PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Beals,* 2023 NSPC 63

Date: 20231018
Docket: 8466944
Registry: Dartmouth

Between:

His Majesty the King

v.

Glen Beals

SENTENCING DECISION

Judge:	The Honourable Judge Bronwyn Duffy
Heard:	September 15, 2023, in Dartmouth, Nova Scotia
Decision:	October 18, 2023
Charge:	5(2) of the *Controlled Drugs and Substances Act*
Counsel:	Jeffrey Moors, for the Public Prosecution Service of Canada Sarah White and Desirée Jones-Matthias, for the Defence

By the Court:

[1] Glen Beals comes before the Court having pled guilty to a single count of possession of cocaine for the purpose of trafficking. The allegation date is the 27th day of June, 2019, alleged to have occurred at or near Dartmouth, Nova Scotia. The CDSA count is straight Indictable. The Defence elected to proceed in this Court.

[2] Mr. Beals consented to bail revocation on August 8, 2023. An Impact of Race and Culture Assessment was ordered and is before the Court.

[3] A *Charter* application was heard on 30 November 2022. The Honourable Judge determined that Mr. Beals did not have standing to advance a *Charter* argument to challenge the basis of the search warrant. Mr. Beals has since entered a guilty plea.

[4] Ms. Letteisha Beals, who was co-accused with Mr. Beals, has passed away and the prosecution abated as against Ms. Beals.

[5] The facts were read into the record of proceedings and argument was heard on 15 September 2023, and the Court reserved decision to today's date.

Recommendations

[6] This was a contested sentencing hearing. The Crown asks the Court to impose a 2-year penitentiary sentence, with enhanced remand credit at a ratio of 1.5:1 pursuant to *R. v. Carvery*, 2012 NSCA 107 for time spent in pre-trial custody. The prosecution submits that subsection 109(1)(c) is applicable and seeks a prohibition order under section 109(3) for life/life, s. 11 forfeiture of offence-related property and a secondary designated DNA collection order.

[7] The Defence recommends a jail sentence to be served in the community, with enhanced remand credit for the time that Mr. Beals has spent in custody while his matters were awaiting to be dealt with according to law. He has been in custody since 8 August 2023 when he consented to revocation of his outstanding release.

Analysis

[8] There are no mandatory minimum penalties applicable, and both recommendations are legislatively available sentences. There are no victim impact statements per §722 before the Court. There is an IRCA, which was prepared to assist the Court in sentencing Mr. Beals for this offence. Ms. White and Ms. Jones-Matthias have also provided supplementary materials to their brief of law in the way of an exposé entitled Halifax: A city of 'Hotspots' of Income Inequality, with references; an article by Cheryl Webster and Anthony Doob entitled "Searching for Sasquatch: deterrence of crime through sentence severity; a letter from Ms. Kim Gowan at the Peoples' Counselling Clinic, Mr. Beals' therapist; and an email from Mr. Archie Downey confirming that Mr. Beals has been employed by Heritage Movers prior to his incarceration and that he is prepared to employ Mr. Beals upon his release from custody.

[9] The goal in every case is to formulate a "fair, fit and principled sanction", as the Supreme Court of Canada has directed in *R. v. Parranto*, 2021 SCC 46. Proportionality is the organizing principle, with parity and individualization as secondary to the end of achieving a fit sentence (¶ 10). Each offence is committed in unique circumstances by an offender with a unique profile, and question to be addressed in the sentencing analysis must always be "whether the sentence reflects the gravity of the offence, the offender's degree of responsibility and the unique circumstances of each case (*R. v. Lacasse*, 2015 SCC 64, at ¶ 58).

Circumstances of the Offences

[10] On 27 June 2019, D/Cst. Jeff Seebold authored a search warrant to search the residence of Ms. Letteisha Beals located at Apartment 15, 250 Victoria Road in Dartmouth, Nova Scotia. This address belongs to Adsum house, a women's shelter in North End Dartmouth. The co-accused, Ms. Letteisha Beals resided in this apartment in the North End of Dartmouth. When police made a hard entry into the small apartment at 9:55 pm, there were seven people inside, using drugs. Drug paraphernalia was located throughout the home. Ms. Letteisha Beals died of a drug overdose on 8 February 2021. Mr. Glen Beals is Ms. Letteisha Beals' cousin. He was a guest in her home at the time.

[11] The police investigation was brief, one officer testified at the *Charter* hearing that this was a “low stakes” investigation that was put together over a short period of time. D/Cst. Jeff Seebold was the first officer to come into contact with Mr. Glen Beals, who was sitting in the living room smoking a cigarette. Sgt. Hueston broke down the door, D/Cst. Seebold was the first officer in, yelling “search warrant”. The officer demanded Mr. Beals show his hands which were not visible. Mr. Beals did not comply immediately, and D/Cst. Seebold drew his gun, which point Mr. Beals complied and showed his hands; he had a pack of cigarettes in his hand, which was the item he had been holding. At approximately 9:55 pm, Mr. Beals was arrested. On Mr. Beals, police located 4.8 grams of crack cocaine, 1.0 gram of fentanyl, $750.00 of cash and a Samsung cell phone on the couch near Mr. Beals. Other drugs and paraphernalia were located in the home but not attributed to Mr. Beals. A cell phone extraction and expert report provided evidence to classify Mr. Beals as a petty trafficker. A selection of the text messages were read into the record, and exhibited on the sentencing hearing. There were messages consistent with retailing drugs. I have reviewed all of these messages, and the Crown Attorney read several passages into the court record. By way of example, at p. 31 – it says “where you wanna meet – I want a pt and another half ball – can you come to my house – I can come to you just tell me”. And on p. 39, “how many – how long will you be? How many point” I got no hard left”. There were a lot of references to cocaine and other drugs on the phone seized from Mr. Beals, proximate to the time of arrest. Upon conclusion of the *Charter* argument, Mr. Beals entered a guilty plea.

