**SUPREME COURT OF NOVA SCOTIA**
**Citation:** *R. v. Campbell*, 2021 NSSC 55

**Date:** 20210219
**Docket:** Halifax, No. 494210
**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Eric Albert Campbell

**Restriction on Publication: s. 486.4 of the *Criminal Code***

**Decision**

| | |
|---|---|
| **Judge:** | The Honourable Justice Peter P. Rosinski |
| **Heard:** | February 8, 2021, in Halifax, Nova Scotia |
| **Counsel:** | Katharine Lovett, for the Crown<br>Scott Brownell, for the Defendant |

**By the Court:**

## Introduction[1]

[1] Mr. Campbell (DOB October 8, 1988) has pleaded guilty that he on **September 16, 2018** did commit a sexual assault on LJ contrary to section 271 of the *Criminal Code* ["*CC*"]. He is presently in custody as a result of being sentenced on August 7, 2020, to 2 years' imprisonment in a federal penitentiary to be followed by three years probation, for a sexual assault (s. 271 *CC*) that he committed on **September 8, 2018**.[2]

[2] These reasons explain my sentencing conclusion: 30 months imprisonment in a federal penitentiary - to be served concurrently to his existing sentence.[3]

[3] I also order him:

1- during the custodial portion of his sentence to have no contact with LJ pursuant to s. 743.21 CC;

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[1] There is a ban on publication regarding the identity of the victim herein – s. 486.4 of the *Criminal Code*.

[2] When an individual is sentenced to a term of two years imprisonment and a period of probation thereafter, the probationary period starts at the warrant expiry date: *R v Smith*, 1999 NSCA 83 at para. 8.

[3] From the 30 months I have deducted 6 months for a pre-sentence remand credit and in mitigation of his 18 months house arrest while on bail. The remaining 2 years imprisonment permits me to impose a period of probation to assist in his continued rehabilitation. I find that appropriate and impose 2 years probation to follow.

2- be prohibited from possession of the items specified in s. 109(1) *CC* for a period of time the begins on the day on which this order is made and ends not earlier than 10 years after Mr. Campbell's release from imprisonment;[4]

3- a lifetime SOIRA order pursuant to s. 490.013(2.1) *CC*;

4- a mandatory DNA Order per s. 487.051 *CC*;

5- I exempt him from the payment of the victim surcharge on the basis of undue hardship per s. 737(2.1) *CC*, as he has obligations to dependents.

**The circumstances of the offence**

[4] These are contained in an agreed statement of facts presented pursuant to s. 724 *CC* and are attached as Appendix "A".[5]

[5] A victim impact statement was filed by LJ. As I read it, I was left with the understanding that the offence: shook her sense of security regarding herself and her children, as well as her confidence in her own judgement; interfered with her resumption of attempts at fresh relationships. It also affected her and her children economically because it interfered with her ability to work as a private contractor cleaner, as that involved working alone and being in non-public locations. She also experienced significant anxiety over what had happened, and in relation to the

[4] Although Mr. Campbell was sentenced on August 7, 2020, to a sentence of two years' imprisonment and three years probation with a s. 109 CC 10-year order, for a s. 271 CC offence of September 8, 2018, the Crown does not request more than a 10 year order in this case.

[5] Also being Exhibit 1 at the sentencing.

pending trial (in relation to that concern, until at least Mr. Campbell pled guilty on December 17, 2020).

**The circumstances of Mr. Campbell**

[6] These are available by virtue of the January 21, 2021 Pre-Sentence Report ("PSR") – which updated a PSR of January 31, 2020.[6]

[7] On September 16, 2018 Mr. Campbell was just shy of 30 years old.

[8] According to the 2020 PSR, he grew up in British Columbia:

> "in a home in which he recalls violence and drug use… His father was a biker, and he was raised in an unconventional environment which resulted in his parent's separation when he was six years old… lived with his mother and sister… consequently went to live with family friends when he was 12 years of age.… It was not a positive home environment and at age 12 he and his girlfriend were given crack cocaine [by those family friends] which subsequently led to addiction.… he was also sexually abused within their home… At age 14 he moved to Fort McMurray Alberta on his own for employment… lived on his own and raised himself since the age of 14.… He travelled a lot throughout Canada during his teenage years for employment purposes… in a nine year relationship with CM, and they have two children, B aged nine and E aged three… split up approximately three years ago [2016-7] – [they] are amicable and co-parent well, adding he sees his children regularly and pays child maintenance.… has been in a three-year relationship with SM [DOB 1994], and they do not have any children.
>
> …
>
> [SM] indicated she and the subject have been together 'off and on' for the past three years… In relation to Mr. Campbell's current substance usage, [she] revealed that the subject has dependency issues with crack cocaine, explaining when he consumes alcohol, it always tends to lead to drug use… However [he] was able to continue working on a regular basis… [He] attended detox two years ago [January 2018] and did very well for the first six months, however… ultimately relapsed.… [He] appears to be very committed to

[6] Mr. Campbell decided not to address the court pursuant to s. 726 *CC*.

Ledgehill, and the program he is currently attending noting he has been dealing with past trauma.

…

"He obtained his grade 10 education… he had a learning disability that was not diagnosed at the time although it has since been recognized as Attention Deficit Hyperactivity Disorder… Mr. Campbell revealed he is currently [January 2020] unemployed, due to the fact that he is attending the Ledgehill Treatment and Recovery Centre for Treatment [since November 22, 2019]… and he believes he will be there for at least three months has been off work for approximately two months. He explained for the past 10 years, since age 20, he has been working in the roofing and installation industry and has been employed… When he first left school at age 15, he was a breakfast cook and also worked as a labourer in the construction industry. According to Mr. Campbell he has never been fired from a job.

…

He has realized that alcohol is a trigger for illicit drug use, which he began at the age of 12. He stated he began smoking crack cocaine at that age and quickly became addicted… After the birth of his son B [approximately 2011] he stopped using drugs on his own but subsequently relapsed… He attended and successfully completed the 21-day inpatient Withdrawal Management Program 2 years ago in Dartmouth… upon his successful release he was clean for six months prior to his relapse.

…

CM… mother of [his] children was contacted… confirmed [that he] has been struggling with addictions for the past few years… However, she stated they are in good terms at this time [January 2020]. She indicated [he] does contact their children at her home on a nightly basis via telephone. Due to the phone calls and the fact that caller ID reads "Ledgehill" she confirmed it is her belief Mr. Campbell is currently in treatment at the facility… While she and [he] were together, his addictions were as both drugs and alcohol, specifically crack cocaine… Although he has limited calling through the treatment program, he calls their children regularly and appears to have more patience… He appears to be more aware of himself and seems to be learning a lot in treatment… She concluded by stating she hopes whatever happens to Mr. Campbell will help him, as he is trying to be a better person.

[9] In the January 21, 2021 PSR we find:

"… He and [SM] are no longer in a relationship but that she supports him; they typically have daily communication. Mr. Campbell stated he misses seeing his children, who do not

understand his absence and with whom he had regular contact before entering federal custody. Mr. Campbell outlined he speaks with his children frequently by telephone.

… Steven Campbell, the father of the subject, was contacted and confirms he speaks to his son daily… He is pleased that his son is no longer in a relationship with [SM] as he believed the couple negatively influenced each other's addictions… [regarding CM] he stated the two co-parent well together… Noted that [Mr. Campbell's] mother with whom he the subject shared a close relationship, passed away in September 2020… described her death as a devastating loss for his son and added that his son struggles with being unable to see her before her death…

…

[SM] confirmed she and Mr. Campbell relocated to Bridgetown in the winter of 2020 so that Mr. Campbell could access the addiction treatment centre in Lawrencetown… confirmed her relocation to the Amherst area in anticipation of his incarceration. She and Mr. Campbell have almost daily phone contact… indicated the breakdown of their intimate relationship resulted from her addiction history and her need to address recovery… concluded that Mr. Campbell would benefit from further addiction counselling and anger management programming adding that his anger is more problematic when under the influence of drugs and alcohol.

…

Mr. Campbell… reported a disruption in his work due to Covid 19… which resulted in his receipt of the Canada Emergency Response Benefit. When not receiving this benefit,… he continued to work as a self-employed carpenter until his incarceration [August 7, 2020 in relation to a sexual assault of September 8, 2018]… attended the private addiction treatment program at the Ledgehill Addiction Rehabilitation Centre in Lawrencetown for 3 months, however in March 2020 the Covid 19 pandemic prevented further program operation… He subsequently secured counselling with the former Ledgehill clinician Adam Lewis with whom he continues to have regular counselling sessions via teleconference from the Springhill Institution.

…

Addiction Counselor Adam Lewis of Inspire Recovery Addiction Counselling, confirmed Mr. Campbell spent approximately 90 days at the private Ledgehill Treatment Centre in the summer of 2019… has continued to support Mr. Campbell following his move to private practice in the Spring of 2020 where Mr. Campbell participated an online group work and one-on-one therapy through videoconferencing during the Covid 19 pandemic… continues to have nearly weekly contact with Mr. Campbell but clarified that this contact is more of an informal check-in than engagement in treatment… noted that Mr. Campbell's history of addiction was centred around alcohol, cannabis, and crack cocaine. He described Mr. Campbell as an individual who is 'highly co-dependent'… confirmed Mr. Campbell's

> history of mental health concerns including diagnosis of anxiety and depression… described Mr. Campbell as an individual who has a good heart."

[10] Elsewhere in the PSR update Mr. Campbell is noted to present "as respectful, follows institutional rules and poses no concerns for institution staff… has no incident reports on file" since August 7, 2020 when he was first incarcerated at Springhill Institution, Nova Scotia.

