PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Miller*, 2020 NSPC 40

Date: 2020-10-19
Docket: 8226351
Registry: Windsor

Between:

Her Majesty the Queen

v.

Steven Miller

Judge:	The Honourable Judge Ronda van der Hoek
Heard:	Windsor, Nova Scotia
Decision	Sentence
Charge:	5 CDSA
Counsel:	Mr. Michael Taylor for the Crown Mr. Brian Church for the Defence

By the Court:

Introduction:

[1] Mr. Steven Miller is before this court for sentencing having pled guilty to a charge of possessing cocaine for the purpose of trafficking, contrary to section 5 of the *Controlled Drugs and Substances Act*.

[2] Mr. Miller argues that his limited criminal record, his guilty plea, that he was a drug user at the time of the offence -since remedied by successful drug treatment and abstention, all combine to support the court suspending the passing of sentence and placing him on a three-year period of probation.

[3] The Crown says there are no factors in this case that support considering such a sentence, and instead seeks the minimum of the applicable range - two-years' federal incarceration.

[4] Ancillary orders for a section 109 *Criminal Code* Prohibition Order for life, a section 487.051 *Criminal Code* DNA order for this secondary designated offence, as well as a Forfeiture Order, pursuant to section 16 of the CDSA, are agreed to by the parties.

Decision:

[5] After careful consideration of all the relevant factors, I conclude the purposes and principles of sentencing support the imposition of two-year period of incarceration in a federal facility.

[6] These are my reasons for reaching such a conclusion, but first the facts.

Facts:

[7] On May 11, 2018, armed with a CDSA search warrant, police conducted a pre-search drive past Mr. Miller's residence in Newport Corner. They saw Mr. Miller standing in the driveway talking on a cell phone. When police circled back

to execute the warrant, they noted a newly arrived vehicle on the property and Mr. Miller no longer present. Police entered onto the property and covertly observed the garage where, through the open door, they saw Mr. Miller and two other men.

[8] Police arrested and searched the three men and on Mr. Miller's person they located two cell phones and $3,620.00 cash. They also noticed an empty torn bag on the ground near his feet. Police surmised the other two men had attended the property to buy drugs from Mr. Miller. Defence did not dispute that conclusion. A search of one of those men resulted in police locating 72 grams of cocaine.

[9] Mr. Miller was cooperative upon arrest and led officers into his house where they seized 56 grams of cocaine from the refrigerator, some stored in a Toaster Strudel box, and almost 500 grams of marijuana from the crisper; from the main bedroom they seized .7 grams of cocaine along with a few hydromorphone and Xanax pills. Finally, 142 grams of marijuana was in the basement along with a scale, a pill crusher, additional cell phones and a laptop. Some of these items were listed in the consent Forfeiture Order the contents is available to the court for consideration on sentencing.

[10] Mr. Miller acknowledged ownership of all the drugs, the related paraphernalia, and the 72 grams of cocaine located on the other man. All these items are subject to the consent Forfeiture Order.

[11] In a warned statement to police, Mr. Miller at first denied he was a drug dealer, but eventually told police he "does not sell as much as they probably think".

The Personal Circumstances of Mr. Miller:

[12] A presentence report dated February 19, 2020 describes Mr. Miller as a 34-year-old male with a limited criminal record for possession of marijuana (2005) and failing to attend court (2006) for which he received fines of $150 for each offence.

[13] Mr. Miller benefited from a childhood raised by gainfully employed parents who care deeply for him. He was not exposed to drug abuse, nor was he subjected

to violence or abuse of any kind in the family unit. His parents were shocked to learn of the offence but remain supportive of their son. Both attended the sentencing hearing. Other than Mr. Miller, no member of the family has ever been before the courts.

[14] Having seen no evidence of it, Mrs. Miller reported that she and her husband were surprised to learn of their son's drug use. She surmised her son may have become addicted to pain medication following two car accidents, adding, "We obviously missed a lot of things".