Circumstances of Mr. Beals

[12] As detailed in the IRCA, and in written and oral advocacy by defence counsel, Mr. Beals has faced systemic discrimination and marginalization throughout his life. He is from North Preston, a community that has faced decline in economic opportunity for its residents, and particularly for its youth, and the community youth have encountered barriers to establishing and maintaining strong racial identity. The fraught and unhealthy relationship with Mr. Beals’ stepmother, who is of European descent, is described in the IRCA and by Mr. Beal’s counsel. This, the death of his biological mother, and the strained relationship with his father are examples of the adverse childhood experiences during Mr. Beals’

upbringing that have acted as barriers to success, as defence counsel notes, and contributed to a negative course in his emotional and psychological development.

[13] Mr. Beals was expelled from school in his grade 11 year, and this educational outcome led to a low-income lifestyle. Mr. Beals attended a de facto-segregated school in his early years before transitioning to another school with varied racial dynamics outside of his home community. When he was expelled, there was a gap of time before he could attend the flexible learning program to continue his education – this left Mr. Beals vulnerable to negative peer influences, and exposed to others who were selling drugs. He was later accepted into Appliance Repair at NSCC but did not complete the program.

[14] The IRCA details extensive learning challenges and cognitive limitations that have affected his success in education programs and which are expected to limit his ability to live independently and maintain stable employment. Indeed, his residential stability has been in constant flux, and he has never lived independently.

[15] Mr. Beals has experienced racialized and intergenerational harm. He has been exposed to gun violence. He has not had access to culturally appropriate mental health services. He has been marginalized and excluded, even within his family environment. Mr. Beals has difficulty trusting others, he struggles to discuss his history, and he has a lack of insight to his circumstance, which presents further challenges to his ability to communicate and his employability, and therefore his ability to move forward productively. The IRCA concludes that Mr. Beals has suffered significant trauma that has gone untreated, and he is unaware of the impact it has had and continues to have on his life.

Application of Purpose, Principles and Objectives of Sentencing

[16] I must consider and apply the objectives, purpose and principles of sentencing set out in ss. 718 through 718.2 of the *Criminal Code*. The fundamental principle is proportionality, both to the gravity of the offence and degree of responsibility of the offender. Individualized sentencing is central to that process of achieving proportionality. (*R. v. Parranto, supra*, ¶ 12, *R. v. LaCasse, supra*, ¶ 58).

[17] The purpose of sentencing legislated in section 718 is to protect the public and contribute to respect for the law and the maintenance of a safe society. The purpose is to be effected by the imposition of just sanctions that denounce criminal conduct, satisfy the objectives of general and specific deterrence, separate offenders from society where necessary, rehabilitate offenders, make reparations, promote responsibility in offenders; and acknowledge harm done to victims and to the community (*R. v. Nasogaluak*, 2010 SCC 6, ¶ 39). Denunciation and deterrence, both specific to the offender and general to the community, are central to the inquiry for serious offences.

[18] The prosecution acknowledges the distressing personal circumstances of Mr. Beals throughout his life, noting the unhealthy relationship with his stepmother, corporal punishment by his father, Mr. Beal's eventual placement in provincial care, his cognitive difficulties, that he was subject to physical trauma from a gunshot wound and emotional suffering from the death of his cousin. Mr. Moors argues the prosecution's submission for a two-year sentence of incarceration takes into account Mr. Beal's personal circumstances. Rehabilitation, while it must be considered, is not one of the key inquiries in these circumstances, argues the prosecution. The Crown's position is that a provincial disposition is not appropriate, that the recommendation of the prosecution absent the IRCA and the circumstances detailed therein would have been three years, and that while rehabilitation does yet play some role in the sentencing determination, he argues it can be achieved in the penitentiary setting.

[19] Defence counsel advocates that in order to achieve proportionality, the systemic and negative racial stereotypes and the overrepresentation of African Canadians in jails must be taken into account. With respect to the gravity of the offence, the defence puts to the Court that Mr. Beals was engaged in low-level trafficking, that he was not the primary target of the search. In advocating for a custodial sentence to be served in the community, defence counsel asks the Court to consider that this investigation that resulted in a seizure of 4.8g of cocaine is on the lower end of the *R. v. Fifield* groupings, it is properly categorized as petty retailing, and this should operate in favour of Mr. Beals and supports that this conviction is at the lower end for these types of offences.

