

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Mombourquette*, 2024 NSPC 14

Date: 20240125

Docket: 8510885

8510902

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8510993

Registry: Halifax

Between:

His Majesty the King

v.

Cameron Mombourquette

Judge: The Honourable Judge Elizabeth Buckle

Heard: January 4, 2024

Oral Decision: January 25, 2024

Charge: Sections 5(1) & 5(2) of the *Controlled Drugs and Substances Act*
Sections 95(1) & 354(1)(a) of the *Criminal Code*

Counsel: Leonard MacKay, for the Crown
Stan MacDonald, for Cameron Mombourquette

By the Court:

Introduction

[1] Mr. Mombourquette has pleaded guilty to trafficking cocaine, possession for the purpose of trafficking of heroin, possession of proceeds of crime (cash), and possession of a prohibited firearm together with readily accessible ammunition. I must now determine a fit and proper sentence.

[2] For approximately nine months in 2020, Mr. Mombourquette's only source of income was selling illegal drugs, including small quantities of fake prescription opiates that contained heroin and larger quantities of cocaine. He was part of a drug trafficking operation and has admitted to selling high purity cocaine at the multi-gram and multi-ounce level. It is estimated that he sold at least 700 grams per week for 14 weeks. Upon arrest, the police found currency and illegal drugs in his vehicle and residence, including drug trafficking paraphernalia, about \$6,000 in cash, almost 500 grams of cocaine, and 97 pills containing heroin.

[3] On the day of his arrest, Mr. Mombourquette and a passenger in his vehicle fled from the police resulting in a high-speed pursuit that ended when he crashed into a pole in a residential neighbourhood. During the pursuit, a loaded handgun was thrown from the passenger side of the vehicle.

[4] Mr. Mombourquette is a young man with no previous criminal record. He was struggling with addiction at the time of the offences. In the three years since his arrest, he has turned his life around. He is no longer involved with his criminal associates, no longer using drugs, is in a stable and healthy relationship, and has been working full time. He has the full support of his extended family, employers, and members of his community, and has demonstrated an intent to lead a pro-social life.

[5] The Crown and Defence agree that denunciation and general deterrence require a penitentiary sentence. However, they disagree on how long. The Crown seeks a global custodial sentence of six years along with ancillary orders (DNA, weapons prohibition, and forfeiture). The Defence seeks a global custodial sentence of three years and does not dispute the ancillary orders.

Circumstances of the Offences

[6] Mr. Mombourquette has pleaded guilty to four offences in two Informations:

Count 2 - Between March 1, 2020, and January 8, 2021, he trafficked in cocaine, a Schedule I substance, contrary to s. 5(1) of the *CDSA*;

Count 10 – On or about December 9, 2020, he possessed heroin, a Schedule I substance, for the purpose of trafficking, contrary to s. 5(2) of the *CDSA*;

Count 13 – On or about December 9, 2020, he possessed Canadian currency and a gold bar, of a value exceeding five thousand dollars, knowing it was the proceeds of crime, contrary to s. 354(1)(a) of the *Criminal Code*; and,

Count 8 – On December 9, 2020, he possessed a prohibited firearm, a 9 mm Luger semi-automatic handgun, together with readily accessible ammunition capable of being discharged in that firearm and without being the holder of an authorization or licence, contrary to s. 95(1) of the *Criminal Code*.

[7] The circumstances of the offences were presented in an Agreed Statement of Fact (ASF, Ex. 1).

[8] For approximately a year, ending in December of 2020, the police were investigating a group, including Mr. Mombourquette, for suspected cocaine trafficking.

[9] During that time, Mr. Mombourquette trafficked small amounts of illegal cannabis, MDMA, and fake prescription opiates that contained heroin. However, his main source of income was trafficking cocaine. He sold high-purity cocaine in quantities of between 10 grams and several ounces. Some of the people he was selling to were reselling. Wiretap intercepts show at least 100 transactions between late August and early December of 2020. Police estimate the amount of cocaine trafficked was at least 700 grams per week.

[10] Mr. Mombourquette delivered cocaine and picked up money. He had a hidden compartment in his vehicle to transport the illegal drugs and weapons. He stored money and processed cocaine in his family residence and in his apartment.

[11] The police arrested Mr. Mombourquette on December 9, 2020. He had picked up product and was driving with a passenger in his vehicle when the police attempted to stop him. He fled, resulting in a high-speed pursuit that ended in a residential neighborhood when the police forced his vehicle into a utility pole. During the pursuit, a loaded prohibited handgun (a semi-automatic 9mm Luger

with excessive ammunition and an oversized magazine, with the serial number removed) was thrown from the passenger window of the vehicle.

[12] The police searched Mr. Mombourquette's vehicle, apartment, and family home and seized the following:

Vehicle

- \$1555.00 in cash;
- a knife;
- 30 oxycodone pills;
- bear spray; and,
- 64 grams of cocaine.

Apartment

- a money counter;
- \$5352 in currency; and,
- a one ounce gold bar.

Family Home

- cocaine trafficking paraphernalia (two presses, scales, and a vacuum sealer);
- almost 500 grams of cocaine; and,
- 97 pills containing heroin.

[13] Mr. Mombourquette was also associated with other locations. Police searches of those locations resulted in the seizure of items, including:

- cocaine trafficking paraphernalia;
- firearms;

- approximately 3kg of cocaine; and,
- almost \$100,000 in Canadian currency.

[14] Mr. Mombourquette does not dispute the presence of these items at those locations. However, the Crown has not proven he knew they were there. They are relevant only to establish the size of the drug trafficking operation that he was part of.

Mr. Mombourquette's Circumstances

[15] Information about Mr. Mombourquette's background and current circumstances has been provided through a Pre-Sentence Report, 11 letters of support, comments of counsel, and Mr. Mombourquette's comments at the end of the sentence hearing.

