

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R.v. Thomas-Hodges*, 2023 NSPC 7

Date: 20230123

Docket: Dartmouth No. 8519933 – 8519940; 8519942 - 8519945

Registry: Dartmouth

Between:

His Majesty the King

v.

Dion Thomas-Hodges II

LIBRARY HEADING

Judge: The Honourable Chief Judge Pamela S. Williams

Heard: January 16, 2023, in Dartmouth, Nova Scotia

Oral Decision: January 23, 2023

Subject: Impact of Race and Culture Assessment (IRCA) considerations and Sentencing for Possession of Cocaine for the Purpose of Trafficking, Possession of a Loaded Restricted Handgun and Impaired Operation of a Conveyance

Summary: Police attend an urban parking lot near a 4-lane bridge, approaching rush hour, and locate an unresponsive driver, in a running motor vehicle. A loaded handgun is visible on the passenger's seat and following a search, drugs, including a 30-gram block of cocaine, is found in the console of the vehicle. Signs of impairment are noted and breath samples of nearly twice the legal limit are obtained from the driver.

Issue: Whether a conditional sentence of imprisonment should be imposed for a street level hard drug trafficker armed with a handgun, having regard to parity and proportionality principles of sentencing and their application to the IRCA.

Result: Denunciation and deterrence are primary considerations when imposing sentences for possession of cocaine for the purpose

of trafficking while possessing a loaded handgun. Sentences of more than two years are often imposed for street level traffickers. The circumstances of the offences posed a real danger to public safety. The degree of moral culpability was high. Therefore, a federal period of incarceration is necessary. Significant weight is given to the positive IRCA and letters of community support. A global sentence of two years incarceration is imposed. Ancillary orders are granted.

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Judge:	The Honourable Chief Judge Pamela S. Williams
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Decision	January 23, 2023
Charge:	Section 5(2) of the Controlled Drugs and Substances Act Section 9(2) of the Cannabis Act Section 10(2) of the Cannabis Act Section 13(1) of the Cannabis Act Section 320.14(1)(a) of the Criminal Code of Canada Section 320.14(1)(b) of the Criminal Code of Canada Section 88(1) of the Criminal Code of Canada Section 86(1) of the Criminal Code of Canada Section 91(1) of the Criminal Code of Canada Section 92(1) of the Criminal Code of Canada Section 94(1) of the Criminal Code of Canada Section 95(1) of the Criminal Code of Canada
Counsel:	Maile Graham-Laidlaw, for the Federal Crown Tiffany Thorne, for the Provincial Crown Alexander J. MacKillop, for the Defence

By the Court:

Introduction:

[1] Dion Thomas-Hodges II pleaded guilty to the following three charges:

1. Possession of a prohibited firearm (a loaded 9 mm handgun with a full magazine of ammunition) contrary to section 95(1) of the *Criminal Code*.
2. Care and control of a motor vehicle having a blood alcohol content of 150 milligrams (mg) of alcohol per 100 millilitres (ml) of blood contrary to section 320.14(1)(b) of the *Criminal Code*.
3. Possession of a Schedule I drug (30 grams of cocaine) for the purpose of trafficking contrary to section 5(2) of the *Controlled Drugs and Substances Act*.

Position of the Parties – Driving Offence:

Joint Recommendation for Driving Offence

[2] As for the driving offence, both the Federal and Provincial Crown and the

Defense recommend I impose the minimum penalty, a fine in the amount of

\$1,500, which I do. Mr. Thomas-Hodges II will be given three years to pay that fine. A driving prohibition of one year was imposed back in June 2022.

Drug and Weapon Offences

Position of the Federal Crown:

Possession of Cocaine for the Purpose of Trafficking

[3] The Federal Crown notes we are on somewhat novel ground as conditional sentences are once again available as a sentencing option for drug trafficking.

That said, possession of a significant quantity of cocaine and a loaded firearm, increases the gravity of the drug offence.

[4] The Crown recommends a two-year term of federal incarceration, given the positive Impact of Race and Culture Assessment (IRCA), the support letters and other mitigating factors. The Crown also seeks ancillary orders.

Position of the Provincial Crown:

Possession of a Loaded 9mm Handgun

[5] The Provincial Crown cites the nexus between the firearm and the drugs as concerning which heightens the risk to the public, regardless of the reason for possessing the loaded gun. The Crown recommends a two-year period of

incarceration concurrent to the period recommended by the Federal Crown.

They too seek ancillary orders.

