropriate range, no two cases are exactly the same, as the circumstances of each case differs from that of the others.

I am mindful of Justice Hallett's comments in *Muise*, in writing for the Nova Scotia Court of Appeal, he stated:

> …sentencing is not an exact science; it is anything but. It is the exercise of judgement taking into consideration relevant legal principles, the circumstances of the offence and the offender. The most that can be expected of a sentencing judge is to arrive at a sentence that is within an acceptable range…"

[66] In my view what distinguishes this case, from some of the other home invasions cases, including the cases of: *Harris, Fraser, Foster, Matwiy, Doyle,* and *Stephenson*, is the absence of extreme physical violence, which includes, in some, cases accused's arming themselves with offensive weapons, and/or conducting

surveillance.

[67] I am satisfied that the Crown established beyond a reasonable doubt the Defendant possessed a significant degree of premeditation and planning in committing these offences based on the Agreed Statements of Facts, and that clearly is an aggravating factor.

[68] Although there was no "extreme" physical violence eg: hit with a bat/cane, the victim was pushed, placed in a chokehold long enough to think he would go unconscious, bound by his wrists and legs and carried to his basement, all the while fearing for his life.

[69] The degree of planning, attempts to avoid detection (mask, gloves, hiding behind present), and the terror inflicted upon Mr. Allen calls for a sentence higher than defence counsel is suggesting but lower than the 15 years imposed by Judge Digby in *R. v. Harris.*

CDSA Matter

[70] In *R. v. Pitts* 2011 NSPC at paragraph 27:

> [27] The court must consider the case *R. v. Knickle*. At paragraph 16, the first step of the analysis is a consideration of the appropriate range of the sentence for the offence. At paragraph 17, the Court of Appeal states:
>
> > The court has consistently categorized drug traffickers based on the type and amount of drug involved and the level of

involvement in the drug business to assist in placed him within the range.

[28] At para. 18 of *Knickle, supra*, the Court of Appeal states:

> Numerous other sentencing decisions from this court repeatedly and consistently emphasize that persons involved in trafficking in cocaine will be subject to sentences of incarceration. This has been absolutely clear since the very first case heard by this court involving trafficking in cocaine. This court has never approved or endorsed a conditional sentence on charges of possession for the purpose of trafficking or trafficking in cocaine.
>
> …
>
> The importance of deterrence in sentencing cocaine traffickers must again be endorsed and reiterated as indicated by this court recently in Steeves:
>
> > This court has been steadfast in emphasizing that deterrence is a primary consideration in sentencing for drug offences.

[29] Chief Justice Clarke went on to say:

> The position of this court, repeated in many of our decisions since Byers, is that there are no exceptional circumstances where cocaine is involved. We are persuaded that general deterrence must be prominently addressed if the public is to be protected from the nefarious trade that has developed in this drug that is so crippling to our society.

[30] At para. 19:

> Trafficking in cocaine, or its possession for the purpose of trafficking, has traditionally attracted a federal term of incarceration. In *R. v. Dawe*, 2002 NSCA 147 (CanLII), [2002] N.S.J. No. 504, this court confirmed that a penitentiary sentence is the norm in Nova Scotia in cases involving trafficking cocaine. There the appellant had been sentenced to 15 months

> incarceration on charges of possession of four grams of cocaine, 200 grams of hashish and 225 grams of marijuana for the purpose of trafficking, to be served concurrently. Hamilton J.A. for the court, at paragraph 6 wrote:
>
> > The appellant has not satisfied us that the sentence is demonstratively unfit. To the contrary, the sentence is, if anything, unduly lenient. Possession of cocaine for the purpose of trafficking typically results in sentences of two years or more, as the judge pointed out.
>
> [31] As noted above, this court has never wavered in expressing these principles in cocaine trafficking cases. Another example is found in McCurdy at paras. 15 and 16:
>
> > This Court has indicated several times that in cases of drug trafficking, deterrence will be the primary consideration.
> >
> > Although it is not necessary that the length of sentence be precisely proportionate to the quantity of drugs involved, commercial distributors and growers require "materially larger" sentences than the petty retailer, as stated in *R. v. Fifield* (1978), 25 N.S.R. (2d) 407 at para.8. There was no question in this case that the respondent was motivated by financial gain and that the operation was a well established, sophisticated, large-scale commercial venture. These are all aggravating factors.