[11] The 2021 PSR continues:

> "Eric Campbell was interviewed by telephone as he is currently serving a federal sentence at the Springhill institution… appeared to take diminished responsibility when he stated the victim gave him 'pre-consent' to engage in sexual activity though he did acknowledge wrongdoing… He has since changed his plea to guilty indicating his attempt to take responsibility… and stated 'I want [the victim] to know that I am sorry'. Mr. Campbell disclosed both he and the victim had been engaged in drug use and suffered from addiction, which he believed was an underlying factor in his behaviour."
>
> [My underlining throughout added]

**Mr. Campbell's prior criminal record**

[12] I recognize that, except for the sentence of 30 days imprisonment in 2008, none of the recent offences (of September 8 2018, May 3 and August 3, 2020) in the strict temporal sense, constitute "prior" criminal offences so as to be an "aggravating factor on sentencing for the September 16, 2018 s. 271 *CC* offence - nevertheless consecutive sentences are possible as an option as a result of s.718.3(4)(a) *CC*: see the court's reasons in *R v Keats*, 2018 NSCA 16:

16 **Mr. Keats sexually assaulted BW on May 26, 2013. The sexual assaults against TH and ML occurred earlier in 2013. …**

…

21 The following reasons in the judge's sentencing decision crystalize his view on his perceived constraint:

> [76] **As I indicated earlier**, [during oral submissions noted above] **the difficulty that I have had with respect to this sentencing and the submission that any sentence imposed here should be consecutive to a sentence that Mr. Keats is presently serving is the fact that the sentence he is serving is for an offence which occurred after the offences for which he is being sentenced this morning**. So, in essence, Mr. Keats is a first offender for purposes of this sentencing.
>
> [77] **With respect to the offence regarding (TH), I am sentencing you to a period of 12 months incarceration. With respect to the offence regarding (ML), I am sentencing you to a period of 18 months incarceration to be served consecutively to the 12 months sentence, for a total sentence of 30 months on these two counts**. I am ordering that the 30-month sentence be **concurrent to his present four-year term**; **and I say that because the four-year sentence, as I have indicated was imposed in relation to an offence that had not occurred when these two offences took place; that Mr. Keats was a first offender for purposes of the sentencing; and there really was a significant gap between offences**.
>
> [Emphasis added]

22 It is apparent that **the judge thought that Mr. Keats being a first-time offender for purposes of the sentencing was a bar to a consecutive sentence being imposed**. As I will explain, the timing of the offence involving BW is neither a bar nor a constraint. The judge was incorrect in holding this view and this view undoubtedly had a material impact on his reasoning as to whether to impose concurrent or consecutive sentences.

…

Law and analysis

24 The Crown argues the decision to make these sentences consecutive to each other, but concurrent to the sentence being served at the time, was grounded in legal error. I agree.

25 The Crown points out that although the judge stated at ¶ 72 that he "considered, in arriving at the sentence to be imposed, the provisions of ss. 718 to 722 of the *Criminal*

*Code*," he made no other reference to these sections, including s. 718.3(4), which is specific to Mr. Keats' sentencing. Section 718.3(4) provides:

> 718.3 (4) The court that sentences an accused **shall consider directing**
>
> (a) that the term of imprisonment that it imposes **be served consecutively to a sentence of imprisonment to which the accused is subject at the time of sentencing;** and
>
> (b) that the terms of imprisonment that it imposes at the same time for more than one offence be served consecutively, including when
>
> (i) the offences do not arise out of the same event or series of events,
>
> (ii) one of the offences was committed while the accused was on judicial interim release, including pending the determination of an appeal, or
>
> (iii) one of the offences was committed while the accused was fleeing from a peace officer.
>
> [Emphasis added]

26 **This section authorizes the judge to impose a new sentence consecutive to one already being served. Section 718.3(4) makes no mention of the relevancy of offence dates. Rather, under s. 718.3(4)(a), it is the date the sentence is imposed that is relevant — *not* the dates on which the underlying offences occurred. As was evident in the judge's reasoning, his focus was incorrectly on the dates of the offences.**

27 The Crown contended that neither the wording of s. 718.3(4)(a) nor legal precedent supports the proposition that the time being served must be for a prior offence in order for a consecutive sentence to be ordered. **The Crown argues the fact that Mr. Keats was a first-time offender for purposes of the sentencing was no bar to a consecutive sentence being imposed. I agree.** This is a correct reflection of the law.

28 **In *R. v. Johnson* (1998), 131 C.C.C. (3d) 274 (B.C. C.A.), the British Columbia Court of Appeal determined that while a subsequent offence cannot be treated as a prior record, there is nothing preventing the sentence for a prior offence from being served consecutively. Although *Johnson* addressed a prior iteration of s. 718.3(4), the principle remains sound.**
In *Johnson*, the Court said:

> [21] This submission finds some support in the authorities to which I have referred at para. 14 of these reasons. **In those cases, however**, **the question before the court was whether, in determining the length of sentence to be imposed for a particular offence, a sentencing judge could treat convictions for offences which were committed prior to the offence in question as a prior record**. As earlier noted, **the answer to this question is "no". That is a different question, however,**

> **from the question of how the sentences should be served once the appropriate length of sentence for the particular offence has been determined.** At that point, the sentencing judge must consider **whether the sentences should be served concurrently or consecutively. In the former situation, the relevant date for the purpose of determining the length of sentence to be imposed for the particular offence is the date the offence is committed; in the latter situation, the relevant date for determining whether the sentence should be consecutive or concurrent is the date that sentence is imposed.**
>
> [emphasis in original]

**29 In *R. v. Johnson* (1999), 173 N.S.R. (2d) 37 (N.S. C.A.), this Court made the same point when interpreting an earlier version of s. 718.3(4). Justice Bateman said:**

> **[10] ... Pursuant to s. 718.3(4) we now have the power to make a sentence consecutive to any sentence that Mr. Johnson is serving whether it relates to an offence committed before or after the sentence on appeal.**

30 **Subsequent offences are relevant for the purposes of sentencing**. In *R. v. J. (H.J.)*, [1989] B.C.J. No. 1542 (B.C. C.A.), the Court of Appeal stated:

> [8] The fact that a person convicted of an offence has since the date of that offence committed similar offences cannot be regarded as irrelevant to the sentencing process. **Other similar offences, whether committed before or after that for which an accused is being sentenced, may well be of considerable importance in determining the character of the accused, the extent, if any, to which there has been rehabilitation, the likelihood of rehabilitation in the future, the extent to which the accused is likely to be deterred by the fact of conviction, brief incarceration or a term of probation and — to some extent a factor related to all of these — the extent to which imprisonment is appropriate for the protection of the public against the commission of further similar offences by the accused. ...**
>
> [10] But in the light of the evidence which was properly before the court at his trial, and of the unchallenged findings of fact of the trial judge, it would, in my view, be wrong that he be treated in the way a first offender might normally be.

31 I turn to address Mr. Keats' position respecting the Crown's appeal.

32 **Mr. Keats' position is that the judge had wide discretion to fashion a proper sentence. Mr. Keats agreed that it was open to the judge to impose a consecutive sentence where an offender, such as Mr. Keats, is serving a sentence for a subsequent offence, but there is no requirement to do so**. He noted that s. 718.3(4) only requires that the option be considered during sentencing. Mr. Keats says the judge made no error in the exercise of his discretion, nor was he overly influenced by the need to treat him as a first-time offender.

33 **I reject this argument. It does not accord with what the sentencing judge said.** With respect, he incorrectly saw the timing of the May 26, 2013 offence respecting BW as a restriction. The judge raised this point with counsel during oral submissions. Then, in his decision, he expressly stated this wrongly perceived limiting factor as a reason for making the decision he did.

34 ***In the alternative, Mr. Keats argues that if the judge did get it wrong, the sentence should be saved by the totality principle — for to do otherwise would impose a disproportionate sentence that is unduly long and harsh.***

35 During oral submissions on appeal, counsel for Mr. Keats acknowledged that aspects of the judge's reasoning were difficult to understand; however, she suggested that, in effect, his decision to render a consecutive sentence for TH and ML, but made concurrent to the sentence for BW, was done with the view of totality in mind. The problem with this argument, and why I also reject it, is that the judge said nothing about totality. *He was clear in his reasons when he said, "I am ordering that the 30-month sentence be concurrent to his present four-year term; and I say that because the four-year sentence, as I have indicated was imposed in relation to an offence that had not occurred when these two offences took place.*" **The principle of totality was not on the radar for the purpose suggested by Mr. Keats.**

36 **The sentencing judge was correct in not treating the subsequent conviction for the sexual assault of BW as a prior record for aggravating purposes. However,** in my view, **he was wrong to have otherwise disregarded it. It was a factor clearly relevant to the exercise of his discretion to impose jail time, whether consecutive or concurrent to the time Mr. Keats was currently serving**.

37 **I am satisfied that the judge** was unduly influenced by the need to treat Mr. Keats as a first-time offender for purposes of the sentencing — to the point he perceived this as a bar to making the 30-month sentence consecutive to the four-year sentence Mr. Keats was serving. Put another way, he **wrongly perceived that his discretion to impose consecutive sentences was curtailed by the timing of BW's offence.**

38 In my view, this was an error in principle that materially impacted the sentence imposed — to the point that ordering the sentence imposed for the assaults against TH and ML to be served concurrently with the sentence for the assault against BW was demonstrably unfit. Appellate intervention is warranted.

[My bolding added]

[13] At the time of his first sexual offence on September 8, 2018, Mr. Campbell had no criminal record *according to the PSR* authored by Probation Officer Danielle Timmons on January 31, 2020.[7]

[14] In the updated PSR it is revealed that he was sentenced in **2008** in Iqualuit, NVT to time served (one month or 15 days on each of two s. **145(3**) *CC* charges – by reference to CPIC).

[15] Since then he was sentenced on May 5, 2020, in Digby Provincial Court to a 60-day Conditional Sentence Order for an offence of **May 3, 2020**, contrary to s. **145(5)** ***CC***. That CSO "was completed without evidence of non-compliance, and Mr. Campbell presented in the preparation phase of the Stages of Change to address his underlying problems of addiction."