Position of the Defence:

[6] The Defence is urging the Court to impose a global period of incarceration of two years less a day to be served in the community under a conditional sentence order, followed by three years probation. They do not oppose the granting of the ancillary orders requested by the respective Crowns.

Circumstances Of Offences:

[7] On Friday August 13, 2019, at 5:06 a.m. police attend the MacKay Bridge staff parking lot to find an unresponsive male sitting in the driver's seat of a running motor vehicle. A loaded handgun is in plain view on the passenger's seat.

Located in the motor vehicle are the following:

1. 30 grams of crack cocaine (block form) in the console between the driver's and passenger's seat
2. 20 grams of mushrooms in a side panel beside the driver's seat

3. 187 grams of cannabis; 2 bags (143 and 8 grams) and an orange container (36 grams), along with digital scales and scissors, all in the trunk.

[8] Signs of impairment are noted. Mr. Thomas Hodges II provides breath samples with readings of 150 and 170 mgs of alcohol in 100 ml of blood, nearly twice the legal limit.

Circumstances of Offender and Impact of Race and Culture Assessment

(IRCA):

[9] Mr. Thomas-Hodges II is a 25-year-old male of African Nova Scotian (ANS) and African American descent. He was born in Chicago and moved to California before he was two years old. His material roots are in Inglewood, California. His mother is a property manager in Chicago.

[10] Mr. Thomas-Hodges II's paternal roots are in the historic black community of East Preston, Nova Scotia. His father is a clinical Addictions and Mental Health therapist. He lives with his father and sister in Portland Hills, Dartmouth. He is active in the lives of his daughter, aged three and his son aged one.

[11] According to the IRCA, he is the “benefactor of a lifetime of parental support”. Though his parents separated when he was very young, both parents remained actively involved in his life. While during much of his childhood he was raised by a single mother, she had a strong family support system. Mr. Thomas-Hodges II’s mother was extremely protective and “had her children’s’ safety, well-being, and opportunity for success, as the priority”.

[12] After Mr. Thomas-Hodges II completed grade 6 (at the age of 12), his parents decided it was best for Mr. Thomas-Hodges II to be with his father during his adolescence, so he moved to Nova Scotia. As with any move during adolescence, there were adjustments to be made. In his case they were both of a cultural and relational nature. He, his father, and his sister resided with family in East Preston for a time, then moved to Lawrencetown, and finally settled in Dartmouth. Despite this, Mr. Thomas-Hodges II always enjoyed residential stability.

[13] Mr. Thomas-Hodges II is described as having been athletic, a good football player, well-dressed and good looking. There were both high hopes for, and high expectations of, Mr. Thomas-Hodges II.

[14] Mr. Thomas-Hodges II benefited from positive educational experiences. In his early years he enjoyed culturally welcoming educational environments comprised of mostly racialized students and teachers.

[15] During his Junior High years in Nova Scotia, he was fortunate to have had the support of two black school principals. The IRCA notes the positive impact and personal connections he had with both administrators which influenced him academically and socially within the classroom. He was an Honour Roll student in high school and received a full athletic football scholarship to Saint Mary's University.

[16] Growing up he had a positive role model who attended Moorehouse College and now owns his own business. This individual is like a big brother, who kept him out of trouble as a child.

[17] However, Mr. Thomas-Hodges II was also exposed to a negative role model, a cousin, who drank, smoked, and took part in questionable activities. In addition, Mr. Thomas-Hodges II experienced significant trauma and loss, both in his early years and more recently.

[18] An uncle was murdered when he was just seven years old. Then, starting in 2020, Mr. Thomas-Hodges II experienced three significant losses – a cousin

was murdered in January 2020; during a family event he attended in July 2020, a close family friend died from heart failure; and later a friend (described like a little brother) died in his arms, having been a victim of homicide in downtown Halifax. After those three deaths it is said that Mr. Thomas-Hodges did not care about anything.

[19] In addition, Mr. Thomas-Hodges II sustained two serious injuries that ended his football career. He tore his ACL during his first football game of grade 12. He recovered but tore it again in a pre-season university game. After that, he admits, having just given up.

[20] He stopped going to classes and started using alcohol. He lost his scholarship and fell into a depression. This led to a loss of identity – a loss of self. He underwent surgery in Chicago just before the pandemic but was unable to return for the second surgery. He continues to experience pain due to ‘bone-on-bone’ in the right knee.