[15] Asked about her son's needs, Mrs. Miller identified a tendency toward easy frustration that may benefit from counselling in anger management. She also supports continuing counselling for addictions.

[16] Mr. Miller is in an eight-year common law relationship and his partner says she was shocked to learn of the charges. She remains supportive of him. Mr. Miller confirmed that her ten-year-old child stays regularly in the house. The Crown expressed skepticism that his partner did not see the drugs hidden around the house, and is concerned that a young child was permitted to stay there given the danger these drugs represent as well as the negative activities often attracted by the drug trade.

[17] The report describes Mr. Miller as a well-behaved child who did not get into trouble at home or at school. He completed both high school and college and benefits from full time employment in a job he enjoys. His employer was interviewed for the report and speaks quite positively of Mr. Miller. At the time of the report, he was laid off but expected to return. The court did not receive a post Covid-19 update on his employment situation, so assumes he is still laid off.

[18] At the time of the report Mr. Miller reported pre-layoff income of $16.50 an hour for 60 hours per week, and post lay off income of $1,900.00/month. His common law partner is also in receipt of income. Mr. Miller owns three vehicles including a Mercedes and has an $800/monthly car payment.

[19] Mr. Miller is currently in good health, does not suffer from mental health issues, but does have a history of drug use. In his youth, he was a daily user of

marijuana until he quit ten years ago because he no longer liked the effect. He began cocaine use at 19 years of age, taking a six-year break before resuming at some point and finally ending his use in October 2018 when he decided to seek counselling and abstain. He now takes Suboxone as prescribed, participates in counselling with a social worker in Dartmouth, and regularly attends an opioid treatment program. He receives "carries" from the local drug store and reports no current use of illicit drugs.

[20] Mr. Miller took the opportunity to allocute, telling the court that he struggled with drugs his whole life, spent time around the wrong people, but sought help in 2018 and is now "testing clean" and working full time. He says he has completely changed his life. He wishes to stay in the community to work and support his family. He is sorry for what he did and is away from that life now and does not want to go back. He was supported in his allocution by his partner who is clearly devoted to him and overwhelmed at the prospect of his incarceration.

[21] The probation officer described Mr. Miller as a suitable candidate for community supervision and, should the court decide to do so, suggested conditions to attend for counselling and treatment for issues of a personal nature as well as continuing the current treatment for substance use.

Position of the Parties:

[22] In arguing for a period of federal incarceration, the Crown notes Mr. Miller is not a petty retailer and points to the amount of drug seized and the circumstances of those seizures. At the time his financial situation included a family income of between $62,000.00- $82,000.00 a year, from which relative financial security can be assumed for a family living within its means. He also points to Mr. Miller's decision to choose an $800.00 monthly car payment, presumably for the Mercedes. He says while Mr. Miller is addressing an opioid addiction, there is no credible evidence of a cocaine addiction. As a result, this is not one of those cases warranting a non-carceral sentence, and but for the mitigating factors the Crown would have sought more then two years.

[23] While the defence says Mr. Miller is a first-time offender, I would note only for this offence. He does have what the Crown described as a "minor criminal

record" as previously noted. Defence says the PSR is generally positive and but for the change in law rendering a conditional sentence unavailable, he might have qualified for a community sentence. Defence says the charge arose because of Mr. Miller's longstanding drug addiction, *albeit* not to cocaine, reminding the court that Mr. Miller was motivated to seek counselling after arrest, and has been successfully dealing with same. I would note the counselling came approximately six months after arrest. Mr. Church says if the court considers incarceration necessary, two years is appropriate, presumably due to the counselling he can receive in a federal institution and the court's awareness that services are purportedly better there than in a provincial facility. I am also advised that Mr. Miller is an introvert and would welcome the opportunity to receive a suspended sentence and continue his counselling for drug use and add to that regime counselling for personal matters as well as community service hours.