[20] Mr. Beals entered a guilty plea to the charge, and he is entitled to mitigation in the result; it favours efficiency in court process and judicial resourcing in

disposition of matters. He has accepted responsibility for his role in this offence, and that is also a mitigating factor. Neither advocate referenced any aggravating factors.

[21] The Defence asks the Court to assign mitigation to pre-trial house arrest. She argues that, while the jurisprudence has concluded that pre-trial bail conditions are not be treated as credit in determining a fixed sentence, they are something "to put in the mix" along with other potential mitigating factors – citing a number of cases for that proposition, including: *R. v. Hickey*, 2011 NSSC 186; *R. v. Leblanc*, 2010 NSSC 347; *R. v. Knockwood*, 2009 NSCA 98; *R. v. Downes*, 2006 CanLII 3957 (ONCA); *R. v. Voeller,* 2008 NSCA 37. The defence argues in this regard, that Mr. Beals was subject to the highest form of release with strict conditions of house arrest. On August 8, he consented to the revocation of his bail conditions. Prior to this, his most recent conviction was for offences dating back four years. Mr. Beals was in community during this time, and employed, until his recent setback.

[22] There was little reference to this in submissions, but Mr. Beals has a moderate criminal record. He has nine convictions, all as an adult. His most recent included three administration of justice convictions in 2019, for which he was sentenced in December 2020 and received a conditional sentence of 60-day duration. He also pled guilty to an assault and assault causing bodily harm, for which he received a conditional discharge, so no convictions were recorded and I do not count those among the nine. Mr. Beals has been subject to non-custodial sentences, including a two-year Probation Order in 2008. The most concerning to this Court are two trafficking convictions in 2013, for which Mr. Beals received a penitentiary sentence of 27 months. He has also served 30 days at a provincial institution in 2015, for a failure to attend court. Mr. Beals has served continuous custody at both federal and provincial facilities, and he has received community-based dispositions over the last 20 years.

[23] Legislative amendments in 2022 repealed the minimum punishment of imprisonment for a term of one year per s.5(3)(a) CDSA if the person was convicted of a designated substance offence, or had served a term of imprisonment for a designated substance offence, within the previous 10 years. Mr. Beals was sentenced to 27 months in a federal institution on 2 January 2013, 10 years and 9 months prior to his sentencing date for the matters before the Court.

[24] Pursuant to section 10(2)(b) CDSA, it is statutorily aggravating that Mr. Beals has been convicted of a designated substance offence, and if the Court decides not to impose a sentence of imprisonment, I must give reasons for that decision.

[25] In *R. v. Lacasse*, *supra*, as well as *R. v. Hamilton* (2004) 186 CCC (3d) 129 (ONCA) the Court emphasized proportionality as the fundamental principle of sentencing, accounting for the gravity of the offence and the degree of responsibility of the offender. The Court explained that sanction severity should reflect the seriousness of the criminal conduct. A disproportionate sanction can never be a just sanction. Aggravating and mitigating factors, and the principles of parity, totality and restraint are also important principles that must be engaged in the determination of a fit and proper sentence. (*Hamilton, supra*, ¶ 95).

[26] Imprisonment is a sentence of last resort. An offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances and all available sanctions other than imprisonment that are reasonable in the circumstances should be considered. This is a codification of the principle of restraint (*R. v. Antic*, 2017 SCC 27), also reflected in the declaration of principles in sections 10.1 to 10.7 CDSA.

[27] Rehabilitation and denunciation and deterrence are not mutually exclusive; the former can have application even in cases where deterrence is in the foreground (See *R. v. Chase*, 2019 NSCA 36; *R. v. Espinosa Ribadeneira*, 2019 NSCA 7). Moreover, the existence of a criminal record is not aggravating on its own, but can call for emphasis on specific deterrence or reduce the focus on rehabilitation (*R. v. Mauger*, 2018 NSCA 41, ¶ 64).

[28] Mr. Beal's criminal history, the related nature and seriousness of some of his offences, and particularly his prior designated substance offences, demand considerable attention to specific deterrence. This record of offending does not favour his candidacy for rehabilitation. Having said that, the Court must guard against dispensing with a rehabilitative sentence entirely, particularly when crafting a contextualized sentencing for an offender who has endured such difficulties in his early life, and I will speak to this in more detail shortly.

[29] A fit sentence must be proportionate to the gravity of the offence and the degree of moral responsibility of the offender (*R. v. Wournell*, 2023 NSCA 53, ¶

68). Mr. Beals was engaged in low-level trafficking. He was not the primary target of the search. There was no physical violence involved. This was not planned or sophisticated criminal enterprising, which speaks to Mr. Beals' moral blameworthiness, which I would characterize at the mid to lower end. With respect to seriousness, considering the circumstances of the offences as detailed earlier, I agree with the defence that the 5(2) should be positioned at the low end of possession for the purpose or trafficking cases; that said, designated substance offences involving Schedule 1 product are serious offences. Parliament has not designated these offences as dual procedure, they are straight Indictable process, attendant to a conviction is a maximum penalty of life imprisonment.