[16] He is now 26 years old and was around 22 to 23 years old at the time of the offences. He has no criminal record.

[17] He had a good upbringing. He was raised with financial and familial stability. He had access to education and competitive sports and was supported in those endeavours. He had some challenges. Those include a difficult relationship with his father who had a problem with alcohol, bullying by his peer group, feelings of inadequacy, and his father's diagnosis with a serious chronic illness about five years ago.

[18] He moved out of the family home when he was 18 years old but returned after his arrest.

[19] He reports that he suffers from depression and anxiety. He has witnessed the terrible consequences that are common amongst people who sell drugs for a living, including the death of his peers by drug overdose and murder. He was also the victim of a crime when he was kidnapped and held for a day.

[20] He started drinking and using cannabis at age 12. For about a year before his arrest, he was drinking every day. At the time of the offences, he was also using cocaine daily and was addicted to Percocet which he had been using for about three years. His mother reports a family history of mental health and addiction issues but says they have generally been kept hidden. For a long time, she was not aware of his drug use.

[21] He is part of a loving and supportive extended family and community. The letters filed were from aunts, his uncle, a community member, long-term family friends, his mother, his grandmother, his two employers, and a customer. These letters do not offer blind or unconditional support. Most of the authors are fully aware of the seriousness of the offences and their impact. They have not shied away from telling Mr. Mombourquette how his behaviour has impacted them and others. They have held him accountable. His mother has explained to him the impact it had on her to have been held at gunpoint while her home was searched by police.

[22] Mr. Mombourquette reports, and all other sources confirm, that he has completely turned his life around since the time of these offences. He is drug-free, working full-time, has a goal to become a Red Seal electrician, and has removed himself from his previous criminal associations.

[23] I accept his statements that he has been drug-free for the past three years. It is consistent with the information provided by others, including his family, friends, and employers. I appreciate that he was previously able to hide his drug use but that would be much more difficult now. Following his arrest, everyone in his life would have been on alert for signs of trouble and he has been living at home and going to work every day.

[24] He feels he's been able to stay away from drugs without professional help though he says he would welcome the help of a counselor or other addictions treatment.

[25] He did not excel in academics. However, he has found an interest in becoming a Red Seal electrician and has been working hard toward that goal. He has been employed full-time for an electrical company for the past two years and wants to attend the Nova Scotia Community College. When he was laid off for a short time due to lack of work, he found employment with another company. His main employer spoke to the author of the PSR and wrote a letter of support. He is aware of Mr. Mombourquette's offences and fully supports him. He describes him as hardworking and reliable with good interactions with coworkers and customers. He said that Mr. Mombourquette was honest with him about his outstanding charges from the beginning. He described him as an excellent apprentice, a hard worker, an intelligent person with a big heart, and "a great kid with lots of potential". These sentiments are echoed by his direct supervisor, his secondary

employer, and a customer. Both his employers said they would hire him back when he is released from custody.

[26] His immediate supervisor expressed confidence that “he will return from everything a better version of himself and ready to continue a successful career path and enrich his community and lives of those around him”.

[27] A customer provided an example of Mr. Mombourquette’s conduct that, to him, demonstrated unusual maturity and restraint. He said that Mr. Mombourquette had a situation with another worker that, in his experience in construction, would frequently have led to a physical confrontation. However, Mr. Mombourquette did not confront the other person. Instead, he remained calm, spoke to the author of the letter, and asked that he speak to the other person in private.

[28] All sources who knew Mr. Mombourquette during the leadup to his arrest report that he is now back to his old self. He is uniformly described as a loving, hard-working, and loyal person. His sister has a debilitating disorder, and his father has been ill. Many members of his family commented on the valuable support he’s provided to his family.

[29] Those outside his family offered similar comments. Family friends, a retired teacher, and a retired member of the clergy described him as trustworthy, kind, caring, conscientious, and dependable. They also commented on his remorse.

[30] He has taken full responsibility for his conduct, the impact it had on his family, and its broader impact. He has demonstrated deep remorse, both in and out of court.

[31] He spent a short period of time in custody following his arrest, but for the past three years, he has been in the community on release conditions, including a curfew. He has complied with those conditions and his family reports that he has been cautious and careful to ensure compliance.

[32] The lead investigator reports that Mr. Mombourquette has not been on the police’s radar since his arrest in December of 2020. Given that officer’s role in policing, he would be aware if there was any intelligence suggesting that Mr. Mombourquette had returned to the drug trade.

Application of Principles of Sentencing

[33] The general purpose, objectives, and principles of sentencing are set out in ss. 718 to 718.21 of the *Criminal Code* and s. 10 of the *Controlled Drugs and Substances Act (CDSA)*.

[34] The fundamental purpose of sentencing under the *Criminal Code* is to protect the public and to contribute to respect for the law and the maintenance of a safe society. Those same purposes are emphasized in the drug context.

Proportionality

[35] The fundamental principle of sentencing is proportionality (*Criminal Code*, s. 718.1).

[36] Proportionality is the starting point for sentencing. It requires that a sentence “reflect the gravity of the offence, the offender’s degree of responsibility and the unique circumstances of each case” (*Criminal Code*, s. 718.1; and, *R. v. Parranto*, 2021 SCC 46, para. 12). It requires that a sentence not be more severe than what is fair and appropriate but severe enough to condemn the offender’s actions and hold them responsible for what they have done (*R. v. LaCasse*, 2015 SCC 64; and, *R. v. Nasogaluak*, 2010 SCC 6, para. 42).

[37] Assessing proportionality requires me to consider the gravity of the offence. That includes both the objective gravity of the offence and the subjective gravity of the offender’s specific offending behaviour (*R. v. Friesen*, 2020 SCC 9, para. 96; and, *R. v. L.M.*, 2008 SCC 31, paras. 24 - 25).