[71] It is trite to say that the public must be protected, and our laws be respected. In sentencing involving cocaine trafficking/possession for the purpose of trafficking, the primary objective must be deterrence and denunciation. Proportionality is a fundamental principle when determining a just sanction.

[72] The Crown categorized Mr. Greenlaw as a "street level dealer" as he was found in possession of 75.7 grams of cocaine. None of the aggravating factors listed in s. 10 of the *CDSA* are present.

[73] There is no evidence of any other drug activity, other than Mr. Greenlaw saying due to his life's circumstances he was using heavily and committed the robbery while high to get money for drugs.

Revisit Principles of Sentencing

[74] In reaching a fit and appropriate sentence for these offences and Mr. Greenlaw, I have also considered the **principle of restraint** which underlies the provisions contained in s. 718 of the *Code.*

[75] As Judge Hoskins states at pages 19 to 21 in *Parsons*:

> As stated, the purpose of sentencing is to impose "just sanctions." A "just sanction" is one that is deserved. A fit sentence in that context is one that commensurate with the gravity of the offence and the moral blameworthiness of the offender. In *R. v. Proulx*, at para. 82 Chief Justice Lamer reaffirmed that principle wherein he stated:
>
> > Proportionality requires an examination of the specific circumstances of both the offender and the offence so that the punishment fits the crime. Disparity in sentencing for similar offences is a natural consequence of the fact the sentence must fit not only the offence but also the offender.
>
> Section 718.1 of the *Criminal Code* directs that the sentence imposed must fit the offence and the offender. Section 718.1 is the codification of the *fundamental principle* of sentencing which is the principle of proportionality. This principle is deeply rooted in notions of fairness and justice.
>
> Section 718.1 states:
>
> > A sentence must be proportionate to the gravity of the offence

and the degree of the responsibility of the offender.

As Doherty J.A., in *Hamilton*, observed:

> Fixing a sentence that is consistent with s. 781.1 is particularly difficult where the gravity of the offence points strongly in one sentencing direction and the culpability of the individual points strongly in a very different direction. The sentencing judge must fashion a disposition from among the limited options available which take both sides of the proportionality inquiry into account… factors which may accentuate the gravity of the crime cannot blind the trial judge to factors mitigating personal responsibility. Equally, factors mitigating personal responsibility cannot justify a disposition that unduly minimizes the seriousness of the crime committed.

The fundamental purpose of sentencing and the objective underlying that purpose cannot be justified unless they are proportionate to the gravity of the offence and the degree of responsibility of the offender. In *Lacasse*, Justice Wagner, writing for the majority, held that:

> …proportionality is the cardinal principle that must guide appellate courts in considering the fitness of a sentence imposed on an offender. The more serious the crime its consequences, or the greater the offender's degree of responsibility, the heavier the sentence will be. In other words, the severity of a sentence depends not only on the seriousness of the crime's consequences, but also on the moral blameworthiness of the offender. Determining a proportionate sentence is a delicate task. As I mentioned above, both sentences that are too lenient and sentences that are too harsh can undermine public confidence in the administration of justice. Moreover, if appellate courts intervene without deference to vary sentences that they consider too lenient or too harsh, their interventions could undermine the credibility of the system and the authority of trial courts.

The principle of proportionality in punishment is fundamentally connected to the general principle of criminal liability, which holds that the criminal sanction may only be imposed on those individuals who possess a morally culpable state of mind. This notion was embraced by

the Supreme Court of Canada in *Martineau*, wherein the court, in discussing the constitutional requirement of fault for murder, held that "punishment must be proportionate to the moral blameworthiness of the offender". Thus, the duty of a sentencing judge is to consider all the legitimate principles of sentencing in determining of a just and appropriate sentence, which reflects the gravity of the offence committed and the moral blameworthiness of the offender.

The Ontario Court of Appeal in *R. v. Priest*, expressed the view that proportionality ensures that an individual is not sacrificed "for sake of the common good."

An appropriate or reasonable disposition will depend on circumstances of the case in the context of all relevant considerations, which includes not only the personal circumstances of the offender and the degree of responsibility of the offender for the offence, but also the gravity of the offence itself.

Proportionality means that the sentence must be proportionate to the gravity of the offence and the moral blameworthiness of the offender. This principle must also take into account the presence of any aggravating or mitigating circumstances including those listed in Section 718.2(a).

Our Appeal Court and those of other provinces have repeatedly stated that general deterrence and denunciation are the objectives to be emphasized in these types of offences which involves the break & enter into private dwellings, particularly in the context of home invasions, [and trafficking in drugs or possession for the purpose].