[7] I presume she was not permitted access to, or did not check, the nationwide database of indictable-offences fingerprint based CPIC system - but relied only upon our provincial JEIN database which records only convictions for offences dealt with in Nova Scotian courts. However, in oral argument, his prior record from Iqualuit was brought up before His Honour Judge Daniel MacRury. Moreover, although Mr. Campbell was found guilty after trial, the Crown and Defence jointly recommended the sentence of two years imprisonment to be followed by three years probation. Judge MacRury accepted this as within the range of sentence in that case, which involved non-consensual vaginal intercourse after preceding consensual sexual activity. The court and counsel relied upon two decisions in particular: *R v Burton*, 2017 NSSC 181 per Arnold, J. (finding the range of sentence in those circumstances to be 2 to 3 years' imprisonment); and *R v WHA*, 2011 NSSC 246 per Rosinski, J. (where I stated at paragraphs 68 and 75 respectively: "I have concluded that *sentences tend to hover around the three year jail mark*, *for* what the Alberta Court of Appeal called *a 'major sexual assault'* in *Sandercock supra*…in the category of sexual assault, previously known as a 'rape', it does appear to be the case that, in the absence of exceptional circumstances, an offender with no significant criminal record, who has committed a non-premeditated rape, will receive a sentence *around three years in jail*".)

[16] On **August 7, 2020**, Mr. Campbell was sentenced in the Dartmouth Provincial Court to two years imprisonment and three years probation for a s. 271 *CC* offence of September 8, 2018.

[17] The PSR indicates that on **October 6, 2020**, Mr. Campbell was sentenced in Amherst Provincial Court to 60 days imprisonment for the following offences: s. 430(4), s. 266, and breach of release conditions contrary to s. 145(5)(a) *CC*.[8]

**The Crown position on sentencing**

[18] It recommends a period of three years imprisonment for the September 16, 2018 sexual assault on LJ, to be served *consecutively* to the two years imprisonment sentence imposed on August 7, 2020 for the September 8, 2018 sexual assault.[9]

[19] Crown counsel argues that this was a violent and sustained sexual assault, and it is an aggravating factor that Mr. Campbell was not wearing a condom when he penetrated LJ's anus without her consent, during which time he ejaculated

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[8] The attached (to the PSR update) JEIN Offender Summary confirms that each of those offence dates were **August 3, 2020 -** as it was also regarding his sentencing that day for operation of a motor vehicle with a Blood Alcohol Concentration greater than "80" **s. 320.14 (1)(b) *CC***. "[SM] confirmed her relocation to Amherst area in anticipation of his incarceration" (January 2021 PSR). I presume her relocation to have been for his expected sentencing on August 7, 2020 for the sexual assault of September 8, 2018. She had previously relocated with him from Halifax to the Annapolis Valley area while he was attending the Ledgehill treatment program in late 2019 and early 2020.

[9] I note the Defence does not take any issue with the other orders sought by the Crown – DNA, SOIRA, s. 109 *CC*, and 743.21 no-contact order.

inside her anus and caused her to be bleeding. The Agreed Statement of Facts includes: "Mr. Campbell then poured lube onto [the victim's] back and inserted his penis into her anus. [She] was able to 'squirm away' from Mr. Campbell, but he continued to insert his penis in her anus. [She] began to cry and asked Mr. Campbell to stop. The sexual assault continued for several minutes and ended when Mr. Campbell ejaculated in [her] anus. No condom was used… She was bleeding from her anus… Mr. Campbell took his belongings and left [her] residence shortly after… A rectal swab was taken from [her]… The profile of the female component matched that of the known DNA sample taken from [her]. The profile of the male component resulted in a match to the known DNA sample taken from Mr. Campbell. The estimated probability of selecting an unrelated individual at random from the Canadian Caucasian population with the same profile is one in 990 quadrillion."

[20] The Crown argues that a three-year sentence is appropriate relying on the following cases:[10]

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[10] I note that Mr. Campbell was under arrest on September 19, 2018 and according to the Information presented in Provincial Court, he remained **in custody on this charge until November 9**, **2018** when he was released on a Recognizance with a surety - which is the equivalent of **52 days** in custody to which a pre-sentence remand credit must be applied - s. 719 (3) – (3.1) *CC*. He has also been on release pursuant to the **Recognizance since November 9, 2018** which was originally in relation to both the September 8 and September 16 sexual assault allegations – **until his August 7, 2020** sentence of two years imprisonment. In summary, I will consider that he has been under **house arrest for approximately 18 months – i.e. to May 5, 2020 when he received his 60 day conditional sentence order -** [with exceptions for regularly scheduled employment, medical emergencies, appointments with his Defence counsel, Probation Officer, or if he is attending a counselling, or treatment program; and it allowed him between 1

1. ***R v JJW***, 2012 NSCA 96 - “while there was other sexual activity which was questionably criminal, the sexual assault conviction was based upon “the forced anal intercourse [upon his wife]… the next [ to the 5 month sentence imposed in that case] lowest sentences found in the case law for similar major sexual assaults in comparable circumstances, namely two years less a day (para. 32)… for this offender and these offences a fit sentence would have been 2 ½ years in custody” (para. 75);

2. ***R v WHA***, 2011 NSSC 246: I stated:

> 68 The "range" is shorthand for what are the lower and higher limits in terms of punishment that Courts historically have tended to impose for the offences in question [including some adjustment for the circumstances of the offender and offences - see the comments of Bateman, JA in *R. v. Cromwell*, 2005 NSCA 137 (N.S. C.A.) at para. 26]. I have concluded that sentences tend to hover around the three-year jail mark, for what the Alberta Court of Appeal called a "major sexual assault" in *Sandercock* supra…
>
> 75 In summary, it is very difficult to set out the "range of sentences" that would be appropriate in a case of similar offences and a similar offender, due to the great differences that make up the facts of each case. Determining a fit sentence is a "complicated calculus" and should not be seen as a simple numbers game. Nevertheless, in the category of sexual assault, previously known as a "rape", it does appear to be the case that, in the absence of exceptional circumstances, an offender with no significant criminal record,

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and 5 PM on Saturdays time to attend to personal needs]. It also prohibited him from accessing the Internet or possessing any device capable of accessing the Internet. It also prohibited him from the use or possession or consumption of any alcoholic beverages or controlled substances as defined by the *Controlled Drugs and Substances Act*. As noted earlier he did have breaches during the currency of the Recognizance – on May 3, 2020 and August 3, 2020. Although he may have benefited from some credit for being on house arrest as against his September 8, 2018 offences for which he was sentenced on August 7, 2020, however because counsel jointly recommended the two year sentence and three years probation and it was accepted without comment by Judge MacRury, it is unclear whether, and to what extent, his house arrest or remand time was factored into (as a reduction of) that sentence.

who has committed a non-premeditated rape, will receive a sentence around three years in jail.

3. ***R v Marshall***, 2008 NSSC 132: 39-year-old male with some previous criminal record convinced a 20-year-old university student to attend at a bar, and while there purchased her drinks which left her very intoxicated. The next morning, she, having no recollection of leaving the bar, woke up naked with Mr. Marshall on top of her having sexual intercourse. He was convicted after trial and after consideration of the Gladue considerations, sentenced to three years imprisonment.

4. ***R v DHE***, 2012 NSSC 260: 49-year-old male provided a 15-year-old female associate of the accused's family member with alcohol laced with a depressant drug Oxazepam with intent to render the victim unconscious – he then proceeded to have sexual intercourse with her. Sentenced to three years imprisonment.

5. ***R v Simpson,*** 2017 NSPC 25 (3 yrs. imprisonment) - this case is canvassed below as the Defence also relies thereon.

[21] The Crown also relies on a number of cases from other Canadian jurisdictions:[11]

1. *R v Stankovic*, 2015 ONSC 6246 (3 yrs. sentence);

2. *R v Diaz*, 2017 ONSC 1883 (sentence 20 months being the lower range of the 20 months to three years sentence range);

*3.* *R v Garrett*, 2014 ONCA 734 (Mr. Garrett and the complainant had known each other for many years and after the date returned to her premises. Neither was intoxicated, and there was consensual kissing however thereafter, in spite of her repeated insistence that he stopped, his kissing became much more aggressive - he pulled up her top, her bra, and licked her breasts and had her pinned down then took off her leggings and put his penis in her vagina. The trial judge sentenced him to a 90-day intermittent sentence in two years probation. *The Crown had argued that 18 to 36 months imprisonment was appropriate. Therefore, on appeal, the court, which found that the sentence was outside the usual range, and manifestly unfit, imposed 18 months saying "the sentence imposed by this Court should not be taken as a*

[11] The Defence distinguishes many of the cases the Crown relies upon, as having been guilty verdicts after trial rather than guilty pleas in advance of trial; or that they are otherwise distinguishable by the previous criminal record of the offender, the seriousness of the circumstances of the offences in those cases; or with offenders who have much lesser rehabilitative potential than Mr. Campbell.

*sentence within the appropriate or usual range. We are constrained in this regard by the Crown's position at trial.";*

4. *R v Brown*, 2020 ONCA 657 (para 59) wherein it referenced the Supreme Court of Canada's recent reasons in *R v Friesen*, 2020 SCC 9, and stated that "sexual offences raise particular considerations in the proportionality analysis… There is no reason to think that it does not also apply to sexual offences at large. As the Supreme Court observed, 'taking the harmfulness of these offences into account ensures that the sentence fully reflects the 'life altering consequences' that can and often do flow from sexual violence': *Friesen* at paragraph 74".