[38] These offences are objectively serious. That is reflected in the maximum sentences set by Parliament: for the drug offences - life imprisonment; for the firearm offence -14 years in custody; and, for possession of proceeds of crime - ten years in custody.

[39] The gravity of offences relating to the sale of hard drugs has been repeatedly and consistently commented on by judges across the country. Cocaine has been recognized as a “creeping evil” and a deadly and devastating drug that ravages lives (*R. v. Huskins*, 95 N.S.R. (2d) 109; and, *R. v. Butt*, 2010 NSCA 56, para. 13).

[40] Heroin is not as common as cocaine in Nova Scotia, but it has typically been treated as more dangerous and attracting higher penalties (eg. *R. v. White*, 2020 NSCA 33, paras. 83-94).

[41] Judges have also repeatedly commented on the gravity of firearms offences, including simple possession. In *R. v. Nur*, 2015 SCC 15, the Supreme Court spoke about the inherent dangers of simple possession of guns:

Section 95 targets the simple possession of guns that are frequently used in gang-related and other criminal activity: see *R. v. Nur*, 2013 ONCA 677, 117 O.R. (3d) 401 (Ont. C.A.), at paras 54-57. Parliament has concentrated on simple possession for a reason: firearms – and particularly the firearms caught by s.95 – are inherently dangerous. In *R. v. Felawka*, [1993] 4 S.C.R. 199 (S.C.C.), the Court recognized that “[a] firearm is expressly designed to kill or wound” and that “no matter what the intention may be of the person carrying a gun, the firearm itself presents the ultimate threat of death to those in its presence” (p.211). As the Attorney General of Canada observes in his factum, this sober reality resonates all the more for “restricted firearms (principally handguns) and prohibited firearms (principally machine guns and sawed-off rifles or shotguns)” (A.F. (Nur), at para 64). These firearms are “the most strictly regulated because they are either easily concealable or generally do not serve a legitimate hunting or target shooting purpose” (ibid). Outside of law enforcement, these guns are primarily found in the hands of criminals who use them to intimidate, wound, maim, and kill.

[42] The combination of drug trafficking and firearms is particularly toxic.

[43] These offences capture a wide range of behaviour. I have to place Mr. Mombourquette’s conduct and moral culpability on the continuum of behaviour that could constitute the offences.

[44] To do that for the drug offences, I have to consider the type and quantity of drug and his role in the drug business (*R. v. Knickle*, 2009 NSCA 59, para. 17; and, *R. v. Kleykens*, 2020 NSCA 49, para. 37). The result is that his specific offending conduct is also very serious.

[45] Both cocaine and heroin are Schedule I substances. They are highly addictive and very dangerous.

[46] Having regard to the drugs, cash, and paraphernalia in his possession, along with the quantities he has admitted trafficking, Mr. Mombourquette’s involvement in cocaine trafficking puts him in the “larger retailer or small wholesaler” category for that substance (*Kleykens*, para. 50; and, *R. v. Fifield*, [1978] N.S.J. No. 42). I will address this further when I talk about the sentencing ranges.

[47] Mr. Mombourquette was also in possession of a smaller amount of heroin as a component of pills. He has admitted that was for the purpose of trafficking and

that he did sell it in small quantities. However, he was addicted to those same pills. I agree with the Defence that, alone, this would put him in the “petty retailer” category for heroin, however, it cannot be entirely divorced from his overall involvement in the drug trade.

[48] For a time, he was a full-time drug trafficker. He was addicted to pills that contain heroin and he was using cocaine daily. However, he was not selling solely to support that habit. He sold for profit. He has acknowledged that he also carried illegal firearms in his vehicle. On the day of his arrest, he and another person met someone for the purpose of a drug deal, and he knew that a handgun and ammunition were present. His flight from the police placed many other lives at risk, including the officers, his passenger, other users of the roads, and pedestrians.

[49] To assess the gravity of the firearm offence, I must consider the circumstances of his possession. In *Nur*, the Supreme Court spoke about the wide range of conduct captured by s. 95(1) – from the “outlaw” who carries a loaded prohibited/restricted firearm as a ‘tool of his trade’ to the licenced and responsible gun owner who stores his unloaded firearm with ammunition nearby (para. 82). Mr. Mombourquette’s conduct places him nearer the top of that range. His possession was truly criminal, and the firearm was a tool of the drug trade - it was in Mr. Mombourquette’s vehicle during a drug transaction, and he has admitted knowing it had readily accessible ammunition.

[50] His culpability for these offences is high. He personally delivered drugs and collected cash and was in possession of cash, a large quantity of cocaine, and paraphernalia associated with the preparation and trafficking of cocaine. He is solely responsible for that conduct.

[51] His culpability is not substantially lessened by his addiction. His addiction may have provided the gateway to his trafficking; however, they are not the reason for it. He did not sell drugs to support his addiction.

[52] He is not solely responsible for the presence of the gun or for it being loaded. He has admitted knowing the gun was in the car that day together with ammunition and to having a hidden compartment in the vehicle that was used to transport drugs and illegal weapons. However, the evidence does not demonstrate ownership, exclusive possession, that he handled it that day, or that he knew it was loaded. That reduces his moral culpability only slightly, since he knew it was present when he went to do a drug deal, knew there was regularly accessible

ammunition, and, given the hidden compartment, I infer that the day of his arrest was not the first time he'd had a gun in his car.

Sentencing Objectives

[53] The overall purposes of sentencing are to be accomplished by imposing just sanctions that have one or more of the objectives that are set out in s. 718, including: denunciation; general and specific deterrence; rehabilitation of the offender; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community (*Criminal Code*, s. 718).