The Law:

Sentencing Principles

[24] The relevant sentencing provisions that I must consider are set out in *Criminal Code* at sections 718, 718.1 and 718.2 of the *Criminal Code* and the *Controlled Drugs and Substances Act* at section 10. They provide the general principles and factors a court must consider in fashioning a sentence that serves to protect the public and contribute to respect for the law and the maintenance of a safe society.

[25] Section 718 instructs the court to impose a just sanction that has, as its goal, one or more of the following: denunciation; general and specific deterrence; separation from society where necessary; rehabilitation of the offender; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community.

[26] Section 718.1 says it is a fundamental principle of sentencing that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[27] Section 718.2 requires a court to consider the aggravating and mitigating factors relating to the offence or to the offender and increase or decrease a sentence accordingly; the principles of parity and proportionality; that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and that all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders.

[28] Section 10 of the *CDSA* incorporates the foregoing principles and requires a sentence encourage treatment of offenders in appropriate circumstances.

[29] Sentencing has an overarching goal of promoting the long-term protection of the public. As a result, the court must balance the relevant principles and purposes of sentencing and apply them to the facts to arrive at a fit sentence. This is not an easy task, but one that should be undertaken with careful reflection. Fortunately, case law provides guidance as to how a court should interpret and balance these principles, guiding how they should be applied to different categories of offence. However, the best means of addressing the principles and attaining the ultimate objective will always depend on the unique circumstances of the case and the offender who appears before the court. Because of that, it has been consistently recognized that sentencing is a delicate and inherently individualized process (*R. v. Lacasse*, 2015 SCC 64 at para. 1 and *R. v. M. (C.A.)*, 1996 SCC 230 at para. 91-92).

Denunciation and Deterrence

[30] Over the years, the Nova Scotia Court of Appeal has repeatedly stated that denunciation and general deterrence must be the primary considerations when sentencing offenders who traffic in Schedule I drugs. (*R. v. Chase*, 2019 NSCA 36; *R. v. Steeves*, 2007 NSCA 130*; R. v. Butt*, 2010 NSCA 56*; R. v. Scott*, 2013 NSCA 28; *R. v Oickle*, 2015 NSCA 87; recently reaffirmed in *R. v. White*, 2020 NSCA 33 at para. 76, *R. v. Kleykens*, 2020 NSCA 49). Emphasizing these objectives reflects society's condemnation of these offences and acknowledges the harm they do to communities.

[31] It is useful to quote paragraph 13 of the *Butt* decision:

> [13] . . . cocaine has consistently been recognized by this Court as a deadly and devastating drug that ravages lives. Involvement in the cocaine trade, at any level, attracts substantial penalties (see, for example, *R. v. Conway*, 2009 NSCA 95; *R. v. Knickle*, 2009 NSCA 59, *R. v. Steeves*, 2007 NSCA 130; *R. v. Dawe*, 2002 NSCA 147; *R. v. Robins*, [1993] N.S.J. No. 152 (Q.L.) (C.A.); *R. v. Huskins*, [1990] N.S.J. No. 46 (Q.L.) (C.A.); and *R. v. Smith*, [1990] N.S.J. No. 30 (Q.L.) (C.A.)). It is significant that the *CDSA* classifies cocaine as one of the drugs for which trafficking can attract a life sentence.

Rehabilitation:

[32] Despite the focus on denunciation and general deterrence, rehabilitation continues to be a relevant sentencing objective. That was confirmed by the Supreme Court of Canada in *R. v. Lacasse*, *supra,* where, in the context of a sentence appeal for the offence of dangerous driving causing death, Wagner, J., writing for a majority, said:

> One of the main objectives of Canadian criminal law is the rehabilitation of offenders. Rehabilitation is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world, and it helps the courts impose sentences that are just and appropriate. (at para. 4)

[33] That said, consideration of an offender's prospect for rehabilitation has a reduced impact in sentencing those who traffic in hard drugs such as cocaine. (*Kleykens*, *supra*, at para. 66)

Proportionality:

[34] The proportionality analysis requires the court to first assess the gravity of the offence. The second step requires consideration of Mr. Miller's degree of responsibility.