[22] The Crown calls attention to the still relevant language of Justice Cory in *R v McCraw*, [1991] 3 SCR 72 which involved convictions for threats to cause serious bodily harm contrary to s. 264.1(1)(a) *CC* – these threats to rape, were upheld as falling within that statutory language:

> 29 Let us consider a threat to rape in general terms, without reference to the specific language of the letters. *Violence is inherent in the act of rape. The element of sexuality aggravates the physical interference caused by an assault. Sexual assault results in a greater impact on the victim than a non-sexual assault.* This has been reflected in the penalty provisions for sexual assault, which are significantly higher than for non-sexual assault offences. In addition, this is emphasized by the fact that the definition of a "serious personal injury offence" in s. 752 of the Code includes the commission of sexual assault or

an attempt to commit that offence. Thus, Parliament has recognized the gravity of sexual assault.

30 *It seems to me that to argue that a woman who has been forced to have sexual intercourse has not necessarily suffered grave and serious violence is to ignore the perspective of women. For women, rape under any circumstance must constitute a profound interference with their physical integrity. As well, by force or threat of force, it denies women the right to exercise freedom of choice as to their partner for sexual relations and the timing of those relations. These are choices of great importance that may have a substantial effect upon the life and health of every woman.* Parliament's intention in replacing the rape laws with the sexual assault offences was to convey the message that rape is not just a sexual act but is basically an act of violence. See Kathleen Mahoney, "*R. v. McCraw*: Rape Fantasies v. Fear of Sexual Assault" (1989) 21 *Ottawa L. Rev.* 207, at pp. 215-216.

31 *It is difficult, if not impossible, to distinguish the sexual component of the act of rape from the context of violence in which it occurs. Rape throughout the ages has been synonymous with an act of forcibly imposing the will of the more powerful assailant upon the weaker victim. Necessarily implied in the act of rape is the imposition of the assailant's will on the victim through the use of force.* Whether the victim is so overcome by fear that she submits, or whether she struggles violently, is of no consequence in determining whether the rape has actually been committed. In both situations the victim has been forced to undergo the ultimate violation of personal privacy by unwanted sexual intercourse. The assailant has imposed his will on the victim by means of actual violence or the threat of violence.

32 *Violence and the threat of serious bodily harm are indeed the hallmarks of rape. While the bruises and physical results of the violent act will often disappear over time, the devastating psychological effects may last a lifetime. It seems to me that grave psychological harm could certainly result from an act of rape.*

[My italicization added]

## The Defence position on sentencing

[23] The Defence points out that each of the following should *not* be treated by the court as aggravating “true prior convictions”:

1. the September 8, 2018 sexual assault (sentenced August 7, 2020)

2. the May 3 and August 3, 2020 offences (i.e. 145(5) *CC* and ss. 266, 430(4), 145(5), and 320.14(1)(b) *CC*.)[12]

[24] His counsel argues that Mr. Campbell's alcohol/drug use and addiction are the underlying factor in all his offending behaviour, and that he has shown remorse in relation to the September 16, 2018 sexual assault upon LJ. It is suggested that his 'pre-consent' remark "shows that Mr. Campbell was confused about the concept of consent and at the time of the offence was unaware of how the legal concept of consent works… Mr. Campbell has acknowledged responsibility with his guilty plea."

[25] Mr. Campbell relies on a number of cases for his proposition that a two-year custodial sentence and three years probation is within the range and is the most appropriate sentence in the circumstances (identical to the sentence that he received on August 7, 2020 for the September 8, 2018 sexual assault offence):

1. ***R v Burton***, 2017 NSSC 181 (Arnold, J.) - **two years imprisonment and three years probation** - a sexual assault [unprotected vaginal intercourse/and thereafter while **he believed** that she was still

[12] At paragraph 6 of Mr. Campbell's brief it states: "that Mr. Campbell did not have a criminal record at the time of the offence…". That brief was apparently prepared *before* the updated PSR was available (which revealed that in fact he did have a 2008 conviction for two counts under s. 145(3) *CC* - and received 15 days on each charge for a total of 30 days). I have concluded that that sentence is immaterial to the present sentencing.

sleeping, he twice masturbated next to her and did rub his ejaculate into her hand] upon a sleeping female while under the influence of sleeping pills;

2. ***R v Percy***, 2019 NSPC 12 (E. Buckle, PCJ) - **two years imprisonment and three years probation** [Judge Buckle opined "**the range of sentence for sexual assault involving intercourse is 18 months to four years**" para. 57 - there was consensual sexual activity with the female victim (who was significantly impaired by alcohol, which only later did negated her ostensible consent or capacity to consent) – but for 90 seconds while she was unconscious Mr. Percy had vaginal intercourse with her and Mr. Percy made a video recording of him doing so. As she stated in summary: "the recording does not show the start of the sexual intercourse… therefore Mr. Percy will be sentenced on the basis that [the victim] was conscious when he began having intercourse with her but became unconscious and he failed to stop. The evidence establishes that Mr. Percy used a condom during the intercourse and there is no evidence of any gratuitous violence or threats. When [the victim] began to wake up Mr. Percy asked her if she was okay, if she wanted to stop and then stopped when she appeared to be distressed." (Para. 10)

3. ***R v JJW***, 2012 NSCA 96 (Oland JA) - the trial judge found W. guilty of (an indictable) sexual assault and assault upon his wife in November 2007. He had no prior record. He was fired from his job as a firefighter as a result of the convictions. The Crown recommended 2 to 3 years imprisonment and the Defence suggested a conditional sentence. The trial judge found that while there was other sexual activity which was questionably criminal, the sexual assault conviction was based upon "the forced anal intercourse… the accused forced anal sex upon the victim against her will and despite her protestations. He did so to express dominance and control." (para 9 NSCA decision) - the trial judge sentenced him to a 5-month jail sentence for the sexual assault and an 8-month conditional sentence for the assault the same night. The Court of Appeal found the sentence "demonstrably unfit". Justice Oland stated: "I agree with the Crown that a 5-month sentence for the sexual assault, forcible anal intercourse, is demonstrably unfit… The discrepancy between the sentence here… and **the next lowest sentences found in the case law for similar major sexual assaults in comparable circumstances, namely two years less a day,** is simply too large to ignore." (para 32) - notably Mr. W was on conditions by virtue of undertakings for more

than three years however “these conditions are neither onerous nor unusual” (para 37). Mr. W had served the sentence for the sexual assault and the conditional sentence for the assault without incident by the time of the release of the appeal decision. The court found it not to be in the interests of justice to re-incarcerate Mr. W, so they did not articulate what specifically would have been the sentence they would have imposed instead of that of the trial judge…. **for this offender and these offences, a fit sentence would have been 2 ½ years in custody**.” (para. 75)

4. ***R v Simpson***, 2017 NSPC 25 (T. Tax, PCJ) - the trial judge convicted Mr. Simpson of an indictable sexual assault and **sentenced him to three years imprisonment**. There was consensual fellatio between the female victim and Mr. Simpson in his bedroom. He “got on top of her and began to remove her pants and underwear… She told Mr. Simpson to stop and that she did not want him to touch her nor did she want to have sex with him… Mr. Simpson forced her hands and arms overhead while he took off one leg of her pants removed her underwear down and then inserted his penis without wearing a condom into her vagina. She maintained that she kept saying ‘no, stop it and get it out” and was crying, but Mr. Simpson continued until he

‘finished inside’ of her.“ (para. 11). However, Judge Tax concluded: “based upon my review of relevant jurisprudence to establish a range of sentence… I find that the **range of sentence for sexual assault involving full intercourse is 2 to 3 years in a federal penitentiary…** Sentences at the lower end of that range usually have significant mitigating factors, such as an early guilty plea which spares the victim from testifying, an expression of remorse and acceptance of full responsibility or the court taking into account the totality principle following consecutive sentences” (para 55).

**What is a fit and proper sentence for the circumstances of this offence, perpetrated by this offender?**

**1**-What is the appropriate range of sentences?

[26] Regarding the appropriate range of sentence, it is first useful to more precisely articulate what that means. As Justice Bateman explained in *R v Cromwell*, 2005 NSCA 137:

> 26 Counsel for Ms. Cromwell says this joint submission is within the range. He broadly defines the range of sentence, in these circumstances, as all sentences that might be imposed for the crime of impaired driving causing bodily harm. I disagree. In my opinion **the range is not the minimum to maximum possibilities for the offence but is narrowed by the context of the offence committed and the circumstances of the offender (" . . . sentences imposed upon similar offenders for similar offences committed in similar circumstances . . .**" *per* MacEachern, C.J.B.C. in *R. v. Mafi* (2000),

142 C.C.C. (3d) 449 (B.C. C.A.)). **The actual punishment may vary on a continuum taking into account aggravating and mitigating factors, the remedial focus required for the particular offender and the need to protect the public. This variation creates the range**.

[My bolding added]

[27] I am satisfied that the range of sentence for this offence, the circumstances thereof, and the degree of responsibility of this offender, and his circumstances (I would characterize him as a "first-time offender") is between two and three years imprisonment.[13]

**i)** *The circumstances of the offence*

[28] The Agreed Statement of Facts indicates that after they dated for several weeks, Mr. Campbell moved into LJ's residence (I infer sometime in June 2018) and then left her residence in August 2018. They began communicating again by texts in early September, and he stayed with her at her residence from September 11 until September 16, 2018 (very shortly after the sexual assault had ended).

[29] The offence committed here may be generally described as the continuation of non-consensual sexual activity after there has been significant consensual sexual

[13] See also: *R v S.L.*, 2020 NSSC 381 per Murray, J. where after trial the Crown was recommending a three-year sentence and the Defence was recommending a two-year sentence – the court imposed a sentence of two years imprisonment for a 41-year-old with no criminal record who twice on the same date sexually assaulted his wife when they were in their shared home, but separated and not intimate. Notably in that case, SL had "undergone a sexual behaviour assessment and is of low risk to reoffend. He is highly unlikely to present a risk in the community…" (para.38)

activity. After consensual vaginal intercourse, Mr. Campbell for several minutes forced (non-consensual) anal intercourse upon LJ- while not wearing a condom; and ejaculating into her anus.