Denunciation and Deterrence

[54] Denunciation and general deterrence are the paramount considerations when sentencing for these offences (trafficking or possession for the purpose of trafficking of hard drugs: *Kleykens*; *R. v. Chase*, 2019 NSCA 36; *R. v. Steeves*, 2007 NSCA 130; *Butt*; *R. v. Scott*, 2013 NSCA 28; and, *R. v. Oickle*, 2015 NSCA 87; and, possession of prohibited/restricted firearms that are loaded or with readily accessible ammunition in 'truly criminal' context: *Nur*, paras. 136-137; *R. v. Brown*, 2020 ONSC 6355, para. 27; and, *R. v. Slack*, 2015 ONCA 94, para. 23).

[55] Specific deterrence is not a concern here. Mr. Mombourquette has no prior criminal record and everything I've read suggests that specific deterrence has been accomplished. He has left drug trafficking behind. In the words of a family friend, Mr. Mombourquette "lost his way for a bit", he knows that, and he has worked hard to get back onto the right path.

[56] Further, and relevant to deterrence, he has already experienced some consequences for his conduct. He has faced his community and his family's disappointment, he has been made aware of the impact his conduct has had on them, and he has had to tell prospective employers about what he's done. He spent a short time in custody and has been on conditions in the community. He has saddled himself with a criminal record for serious drug offences which will impact his future employment and travel for years to come. Finally, he will be going to the penitentiary.

Rehabilitation

[57] Rehabilitation is an important sentencing objective under both the *Criminal Code* and the *CDSA*. It is necessary for the long-term protection of society. In the

drug context, it is singled out in s. 10 of the *CDSA* which specifically requires that a sentence encourage treatment of offenders in appropriate circumstances.

[58] Rehabilitation continues to be a relevant objective, even in cases requiring that denunciation and deterrence be emphasized (*LaCasse*, para. 4).

[59] Mr. Mombourquette was 22 to 23 years old when he committed these offences so was not a ‘young person’ under the *Youth Criminal Justice Act*. However, he was still youthful (see: generally, the comments of Rosenberg, J.A. in *R. v. Priest*, [1996] O.J. No. 3369, and specifically, para. 21; *R. v. Laine*, 2015 ONCA 519, paras. 80-81; *R. v. Waterhouse*, 2021 NSCA 23, para. 42; and, *R. v. Hills*, 2023 SCC 2, para. 165). Young people don’t magically reach maturity on their eighteenth birthday. Maturation is a gradual process, bringing with it increased moral sophistication and a greater ability to foresee consequences, resist impulses, and exercise sound judgement.

[60] The rehabilitative objective of sentencing is even more important when dealing with youthful, first-time offenders. This principle has been recognized even in cases where the nature of the offence requires that denunciation and deterrence be paramount (e.g. *R. v. Bratzer*, 2001 NSCA 166; *R. v. Quesnel*, (1984), 14 C.C.C. (3d) 254; *Priest*, para. 17; *R. v. Brown*, 2015 ONCA 361, para. 7; *Laine*, para. 85; and, *Hills*, para. 165).

Secondary Principles

[61] There are also important secondary principles that I am required to take into account: the principle that a sentence should be increased or reduced to account for relevant aggravating and mitigating factors relating to the offence and the offender; the principle of parity, meaning that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and, the principle of restraint.

Aggravating and Mitigating Factors

[62] Section 718.2 requires that I consider the aggravating and mitigating factors relating to the offence and the offender.

[63] There is no real dispute between the Crown and the Defence about these factors. However, a couple require comment. Mr. Mombourquette was on a Release Order for three years that included a curfew and other conditions. The

Defence does not argue that this restriction of liberty entitles him to direct mitigation of his sentence since his conditions were not particularly onerous (*R. v. Hickey*, 2023 NSSC 33, para. 21-26; and, *R. v. Simmonds* 2021 NSSC 54). However, the Defence does submit that his compliance with those conditions over a lengthy period demonstrates his sincerity and commitment to change, which is mitigating.

[64] Carrying a weapon during the commission of a designated substance offence is an aggravating factor when sentencing for the drug offence (s. 10(2), *CDSA*). However, I also have to sentence Mr. Mombourquette for the separate offence of possession of the prohibited firearm. I cannot punish him twice for the same conduct by sentencing him for it under one offence and then also using it as an aggravating factor to increase the sentence for the other.

[65] In summary, the aggravating factors I have considered are as follows:

- The duration and frequency of the offending conduct;
- The type, quantity, and purity of the drugs;
- The combination of drug trafficking and a firearm;
- The firearm was a ‘tool of the trade’ and its possession was ‘truly criminal’;
- The trafficking was solely for profit;
- The firearm was in the vehicle, loaded, and accompanied by an oversized magazine;
- There was a hidden compartment in the vehicle which he admits was used to transport drugs and illegal weapons; and,
- The flight from police which put many people in danger.

[66] The mitigating factors I have considered are as follows:

- Mr. Mombourquette is a youthful offender;
- He has no criminal record;
- His very early and ongoing acceptance of responsibility, guilty plea, and genuine remorse;

- Since his arrest he has turned his life around as demonstrated by his full-time employment, dissociation from criminal lifestyle, help and support for his family, demonstrated commitment to remaining drug free, and compliance with release conditions; and,
- He has the informed support of his extended family, community, and employers.

[67] There are aggravating factors that are present in other cases but are either not present here or their impact is lessened. For example, the Crown has not proven that Mr. Mombourquette knew the firearm was loaded, that Mr. Mombourquette had exclusive or personal possession of it, or that the firearm was used or displayed.

Parity / Range of Sentences

[68] Section 718.2 also requires that I consider the principle of parity. Within reason, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[69] That requires me to look at the sentencing ranges for each offence. Those ranges help me assess proportionality by providing a reference to situate Mr. Mombourquette and his conduct on the spectrum of gravity (*Parranto*, para. 33). Sentencing ranges also encourage consistency between sentences which promotes fairness and rationality in sentencing.

[70] However, ranges are recognized to be “guidelines rather than hard and fast rules”, “tools and not straitjackets” (*Nasogaluak*, para. 44; and, *Parranto*, para. 37).