[35] Possession of cocaine, a Schedule I drug, for the purpose of trafficking is a very serious offence. It carries a maximum sentence of life imprisonment, cannot be subject to discharge and does not qualify for a conditional sentence order. In this case the amount of the drug seized was quite high- 128 grams. Cocaine is generally recognized as a hard drug that ravages communities by both the

addictions it creates and supports, as well as the spinoff crimes that result from the trade.

[36] In assessing Mr. Miller's degree of responsibility, I have heard the facts and apply the *Fifield* categories, " the isolated accommodator of a friend, the petty retailer, the large retailer or small wholesaler or big-time operator". I accept that Mr. Miller was certainly not accommodating a friend. Based on the type of drug, the amount of cash found on his person, and the street value of the cocaine (approximately $13,000.00), I am comfortable categorizing him as above a petty retailer and more particularly somewhere between that and a large retailer. In reaching this conclusion I also rely on the seizure of numerous cell phones and note the variety of drugs located on the property. These are the hallmarks of a somewhat more organized operation. I also consider the amount of drug found on the other man searched, 72 grams, that was claimed by Mr. Miller. (*R. v. Fifield*, 1978 CanLii 812 (NSCA)

[37] That said, Mr. Miller has accepted full responsibility for his actions and was cooperative with police upon arrest. He is remorseful. He has beaten a drug addiction; he is an employed high school graduate; he benefited from an enviable upbringing; he has a supportive family; and his family income at the time represented a decent standard of living in this province.

[38] I find Mr. Miller's degree of responsibility high. I cannot find that he was selling purely to support his own drug habit. If so, he hid it well from his family. I cannot but agree with the Crown that an $800/monthly car payment presumably for a Mercedes, or the other two vehicles listed in the PSR, suggests spending beyond ones means. It is fair to say obtaining cocaine for resale cannot in any manner compare to obtaining, for example, marijuana which one could undertake to grow oneself. By necessity obtaining cocaine must involve trusted contact with criminal operations at some level.

Aggravating and Mitigating Factors:

[39] Section 718.2 of the *Criminal Code* requires identification of both the aggravating and the mitigating factors relating to the offence and the offender. I find as follows:

Aggravating Factors:

- Nature of substance (cocaine, a Schedule I drug);
- The large amount of the drug- 128 grams. The uncontested street value is $100.00 a gram with a possible street value of $13,000.00; (I note the presumed buyer was found with 72 grams and Mr. Miller was in possession of $3,600.00, so I could assume a lower value, but nothing really turns on this detail);
- He used the family home where his partner lives, and I cannot ignore her claim that she was unaware drugs were being kept in the house;
- A past conviction for possession under the *CDSA* which must surely suggest knowledge of the unlawfulness of scheduled drugs; and finally
- A child frequently residing in the house, presumably in the presence of the dangerous drugs.

Mitigating factors:

- His guilty plea;
- His minimal criminal record;
- His gainful employment, *albeit* laid off at the moment;
- His passionate allocution that demonstrated remorse, embarrassment, shame, and an understanding of the effects of his choices on his family;
- Cooperation with police (aiding the search by showing them the drugs hidden in his house);
- His strong family support as demonstrated by their attendance at court; and
- His positive decision to refrain from drug use and undergo counselling, representing good prospects for rehabilitation.

Parity / Range of Sentences

[40] Section 718.2 of the *Code* requires the Court to consider the principle of parity by examining the range of sentences imposed for possession for the purpose of trafficking Schedule I substances. As the Nova Scotia Court of Appeal said at para. 68 in *R. v. White, supra, "*one of the functions of parity is to ensure fairness and guide our responsibility as judges to impose a sentence that is just and fair". There is of course a connection between proportionality and parity, as individualization and parity of sentences must be reconciled for a sentence to be proportionate (*Lacasse*, *supra*, at para. 53).