**ii)** *The circumstances of the offender*

[30] The 32-year-old offender, Mr. Campbell is for present purposes, at the time of the commission of the September 16, 2018 sexual assault, properly described as a "first time offender". At the date of sentencing, he is properly described as having a limited and recent record - yet not one of significant violence – except in the case of the September 8, 2016 sexual assault.[14]

[31] I am satisfied that his recent convictions all appear to be relatable to his substance abuse. He has continued to struggle with addictions to alcohol and crack cocaine since he was in his teenage years.

[32] He grew up in a dysfunctional and unconventional home environment which led his parents to separate when he was 6 years old. He discontinued living with either of his parents at age 12. He relocated to living with "family friends". During

[14] Without question, the two sexual assaults are offences involving a significant level of violence – particularly when viewed from the perspective of the harm occasioned to the victims. Regarding the 2008 sentence of 30 days in total for 2 breaches of s. 145 *CC* - they should be characterized as "stale" for present purposes; whereas his only other offence dates - other than for the September 2018 sexual assaults - are May 3, 2020 (s. 145(5) *CC*) and August 3, 2020 (s. 320.14 / 266(b) / 430(4) / and 145(5) *CC*.

the ensuing two years he was introduced to crack cocaine and sexually abused. Having been introduced as a child to the use of alcohol and drugs, including crack cocaine, and being traumatized by sexual abuse, at the age of 14 years he went on to live on his own, and "raise" himself from child to adult.

[33] In spite of that start in life, he has completed Grade 10. He has maintained a long history of steady employment (for the last 10 years in the roofing and installation industry), and has reliably, until his recent incarceration, provided for his two children.

**2**-A consideration of the mitigating and aggravating factors

[34] He still recognizes now, and has recognized in the past, his substance abuse issues (including his past trauma).

[35] Even before the September 2018 sexual assaults, he had attempted to address those issues, which I infer are based as well on the traumas he has suffered in the past (as far back as to his childhood) which have caused him psychological harm.

[36] For present purposes, I consider him to have remained conviction-free until September 2018, just shy of his 30th birthday.

[37] Of his own accord, he engaged and appears to have responded favourably to, the treatment and counselling he received in 2018, and then from the Ledgehill program in 2019. He paid to continue his contact with Addiction Counsellor Adam Lewis in the Spring of 2020.

[38] He had arranged to continue counselling with Adam Lewis into the summer of 2020, but this was interrupted by the Covid 19 pandemic.

[39] Even after he was incarcerated on August 7, 2020, he has maintained contact with Mr. Lewis having "regular counselling sessions via teleconference from the Springhill Institution... [although it is] "more of an informal check-in than engagement in treatment."

[40] Mr. Lewis also "confirmed Mr. Campbell's history of mental health concerns, including a diagnosis of anxiety and depression…".

[41] The mother of his children (with whom he was in a nine year relationship until approximately 2017 and who would presently be 11 and 4 years of age) indicated in the January 31, 2020 PSR that they were "amicable and co-parent well, adding he sees his children regularly and pays child maintenance".

[42] Regarding the history of this matter, and to what extent there is mitigation flowing from a resolution of this matter by way of guilty plea, I will briefly canvas the procedural history of this proceeding.

[43] In relation to this sexual assault offence, he first appeared in Provincial Court on September 19, 2018 and remained in custody until a show-cause hearing was held November 9, 2018. He was then at liberty on a recognizance with one surety, including house arrest (with exceptions, until he was incarcerated on August 7, 2020, having been sentenced to two-year's imprisonment and three years probation regarding the September 8, 2018 sexual assault).

[44] Throughout his appearances in Provincial Court on this matter, he has had various duty counsels, as well as counsels: Patrick Atherton, David Hirtle, and Giancarla Francis. I bear in mind that he was also contemporaneously defending himself against the September 8, 2018 sexual assault allegation. That matter went to trial, he was found guilty and then sentenced on August 7, 2020 (which would appear to have been delayed from its original sentencing date of February 7, 2020.

[45] He re-elected to trial by Nova Scotia Supreme Court Justice sitting alone on May 2, 2019, and although a preliminary inquiry had been scheduled for November 26, 2019, the Crown advised in the preceding week that they would file

a directed Indictment per s. 577 *CC*. They did so, and the parties appeared in this court on November 28, 2019.

[46] He was convicted of the September 8, 2018 sexual assault offence, and sentencing was set for February 7, 2020 - though ultimately deferred until August 7, 2020.

[47] On February 28, 2020, a pre-trial conference was held as a result of which the court expected a four-day judge alone trial, with issues that included: the voluntariness and Charter of Rights compliance regarding Mr. Campbell's statement to police; possible *voir dires* pursuant to sections 276 and 278 *CC*.

[48] On March 5, 2020 trial dates were assigned in this court for February 3, 4, 5 and 8, 2021 with me as the presiding Justice. David Hirtle was Mr. Campbell's counsel at that time.

[49] In mid-March 2020 the Covid 19 Pandemic arrived in Nova Scotia. It significantly delayed the setting down or hearing of almost all matters thereafter, for the foreseeable future.

[50] At the next appearance, on June 19, 2020, I set dates for the *voir dires* in relation to the voluntariness and Charter compliance of Mr. Campbell's police

statement as July 28 and 29, 2020; s. 276(2) *CC voir dire* stage I set for September 11, 2020; and a stage 2 hearing, if necessary, set for October 9, 2020.

[51] On October 8, 2020 Mr. David Hirtle withdrew as counsel of record, but indicated it was not because of the non-payment of fees – I infer there was a breakdown in the solicitor-client relationship.

[52] At an appearance on October 22, 2020, Mr. Brownell confirmed his expected retainer and that he would ensure he was available for the previously set trial dates; at the November 26, 2020 appearance Mr. Brownell confirmed his retainer and that he would be speaking with the Crown regarding the possibility of a resolution to the matter.

[53] On December 17, 2020 Mr. Campbell changed his plea to guilty. A Pre-Sentence Report was requested - the sentencing was adjourned to February 8, 2021 for sentencing submissions.

[54] In summary, any delays in this matter, to the extent that they could be thought to be attributable to Mr. Campbell, are not unreasonable. He dealt with the matter reasonably expeditiously.

[55] Seen in that light, his guilty plea on December 17, 2020, while not at the earliest possible opportunity, is still a significant mitigating factor.

[56] I say this because at that point, it gave LJ a signal that the matter would be resolved without her having to testify – which would tend to have exacerbated and prolonged her anxiety.

[57] I had some concern based on his statement in the 2021 PSR that "Mr. Campbell appeared to take diminished responsibility when he stated the victim gave him 'pre-consent' to engage in sexual activity though he did acknowledge wrongdoing". I infer he had a less than precise understanding of the need for affirmative communicated consent in such circumstances.

[58] However, immediately thereafter in the PSR, he stated that he does accept responsibility - and he has pled guilty.

[59] His guilty plea also signals his acceptance of the wrongfulness of what he did, which is seen as a prerequisite for sincere rehabilitation to take place. He reiterated this in the January 2021 PSR: "Mr. Campbell informed that while he initially pled not guilty he has since changed his plea to guilty, indicating his attempt to take responsibility… stated 'I want [the victim] to know that I am sorry.'. Mr. Campbell disclosed both he and the victim had been engaged in drug use and suffered from addiction, which he believed was an underlying factor in his behaviour."

[60] Moreover, his guilty plea entered with his new counsel Mr. Brownell, also dispensed with the *voir dires* which, if he had been successful, could have significantly changed the complexion of the strength of the Crown's case. Thus, he also by his guilty plea gave up his right to challenge the case against him, including the admissibility of his statement to police and the evidence that might have resulted from a successful s. 276 *CC* application.

[61] The material aggravating factors arise exclusively from the circumstances of the commission of the offence (they include that he did not wear a condom, he ejaculated into LJ's anus, which he caused to bleed), and I infer these resulted in physical pain and increased psychological and medical concerns for the victim.

**The range of sentence and consideration of the mitigating and aggravating factors in light of the statutory and common law principles of sentencing**

[62] I will not extensively repeat the principles of sentencing here, as they are well known to the court, and arise in this case in particular through the application of sections 718, 718.1, 718.2(a) and 718.2(b), 718.3(4)(a), and 719 *CC*.[15]

[15] I do not find LJ and Mr. Campbell to have been "common-law partners" as defined in section 2 of the *Criminal Code* - see also the comments of the majority and Justice Beveridge's comments in dissent in *R v Butcher*, 2020 NSCA 50 (leave to appeal denied October 9, 2020) - however the offence did nevertheless have a significant impact on LJ.

[63] The most prominent objectives in this sentencing are those oriented towards deterrence and denunciation of such offenders and offences.

[64] This offence occurred immediately after consensual activity - which suggests it was an impulsive, rather than premeditated decision by Mr. Campbell. Although it only temporally continued for "several minutes", its impact on LJ has persisted at least these last two years plus. Such sexual assaults are a very personal violation – not just physically, with the resultant bleeding of LJ's anus which gives some sense to the physical pain that LJ likely also felt, but also the lasting psychological harm that manifested itself in the various ways she described.

[65] I conclude the sentence here requires an emphasis on the elements of general and specific deterrence.

[66] However, one cannot lose sight of rehabilitation, and in Mr. Campbell's case, there is a real prospect of his rehabilitation.

[67] He recognized his problems and made efforts regarding his entrenched substance abuse even before September 2018. He had been able to manage without criminal incidents until September 2018. Thereafter, in 2019 and in early 2020 he again made efforts on his own initiative to address his substance abuse and past trauma.

[68] I find he has the sincere desire to be free from the substance abuse that has brought him to this point.