[71] Each sentence has to reflect the unique circumstances of that offence and that offender (*Lacasse*, para. 58; and, *Chase*, para. 41). Sometimes those unique circumstances call for a sentence at the upper or lower boundaries of the range and sometimes they call for a sentence outside the range. Sentencing judges are permitted to go outside the established range if the sentence imposed is a lawful sentence that adequately reflects the principles and purposes of sentencing, does not depart significantly from the range, and there is reason for departing from the normal range (*Lacasse*, para. 58; *R. v. Livingstone*; *Lungal*; *Terris*, 2020 NSCA 5, para. 9).

Range for Trafficking Cocaine

[72] Our Court of Appeal has consistently said that cocaine traffickers, even petty retailers, should expect to be sentenced to imprisonment in a federal penitentiary (See: *Kleykens*, para. 67; *Steeves*; *Knickle*; *Butt*; *R. v. Jamieson*, 2011 NSCA 122; and *Oickle*). In Nova Scotia, trafficking at a higher than ‘petty retail’ level attracts sentences between two and seven years (*Kleykens*, paras. 50 & 67).

[73] Mr. Mombourquette has admitted to trafficking cocaine in amounts of between 10 grams and “several ounces” (assuming that ‘several’ means approximately three to six ounces, it equates to 85 to 170 grams) and up to about 700 grams per week over a 14-week period. He also possessed about 500 grams of cocaine along with paraphernalia. As I said, that places him in the “larger retailer or small wholesaler category” as that phrase is used by the Nova Scotia Court of Appeal in *Fifield* and *Kleykens*.

[74] The Crown submits that Mr. Mombourquette’s involvement puts him in the upper part of that category, resulting in a sentencing range of between five and eight years (relying on *R. v. Leblanc*, 2019 NSSC 192, paras. 10-22). Of course, people who traffic or possess higher quantities of drugs will generally receive sentences that are higher. However, to my knowledge, the Court of Appeal has not specifically identified narrower sentencing ranges for sub-categories within the broader “larger retailer or small wholesaler” category identified in *Fifield*.

[75] In *Kleykens*, the Court of Appeal spoke about trafficking “that went beyond “petty retailing” and fell within the “larger retailer or small wholesaler” category” and provided cases where sentences of between two and seven years were imposed for traffickers falling in that category (para. 50 & 67). The Court said that Mr. Kleykens’ possession of 5 ounces of cocaine (about 140 grams) “comfortably” put him in that category and when combined with his possession of 8.3 kg of marihuana, put him in the mid-upper end of the category. The Court then concluded that a fit and proper sentence for Mr. Kleykens was two years in custody. That suggests that a sentence of two years is within the range for offenders who are ‘comfortably’ in the “larger retailer or small wholesaler” category for hard drugs, even when there dealing in soft drugs moves them into the upper part of that category.

[76] The range suggested by the Crown corresponds with the range identified by Justice Rosinski in *Leblanc* as applying to “medium scale retailers/small wholesalers (distributing more than 1/3 kilogram and up to lower single digit kilograms)” (para. 22, bullet point 3). Other cases suggest the sentencing range for

this sub-category includes sentences of less than five years. For example, in *R. v. Heickert*, 2020 NSPC 9, the Court said that the range for trafficking of single-digit kilograms of cocaine is four to eight years. There are multiple examples of cases where sentences of less than five years have been imposed for traffickers in that 1/3 kg to lower single digit kg sub-category (eg. *R. v. Hickey*, 2023 NSSC 33 – 4 years; *R. v. Boudreau*, 2023 NSSC 131 – 4 years; and, *R. v. Knickle*, 2009 NSCA 59 – 3 ½ years).

[77] The reality, as was recognized in *Fifield*, is that even the broad categories it identified “... have broad and overlapping ranges of sentence into which the individual offender must be appropriately placed, depending on his age, background, criminal record, and all surrounding circumstances.” (para. 10). That statement is even more applicable when dealing with any ‘sub-categories’ within the *Fifield* categories.

[78] The following cases assist me in identifying the broad range of sentences that apply in the larger retailer/smaller wholesaler category:

- *R. v. Carvery*, 1991 CanLII 2475 (NSCA) – 184 g of cocaine - high level retailer - no prior record - 5 years;
- *R. v. Smith*, 1992 NSCA 73 - 28.75 g crack cocaine and 372 g powder cocaine - "upper end of the scale as a retailer" - minor unrelated prior record - 5 years;
- *R. v. Stokes*, 1993 NSCA 195 - trafficked 170 g of cocaine - more than a petty retailer - lengthy prior record - 7 years;
- *R. v. Steeves*, 2007 NSCA 130 – 77 g cocaine and 100 ecstasy pills – above the lower *Fifield* categories - minor unrelated prior record - 2.5 years;
- *R. v. Knickle*, 2009 NSCA 59 - approximately 311 g cocaine - higher retail level of the *Fifield* categories - no prior record - 3.5 years;
- *R. v. Conway*, 2009 NSCA 95 – 103 g crack cocaine and 264 g marihuana - mid to high level retailer - 65-year-old with no prior record - 2.5 years;
- *R. v. Shields*, 2014 NSPC 69 – busy mid-level cocaine distributor trafficking in amounts up to 100 g – no record - found guilty after trial – 4 years;
- *R. v. Leblanc*, 2019 NSSC 192 – 210 g cocaine and over \$6000 cash - third *Fifield* category - related prior record - 5 years;
- *R. v. White*, 2020 NSCA 33 – 185 g cocaine, crack cocaine and fentanyl - mid-level drug trafficker – lengthy prior record – 5 years for cocaine and 8 years, concurrent for fentanyl;

- *R. v. Kleykens* – 141 g cocaine, 8.3 kg marihuana and resin and \$6000 cash – mid-to-upper end of level 3 of Fifield categories – no prior record - 2 years;
- *R. v. Hickey*, 2023 NSSC 33 – possession of 1 kg of high-purity cocaine – part of a sophisticated operation - extensive criminal record including related offences – found guilty after trial - 4 years;
- *R. v. Boudreau*, 2023 NSSC 131 – possession of more than 775 g of cocaine and significant amounts of other drugs and trafficking paraphernalia - guilty plea after unsuccessful *Charter* application - 22 year old offender with no criminal record – 4 years; and,
- *R. v. Wint*, 2023 NSSC 412 – 841 g cocaine, \$32,000 and trafficking fentanyl - high level local cocaine dealer - extensive record for drug offences, including trafficking – 5 years.