[30] Counsel have provided jurisprudence to specifically comment on the appropriate range of sentence for Mr. Beals. The Crown references *R. v. Chase*, 2019 NSCA 36, and argues the emphasis of the Court of Appeal on denunciation and deterrence, and the long-held acknowledgment that enterprise crimes, and particularly trafficking in Schedule 1 drugs, are the ruination of communities. Mr. Moors argues the trilogy case of *R. v. Livingstone, Lungal and Terris*, 2020 NSCA 5, wherein the NSCA said where drug enterprising is a considered and deliberate choice, custodial sentences are the typical outcome, though acknowledging that a deviation from that is not necessarily an error in principle.

[31] With respect to parity and range of sentence, the defence has gathered a collection of sentencing decisions, many unreported, to demonstrate that courts in this province, in undertaking a contextualized analysis as directed in *R. v. Anderson*, 2021 NSCA 62, have imposed non-custodial sentences where the individualized circumstances of the offender and the offence warrant.

[32] *R v. Renee Strowbridge*, NSPC, 27 June 2023. Ms. Strowbridge was convicted of possessing approximately 30 grams of cocaine for the purpose of trafficking. He was sentenced to a Conditional Sentence Order in the Halifax Provincial Court.

[33] *R. v. Nicholas MacLeod*, NSPC, 25 May 2023. Mr. MacLeod was convicted of trafficking 1g to an undercover police officer on two occasions. He was motivated by his addiction but was also financially motivated. A community disposition was ordered.

[34] *R. v. Conrad*, NSPC, 8 May 2023. Ms. Conrad was a taxi driver who facilitated drug buys and transported cocaine. The undercover police operator used her on numerous occasions to make drug purchases. She was sentenced to a CSO of two years less a day in the Yarmouth Provincial Court with exceptions to continue working as a dispatcher for the taxi company.

[35] *R. v. Belicia Bella-Ashe, R. v. Leann Acker,* NSSC, 17 April 2023. Ms. Bella-Ashe worked at an illicit dispensary and was the middle person arranging the sale of cocaine to an undercover police officer. She was not the primary target. She had a prior record. She was sentenced to a 300-day CSO in the Halifax Supreme Court.

[36] *R v. Merrill Aldercotte*, NSPC, 5 April 2023. Mr. Merrill Aldercotte was convicted of trafficking approximately 26 grams of cocaine. He had a history of substance abuse and mental health challenges but was pro-active in his own rehabilitation. The Bridgewater Provincial Court sentenced him to a CSO.

[37] *R. v. Sherry Goodwin*, NSPC, 14 February 2023 (CSO 364 days). The offender was convicted for cocaine trafficking, and was sentenced to a community-based disposition in the Yarmouth Provincial Court.

[38] *R. v. N'Quem Whyttington Smith*, NSPC, 20 January 2022. Mr. Smith was convicted of s. 5(2) CDSA; a search of his place of business located 59 grams of cocaine which was packaged in smaller bags for sale as well as other indicia of trafficking. An IRCA was prepared and considered along with an in-depth restorative justice process. Mr. Smith was also not a Canadian citizen. He was sentenced to a CSO in Halifax Provincial Court.

[39] *R. v. Auston Wagner*, NSPC, 9 months' custody. Mr. Wagner sold small amounts to an undercover officer on two separate occasions. He had a prior record and had accumulated a significant amount of charges at the time of sentencing. He was remanded at the time of sentencing.

[40] *R. v. Smith*, 2022 NSPC 11. Mr. Smith plead guilty to trafficking cocaine, after a search warrant was executed in his home and approximately 87 grams of cocaine and other drugs were located. Mr. Smith abstained from drugs since his arrest and had made considerable progress in his life. He had challenges accessing services, but was able to remain offence free. He was charged on 7 December

2017, pled guilty on 9 April 2019, and was sentenced on 23 February 2022. The pandemic was responsible for significant delays in sentencing. The Court determined that a period of imprisonment would negatively impact the offender's rehabilitation process and imposed a 36-month period of probation.

[41] *R. v. Tenisha Brown*, NSPC, 22 November 2021. Ms. Brown was an African Nova Scotian woman who was convicted of possession for the purpose of trafficking of cocaine. After her home was raided, approximately 300 grams of cocaine were located. Ms. Brown was a single mother who had a tumultuous upbringing and had been working as an exotic dancer to support herself and her family. She had no criminal record, and was sentenced to 36 months' probation.

[42] *R v. Robinson*, 2020 NSPC 1. Ms. Robinson pleaded guilty to possession of cocaine for the purpose of trafficking. The accused transported cocaine in her car from Toronto to Nova Scotia. She was arrested with a 1-kilogram brick of cocaine, and 200 grams of cocaine packaged separately, in a backpack. The cocaine had an estimated street value of $120,000.00. There was a major gap in the information provided to the Court regarding her reasons for being involved in the transportation of this cocaine. Three years' incarceration was the sentence.