[69] In my opinion, this will require him to dis-associate himself from past acquaintances who have not been, and will not likely be, entirely alcohol/drug-free.[16]

[70] I am satisfied that it is likely that his past trauma as a child and growing up has not been fully addressed by him in an effective way - namely, one that would allow him to be in a much better position to cope with it, and therefore be better able to resist the abuse of substances, which underlie his offending. Until that past trauma is more fully addressed, it may undermine his sincere attempts to be substance free.

[71] He has conducted himself positively within the prison environment since August 7, 2020. Maintaining such positive conduct can be a challenging proposition and it is to his credit that he has done so – given that he is in the

[16] His father, Steven Campbell stated, in the January 2021 PSR, that he speaks to his son on a daily basis, (and his son is a hard worker who desperately misses his children); "he is pleased his son is no longer in a relationship with [SM], as he believed the couple negatively influenced each other's addictions". In the January 2020 PSR, SM declared that she and Mr. Campbell had been "off and on" for the past three years [January 2017 – January 2020]. In the January 2021 PSR, SM declared that she and Mr. Campbell relocated to the Annapolis Valley in the winter of 2020 so he could access the Ledgehill treatment centre in Lawrencetown… and confirmed her relocation to the Amherst area in anticipation of his incarceration (sentenced August 7, 2020 – notably at that sentencing his counsel indicated he had recently become "engaged" – which I infer is in relation to SM). I note his post-September 2018 offences occurred May 3, 2020 and August 3, 2020 when he and SM were together. I would anticipate that Correctional Services will examine whether his continued contacts with SM are expected to be an overall positive influence on his rehabilitation.

company of entrenched violent, and perhaps even dangerous offenders; that he is further removed from his children and more immediate positive influences; that the environment necessarily signals what he likely perceives as a low point in his life to date.

[72] I reiterate that: he endured and came through a very traumatic childhood, making a life for himself without the benefit of any adult or other family member to provide guidance; he has a sustained and positive record of employment; he has reliably provided financially for his dependents; all indications are that he cares deeply for his children; he has made sincere efforts to overcome his past trauma and substance abuse, and I believe he will continue to do so - and he had no meaningful criminal record until the sexual assaults occurred in September 2018.

[73] Section 718.2(d) *CC* requires that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances". This embodies the principle of restraint – the court should impose no more punishment than is required at a minimum to satisfy the principles of sentencing.

[74] Section 718.3(4) *CC* requires the court to "consider directing (a) that the term of imprisonment that it imposes be served consecutively to a sentence of imprisonment to which the accused is subject at the time of sentencing".

[75] The Crown and Defence position that the sentence recommended should be consecutive to his August 7, 2020 sentence, is principled, and on its face not unreasonable.

[76] However, this also requires the court to consider the totality of making a proposed sentence consecutive to an existing sentence – including that the combination of those sentences should not become disproportionate (s. 718.1 *CC*) or, as is sometimes said: "crushing" to the rehabilitative prospects of an offender.

[77] As to the Defence seeking a sentence of two years imprisonment followed by three years probation, it is important to remember that a probationary term commences at the end of a sentence – i.e., the warrant expiry date: *R v Smith*, 1999 NSCA 83.

[78] On the one hand, if I impose a sentence of three years in custody (consecutive or not), as suggested by the Crown, I cannot impose a period of probation – s 731(1)(b) *CC*.

[79] On the other hand, if impose a sentence of two years in custody consecutively, as suggested by the Defence, I could impose a period of probation for up to three years. However, then Mr. Campbell would be subject to the earlier

sentence of two years imprisonment and three years probation, and a further sentence of two years imprisonment and three years probation.

[80] Is this permitted, and what effect would it have if a term of probation is also imposed?

[81] It is permitted - *R v Knott*, [2012] 2 SCR 470 confirmed that s. 731(1)(b) *CC* should be interpreted as relating only to the actual term of imprisonment (less pre-sentence "credits") imposed by a sentencing court at a single sitting, rather than the aggregate of that sentence and all other sentences that were being served or later imposed on the offender. Notably in *R v Mathieu*, 2008 SCC 21, this principle was already somewhat established.

[82] Fortunately for this Court, this issue was further explained by our Court of Appeal in *R v MacPherson*,2020 NSCA 23:

> 26 In the Amended Notice of Appeal, Mr. McPherson claims:
>
> > The sentence is illegal. Probation cannot be applied to a person serving a federal sentence.
>
> 27 When this ground was advanced, Mr. McPherson held the view that because he was already subject to a federal term of incarceration, the remainder of which exceeded two years at the time of his sentencing, a probation order could not be made by the trial judge. This belief found its genesis in s. 731(1)(b) of the *Criminal Code* which provides:
>
> > Where a person is convicted of an offence, a court may, having regard to the age and character of the offender, the nature of the offence and the circumstances surrounding its commission,

. . .

> (b) in addition to fining or sentencing the offender to imprisonment for a term not exceeding two years, direct that the offender comply with the conditions prescribed in a probation order.

28 **In this instance, the trial judge ordered a term of probation that followed a six-month custodial period. We agree with the submission of the Crown that the sentence imposed was not "illegal" nor precluded by the above section.** It was an option available to the trial judge. However, in the past, some courts had expressed the same view of the import of s. 731(1)(b) as advanced by Mr. McPherson. In *R. v. Knott*,2012 SCC 42 (S.C.C.), Fish J. writing for the Court ended the uncertainty as to the intent of the above provision. He wrote:

> [32] The Crown submits that the phrase "imprisonment for a term not exceeding two years" in s. 731(1)(b) relates only to the actual term of imprisonment imposed by a sentencing court at a single sitting. The appellants argue that "term" of imprisonment referred to in that provision is the aggregate of the custodial term imposed by the sentencing court and all other sentences then being served or later imposed on the offender. In my view, the Crown's submission is correct, and the appellants' submission fails.
>
> [33] The ordinary meaning of s. 731(1)(b) is perfectly clear: A probation order may not be made where the *sentencing court* imposes a term of imprisonment exceeding two years. In determining whether two years has been exceeded, one looks at the term of imprisonment ordered by *the sentencing court on that occasion* — not at *other* sentences imposed by *other* courts on *other* occasions for *other* matters.
>
> [34] Section 731(1)(b) admits of no ambiguity in this regard. The opening words of s. 731(1) read: "Where a person is convicted of an offence, a court may". The provision authorizes *that court* to make a probation order, "in addition to fining or sentencing the offender to imprisonment for a term not exceeding two years". On a plain reading of this provision, the phrase "imprisonment for a term not exceeding two years" refers to the sentence imposed by the court empowered by s. 731(1) to make the probation order. [Emphasis in original]

29 **If we were to base our analysis solely on the ground as initially advanced by Mr. McPherson, our analysis would be concluded. However, the sentencing appeal became more nuanced in the course of oral submissions. There is a question as to whether the term of probation imposed was appropriate given Mr. McPherson's circumstances.**

30 The Crown says that although the imposition of a period of probation was not contrary to s. 731(1)(b), **the record discloses the trial judge may have been inadvertently misinformed by Crown counsel as to the commencement of any period**

**of probation to be served by Mr. McPherson. This, in turn, may have influenced the trial judge in crafting a probationary term of 24 months. Specifically, the trial judge was advised Mr. McPherson was eligible for parole "in the not too distant future" at which time the term of probation would commence.**

31 On appeal, the Crown says **the trial judge may have been unintentionally left with a false impression as to when the term of probation would commence. Contrary to what was suggested to him, any term of probation ordered would not commence when parole was granted, but at the expiry of Mr. McPherson's pre-existing warrant period (two and a half years from the date of sentencing) plus any additional term of imprisonment being considered in relation to the new conviction (a further six months)**. The Crown posits that, given counsel's representation, in crafting his sentence **the trial judge may not have been aware that any period of probation would not commence until three years in the future.**

32 **In addressing this concern, we return to *Knott*.** Fish J., although ultimately dismissing the appeal, rejected the British Columbia Court of Appeal's view that where a new sentence is imposed on an individual serving a current term of imprisonment, a probation order should not be ordered if the remnant sentence and new sentence exceed two years. However**, Fish J. made clear that in such instances, a sentencing judge should be mindful of unexpired prior sentences. He wrote:**

> **[61] But probation orders permitted by s. 731(1)(b) are, like other elements of a sentence, subject to review for their fitness. Courts are precluded by the relevant sentencing principles from making a probation order that is clearly unreasonable in the circumstances (*R. v. Shropshire*, [1995] 4 S.C.R. 227). Put differently, a probation order that is manifestly inappropriate in itself or that renders unfit the sentence of which it is a part will be set aside on appeal.**
>
> [62] **In considering whether a fresh probation order is appropriate, the sentencing court must thus take into account the particular circumstances of the offence, the character and needs of the offender, and the purpose and relevant principles of sentencing** (*R v.Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206, at para. 43).
>
> [63] In short, **unexpired prior sentences remain an important consideration, though not necessarily decisive, in determining whether a probation order is appropriate.** [Emphasis added]

33 From a review of the sentencing decision, it is unclear if the trial judge was alerted to the extent of Mr. McPherson's unexpired prior sentence and whether it impacted on the crafting of his disposition. **The Crown says it is open to this Court to consider whether the imposition of an additional 24-month term of probation, commencing three years in the future, was a fit sentence when imposed**.

> 34 **Although Mr. McPherson will, following expiry of his warrants (in September 2021) be subject to probation for a further period of 24 months, we do not find that results in a manifestly unfit or excessive sentence. We reach that conclusion primarily due to the nature of Mr. McPherson's historically documented mental health issues. We are of the view the conditions of the probation order imposed have the potential to improve his ability to access treatment and to reduce his risk of re-offending**.
>
> [My bolding added]

[83] Thus, I could impose a consecutive two-years imprisonment plus 3 years probation.

[84] But should I? - given that the operation of this sentencing's probation order will begin at a distant time in the future.

[85] Mr. Campbell's counsel suggested that a sentence of two years would allow for a probation order of three years and that this would be beneficial to Mr. Campbell to ensure his continued rehabilitation in the community, as well as formally require Mr. Campbell to have no contact with the victim over that extended period.