[21] Mr. Thomas-Hodges II has no criminal record. He does have several motor vehicle infractions - explaining - he had two ‘fender benders’ in his youth and his dad then took away his car. He bought his own vehicle and drove without insurance. In his words, he was “raised better, knew better but did not care and

would drive anyway”. He described himself as having been “young and dumb”.

[22] When commenting on the offences which bring him before this Court, Mr. Thomas-Hodges II says he got the gun two weeks earlier, for protection, after the murders. However, it is also well known that guns are ‘tools of the trade’ for drug trafficking.

[23] Mr. Thomas-Hodges II is remorseful. He takes full responsibility and, in a way, sees his arrest as a ‘blessing in disguise’ as it has “slowed him down on the life he was living”. The experience has been both humbling and humiliating.

[24] He has reflected on his misdeeds and has turned his attention to both his rehabilitation and to helping others. By all accounts there are very good prospects for rehabilitation.

Law:

[25] Sentencing offenders is one of the most difficult tasks facing judges. Judges must consider the circumstances of the offence and the offender and apply both the purpose and principles of sentencing and the applicable caselaw.

Principles of Sentencing:

[26] The general principles and factors to be considered in deciding a fit and just sentence are set out in sections 718, 718.1 and 718.2 of the *Criminal Code*.

[27] Section 718 states the fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions that have one or more of the following objectives:

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

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

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

(d) to assist in rehabilitating offenders.

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

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

Denunciation and Deterrence

[28] Denunciation and deterrence are primary considerations when sentencing offenders for drug and gun offenses.

Rehabilitation

[29] Rehabilitation remains an important objective, despite the need to emphasize denunciation and deterrence. This was confirmed by the Supreme Court of Canada in *R. v. LaCasse [2015] SCC 64* in the context of a sentence appeal on dangerous driving causing death. Wagner, J., as he then was, writing for the majority stated at para. 4:

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

Proportionality and Parity

[30] Proportionality is a fundamental principle of sentencing. Section 718.1 states that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[31] The Nova Scotia Court of Appeal in *R. v. White 2020 NSCA 33 at para. 69* provides guidance to trial judges on the application of the parity principle:

In conducting a parity analysis, sentencing judges are required to focus on both the “fundamental principle” of proportionality and the “secondary” principle of parity (Lacasse, paras. 53-54). Judges must also understand that while the proportionality and parity analyses are separate and distinct inquiries, there will always be a connection and interplay between the two. That is because proportionality not only involves a consideration of the individual features of an accused and his or her crime(s) but also a comparison with sentences for similar offences committed in much the same circumstances.

In other words, the sentence must be proportionate to the seriousness of the crime and the offender’s culpability in committing it. The gravity of the offence and its consequences will be informed by the range of sentence prescribed in the applicable legislation.

Aggravating and Mitigating Circumstances

[32] A sentencing judge must consider all aggravating and mitigating factors as set out in section 718.2:

- a) A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and without limiting the generality of the foregoing:
- b) A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
- c) Where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

- d) An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- e) 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, with particular attention to the circumstances of Aboriginal Offenders.

Caselaw:

Application of IRCAs:

[33] Sentencing is a highly individualized process and in the case of Nova Scotians of African descent, failure to consider systemic and background factors may result in an error of law: *R. v. Anderson 2021 NSCA 62*. IRCAs are a valuable resource for sentencing judges as per the summary set out in the library page:

IRCAs can be a valuable resource for sentencing judges. They are conduits of information about the history of anti-Black racism and discrimination and its effects. Mining the rich seam of information in IRCAs ensures relevant systemic and background factors are integrated into crafting a fit sentence, one that is proportionate to the gravity of the offence and the moral culpability of the offender. They can play a role in reducing reliance on incarceration for African Nova Scotian offenders. The systemic factors described in the respondent's IRCA and his experiences as an African Nova Scotian navigating racism and marginalization are not unique. It may amount to an error of law for a sentencing judge to ignore or fail to inquire into the systemic and background factors detailed in an IRCA or otherwise

raised in the sentencing of an African Nova Scotian offender. It should be possible on appeal for the court to determine, based on the record or the judge's reasons, that proper attention was given to the offender's circumstances and the deeply entrenched historical disadvantage and systemic racism that more than likely had a hand in bringing them before the courts. Where this cannot be discerned, appellate intervention may be warranted.