[41] In a recent decision, *R. v. Kirkpatrick*, 2019 NSPC 56, I had occasion to review a long line of case law involving the *CDSA* sentencing regime, local decisions, and cocaine. Since that time, our Court of Appeal has decided *White*, *supra*, and other crown appeals of non-carceral sentences imposed for possession for the purpose of trafficking offences in the province. While recognizing a two-year sentence may not always be a fit sentence for some offenders, that court continues to support the oft referenced direction that cocaine traffickers should generally expect to be sentenced to imprisonment in a federal penitentiary. (See: *Kleykens*, *supra*, and *White*, *supra*) Prior to that - *Steeves*, supra; *Knickle*, *supra*; *Butt*, *supra*; *Jamieson*, 2011 NSCA 122; and *Oickle, supra*, 87 that set the standard.)

[42] Mr. Church acknowledges that conditional sentences are no longer available for this offence and asks the court to consider the recent non-carceral sentencing decisions that have stood up to scrutiny. I am familiar with many of these decisions as all of them have formed the foundation for non-custodial sentences I have imposed for offences under the *CDSA* of which I will say more later. (See also: *R. v. Scott, supra;* and, *R. v. Howell*, 2013 NSCA 67, *R. v. Chase*, *supra*.)

[43] While I have more often than not found it necessary to impose periods of federal incarceration for offenders convicted of section 5 *CDSA* offences, I will say a word about what is necessary and what is not to move the consideration away from incarceration. In *R. v. Scott, supra*, Beveridge, J.A., writing for the majority, concluded that it was not necessary for a sentencing judge to find "exceptional" circumstances to justify imposing a sentence lower than two years for trafficking cocaine (at para. 53). He reminded sentencing judges that the task in imposing a sentence for cocaine trafficking is the same as any other offence – "considering all of the relevant objectives and principles of sentence as set out in the *Criminal Code*, balancing those and arriving at what that judge concludes is a proper sentence" (para. 26).

[44] *Scott* and *Chase* stand for the proposition that while it may be rare for a cocaine trafficker to receive a sentence less than a federal penitentiary term, where the court properly applies sentencing principles that justify the result, a sentencing judge is not required to make any specific conclusion that the circumstances are exceptional.

[45] Based on the majority decision in *Scott, supra*, reiterated in *Rushton*, 2017 NSPC 2, the lower end of the range has generally been imposed in cases involving one or more of the following: addictions; a youthful offender; limited or no prior record; relatively small amount of the drug; hope of rehabilitation; compelling *Gladue* factors for an aboriginal offender, and an absence of aggravating factors, statutory and otherwise.

[46] As was noted in *R. v. Zachar*, 2018 ONCJ 631, a decision of Green J. of the Ontario Court of Justice, the range across Canada is broad and includes, in some provinces, intermittent sentences or suspended sentences with probation. He included reference to many such cases including: *R. v. Peters,* 2015 MBCA 119*; R. v. McGill*, 2016 ONCJ 138*; R. v. Maynard,* 2016 YKTC 51*; R. v. Voong,* 2015 BCCA 285*; R. v. Carrillo,* 2015 BCCA 192*; R. v. Fergusson,* 2014 BCCA 347*; R. v. Arcand,* 2014 SKPC 12*;* and, *R. v. Yanke,* 2014 ABPC 88.

[47] Setting a range of sentence encourages consistency across the province as well as the country, but ranges, "are guidelines rather than hard and fast rules" (*R. v. Nasogaluak*, 2010 SCC 6 at para. 44).

[48] Justice Farrar in *R. v. Phinn*, 2015 NSCA 27, referenced *R. v. A.N.*, 2011 NSCA 21, noting:

> [34] Unless expressed in the *Code*, there is no universal range with fixed boundaries for all instances of an offence: [Authorities omitted]. **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.** ...[emphasis added]

[49] Mr. Church has asked me to go outside of the range of 2-4 years proposed by the Crown. I am aware that I may do so, if the sentence I impose is a lawful one that adequately reflects the principles and purposes of sentencing (*Nasogaluak, supra*, at para. 44).