[43] *R. v. Livingstone; R. v. Lungal; R. v. Terris*, 2020 NSCA 5. The sentencing judge imposed a suspended sentence and a three-year probation period of three years, in three unrelated cases, one of which (*R. v. Lungal*) was upheld on the Crown appeal. In the process of judgment, the Court reviewed approximately 35 cases of suspended sentences being granted in Canada for trafficking in hard drugs (including *Peters*, *Voong*, *Diedricksen*, and *McGill)* and concluded (para 24) that the common factors were that" "mitigating factors substantially outweigh the aggravating factors"; "specific and general deterrence are satisfied ..." and "a custodial sentence would negatively impact the offender's rehabilitation progress".

[44] *R. v. Rhonda Cormier*, NSPC, July 2019, The accused pled guilty to one count of possession for the purpose of trafficking methamphetamine. She was in possession of several hundred tabs. The accused was a middle-aged woman with a prior record. She was selling to support her addiction. She received a 90-day intermittent sentence and three years' probation.

[45] *R. v. Robert Purdy Houston*, NSPC, September 2019. The accused pled guilty to one count of possession for the purpose of trafficking methamphetamine.

He was found with over 50 tabs. He was in his late 20's and had a prior record. He was living out of a backpack and had addictions issues. He received a 90-day intermittent sentence plus probation**.**

[46] *R. v. Chase,* 2019 NSCA 36. The Crown appealed a 90-day intermittent jail sentence following a guilty plea to possessing six grams of cocaine for the purpose of trafficking. The appeal was dismissed, with the Court concluding that upon reading the judgment as a whole, it cannot be said that the trial judge either erred in principle, exercised broad discretion unreasonably, or imposed a sentence that was manifestly unfit.

[47] *R. v. Masters*, 2017 NSPC 75. Mr. Masters pleaded guilty to the offence of having in his possession, for the purpose of trafficking, a substance included in Schedule I, contrary to s. 5(2) of the CDSA. He was a petty retailer and motivated by his own drug use. An intermittent sentence was imposed.

[48] These cases are of great utility in providing the Court with a comprehensive landscape of how courts in Nova Scotia are approaching sentencing. I do consider the unreported decisions with a degree of caution, being without the full scope of information that informed those sentencing decisions.

[49] With respect to range of sentencing, and the principle of parity, the Supreme Court in *Parranto* declined to proscribe the use of starting point sentences but did limit their use. I am satisfied that the recommendations of counsel are within the range of appropriate sentences for offences of this nature in these circumstances.

[50] This was not before me in submissions, but I have also considered the most recent directive of our NSCA on trafficking in hard drugs, and that is *R. v. Kleykens,* 2020 NSCA 49. Following a guilty plea to 5(2) cocaine, involving a seizure of 8.25 kilograms of cultivated and packaged cannabis marihuana, 144.5 grams of cocaine, 56.6 grams of cannabis resin, and $5,975.00 in cash and other paraphernalia, the accused was sentenced in Provincial Court to 90 days' intermittent custody and three years' probation. The Crown appealed. Leave was granted, the appeal allowed, the sentence set aside, and a new sentence of two years' imprisonment (less the 90 days already served intermittently) was imposed, but a judicial stay of the sentence was effected because that time was the very centre of the covid crisis, and the court was of the view that re-incarceration was an unacceptable risk and not in the interests of justice.

[51] *Kleykens* is the state of the law in this province for designated substance offences; it is the culmination of "decades of binding authority in this province" as stated by Justice Saunders. However, that case differs from this one in many respects, most notably its seriousness, and the offender in *Kleykens* was not an African Nova Scotian offender, not a racialized offender, and there was no impact of race and culture to be considered in that case. There were many aggravating features, the offender was not a petty retailer, the nature and extent of the drug-dealing operation was far removed from Mr. Beals' circumstance.

[52] What *Kleykens* does direct sentencing courts, however, is that a proper application of sentencing principles for those persons convicted of participating in the trafficking of "hard drugs" requires as its principal objective the protection of society, such that the primary emphasis must always be placed on the principles of deterrence and denunciation.

[53] The CA also offered a similar directive in *White*, 2020 NSCA 33, which the Court specifically said at paragraph 27 was highly relevant to any case involving the trafficking and possession for the purpose of trafficking so-called hard drugs:

> [76] 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. The majority of these pronouncements have been made in relation to cocaine trafficking, and only a few need to be referred to here.

[54] I will note a couple of these bedrock cases. Almost 35 years ago in *R. v. Byers,*[1] Justice Hart issued a warning with respect to trafficking in cocaine:

> In my opinion the time has come for this Court to give warning to all those greedy persons who deal in the supply and distribution of the narcotic cocaine that more severe penalties will be imposed even when relatively small amounts of the drug are involved. Nor should the lack of a criminal record stand in the way of a substantial period of imprisonment. No one today can claim to be so naive as to

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[1] *R. v. Byers*, [1989] NSJ No. 168.

> think that trafficking in cocaine can be conducted without serious damage to our social structure.

[55] Shortly thereafter in *R. v. Downey*,[2] the Court of Appeal reiterated Justice Hart's statement and went on to direct that there is an "urgent need to protect the public" from the consequences of its retail in the community.