[79] For this offence, the Crown seeks a sentence of five years in custody. The Defence submits that three years is appropriate. Both are within the range identified by these cases. Deciding where Mr. Mombourquette fits will require a closer look at the aggravating and mitigating factors and a consideration of other sentencing principles.

Possession for the Purpose of Trafficking of Heroin

[80] It is difficult to place Mr. Mombourquette's offence in the range of sentences for trafficking or possession for the purpose of trafficking of heroin. The Crown referenced *White* from the Nova Scotia Court of Appeal and the cases referenced in that decision. However, those decisions all refer to the quantity of drug by reference to weight. Mr. Mombourquette possessed 97 pills that contained heroin, however, I have no evidence of their strength or how much heroin that amounts to. There are many reported cases dealing with sentencing for trafficking in synthetic opioids in pill form. However, neither the Crown nor the Defence have referred to those, so I have been reluctant to rely on them given that I have no evidence as to the relative harm of heroin as compared to those synthetic forms and no evidence of the strength of the pills possessed by Mr. Mombourquette.

[81] There is no doubt that commercial traffickers of heroin typically receive sentences of five years or more. The Crown acknowledges that the amount here is well below that category and submits that the sentence here should be three years in custody. The rationale being that heroin is viewed as more serious than cocaine so the sentence should be above what would be imposed for a low-level retailer of cocaine. The Defence submits that one year is the appropriate sentence, but that recommendation is impacted by totality.

[82] The Ontario Court of Appeal has repeatedly said that trafficking in heroin (or its synthetic counterparts), even in small amounts, will attract a penitentiary sentence (e.g. *R. v. Zamini*, [1999] O.J. No. 3780 (ONCA), para. 4; and, *R. v. Turner*, [2003] O.J. No. 685 (ONCA), para. 3). However, conditional sentences and sentences in the reformatory range have been imposed:

- *R. v. Zamini* [1999] O.J. No. 3780 (ONCA) – 2 years less a day upheld on Crown appeal. 43-year-old first offender was convicted after trial of trafficking 50 grams of heroin;
- *R. v. Comer*, 2015 ABPC 140 - two years in custody (less remand time) for trafficking ½ gram of heroin. When arrested, he also had a small amount of heroin in his possession. He pleaded guilty, was 19 years old, had no prior criminal record, had been addicted and participated in a drug treatment program;
- *R. v. Kerr*, 2001 CANLII 21142 (ONCA) – 18-month CSO and 3 years probation for three counts of trafficking heroin and one count of improper storage of a firearm. The offender pleaded guilty, was 27 years old with supportive family, addiction issues and no prior criminal record; and,
- *R. v. Fortune*, 2011 ONCJ 459 - the offender was sentenced to maximum reformatory sentence for possession of a small quantity of heroin for the purpose of trafficking.

Possession of a Firearm Contrary to s. 95(1)

[83] The decision of the Supreme Court in *Nur* is instructive for general principles but also has some factual similarities to the case before me so is useful as a sentencing precedent. Mr. Nur was a 19-year-old first offender who pleaded guilty. He was in a public place with a loaded handgun with an oversized ammunition clip. He had been standing by an entrance to a community centre with other young men. Police responded to a complaint of threatening behaviour, and he ran, tossing the gun away. His personal circumstances, not unlike Mr. Mombourquette's, were very positive. He was described as an “incredible youth with unlimited academic and great leadership skills”, he was performing well in school, was an exceptional athlete, and hoped to attend university (para. 21). The Court upheld a 40-month sentence. Mr. Nur's individual connection to the firearm was perhaps greater than Mr. Mombourquette's – Mr. Nur was carrying the firearm on his person, knowing it was loaded. However, the evidence connecting the firearm to criminal conduct is stronger for Mr. Mombourquette – Mr. Mombourquette's possession was clearly connected to drug trafficking.

[84] There are some relevant Nova Scotia precedents:

- *R. v. Fraser*, 2019 NSSC 368 – possession of a loaded handgun in a taxi along with drugs – lengthy criminal record including recent record for firearms offences – African-Nova Scotian / Indigenous offender – 4 years and 9 months;
- *R. v. Steed*, 2021 NSSC 71 – possession of a loaded restricted firearm in a hidden compartment of his vehicle along with ammunition - African-Nova Scotian offender - pleaded guilty after unsuccessful *Charter* motion – 3 years;
- *R. v. Cox*, 2022 NSSC 95 – possession of a sawed-off shotgun with ammunition in a vehicle – lengthy record over 24 years - used the firearm as a tool of his trade - found guilty after trial - 3 years; and,
- *R. v. Arsenault*, 2022 NSSC 325 – possession of a loaded firearm in the glove box of his vehicle – a ‘true crime’ offence albeit not for the purpose of pursuing a criminal enterprise - record for drug trafficking and firearms offences - found guilty after trial - four years.

[85] The Crown submits that a three-year sentence for this offence is appropriate, and the Defence submits that one year is sufficient, but again, that recommendation is impacted by totality.

Possession of Proceeds of Crime

[86] The Crown has provided the case of *R. v. Williams*, 2019 NBPC 1, which includes a comprehensive review of proceeds cases. The offender was found to have possessed a variety of proceeds of crime including cash and was sentenced to three years in custody. The value of the property and cash in that case was higher than in the present case. The cases reviewed in *Williams* resulted in sentences of one to three years but, in each, the total amount of cash and assets was much higher than here.