[50] While Mr. Church did not review or provide case law for my consideration, he argues in support of a non-custodial sentence noting provincial courts have imposed them. The Crown says those cases are distinguishable and I agree.

[51] In *R. v. Kleykens*, 2020 NSCA 49, Justice Saunders writing for the court concluded a sentence of 90 days was not fit for an offender found in possession of 144 grams of cocaine and marijuana. Mr. Kleykens was cooperative, had no prior record, expressed regret, had a strong work ethic, was gainfully employed, and appeared to have turned his life around. The court allowed the Crown appeal and concluded a two-year sentence should have been imposed. His situation really does not differ materially from that of Mr. Miller. Add to this, Mr. Kleykens was a first offender.

[52] In *R. v. Saldanha*, 2018 NSSC 169, the court referenced *Scott* at paragraph 108 wherein Justice Saunders suggested some examples of the type of factors that he thought might persuade a court to conclude that an offender had "exceptional circumstances". They included: the offence being a single one-time event; it being completely out of character and an aberration in the life of the offender for which great pain had been taken to make amends.

[53] I cannot say that this case assists in moving the bar from a period of federal incarceration for Mr. Miller. The amount of drug alone suggests an established

practice and not a one-time situation. His recklessness regarding others who reside in the house, his partner, and her child, are also factors that cannot be ignored.

[54] In *Saldanha*, *supra,* the court identified an offence triggered by some significant trauma, crisis or personal hardship, or an offender who took significant steps to reform his behaviour and made remarkable progress in his own rehabilitation, thereby managing by all accounts to turn his life around. Mr. Miller was not motivated to offend because of trauma, crisis, or personal hardship. Instead, his offence appears to be financially motivated at the same time it is said to be motivated by his own drug use. But, to his credit I will add, he has recognized his error in judgement.

[55] *Saldanha* also suggests the grave hardship that a lengthy period of incarceration may cause, the impact on dependents, any deterioration of health due to a serious illness that likely could not be properly treated in prison. Mr. Miller by comparison is a healthy adult male who has his past drug addiction well in hand. The prison is statutorily mandated to continue his treatment. While he is incarcerated, his partner will continue to support her child.

[56] I have also considered *R. v. Christmas*, 2017 NSPC 48, *R. v. Casey,* 2017 NSPC 55, *Rushton*, *supra, (*a youthful, remorseful petty retailer who possessed cocaine, methamphetamine, and cannabis for the purpose of trafficking who was placed on a three-year suspended sentence*)* and *Chase*, *supra*. Those cases are distinguishable because of *Gladue* factors, youth, addiction and small amounts of drug, and rehabilitation of addiction. Mr. Miller is an adult who possessed a significant amount of drug. I do not accept that the individuals in the cases, and Mr. Rushton, had factors in play that were worse or similar to Mr. Miller. For the reasons I have already set out and will say more of, there is nothing to move this court from considering the fitness of a federal period of incarceration. Nothing has changed regarding the principles of sentencing in these matters and two years remains a "normal" sentence for this offence, despite the fact less time has been imposed in some cases.

[57] In *R. v. Morrison,* 2019 NSPC 38, Judge Peter Ross' imposed an eight-month period of incarceration for a low-end retailer found in possession of 60 grams of cocaine. Mr. Morrison plead guilty, his PSR was positive, his family

support strong, and since being charged he had engaged in commendable conduct in the community. The cocaine was valued at $100 per gram - $6,000.00. He was a user himself and claimed grief as a factor triggering his own use. He had a long and varied work history and his family asserted that he had disavowed the drug scene, taken on volunteer work, and maintained employment.