[56] Since that time, Nova Scotia Courts have consistently and repeatedly emphasized that denunciation, deterrence and protection of the public must be the predominant considerations when sentencing those involved in trafficking Schedule I drugs such as cocaine. *R. v. Huskins*[3] directed that it would be "rare indeed" that a sentence less than federal time would be considered a fit and proper sanction; in *R. v. Robins*,[4] the Court of Appeal noted their position thusly: "there are no exceptional circumstances where cocaine is involved".

[57] 2009 through 2015 saw a line of cases continuing to support a federal term of incarceration for offenders convicted of trafficking or possessing to traffick Schedule 1 controlled substances - *Knickle* and *Butt*, in 2009 and 2010, respectively, carrying through to the definitive statement of the Court of Appeal in 2015 with *Oickle*.[5] From there, we have the more recent decisions of *Chase*, the *Livingstone* trilogy. *White*. *Kleykens*. These cases, however, all pre-dated *Anderson*.

[58] The Defence has asked the Court to consider the imposition of a jail sentence to be served in the community. In order to consider a CSO, it must be a legally available sentence under 742.1– there must be no mandatory minimum. The Court must be of the view that less than two years jail is appropriate, and, in accordance with the test in *R. v. Proulx*, 2000 SCC 5, that service in community would not endanger the public safety and would be consistent with the fundamental purpose and principles of sentencing.

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[2] *R. v. Downey*, 94 NSR (2d) 71; [1989] NSJ No. 368 at p. 3
[3] *R. v. Huskins*, 1990 CanLII 2399 (NS CA); (1990), 95 NSR 2d 109 (CA) at p. 6
[4] *R. v. Robins*, 1993 CanLII 3205 (NS CA); [1993] NSJ. No. 152 at p. 2
[5] *R v. Oickle,* 2015 NSCA 87 *R. v. Knickle*, 2009 N.S.C.A. 59, *R. v. Butt*, 2010 NSCA 56, *R. v. Aucoin* 2011 NSCA 64 (the Appeal to the Supreme Court of Canada, *R. v. Aucoin*, 2012 SCC 66 did not deal with the issue of sentence), and *R. v. Jamieson* 2011 NSCA 122; *R. v. Faustino*, 2014 NSSC 321; *R. v. Way*, 2015 NSSC 14

[59] With the recent legislative changes to section 742 CC, and particularly, the statutory amendment to 742.1(c) and the repeal of subsections (e) and (f), the imposition of a conditional sentence is a statutorily available sentence for convictions under Section 5(2) CDSA. There are a collection of principles that derive from *Proulx*, and that this Court must consider in its evaluation of whether a CSO is a fit and proper sentence for Mr. Beals.

[60] A CSO is not just a rehabilitative sentencing tool – it is intended to address both punitive and rehabilitative objectives. Conditions that impose a restriction of liberty should be commonplace in these dispositions.

[61] The decision-making process involves two tranches; the first stage is limited to the consideration of whether to exclude a penitentiary term or a non-custodial term. In making this determination the judge need only consider the fundamental purpose and principles of sentencing to the extent necessary to narrow the range. At the second stage of the analysis the judge must consider the principles of sentencing in a more comprehensive fashion.

[62] That there is no threat to the safety of the community is one of the requisites for the imposition of a CSO, but it is not the primary consideration. This community risk reference is only specific to the offender and is not a broader risk of undermining respect for the law. In this analysis, the court considers the risk of re-offending and the gravity of the damage that could result. The risk should be assessed in view of the conditions that would form part of the sentence.

[63] A conditional sentence is available for all offences in which the statutory prerequisites are fulfilled; there is no presumption of inappropriateness for specific offences; nevertheless, gravity of the offence is clearly relevant in the determination.

[64] By the same token, there is also no presumption in favour of a conditional sentence. It should be given serious consideration by courts where the statutory prerequisites are satisfied. The jurisprudence directs that a conditional sentence can provide substantial denunciation particularly when onerous conditions are imposed and the term is longer than would have been imposed as a jail sentence.

[65] Conditional sentences can also provide significant deterrence, and judges must be wary of overemphasis on deterrence when choosing between the two

sentencing options; nevertheless, in some cases, the need for deterrence may warrant incarceration.

[66] When the objectives of rehabilitation, reparation, and promotion of responsibility in the offender may be realistically achieved, a conditional sentence will likely be the appropriate sanction, subject to considerations of denunciation and deterrence.

[67] In making the assessment, it is critical to remember that presentence custody is not a mitigating factor that can affect the range of sentence in the availability of a conditional sentence *R. v. Fice*, [2005] 1 SCR 742.

[68] In determining whether a conditional sentence should be imposed, a starting point sentence may be considered at the initial stage of the determination of whether a penitentiary term can be rejected (*R .v. Rahime,* 2001, 156 CCC (3d) 349, Alta CA).

[69] The longstanding jurisprudence in this province cited earlier in these reasons directs that when dealing in hard drugs, the primary emphasis is denunciation and deterrence, and it is the unusual case that does not attract lengthy imprisonment, often penitentiary terms. At the first stage of the *Proulx* analysis, I must determine whether a sentence of less than two years is appropriate. To do this, I reflect first on the type and quantity of drugs seized from Mr. Beals and compare those circumstances to comparable and binding decisions of our Court of Appeal. To this end, I look to what the Court said at paragraph 47 of *Kleykens*: "… *Lungal* (103 methamphetamine pills), *Livingstone* (36 grams cocaine), and *Terris* (52 grams cocaine) are not remotely comparable to the level of the respondent's criminality here. They were all legitimately categorized as "petty retailers". By contrast, Mr. Kleykens ran a substantial commercial enterprise. Characterizing him as a "petty retailer" reveals a fundamental misconception of the seriousness of his offences."