Drug Trafficking Schedule I (Cocaine)

Denunciation and Deterrence as Primary Considerations

[34] Sentencing judges are to be mindful of all the objectives of sentencing set out in section 718 of the *Criminal Code*. That said, the caselaw, particularly in Nova Scotia, is clear. General and specific deterrence are to be the primary considerations when sentencing offenders for Schedule 1 Drug Trafficking. This will generally result in federal periods of incarcerations. For over 30 years the Nova Scotia Court of Appeal has provided clear direction in this regard.

[35] Starting in 1989, The Nova Scotia Court of Appeal in *R. v. Byers, [1989] NSJ No. 168* at para 3 linked the need for deterrence to the severity of the harm posed by the drug by sending out a warning that trafficking in cocaine will result in more severe penalties even when relatively small amounts of the drug are involved.

[36] A year later in *R. v. Huskins 1990 CanLII 2399 (NSCA) at p 4* the Court of

Appeal stated:

No one can seriously dispute that cocaine is an extremely dangerous drug and that society demands that those who are involved in selling it must be dealt with severely. Rare indeed will be the case where less than federal time should be considered as a proper sanction for such an offence.

[37] Again in 2013 the Court of Appeal in *R. v. Scott 2013, NSCA 28*

emphasized the link between the harm posed by the drug, and the importance of imposing severe sentences to clearly reflect denunciation and deterrence.

[38] Two years later, in *R. v. Oickle 2015 NSCA 87* at paras. 45 and 48, the Nova

Scotia Court of Appeal reaffirmed that trafficking cocaine will “consistently attract sentences of imprisonment in the range of two years even for first time offenders”.

[39] In upholding a 90-day intermittent sentence in 2019, the Court of Appeal in

R. v. Chase 2019 NSCA 36, reiterated that “nothing has changed this Court’s repeated and consistent warning that deterrence and denunciation will continue to be the primary objectives” and that cocaine trafficking “will normally attract a federal prison term.”

[40] And finally, 2020, the Court of Appeal, in *White at para 76* noted:

In Nova Scotia there developed a long tradition of recognizing that the severity of a sentence should match the dangerousness of the drug involved, all other factors being equal. As our judicial understanding of the danger of “hard drugs” evolved, so too did the approach taken in sentencing those convicted of participating in their distribution. Using very explicit language, this Court has repeatedly directed that the approach to be taken in sentencing those convicted for trafficking, and possession for the purpose of trafficking, in so-called “hard drugs” requires as its principal objective the protection of society, such that our primary emphasis must be placed on the principles of deterrence and denunciation.

Application of Principles of Proportionality and Parity:

[41] The proportionality analysis triggers a 2-part inquiry: an assessment of the gravity of the offence and the culpability of the offender. In other words, the severity of a sentence is dictated by the seriousness of the consequences of a crime and the moral blameworthiness of the offender.

[42] In drug cases, the dangerousness of the drug, as well as the quantity of drugs seized, will be important considerations when addressing both gravity and moral culpability (*R. v. White, at para. 32*).

Possession of a Loaded Prohibited Weapon s. 95

Denunciation and Deterrence are Primary Considerations

[42] The possession of a loaded prohibited handgun remains a very serious offence even though the 3-year mandatory minimum sentence, for first time offenders, was struck down in 2015 by the Supreme Court of Canada in ***R. v. Nur*** **2015 SCC 15**.

[43] The comments of the Supreme Court of Canada at para 6 remain instructive:

Firearm-related offences are serious crimes. Parliament has sought to protect the public from firearm-related injuries and to deter crimes involving firearms through a combination of strict licensing and registration requirements under the *Firearms Act*, S.C. 1995, c.39, and criminal prohibitions under Part III of the Criminal Code: Reference re Firearms Act (Canada), 2000 SCC 31...

[44] And at para 13:

A review of the firearms offences in the *Criminal Code* reveals that s. 95 carries a more serious penalty than any other simple possession offence. The mandatory minimum terms of imprisonment found in s. 95 reflect two aggravating factors. It applies to prohibited and restricted firearms, which present the most significant danger to public safety. It only applies if the firearm is loaded or if ammunition for the firearm is readily available.

Analysis:

[45] Sentencing is a very individualized process. It bears repeating that it is also one of the most difficult tasks facing judges. The goal is to arrive at a fair and just

sentence that reflects a careful balancing of the purpose and principles of sentencing and the caselaw, while taking into consideration the specific circumstances of the offender and the offence.

[46] Mr. Thomas-Hodges II crimes were extremely serious, and his degree of responsibility was high.