This is not to say that the other objectives are not important or are not to be considered, however, I believe that because of the view which our courts and out society takes of these crimes, these objectives must be the primary focus. A sentence which is unduly lenient can provide neither the necessary deterrence or denunciation required to meet the fundamental purpose of sentencing.

In essence, each case turns on its own unique set of circumstances. Thus, it is often a difficult challenge to apply the principle that a sentence should be similar to sentences imposed on similar offenders

> for similar offences committed in similar circumstances. However, what emerges from the myriad of factors that a court must consider in fashioning a just and appropriate sentence, as the appropriateness of the sentence is the product of the combined effects of the circumstances of the specific offence with the unique attributes of the specific offender.

[76] In the present case, Mr. Greenlaw, is *not* a youthful offender, nor is he a first-time offender. Although his record is not lengthy, he has committed previous crimes of violence: a s. 264.1(1)(a) from November 14, 2017 and a s. 266 from May 16, 2002, but he has not received a custodial sentence.

[77] Therefore, the sentence that I am about to impose will be Mr. Greenlaw's first period of incarceration.

[78] Thus, (as mentioned previously) the principle of restraint must be considered. Section 718.2(d) provides that an offender should not be deprived of liberty if a less restrictive sanction may be appropriate. It requires a sentencing judge to first consider all available sanctions other than imprisonment that are reasonable in the circumstances.

[79] These provisions exist to discourage imprisonment when another less onerous sanction will also satisfy the relevant sentencing principles. Restraint also means that sentencing courts should seek the least intrusive sentence and the least quantum that will achieve the overall purpose of being an appropriate and just disposition.

[80] I am mindful, however, that as the gravity of the offence becomes more serious, particularly, in crimes of violence, the mitigating effects decrease.

[81] In *R. v. J.W.S.*, 2013 NSPC 7, Judge Derrick (as she was then) stated at paragraph 68 and 69:

> [68] A first sentence of imprisonment is a relevant consideration in determining how long a custodial sentence should be. As the Nova Scotia Court of Appeal noted in *R. v. Colley*, 1991 CanLII 2508 (NS CA), [1991] N.S.J. No. 62: "If the need to protect society can be well served by a shorter sentence as by a longer one, the shorter is to be preferred." The Ontario Court of Appeal has expressed a similar view: "... a first sentence of imprisonment should be as short as possible and tailored to the individual circumstances of the accused [rather] than solely for the purpose of general deterrence."(*R. v. Priest*, 1996 CanLII 1381 (ON CA), [1996] O.J. No. 3369) This consideration is related to the principle of restraint in sentencing: that the court should impose "the least quantum that will achieve the overall purpose of being appropriate and just." (*R. v. Best*, [2005] N.S.J. No. 347 (S.C.), paragraph 25)
>
> [69] Generally, the sentencing of even serious, violent offences should be governed by this principle, particularly in cases involving youthful offences.

[82] In *R. v. Parsons* Judge Hoskins states at page 24:

> As stated, given that sentencing is highly contextual and necessarily an individualized process, the Court must impose a sentence that address the two elements of proportionality, that is the circumstances of the offence and the circumstances of the offender and thereby reach a sentence that fits nor only the offence but also the offender. The sentencing judge must fashion a disposition from among the limited options available which take both side of the proportionality inquiry into account.
>
> Section 718.2(b) requires the Court to take into consideration the principle that:

> a sentence should be similar to sentences imposed on similar offences committed in similar circumstances.

The principle of parity is qualified by the recognition that sentencing is an individualized process. Although it is always desirable to minimize disparity in sentencing of similar offences and similar offenders, there will undoubtedly be exceptional cases in which the disparity between the sentences is justified. The relationship between the principles of proportionality and parity was discussed by the Supreme Court of Canada in *Lacasse:*

> Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence for similar offences committed in similar circumstances. Individualization and parity of sentences must be reconciled for a sentence to be proportionate: s. 718.2(a) and (*b*) of the *Criminal Code.*

The determination of whether a sentence is fit also requires that the sentencing objectives set out in s. 718 of the *Criminal Code* and the other sentencing principles set out in s. 718.2 be taken in to account. Once again, however, it is up to the trial judge to properly weight these various principles and objectives, whose relative importance will necessarily vary with the nature of the crime and circumstances in which it was committed. **The principles parity of sentences, on which the Court of Appeal relied, is secondary to the fundamental principle of proportionality.** This court explained this as following in *M. (C.A.)*;

> It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime… Sentencing an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. [para. 92] (emphasis added)

As emphasized, parity means that the sentence must be similar to those sentences imposed for similar offences on similarly situated offenders.