[70] With 4.8g of cocaine, this places Mr. Beals very definitively in the petty retailing category. It is substantially less product than Mr. Livingstone and Mr. Terris, who possessed 36 and 52g of cocaine, respectively, and received an 18-month sentence. I am satisfied that a sentence of less than two years is appropriate for Mr. Beals, before addressing in detail his personal circumstances or the other principles of sentencing. In making this determination, as per the direction in

Proulx, I need only consider the fundamental purpose and principles of sentencing to the extent necessary to narrow the range.

[71] At the second stage of the analysis, the Court must consider the principles of sentencing in a more comprehensive manner. It is at this stage that I must consider whether service in community would endanger the public safety and would be consistent with the fundamental purpose and principles of sentencing.

[72] In this regard, I consider the application of principles that I have reviewed earlier in these reasons. I take into account Mr. Beal's guilty plea and acceptance of responsibility. I consider that he has been on strict release process without setback for a considerable period of time, until his outstanding release was revoked by consent. I look to the characterization of Mr. Beals' offending in this circumstance as petty retailing, a small amount of drugs, and no violence. I consider the impact of race and culture as it relates to Mr. Beals, and the systemic hardship that has affected every facet of his life, from educational to economic to familial and community relationships to his cognitive and emotional development.

[73] I also consider how our Court of Appeal has approached sentencing in drug cases, as detailed in paragraph 67 of *Kleykens*:

> [67] The Crown provides a helpful and accurate summary of this Court's approach to sentencing in drug cases at ¶53-56 of its factum:
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> 53. To adequately address these primary sentencing objectives, this Court has emphasized that "even minor traffickers" should expect significant periods of incarceration.
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> 54. Beginning with *R.v.Byers*, 1989 CanLII 200 (NS CA) the Court has consistently warned of the "severe penalties" that will be imposed for cocaine trafficking, even when relatively small amounts of the drug are involved. In *R. v. Huskins*, 1990 CanLII 2399, the Court stated, "Rare indeed will be the case where less than federal time should be considered as a proper sanction for such offence." In *R. v. Dawe*, 2002 NSCA 147, Justice Hamilton noted that, "Possession of cocaine for the purposes of trafficking typically results in sentences of two years or more…" In *R. v. Steeves*, 2007 NSCA 130 the Court stated that "time served in a federal penitentiary is the norm…" In *R. v. Butt*, 2010 NSCA 56, the Court underlined that "Involvement in the cocaine trade, *at any level*, attracts substantial penalties." (emphasis added)

> 55. In *R. v. Oickle*, 2015 NSCA 87, the Court reaffirmed that trafficking cocaine will "consistently attract sentences of imprisonment in the range of two years even for first time offenders." More recently in *R. v. Chase*, 2019 NSCA 36 the Court 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."
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> 56. Both *Chase* (6g cocaine) and *Oickle* (11g cocaine, 23 morphine pills) were "petty retailers". As outlined previously, the established sentencing range for offenders who traffick cocaine, marihuana or, as in the Respondent's case, both, at a higher level is broadly between 2 and 7 years imprisonment. The advent of the *Cannabis Act* has not changed the equation for offenders at the higher levels of marihuana trafficking.
>
> [68] As we explained in *White*, these longstanding pronouncements are consistent with and echoed by the Supreme Court of Canada. …

[74] I consider the statutorily aggravating feature that Mr. Beals was convicted of a designated substance offence, and the legislative requirement under s. 10(2)(b) that I must give reasons should the Court decide not to impose a sentence of imprisonment. Mr. Beals was sentenced to 27 months in a federal institution for two 5(1) convictions, on 2 January 2013.

[75] One of the principles deriving from the *Proulx* decision is that while the court should be wary of placing too much weight on deterrence when choosing between a conditional sentence and incarceration (which, in substance, gives effect to the principle of restraint), there nevertheless may be circumstances in which the need for deterrence will warrant incarceration. For the CDSA convictions in 2013, Mr. Beals was sentenced to federal incarceration. While the related portion of his criminal history is somewhat dated, it nevertheless has a common thread – trafficking drugs. I am satisfied that a custodial sentence is warranted and the interests of justice require it, to satisfy the principle of specific deterrence, and suitably reflect the gravity of a straight Indictable trafficking offence, Mr. Beal's degree of responsibility and to ensure the protection of the public.

[76] However, while the Court's approach has been to emphasize that "even minor traffickers" should expect significant periods of incarceration, and that trafficking cocaine will "consistently attract sentences of imprisonment in the range of two years even for first time offenders," this Court is of the view that a custodial sentence on the order of a penitentiary term is not a fit and proper

sentence for Mr. Beals. *Fifield* reminds us that "sentencing, to be an effective social instrument, must be flexible and imaginative". Justice Derrick in *Anderson* has directed courts that "IRCAs set a new table for sentencing offenders of African descent in a regime that has been shaped through an overreliance on incarceration for Black offenders and their concomitant disproportionate representation in Canada's prisons and jails."