Drug Trafficking

[47] As noted from the caselaw, possession of cocaine for the purpose of trafficking often attracts federal prison terms, given the devastating consequences of cocaine and crack cocaine on the community. In this instance, Mr. Thomas-Hodges II was in possession of 30 grams of crack cocaine in block form. This is a significant quantity. He also possessed 20 grams of mushrooms and 187 grams of cannabis, digital scales, and scissors. Together, this points to more than a petty retailer.

[48] The Federal Crown maintains Mr. Thomas-Hodges II is a street level trafficker, which I accept. Street level traffickers often receive sentences of between 18 and 30-months incarceration.

[49] It is to be noted that between 2012 and 2022 conditional sentences were not available for drug traffickers. Bill C-5, having received Royal Assent on November 22, 2022, once again permits sentencing judges to consider the imposition of conditional sentences for drug trafficking offences. This recent change in the law has, in part, been an attempt to address the overincarceration of marginalized and racialized offenders. That said, the principles of sentencing and the jurisprudence must continue to be applied in a thorough and thoughtful manner.

Possession of a Loaded Handgun

[50] Although there is no longer a 3-year mandatory minimum for possession of a loaded handgun, sentences of federal incarceration continue to be imposed, given the gravity of the circumstances. In fact, in the *Nur* decision, it was conceded that a 3-year term would not have been cruel and unusual punishment.

[51] Mr. Nur was located outside a community centre locked down by the fear of threats. Police chased Mr. Nur who threw a loaded handgun under a parked car. Mr. Nur was not found to be involved with the threatening behaviour, and it was not clear when, for how long, or how Mr. Nur came to possess the loaded handgun.

[52] Mr. Nur's circumstances are somewhat like those of Mr. Thomas-Hodges II.

At para 21 the Supreme Court of Canada noted:

He [Mr. Nur] came from a supportive, law-abiding family who came to Canada as refugees. At the time of the offence, he was 19 and attending high school. He was performing well and hoped to eventually attend university. He had worked a number of part-time jobs and volunteered in the community. Teachers and past employers praised his performance and his considerable potential. One teacher described Nur as “an exceptional student and athlete who excelled in the classroom and on the basketball court ... an incredible youth with unlimited academic and great leadership skills”.

[53] And at para. 120 the Court provides guidance to judges where the gravity of the offence increases the risk to the public - It remains appropriate for judges to continue to impose weighty sentences in cases such as this one.

[54] Mr. Nur’s sentence of three years was upheld.

[55] A conditional sentence of two years less a day, followed by three years probation was upheld on appeal in *Anderson* but the circumstances are quite different. Mr. Anderson was stopped at a random checkpoint. Police determined he was a revoked driver with a history of involvement in serious violent offences. This led to a pat down search, for officer safety concerns, and the discovery of a loaded revolver in his waist band. He had not committed any other criminal offence.

Proportionality and Assessing Moral Culpability

[56] Proportionality is a fundamental and overarching principle in sentencing and must be determined based on the offence and the offender: *R. v. Stewart, 2022 ONSC 6997* and *R. v. Morris, 2021 ONCA 680*.

[57] *Stewart at para. 14 and 15*, referencing *Morris* is instructive:

[14] The gravity of the offence is assessed based on the normative wrongfulness of the offence. The more serious or grave an offence, the greater the need for denunciation and general deterrence...Evidence of anti-Black racism and its impact on the particular offender does not mitigate the seriousness of an offence.

[15] However, evidence of systemic anti-Black racism and its impact on an offender may be relevant to sentencing in two ways. First, it may be mitigating in relation to assessing the offender's moral culpability for the offence... Second, it may inform how a sentencing judge balances the various sentencing principles in the circumstances of an individual sentencing.

[58] As was seen in *White at paras 63 and 64*, the impact of race and culture was given "little effect" by the Nova Scotia Court of Appeal given the very serious crime of trafficking in fentanyl by a repeat offender. The Court noted that various family tragedies had an adverse impact on his life, contributing to conflict with the law and periods of incarceration, and that while this may have had some connection to his race and culture, there was "another side to this history".

[59] The IRCA established he had positive role models in his life, including his mother and father and other family members. They did their best to provide “a safe environment, a good home and a positive upbringing ...”. The fact that he was a mid-level trafficker of fentanyl, cocaine, and crack cocaine, could not be ascribed to his race, culture, upbringing, or community.