…

> In reaching this difficult decision, I have considered and applied the statutory purposes and principles of sentence, which suggests a period of incarceration given the seriousness of the crime is "unavoidable". Indeed, this is one of those serious cases where is it necessary to separate an offender for a significant period of incarceration because of the seriousness of the crime committed.

[83] I have outlined the mitigating factors: a change of plea; a lack of record; acceptance of responsibility; a relatively positive Pre-Sentence Report; a sincere expression of remorse; and steps towards rehabilitation.

[84] I have also considered the aggravating factors, which have been listed earlier in these reasons.

[85] Thus, given the gravity of the offence(s), and degree of Mr. Greenlaw's responsibility, deterrence and separation from society must be reflected in the sentence imposed.

[86] I am mindful that the rehabilitation of Mr. Greenlaw must not be lost in the sentencing calculus and that it plays a role in fixing the length of any prison term. The fact that the sentence being imposed is the first significant sentence of incarceration is also relevant.

[87] As stated in the Crown's brief beginning at page 5:

> Sentences for multiple offences should be determined independently
>
> 9. When sentencing an offender for multiple offences, a proper sentence for each offence should be determined independently of each

other. A final review at the end to ensure compliance with the totality principle ensures that the total length of any consecutive sentences is not unduly long or harsh.

…

11. In *R. v. Hutchings*, 2012 NLCA [Hutchings], the Newfoundland and Labrador Court of Appeal sat a panel of five justices to provide the following guidelines regarding sentencing in the context of multiple offences:

The foregoing analysis, as well as the fact that Ruby formulation which was referred to in *M.(C.A.)*, pre-dated ss. 718.1 and 718.2(c), requires a restatement of the applicable approach. I would state the following as guidelines for the analytical approach to be taken henceforth:

> When sentencing for multiple offences, the sentencing judge should commence by identifying a proper sentence for each offence, applying proper sentencing principles.
>
> The judge should then consider whether any of the individual sentences should be made consecutive or concurrent on the ground that they constitute a single criminal adventure, without consideration of the totality principle at this stage.
>
> Whenever, following the determination in steps 1 and 2, the imposition of two or more sentences, to be served consecutively, is indicated, the application of the totality principle is potentially engaged. The sentencing judge must therefore turn his or her mind to its application.
>
> The approached is to take one last look at the combined sentence to determine whether it is unduly long or harsh, in the sense that it is disproportionate to the gravity of the offence and the degree of the responsibility of the offender.
>
> In determining whether the combined sentence is unduly long or harsh and not proportionate to the gravity of offence and the degree of responsibility of the offender, the sentencing court should, to the extent of their relevance in the particular

circumstances of the case, take into account, and balance, the following factors:

> The length of the combined sentence in relation to the normal level of sentence for the most serious of the individual offenses involved;
>
> the number and gravity of the offences involved;
>
> the offender's criminal record;
>
> the impact of the combined sentence on the offender's prospects for rehabilitation, in the sense that it may be hard or crushing;
>
> such other factors as may be appropriate to consider to ensure that the combined sentence is proportionate to the gravity of the offences and the offender's degree of responsibility.

Where the sentencing judge concludes, in light of the application of those factors identified in Step 5 that are deemed to be relevant, that the combined sentence is unduly long or harsh and not proportionate to the gravity of the offences and the offender's degree of responsibility, the judge should proceed to determine the extent to which the combined sentence should be reduced to achieve a proper totality. If, on the other hand, the judge concludes that the combined sentence is not unduly long or harsh, the sentence must stand.

Where the sentencing court determines that it is appropriate to reduce the combined sentence to achieve a proper totality, it should first attempt to adjust one or more of the sentences by making it or them concurrent with other sentences, but if that does not achieve the proper result, the court may in addition, or instead, reduce the length of an individual sentence below what it would otherwise have been.