[58] In rejecting the request for a suspended sentence, Judge Ross considered recent reported decisions from the bench wherein such had been imposed and distinguished Mr. Morrison's situation noting his plea was not early, he was found with a greater quantity of drugs than in comparator cases – *Rushton*, *supra,* 6 grams of cocaine, *Casey*, *supra*, 0.23 grams of crack cocaine, *Saldanha*, *supra*, approximately 8 grams and *R. v. Provo*, 2001 NSSC 189, 0.67 grams.

[59] Judge Ross agreed that calls for leniency are understandable but must be tempered by an awareness of the destructive effects of hard drugs. He concluded a significant period of incarceration was required and the strong mitigating factors served to reduce an otherwise appropriate two-year sentence to eight months and probation, taking into account, *inter alia*, the significant amount of cocaine seized, and Mr. Morrison's daily involvement in purchasing and distributing a Schedule 1 drug.

[60] As mentioned, I have recently sentenced three individuals to non-custodial sentences for offences under section 5 of the *CDSA*.

[61] *R. v. Nicholson* (unreported, [November 26, 2018] (Crown appeal from sentence abandoned): Mr. Nicholson possessed approximately 1900 methamphetamine pills for the purpose of trafficking. His relevant *Gladue* factors, serious long-term drug addiction, some of the pills intended for his own use, finally beating his addiction through significant, sustained rehabilitative efforts, resulted in a non-custodial sentence.

[62] *R. v. Wilcox* (unreported, [February 7, 2019]): An elderly first offender afflicted by a variety of medical conditions gave to a friend a number of pills from her own oxycodone script and received a suspended sentence and three years of probation.

[63] *R. v. Ward* (unreported [June 17, 2019]): A middle aged first offender with a long-term addiction to pills, pestered by two fellow addicts relented and gave them two pills. The two men suffered an adverse reaction that required emergency medical intervention. Mr. Ward received a "shocking wake up call" and immediately addressed his own long-term addiction through sustained and intensive therapy and engaged in laudable efforts to assist other addicts in his community. He was supported by a significant number of community members including his employers and recipients of his recovery focused support. His sentence was suspended, and he was placed on probation for three years with significant community service hours.

[64] Mr. Miller's circumstances, I find, cannot be compared to the foregoing cases. He is not a first offender at senior age as in *Wilcox*, his rehabilitation does not have the hallmarks of tenacity and open support of others, found in *Ward*, nor does he benefit from compelling *Gladue* factors as in *Nicholson*.

Reasonable Alternatives to Custody

[65] That said, I must still consider reasonable alternatives to custody. I note an offender should not be deprived of liberty, if there are less restrictive sanctions that are appropriate in the circumstances and that are available other than imprisonment. They must be reasonable in the circumstances and consistent with the harm done to victims or to the community and should be considered for all offenders.

[66] Since hearing the sentencing submissions, I balanced and carefully considered the facts of this case, the contents of the PSR, and reviewed the case law, including the cases that persuaded other courts that a period of incarceration was not necessary. I cannot agree that the cases reviewed are equivalent to the case before me. All those cases involved factors that swayed courts in the circumstances to determine that a period of incarceration was not appropriate or to impose a low period. Unfortunately, when I consider the circumstances here it is important to denounce what was done and it is very important to send a strong message of deterrence to other people in the community.

[67] The mitigating factors, I find, do not substantially outweigh the aggravating factors. It pleases the court and no doubt your family, that you have gained valuable insight into your behaviour and have finally addressed your drug use. With recovery from your drug addiction well in hand, a custodial sentence should not negatively impact your continued prospects for rehabilitative progress. I am satisfied that a period of federal incarceration is necessary to meet the sentencing principles applicable in this case- denunciation and general deterrence require nothing less.

[68] While the range certainly suggests a starting point of two years, the crown quite fairly recommends two given the mitigating factors, and I accept that recommendation. Mr. Miller you are sentenced to two years in a federal facility.

Judgment accordingly

van der Hoek J.