[86] Bearing in mind that probation orders only commence after the warrant expiry of the associated imprisonment, let me briefly examine when his presently proposed probation order would commence.

[87] Mr. Campbell's earlier imprisonment's Warrant Expiry Date would be **August 7, 2022** (i.e. August 7, 2020 plus 2 years ) and if the present proposed

sentence of 2 years imprisonment is made consecutive thereto, we should add 2 years to August 7, 2022 giving us a combined Warrant Expiry Date of August 7, **2024**.

[88] The probation order associated with the proposed sentence of two years consecutive would begin to run on August 7, 2024 until August 7, 2027. A no-contact (with LJ, the victim herein) provision could be made a condition thereof. A section 743.21 *CC* no-contact (with LJ) order combined with a similar condition in the probation order made by this Court would therefore create a no-contact order that would remain in force from February 19, 2021 until August 7, 2027.[17]

[89] Mr. Campbell has been subject to a no-contact order since November 9, 2018, while he has remained on the recognizance on the September 16, 2018 offence. There have been no breaches – over a period of 2 ½ years.

[90] The Defence recommendation herein would see him on a no-contact order through the operation of his recognizance, and sentencing orders - s. 743.21 *CC* and a three-year's probation – from November 9, 2018 until **August 7, 2027**.

[17] Mr. Campbell's recognizance required no contact with LJ since November 9, 2018 - it presently remains in effect regarding the September 16, 2018 sexual assault (until varied or he is sentenced). There has been no formal request to revoke his bail on the offence before the court.

[91] It would also see a large part of the three-year probation order from his first sentencing (commencing **August 7, 2022 - August 7, 2025**) be in effect *while* he was under sentence and imprisoned on the proposed two-year consecutive sentence (commencing **August 7, 2022 – August 7, 2024**, plus 3 years probation).

[92] That period of probation is intended to focus on the rehabilitation of Mr. Campbell while in the community. With a two-year consecutive sentence, Mr. Campbell would not be in the community on probation until after August 7, 2024. A period of probation that is too distant in the future may be questionably required, since in the interim Mr. Campbell will likely receive some opportunity to address his substance abuse, past trauma and sexual offending history.

[93] The September 8, 2016 sentence, albeit in relation to a different female victim, will give him an opportunity to address those same issues. That sentence of imprisonment and probation will end August 7, 2025. That is seven years after the September 2018 offence dates.

[94] In these circumstances, while I conclude two-year's imprisonment is within the range of appropriate sentences, I think it disproportionate to impose a sentence of two years imprisonment *consecutively and three years probation.*[18]

[95] The Crown argues that a fit and proper sentence should be no less than three years imprisonment (consecutive) – that would arguably see LJ benefit from a no-contact order from February 19, 2021 to August 7, 2025.[19]

[96] I conclude that, while a sentence of three years imprisonment is within the range, much depends on an assessment of the aggravating and mitigating factors.

[97] The aggravating factors arise exclusively from the commission of the offence including its impact on JL. They will have been accounted for by a substantial period of imprisonment.

[98] Mr. Campbell has been serving his first sentence since August 7, 2020.

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[18] See s. 718.2(c) *CC* - I appreciate that these two sexual assault convictions arose from offence dates September 8 and September 16, 2018. If both came before a sentencing court at the same time, it is very likely that the overall sentence would have been a term of imprisonment in a federal penitentiary of more than two years - no following probation period would have been possible – in all likelihood there would have been consecutive sentences imposed (each between two and three years) such that the total was between four and five years imprisonment. In those circumstances, Mr. Campbell's combined warrant expiry date would have been between August 7, 2024 and August 7, 2025 (presuming they were both sentenced on August 7, 2020).

[19] Without having done extensive research, as a matter of law, I am of the opinion that the endorsement of a section 743.21 *CC* order on a Warrant of Committal is best viewed as a stand-alone order, such that for it to be operative and binding, it is *not* dependent on the term of imprisonment being triggered - which in the case of a consecutive sentence as proposed in this case, would be August 7, 2024 - but rather that the 743.21 order therefore becomes effective and binding upon the signing of the Warrant of Committal and continues until the associated Warrant Expiry Date.

[99] If on February 19, 2021 he receives a *consecutive* 3 year sentence with a Warrant Expiry Date (August 7, 2022 plus 3 years equals) of August 7, 2025, that second sentence will overlap with, and effectively negate the intention behind the probation order of his first sentence (August 7, 2022 plus 3 years probation). In that case, Mr. Campbell may have no opportunity to experience the greater freedom of being on probation in the community – albeit I expect that he will be paroled and under conditional supervision in the community for some portion of his first sentence.

[100] If Mr. Campbell receives a *concurrent* three-year sentence on February 19, 2021, (Warrant Expiry Date February 19, 2024) that sentence will also overlap between February 19, 2021 and February 19, 2024 with his period of custody and probation from his first sentence, ending August 7, 2025:

1. remaining custody overlap: February 19, 2021 – August 7, 2022; and
2. probationary period overlap: August 8, 2022 – February 19, 2024.

[101] That is not to say that the mere fact that the second sentence overlaps with his first sentence is a determinative factor – it is not. However, each sentence imposed should be designed to achieve the objectives of the relevant principles of sentencing in the *Criminal Code* and jurisprudence. Therefore, it has been useful to examine the practical effects of various sentencing approaches.

**Summary of sentencing decision**

[102] After very careful consideration I have found reasons to reject both the principled Crown and Defence positions herein.

[103] In my opinion, a fit and proper sentence here is 30 months imprisonment.

[104] From that I must reduce the sentence for any properly established pre-sentence credit and should consider whether it is a mitigating factor that he spent time on restrictive bail conditions.

[105] Per s. 719(3.1) *CC*, given that: Mr. Campbell has had an incident-free positive experience after incarceration on August 7, 2020; there is no reason to believe he was not similarly disposed in 2018; and there is no evidence to suggest otherwise; I infer that as a result he would, if serving a sentence, have not lost time that would've counted toward eligibility for parole or early release (remission) – *R v Carvery*, 2014 SCC 27. I therefore give him a credit of 1.5 days for every of the 52 days he was in custody – or 78 days.

[106] It is also in the interests of justice to consider, and in his case I find it appropriate that he receive, a further reduction of his sentence for his relatively onerous 18 months on house arrest from November 9, 2018 until May 5, 2020

(which is when his 60 day conditional sentence started – ending July 5, 2020 - only one month before his sentencing on the first offence on August 7, 2020).[20]

[107] Collectively, I would synthesize the remand time and his time on house arrest into a reduction of 6 months in his sentence. Therefore, his effective sentence ordered as of February 19, 2021 is 24 months or, 2 years imprisonment.

[108] Bearing in mind that Mr. Campbell's nominal sentence on the September 16, 2018 offence is 30 months; that his August 7, 2020 sentence was two-years' imprisonment (ending August 7, 2022) and 3 years probation, which collectively will end August 7, 2025; and that had I sentenced him to 30 months his warrant expiry date would be August 21, 2023, I conclude that the 24 months/2 years sentence I am imposing, should be served concurrently, rather than consecutively (which would have seen his Warrant Expiry Date as August 7, 2024).[21]

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[20] I recognize that he was bound by the same recognizance simultaneously for the September 8 and September 16, 2018 offences. At his August 7, 2020 sentencing there was no explicit reference by the court to credits based on s. 719 *CC* or to account for lengthy bail with stringent house-arrest conditions. In relation to the latter factor, I am satisfied a modest amount in mitigation should be attributable to the September 16, 2018 offence. The applicable considerations are succinctly summarized in *R v Noseworthy*, 2021 NLCA 2 at paras. 109-114; see also Justice Saunders reasons in *R v Knockwood*, 2009 NSCA 98 at paras. 26-36.

[21] His warrant expiry date will be February 19, 2023 – in contrast, had he been sentenced to 30 months custody on August 7, 2020 concurrently, his Warrant Expiry Date would have been February 7, 2023.

[109] I impose a sentence of imprisonment for a period of 2 years, to be served in a penitentiary, and concurrently to any other sentences he is presently serving.[22] To assist in his rehabilitation and to provide a lengthier no-contact order vis-à-vis LJ, I also impose 2 years probation with the same conditions otherwise imposed by Judge MacRury on August 7, 2020 – see a copy thereof at "Appendix B".

[110] There will be a section 743.21 *CC* no contact order with the victim endorsed upon the Warrant of Committal.

[111] I will also sign the requested ancillary orders.

[112] I consider it appropriate to exempt Mr. Campbell from payment of the victim surcharge, pursuant to s. 737(4) *CC* as he has dependents for whom he is legally responsible.

Rosinski, J.

[22] I strongly recommend that Mr. Campbell be provided the opportunities for the maximum possible contact with his children that is consistent with his rehabilitation and their best interests, as I conclude that a positive relationship with them will encourage Mr. Campbell's sincere continued efforts at rehabilitation.

# Appendix "A"

Canada
Province of Nova Scotia

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

**HER MAJESTY THE QUEEN**

- and -

**ERIC ALBERT CAMPBELL**

**AGREED STATEMENT OF FACTS**

**Pursuant to section 724(1) of the *Criminal Code of Canada*, Eric Albert Campbell admits the following facts:**

1. Eric Albert Campbell ("Mr. Campbell") and ("L.A.J.") met on a dating website called Plenty of Fish sometime in May or June of 2018. Mr. Campbell and L.A.J. dated for a couple weeks, and Mr. Campbell moved into L.A.J.'s residence during that time. The relationship ended in August 2018 and Mr. Campbell moved out of L.A.J.'s residence.

2. Mr. Campbell and L.A.J. began communicating again by text message in early September 2018. Mr. Campbell stayed at L.A.J.'s residence from September 11, 2018 to September 16, 2018.