In imposing individual sentences adjusted for totality, the judge should be careful to identify:

> the sentences that are regarded as appropriate for each individual offence applying proper sentencing principles, without considerations of totality;
>
> the degree to which sentences have been made concurrent on the basis that they constitute a single criminal adventure; and
>
> the methodology employed to achieve the proper totality that is indicated, identifying which individual sentences, are for this purpose, to be made concurrent or to be otherwise reduced.
>
> Finally, the sentencing judge should indicate whether one or more of the resulting sentences should be further reduced to reflect any credit for pre-trial custody and if so, by how much.
>
> [Hutchings at para 84.]

12. In *R. v. Stokes* (N.S.C.A.) (1993), 12 NSR (2d) 66 (QL), the Nova Scotia Court of Appeal commented as follows in dealing with multiple drug sales to undercover officer:

> The next ground of appeal is that the sentences should, in the appellant's opinion, have been concurrent rather that consecutive. Although the sales were all to the same person and all within a few weeks, each offence was a separate and distinct act requiring its own intent, premeditation, planning and execution. **Each deserves its own sentence, lest like-minded individuals believe once they've done it for the first time, it makes little difference if they do it again.**
>
> [*Stokes* at para. 11.]
>
> [Emphasis added.]

13. The Manitoba Court of Appeal took the same view in *R. v. P.K.*, 2012 MCBA 36:

> In *R. v. N.A.S.*, 2007 MBCA 97 at para. 20, 220 Man.R. (2d) 43,

> this court referenced, with approval, the Alberta Court of Appeal, sitting with a panel of five members, in *R. v. Johnas, Hammond, Morozoff, Jurgens, MacIntyre, Lodoen and Cardinal* (1982), 41 A.R. 183 (at para. 26):
>
> **If all offences after the first one are punished by sentences which are concurrent to the first, it will soon be observed by offenders that once one offence has been committed, there is nothing to deter them from subsequent offences. …**
>
> See all the recent decision of *R. v. B.S.M.,* 2011 ABCA 105, 502 A.R. 253, where the Crown argued that the judge erred in principle by making the sentences for the two crimes run concurrently. In that case, the accused had pled guilty to touching a child for a sexual purpose and making child pornography. He was sentenced to four years three months, and two years, respectively…. [Emphasis added.]

[88] I find a proper sentence for each offence is as follows; for the break and enter; seven years. Unlawful confinement; four years, concurrent. Mask; four years, concurrent. These offences are all part of a single criminal event. The *CDSA* offence, I would impose two years and six months consecutive, for a total of nine years, six months.

[89] Taking into consideration the totality principle, is this sentence unduly long or harsh?

[90] Mr. Greenlaw must be sentenced according to his specific circumstances and culpability. The fact that he took responsibility by changing his plea and not going to trial, as was his right to do so, should be seen in a positive light.

[91] And although denunciation and deterrence must be in the foreground, I cannot

disregard the real prospects for the Defendant's rehabilitation. At page five of the Pre-Sentence Report, he has been described by the program officer at Northeast Nova as a "model inmate who has always shown staff respect and has shown a very high desire to change his life…". I had listed previously the programs the Defendant has taken. This is not a case of an offender who failed to engage in rehabilitating himself.

[92] I am satisfied that the totality principle be applied in Mr. Greenlaw's sentencing. I do not think applying the principle of totality undermines the integrity of the sentencing regime.

[93] The sentence I referred to earlier, nine years and six months, would be unduly long and harsh and could potentially undermine Mr. Greenlaw's motivation and opportunities to continue rehabilitation.

[94] The ultimate objective of sentencing is protection of the public and furtherance of a just, peaceful and safe society. That is best achieved by the rehabilitation of the offender. A nine year and six-month sentence would be excessive and have a real potential to jeopardize Mr. Greenlaw's rehabilitation, his plans for a new start to life and his ability to successfully reintegrate into society.

[95] For the break and enter (robbery) the appropriate sentence is six years, unlawful confinement, four years concurrent. Mask, four years concurrent, and the *CDSA*, two years consecutive.

[96] The sentence still sends a strong message of denunciation and meets the

objectives of specific and general deterrence.

[97] Mr. Greenlaw is entitled to remand credit at 1.5 to 1. A total of 234 days at 1.5 credit is 351 days. The break and enter of six years less 351 days for at a total of five years, 14 days. With the two four years' concurrent sentences, and the two years consecutive on the *CDSA*, would be a total of seven years and 14 days.

[98] Ancillary Orders: the mandatory victim fine surcharge, Mr. Greenlaw will have ten years to pay; a DNA order on s. 279 and s. 348 offences; a s. 109 for life; and a Forfeiture Order for the shotgun and for the drugs.