[60] Mr. Thomas-Hodges II, though impacted by tragedy, loss, and injuries, benefited from a stable loving family upbringing with positive role models, a good education, and a solid moral compass. Following a series of difficult life circumstances beyond his control, Mr. Thomas-Hodges II, instead of turning to his supports, chose to turn to the drug culture and trade, and trafficking in cocaine while armed with a loaded handgun. This was not a momentary lapse in judgement. One does not become immersed in the drug trade overnight.

[61] Mr. Thomas-Hodges II’s moral culpability is therefore high. Unlike many Black offenders whose IRCAs tell a story of entrenched poverty, familial instability, and lack of educational opportunities, Mr. Thomas-HodgesII’s IRCA is very positive. He had options and chose a bad one.

[62] This is reminiscent of Mr. Thomas-Hodges II's IRCA comment about driving without insurance; he was raised better; he knew better but did not care and would drive anyway. He attributed this to being 'young and dumb'.

[63] Most assuredly the driving offence was a choice with less serious consequences. But in this instance, once again, it can be said he was raised better, he knew better, but did not care. This was a most unfortunate choice on his part, affecting not only him but his loved ones as well.

Aggravating and Mitigating Circumstances:

Aggravating Circumstances

[64] Counsel agree the most aggravating feature of these circumstances is the possession of both a significant quantity of cocaine, and a loaded 9 mm handgun in a motor vehicle. Regardless of whether the gun was purchased for protection, it was possessed, on this occasion, possessed in the context of a criminal enterprise.

[65] Mr. Thomas-Hodges II was also in possession of a significant quantity of cannabis, psilocybin (mushrooms) and scales; multiple substances associated with the drug trade.

[66] There are two further aggravating factors. First, this young man was impaired while operating the motor vehicle containing the drugs and gun. And second, he was passed out in the running vehicle, early on a Friday morning, in a busy area of Dartmouth, near the MacKay bridge. Together, these circumstances posed a very significant risk to public safety.

Mitigating Circumstances

[67] There are, however, numerous mitigating factors.

[68] Mr. Thomas-Hodges II is youthful; 25 years of age. He was 24 at the time of the offenses. He has no criminal record. He is gainfully employed and is a devoted father to two young children.

[69] He entered early guilty pleas and is extremely remorseful.

[70] He has been subject to fairly stringent bail conditions that have adversely affected some employment opportunities.

[71] He has a very positive IRCA which describes a prosocial individual with great prospects for rehabilitation. He has impressive letters of support from community members who describe him as a leader and good role model for youth with whom he acts as a coach.

Imposition of Sentence:

[72] These offences warrant the imposition of periods of incarceration. The question is whether a conditional sentence can be imposed, and if not, what period of incarceration is warranted.

[73] To grant a conditional sentence of imprisonment I must be satisfied that a sentence of less than two years is appropriate, that it would not endanger the safety of the community, and that it would be consistent with the fundamental purpose and principles of sentencing.

[74] The caselaw is clear. Generally drug trafficking involving cocaine attracts federal periods of incarceration. Possession of loaded handguns attract similar sentences. When combined, the risk to the public is increased exponentially and significant federal periods of incarceration are often imposed.

[75] I am not satisfied that a sentence of less than two years is appropriate given the circumstances. The aggravating factors in this case are far too grievous – a young man passed out in a running motor vehicle containing a significant quantity of drugs and a loaded handgun in plain view on the passenger's seat, early on a Friday morning, near the MacKay bridge.

[76] I do however give considerable weight to the positive IRCA and the letters of community support and agree with the Federal and Provincial Crown that a period of two years incarceration should be imposed on each of the offences to be served concurrently, for a total of two years incarceration.

Ancillary Orders

[77] The following ancillary orders are granted:

- Weapons Prohibition Orders pursuant to section 109 of the *Criminal Code*;
- A Forfeiture Order pursuant to section 16 of the *Controlled Drugs and Substances Act*;
- A Forfeiture Order pursuant to section of the *Criminal Code*; and
- A Secondary DNA Order pursuant to section 487.04 of the *Criminal Code*.

Recommendations for Treatment and Programming:

[78] The IRCA makes several recommendations for treatment and programming that hopefully can be integrated into his sentence and discharge planning:

1. Counselling to address trauma and loss he has experienced in the recent past. The work should be culturally informed and implemented by a service provider of African descent.
2. Counselling to explore culturally appropriate educational opportunities and career paths.

Chief Judge Pamela S. Williams, JPC