Restraint and Totality

[87] Finally, s. 718.2 requires me to consider the principle of restraint. This principle means that a sentence should not be more punitive than is required to respond to the principles of sentencing (*Criminal Code*, s. 718.2; and, *Parranto*, para. 10).

[88] Restraint is particularly important when dealing with youthful, first-time offenders. A first sentence of imprisonment should always be as short as possible to satisfy the principles of sentencing, but that is even more important when sentencing youthful offenders.

[89] This was addressed by the Supreme Court of Canada in *Hills*. In that case, the Court was dealing with the constitutionality of a mandatory minimum penalty for discharging a firearm. In that context, Justice Martin, writing for the majority, commented on the impact of incarceration on youthful offenders:

165 ... A four-year term of imprisonment would have significant deleterious effects on youthful offenders, who are viewed by our criminal law as having high rehabilitative prospects. It follows that sentences for youthful offenders are often largely directed at rehabilitation. To prioritize rehabilitation, youthful offenders should benefit from the shortest possible sentence that is proportionate to the gravity of the offence (see *R. v. Brown*, 2015 ONCA 361, 126 O.R. (3d) 797, at para. 7; *R. v. Laine*, 2015 ONCA 519, 338 O.A.C. 264, at para. 85). This is because incarceration is often not a setting where the reformatory needs of young people are met (*Ruby*, at s.5.191). Youthful offenders in federal penitentiaries are often bullied, recruited into adult gangs for protection and are vulnerable to placements in segregation (Office of the Correctional Investigator and Office of the Provincial Advocate for Children and Youth, *Missed Opportunities: The Experience of Young Adults Incarcerated in Federal Penitentiaries* (2017)). For the youthful offender at bar, the difference between a reformatory sentence served in community and a four-year period of incarceration would be profoundly detrimental.

[90] The principle of totality is a form of restraint and a function of proportionality that applies when consecutive sentences are imposed (*R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, para. 42; and, *Parranto*, para. 251). It serves as a reminder that combined sentences should not be “unduly long or harsh” (s. 718.2(c)).

Application of Principles

[91] After a consideration of totality, the Crown seeks a global custodial sentence of six years, and the Defence recommends three years.

[92] The Nova Scotia Court of Appeal has directed that when sentencing for multiple offences, a judge should first determine the appropriate sentence for each individual conviction and then go on to decide whether the sentence should be consecutive or concurrent before ultimately taking a final look at the total sentence and reducing it if required to reflect totality (*R. v. Adams*, 2010 NSCA 42; and, *R. v. Laing*, 2022 NSCA 23).

Step 1 – What is the appropriate sentence for each individual conviction?

[93] There is no doubt that proper application of the principles of proportionality, denunciation, and general deterrence require that I sentence Mr. Mombourquette to a penitentiary sentence.

[94] For trafficking cocaine, the sentence proposed by the Crown, five years, is the same sentence that was imposed in *Carvery*, *Smith*, *LeBlanc*, *White*, and *Wint*. However, none of those cases include the constellation of significant mitigating factors that are present here – early guilty plea, youthful offender, no record, addiction, and a demonstrated commitment to rehabilitation. *Carvery* had no prior record and *Smith* had a minor record, but there is no evidence that either had the extensive pre-sentence rehabilitation present here. *Leblanc* had a prior related record for trafficking cocaine and was found guilty after trial. *Wint* and *White* were both also found guilty after trial and had significant prior related records including for trafficking controlled substances.

[95] The circumstances here can also be contrasted with those in *Hickey* which resulted in a sentence of four years. Mr. Hickey was a mature individual with an extensive criminal record who was found guilty after trial of being involved in a large and sophisticated trafficking operation.

[96] There are similarities between this case and the cases of *Boudreau* and *Shields* who were both sentenced to four years in custody. Mr. Mombourquette's offending conduct is more serious because of the presence of the firearm and the quantity of drugs he possessed/trafficked is larger than in *Shields*. Like Mr. Mombourquette, neither of these offenders had a prior criminal record and Mr. Boudreau was a youthful offender. Both Mr. Shields and Mr. Boudreau had good rehabilitative prospects. However, neither had demonstrated a commitment to turning their lives around to the degree demonstrated by Mr. Mombourquette. Significantly, neither pleaded guilty at the earliest opportunity. Mr. Boudreau did plead guilty but only after a failed *Charter* motion. Mr. Mombourquette's guilty plea in the circumstances of this case is a significant mitigating factor. It saved court time and demonstrated his acceptance of responsibility and remorse in circumstances where there were arguable trial issues. His co-accused challenged the judicial authorizations, including the wire-tap, resulting in multiple pre-trial motions.

[97] The cases of *Steeves*, *Knickle*, *Conway*, and *Kleykens* resulted in sentences of between two and three-and-a-half years. The offences committed by those offenders are less serious in that they involved smaller quantities or took place over

a shorter period. However, they all trafficked or possessed for the purpose of trafficking Schedule I substances in quantities that placed them in the category of mid-to-high level retailer and, again, they do not have the constellation of mitigating factors present here.

[98] Mr. Mombourquette's possession of the firearm was 'truly criminal' and he possessed it as a 'tool of the trade'. In the firearms precedents noted above, the offenders received sentences of three or four years. In each, the possession was 'truly criminal'. Unlike the circumstances here, the offenders in those cases had exclusive personal possession of a firearm, knowing it was loaded. Further, unlike Mr. Mombourquette, those individuals were all mature with prior criminal records, some including prior firearms offences and, again, did not have evidence of sustained commitment to rehabilitation. Mr. Fraser and Mr. Steed are both African Nova Scotian, so, unlike Mr. Mombourquette, had mitigation provided by their unique backgrounds and circumstances.