[77] I agree with defence counsel that a contextualized sentencing process requires the sentencing outcome, and particularly Mr. Beals' moral culpability, to be informed by systemic factors. That is essential to achieving a proportionate sentence.

[78] *R. v. Wournell*, 2023 NSCA 53, tells sentencing courts that a meaningful consideration of Mr. Beals' background and his personal circumstances and life in relation to systemic factors of racism and marginalization are central to my obligation to determine an individualized sentence for this racialized offender – I cannot satisfy the fundamental principle of proportionality without doing so.

[79] I also return to the principle of restraint, both codified and directed in jurisprudence – *Antic*, in the context of bail, *Wournell* and *Anderson*, by our NSCA – which reflects Parliament's intention to be circumspect in the use of prison as a sanction.

[80] As noted by Ms. Jones-Matthias in submissions, the law is evolving.

[81] The IRCA notes Mr. Beals' cognitive challenges that impact his successful functioning in everyday life. The IRCA documents the limitations he has experienced in acquiring connections to his community, in succeeding with his educational endeavours, and his strained family relationships, the latter which has been a contributor to his lost opportunities with respect to connection to his racial identity, particularly vis-à-vis his stepmother. All of his adverse childhood experiences provide context for his offending, and a more nuanced understanding of the aggravating factors present in this case, most notably his prior related convictions for trafficking.

[82] One of the factors I must consider in arriving at a proportionate sentence is the issue of risk – *Anderson* addressed this at paragraphs 140 and 141. As pointed out by Ms. White, Mr. Beals has been compliant with release conditions for a

considerable stretch of time. I take into account that Mr. Beals' social and familial struggles, his employment limitations, his cognitive limitations, and the lack of opportunities that have plagued him throughout his life affect his moral responsibility. This is one of the decrees of *Friesen*, 2020 SCC 9, to be alive to the reality that the degree of responsibility of certain offenders must be informed by a new societal understanding and sentencing practices must be adjusted accordingly, and the weight to be accorded to denunciation and deterrence must be likewise revised.

[83] I conclude that a six-month sentence of incarceration followed by an 18-month period of probation gives effect to the principles of restraint and rehabilitation; this Court is of the view that I should guard against dispensing with a rehabilitative sentence, and a sentence that incorporates culturally-appropriate and trauma-informed rehabilitative programming will provide an opportunity for Mr. Beals to strengthen his engagement with his community.

[84] The final step is remand credit. The defence noted 66 days of remand should be credited to Mr. Beals, and the prosecution said 60 days. Mr. Beals consented to revocation of his outstanding release on August 8, 2023. That is 39 real days to the date of sentencing submissions, and 59 days on a *Carvery* ratio of 1.5:1. Mr. Beals is entitled to 110 days, based on the calculation of 59 enhanced credit days (39 x 1.5) and taking into account the elapse of time since then, which is 34 days for the Court to formulate these reasons – 51 days of enhanced credit. This credit is reckoned based on the 1.5:1 ratio set out in *Carvery*, as authorized in ¶ 719(3.1) of the *Code*. The total sentence is 70 days in custody. This will be served on a straight time basis.

[85] In accordance with s. 719(3.3), the warrant of committal will be endorsed to record that the amount of time spent in custody is 73 days to date, the term of imprisonment that would have been imposed but for the remand credit is 180 days, the amount of time credited is 110 days, and the total sentence of the court is 70 days in custody.

[86] Mr. Beals, you shall, upon expiration of the sentence of imprisonment imposed on you for the period of 18 months, comply with the following terms and conditions: keep the peace and be of good behaviour; appear before the court when required to do so by the court; notify the court, probation officer or supervisor, in

advance, of any change of name, address, employment or occupation. In addition, report to a probation officer at 277 Pleasant St. within three days of the date of expiration of your sentence of imprisonment and thereafter as directed; you are not to possess, take or consume a controlled substance as defined in the CDSA except in accordance with a physician's prescription for you or a legal authorization; you are not to have in your possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance. The Order includes a condition to engage in culturally-specific and trauma-informed assessment and counselling for mental health and substance abuse as directed by probation, to attend for assessment, counselling or programming as directed and to participate in and cooperate with any assessment, counselling or programming as directed by your probation officer, and to connect with the 902 Man Up mentoring program, NSCC Adult Learning Program and the NS Brotherhood.

[87] A lifetime weapons prohibition and a lifetime restricted or prohibited weapons prohibition issues per section 109(3).

[88] The Court will sign a s. 16 forfeiture order of ORP, once counsel presents a draft Order consented to in form and content by both counsel.

[89] A secondary designated DNA collection order will issue.

[90] Given the current personal and financial circumstances of Mr. Beals, he has little ability to pay a victim surcharge, and I find that the imposition of a surcharge amounts would work an undue hardship and I decline to impose one.

Bronwyn Duffy, JPC