3. On September 16, 2018, Mr. Campbell and L.A.J. engaged in consensual vaginal intercourse at approximately 8:00 am. During that consensual vaginal intercourse, Mr. Campbell asked L.A.J. if he could have anal intercourse with her, to which she said "no". Mr. Campbell asked L.A.J. if he could "just insert the tip" of his penis, to which she said "no".



Initials: _____

4. Mr. Campbell rolled L.A.J. onto her stomach and continued to have consensual vaginal intercourse with her while he was positioned behind her. Mr. Campbell asked L.A.J. again if she wanted to have anal intercourse, to which she said "no".

5. Mr. Campbell then poured lube onto L.A.J.'s back and inserted his penis into her anus. L.A.J. was able to "squirm away" from Mr. Campbell, but he continued to insert his penis in her anus. L.A.J. began to cry and asked Mr. Campbell to stop.

6. The sexual assault continued for several minutes and ended when Mr. Campbell ejaculated in L.A.J.'s anus. No condom was used.

7. L.A.J. ran to the bathroom and saw that she was bleeding from her anus. L.A.J. said to Mr. Campbell, "what are you doing? I asked you to stop. I said no". Mr. Campbell took his belongings and left L.A.J.'s residence shortly after.

8. L.A.J. sat on her couch and cried for several hours. L.A.J.'s neighbor, Cherrie Hunt, came over to L.A.J.'s home that afternoon. L.A.J. disclosed the sexual assault to Ms. Hunt, who convinced L.A.J. to go to the hospital. Ms. Hunt said she found L.A.J. "curled up" on her couch and described her as a "wreck in a human shell".

9. L.A.J. attended the Cobequid Hospital in Lower Sackville, Nova Scotia on September 16, 2018 around 4:00 pm (approximately 8 hours after the sexual assault).

10. A 'Sexual Assault Interview' and examination was completed by a Sexual Assault Nurse Examiner ("SANE") at the hospital. The examination began at 6:25 pm.

11. During the examination, a rectal swab was taken from L.A.J. The rectal swab was provided directly to Cst. Michael Collins at the Cobequid Hospital at 9:33 pm on September 16, 2018. The swab was then sent to the National Forensic Laboratory in Ottawa, Ontario for analysis.

12. The SANE also found bruises on L.A.J.'s lower back, left wrist, and left inner thigh.

13. Between September 16, 2018 and September 18, 2018, Mr. Campbell called L.A.J. 78 times and sent her 43 text messages, to which she did not respond.



Initials: _____

14. L.A.J. was interviewed by police on September 18, 2018.

15. Mr. Campbell was arrested by Detective Constable Leonard MacDonald on September 19, 2018.

16. A DNA sample was obtained from Mr. Campbell on April 11, 2019.

17. A DNA typing profile was obtained from L.A.J.'s rectal swab. The profile was of mixed origin consistent with having originated from two individuals.

18. The profile of the male component resulted in a match to the known DNA sample taken from Mr. Campbell. The estimated probability of selecting an unrelated individual at random from the Canadian Caucasian population with the same profile is 1 in 990 quadrillion.

19. The profile of the female component matched that of the known DNA sample taken from L.A.J.

Scott Brownell
Counsel for Eric Albert Campbell

Date:

Eric Albert Campbell

Date:

Katharine A. Lovett
Crown Attorney

Date: February 8, 2021.



Initials:

# Appendix "B"

Canada
Province of Nova Scotia

Order # 2272055-1
NS Form 34/46
Revised 07/02

## IN THE PROVINCIAL COURT

**Her Majesty the Queen**

**v.**

Eric Albert Campbell, Oct. 08, 1988, 690667-7
*(Name, DOB, and I.D. Number of Accused)*

Approved:

*Judge*

*D/M/Y*

## PROBATION ORDER

(Sec. 731 CC)

YOU, Eric Albert Campbell of 44 COLES ROAD
LOWER SACKVILLE NS

have been found guilty of the following offence(s):

| Case no(s). and Brief Description of Offence(s) | Section | Date | Place |
|---|---|---|---|
| 8266838 SEXUAL ASSAULT | CC 271 | Sep. 08, 2018 | LOWER SACKVILLE |

**THE COURT ORDERS THAT**

(A) You be imprisoned in a correctional facility for a term of 2 years.

**AND THAT YOU COMPLY WITH THE FOLLOWING TERMS AND CONDITIONS:**

upon the expiration of the sentence of imprisonment imposed on you pursuant to paragraph (A) above for the period of 3 years.

1. keep the peace and be of good behaviour;
2. appear before the Court when required to do so by the Court; and
3. notify the Court or the Probation Officer in advance of any changes of name or address, and promptly notify the Court or the Probation Officer of any changes of employment or occupation.

**AND IN ADDITION, YOU SHALL:**

(a) REPORT TO A PROBATION OFFICER AT 277 PLEASANT STREET, SUITE 112, DARTMOUTH, NOVA SCOTIA WITHIN FIVE (5) DAYS FROM THE DATE OF YOUR RELEASE FROM CUSTODY AND THEREAFTER AS DIRECTED BY THE PROBATION OFFICER OR SUPERVISOR.

(b) NOT TO POSSESS, USE OR CONSUME A CONTROLLED SUBSTANCE AS DEFINED IN THE CONTROLLED DRUGS AND SUBSTANCES ACT, EXCEPT IN ACCORDANCE WITH A PHYSICIAN'S PRESCRIPTION FOR YOU OR A LEGAL AUTHORIZATION

(c) HAVE NO DIRECT OR INDIRECT CONTACT OR COMMUNICATION WITH , NO EXCEPTIONS.

(d) DO NOT BE ON OR WITHIN FIFTY (50) METRES OF THE PREMISES KNOWN AS THE PLACE OF RESIDENCE, EMPLOYMENT, OR EDUCATION OF

(e) MAKE REASONABLE EFFORTS TO LOCATE AND MAINTAIN EMPLOYMENT OR AN EDUCATIONAL PROGRAM AS DIRECTED BY YOUR PROBATION OFFICER

(f) ATTEND FOR SUBSTANCE ABUSE ASSESSMENT AND COUNSELING AS DIRECTED BY YOUR PROBATION OFFICER

(g) ATTEND FOR ASSESSMENT AND COUNSELLING IN ANGER MANAGEMENT AS DIRECTED BY YOUR PROBATION OFFICER.

(h) ATTEND FOR ASSESSMENT AND COUNSELLING IN A VIOLENCE INTERVENTION AND PREVENTION PROGRAM AS DIRECTED BY YOUR PROBATION OFFICER.

(i) ATTEND FOR ASSESSMENT, COUNSELLING OR PROGRAM AS DIRECTED BY PROBATION OFFICER.

(j) PARTICIPATE IN AND CO-OPERATE WITH ANY ASSESSMENT, COUNSELLING OR PROGRAM DIRECTED BY THE PROBATION OFFICER, AND PAY THE COST OR A PORTION OF THE COST AS DIRECTED BY YOUR PROBATION OFFICER

(k) ATTEND AND PARTICIPATE IN A COMPREHENSIVE SEXUAL OFFENDER ASSESSMENT

DATED at DARTMOUTH, Nova Scotia, on August 7th, 2020.

*Judge, Provincial Court Judge, Justice of the Peace, Clerk*

Distribution: Court, Offender, Probation Officer,
Halifax Regional Police, Cst L Macdonald; 18-139269 - Judge Daniel A. MacRury

**THE CRIMINAL CODE PROVIDES AS FOLLOWS:**

**SECTION 732.2(3)**

A court that makes a probation order may at any time, on application by the offender, the probation officer or the prosecutor, require the offender to appear before it and, after hearing the offender and one or both of the probation officer and the prosecutor,

(a) make any changes to the optional conditions that in the opinion of the court are rendered desireable by a change in the circumstances since those conditions were prescribed,

(b) relieve the offender, either absolutely or on such terms or for such period as the court deems desireable, of compliance with any optional condition, or

(c) decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and, if it changes the optional conditions, inform the offender of its action and give the offender a copy of the order so endorsed.

**SECTION 732.2(5)**

Where an offender who is bound by a probation order is convicted of an offence, including an offence under Section 733.1, and

(a) the time within which an appeal may be taken against that conviction has expired and the offender has not taken an appeal,

(b) the offender has taken an appeal against that conviction and the appeal has been dismissed, or

(c) the offender has given written notice to the court that convicted the offender that the offender elects not to appeal the conviction or has abandoned the appeal, as the case may be,

in addition to any punishment that may be imposed for that offence, the court that made the probation order may, on application by the prosecutor, require the offender to appear before it and, after hearing the prosecutor and the offender,

(d) where the probation order was made under paragraph 731(1)(a), revoke the order and impose any sentence that could have been imposed if the passing of sentence had not been suspended, or

(e) make such changes to the optional conditions as the court deems desireable, or extend the period for which the order is to remain in force for such period, not exceeding one year, as the court deems desireable,

and the court shall thereupon endorse the probation order accordingly and, if it changes the optional conditions or extends the period for which the order is to remain in force, inform the offender of its action and give the offender a copy of the order so endorsed.

**SECTION 733.1**

(1) An offender who is bound by a probation order and who, without reasonable excuse, fails or refuses to comply with that order is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding eighteen months, or to a fine not exceeding two thousand dollars, or both.

(2) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having juristiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody, but where the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be instituted in that place without the consent of the Attorney General of that province.

**ACKNOWLEDGEMENT**

I HAVE received a copy of this Order; it has been read to or by me; I have read or have had read to me Sections 732.2(3), 732.2(5), and 733.1 of the Criminal Code; and I understand the meaning of this Order and Sections 732.2(3), 732.2(5), and 733.1 of the Criminal Code.

DATED at DARTMOUTH, Nova Scotia, on August 7th, 2020.

Witness:

*Order Served by Above Witness*

*Signature of Offender*