[99] Trafficking heroin is a serious offence and one that should attract a more significant sentence than trafficking of a similar amount of cocaine by a similar offender. However, given the quantities here and Mr. Mombourquette's circumstances, a custodial sentence in the reformatory range would not be outside the range for that offence.

[100] Mr. Mombourquette's flight from police also must be accounted for in the overall sentence. He is solely responsible for the decision to flee, and the resulting high-speed pursuit that put the lives of many innocent people at risk.

[101] Prior to a consideration of totality, I conclude the following sentences are appropriate:

Count 2 – trafficking cocaine, contrary to s. 5(1) – 3 years;

Count 10 – possession of heroin for the purpose of trafficking, contrary to s. 5(2) – 18 months;

Count 13 – possession of proceeds of crime – 6 months; and,

Count 8 – possession of a prohibited firearm, contrary to s. 95(1) – 3 years

Step 2 – Should the sentences be consecutive or concurrent?

[102] Sentences for separate offences “should be consecutive unless there is a valid reason for making them concurrent” (*R. v. Campbell*, 2022 NSCA 29, para. 35). A valid reason is where there “is a reasonable close nexus between the offences in time and place as part of one continuing criminal operation or transaction” (*R. v. Hatch*, 31 N.S.R. (2d) 110 (S.C.A.D.), para. 6). Where offences are designed to protect different legal interests, consecutive sentences may be appropriate (*R. v. Clarke*, 1994 NSCA 200, para. 3).

[103] The Crown and the Defence agree that the caselaw supports both consecutive and concurrent sentences arising out of scenarios like this one where there are multiple drugs, possession of a weapon, and proceeds of crime arising out of a continuing criminal operation. It is a matter within the discretion of the sentencing judge (*R. v. Banfield*, 2012 NSCA 98, paras. 31-33; and, *R. v. Skinner*, 2016 NSCA 54).

[104] I accept that these offences arose out of a continuing criminal operation and there is a reasonable factual nexus between them. As such, I am satisfied that the sentences for trafficking cocaine, possession for the purpose of trafficking, and possession of proceeds of crime should be concurrent to each other. I am aware of the comments of the New Brunswick Court of Appeal in *R. v. Williams* (2020 NBCA 59, para. 21) that different societal interests are being protected by drug trafficking and proceeds of crime / money laundering charges. However, the circumstances here are different. I am dealing only with cash, the cash is part of the evidence of possession for the purpose of trafficking and also helps place Mr. Mombourquette in the hierarchy of drug-dealers, so it has already been considered as an aggravating factor on the trafficking offence.

[105] However, the firearm offence clearly protects a different and significant societal interest. I have concluded that the sentence for that offence must be consecutive.

Step 3 – Should the sentence be reduced to reflect totality and, if so, how?

[106] Prior to a consideration of totality, Mr. Mombourquette would be sentenced to a custodial sentence of six years.

[107] The “final look” under *Adams* is an opportunity to ensure that the global sentence is “just and appropriate” given all the circumstances, does “not exceed the offender’s overall culpability”, and is not so crushing that it removes hope and undermines rehabilitation (*Friesen*, para. 157; and, *M. (C.A.)*, para. 42).

[108] In *Laing*, the Court suggested two questions: (1) are the cumulative consecutive sentences “unduly long or harsh” and, if so, (2) what reduced cumulative term of incarceration will mollify the harshness while maintaining the proportionality to overall culpability demanded by s. 718.1? (para. 57).

[109] The principle of totality does not require that consecutive sentences be reduced in every case (*R. v. W.(J.J.)*, 2012 NSCA 96, para. 42; and *Adams*, para. 23). However, I conclude that the principles of proportionality and restraint require reduction of Mr. Mombourquette’s sentence. In reaching that conclusion, I have considered the global gravity of the conduct and his culpability as well as his youth at the time of the offences, the absence of a criminal record, and his exemplary conduct since his arrest. A six-year sentence for him would be crushing and is not required to address denunciation and deterrence.

[110] I have concluded that an appropriate global sentence would be three-and-a-half years in custody. In my view that sentence is proportionate to the gravity of all the offending conduct and to Mr. Mombourquette’s circumstances.

[111] It is lower than sentences imposed on other offenders who possessed firearms in the drug trafficking context, such as Mr. Fraser, and I recognize that it may be perceived as below the range for this combination of offences. However, I am satisfied that proper application of the sentencing principles justifies a departure in this case. This is still a significant penitentiary sentence which can achieve denunciation and general deterrence. Given that Mr. Mombourquette is a youthful, first-time offender, it is important to give full effect to the principles of restraint and rehabilitation. Mr. Mombourquette has a real and viable hope for full rehabilitation. He has removed himself from criminal influences and surrounded himself with pro-social people who support him. That will change in the penitentiary, so it is important not to impose a sentence on him that is so long that it removes his hope for the future and undermines the hard work and commitment that he has demonstrated in the past three years.

[112] To achieve that sentence, I will reduce the sentences for both the cocaine trafficking and firearm offences. In the result, the custodial sentences will be:

Count 2 – trafficking cocaine - s. 5(1) - 2.5 years;

Count 10 – possession of heroin for the purpose of trafficking - s. 5(2) - 18 months, concurrent;

Count 13 – possession of proceeds of crime - s. 354(1)(a) - 6 months, concurrent; and,

Count 8 – possession of a prohibited firearm - s. 95(1) - 1 year, consecutive.

[113] Following his arrest, Mr. Mombourquette was in custody for six days before being released. He will be given statutory enhanced credit for that time, meaning he has served the equivalent of nine days which will be deducted from his sentence.

[114] There will also be the following ancillary orders:

- S. 109 firearm/weapon prohibition for life;
- Forfeiture of certain items seized by police; and,
- DNA Order for databank

Elizabeth A. Buckle, JPC