

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Lambert*, 2023 NSSC 264

**Date:** 20230911

**Docket:** CRH 498473

**Registry:** Halifax

**Between:**

His Majesty the King

v.

Matthew Ross Lambert

**SENTENCE DECISION**

**Judge:** The Honourable Justice Jamie Campbell

**Heard:** August 9, 2023, in Halifax, Nova Scotia

**Counsel:** Rick Woodburn and Scott Morrison, for the Crown  
Joven Narwal, for the Defence

**By the Court (Orally):**

[1] Matthew Ross Lambert is being sentenced for his part in the assault of Stephen Anderson at the Central Nova Scotia Correctional Facility in Burnside on December 2, 2019.

[2] After two trials 12 people were found guilty of aggravated assault and one of obstruction. The person found guilty of obstruction has been sentenced, *R. v. Nagendran*, 2022 NSSC 14. Ten of the people found guilty of aggravated assault have been sentenced; *R. v. Ladelpha*, 2021 NSSC 352, *R. v. McIntosh*, 2021 NSSC 351, *R. v. Clarke-McNeil*, 2022 NSSC 63, *R. v. Mitton*, 2022 NSSC 123, *R. v. Hardiman*, 2022 NSSC 198, *R. v. Crawley*, 2022 NSSC 199, *R. v. Cox*, 2022 NSSC 200, *R. v. Coaker*, 2022 NSSC 201, *R. v. Fraser*, 2022 NSSC 215, and Kirk Carridice who was sentenced in an unreported decision following a joint submission. Mr. Ladelpha was sentenced to 6 years, Mr. McIntosh to 5½ years, Mr. Clarke-McNeil to 6 years, Mr. Mitton to 6 years, Mr. Hardiman to 6 years, Mr. Crawley to 5 years, Mr. Cox to 4½ years, Mr. Coaker to 4 years, Mr. Fraser to 4 years, and Mr. Carridice to 5½ years.

[3] Jacob Lilly is the last among the 12 found guilty of aggravated assault to be sentenced. The Crown has made an application to have Mr. Lilly designated as a dangerous offender.

[4] As with any sentencing, all the principles and purposes of sentencing must be considered in coming to a sentence that is fair, fit and appropriate. But Mr. Lambert's case particularly engages the issue of how the sentencing principles of parity and totality should be weighed or perhaps more appropriately, "synthesized" in determining a sentence that is proportionate. They work together as factors in informing the crafting a proportionate sentence. They do not work in direct opposition to each other. Mr. Lambert's sentence should not be set only in reference to the sentences imposed on others involved in the same incident, but the sentencing principle of parity must be considered. Mr. Lambert has about 10 years left on a sentence he has been serving on an unrelated matter. The sentence in this matter would be served consecutive to that sentence so that Mr. Lambert will begin serving the sentence on this matter almost 10 years from now. That is an issue that must also be considered in his sentencing.

**Issue**

[5] The issue is how a sentence that reflects parity, recognizing the sentences that others have received, can also reflect the reality that Mr. Lambert has already been sentenced to a term that has 10 years remaining so that if he received the same sentence as the others whose involvement was on the same level as his, he would be serving a total of 16 years.

[6] The Crown has recommended a sentence of between 4 and 6 years, reflecting the range of sentences that have been imposed on others involved in the incident in the Burnside facility. Mr. Lambert was the first person to enter the cell where the assault took place and already had a lengthy criminal record at that time. Those who entered that cell have received sentences of 6 years, in Mr. McIntosh's case 5½ years and in Mr. Crawley's case, 5 years. Mr. Narwal, counsel for Mr. Lambert, emphasizes the principal of totality and says that adding another 4 to 6 years to the 10 years remaining to be served on Mr. Lambert's other matter would be crushing and disproportionate to his level of moral blameworthiness. He recommends a sentence of 3 years.

### **Sentence Being Served**

[7] Mr. Lambert was sentenced to a global sentence of 16 years on September 24, 2020. He was given credit for 1,256 days for time spent in pre-trial custody, so that his final sentence was 12 years, 204 days going forward. He has almost 10 years remaining in that sentence.

[8] The circumstances of the offences for which he was sentenced are unrelated to the Burnside incident apart from the fact that he was in custody awaiting sentencing on those matters when the aggravated assault occurred in the Burnside facility.

[9] The facts relating to the drug offences of which he has been convicted are as set out in Judge Buckle's decision in *R. v. Alvarado-Calles*, 2020 NSPC 38, and summarized in the sentencing decision *R. v. Lambert*, 2020 NSPC 39. Those decisions are under appeal.

[10] As summarized by Judge Buckle, Mr. Lambert agreed to facilitate the importation of 157 kg of cocaine into Canada. He agreed to retrieve the drugs from where they were hidden. The cocaine was in an underwater chamber attached to the hull of a large vessel. Retrieval required planning and specialized diving equipment. Mr. Lambert got the equipment and tools and researched how to use them. He paid for flights and hotel rooms. He and the co-accused tried without

success to retrieve the drugs from the ship in Montreal then followed it to Halifax. The authorities intervened and they were arrested.

[11] The value of the drugs was estimated to have been between \$6.9 million and \$7.5 million if sold on the street in Montreal.

[12] After his arrest and while in custody Mr. Lambert tried to arrange for the placement of materials to corroborate a cover story.

[13] After his release on a recognizance on those charges Mr. Lambert began making plans to commit robberies of several people involved in the drug trade.

[14] He was found guilty of conspiracy to import cocaine, conspiracy to traffic cocaine, attempts to traffic cocaine, and possession for the purpose of trafficking. He pleaded guilty to conspiracy to commit robbery.

[15] Judge Buckle found that the appropriate sentences would be apportioned as 14 years for conspiracy to import cocaine, 10 years concurrent for conspiracy to traffic cocaine, 10 years concurrent for attempt to traffic, and 3 years consecutive for the conspiracy to commit robbery. She concluded that the overall sentence should be reduced somewhat to reflect the principle of totality. The global sentence imposed was 16 years.

[16] Judge Buckle noted that Mr. Lambert had been involved with the scheme to import a drug of relatively high purity. His role was organizational, and he was a leader in it. The plans to do the robberies involved high risk and were relatively sophisticated, with the use of satellite imagery, trackers, grabbing victims and holding them. The offences for which Mr. Lambert is now serving a sentence were in no way spur of the moment mistakes or lapses in judgement.

### **Criminal Record**

[17] Mr. Lambert has an extensive criminal record in British Columbia going back to 2003. Those include theft, fraud, impaired driving, obstructing a police officer, break and enter, and mischief. He became involved in more serious criminal offences in 2017.

[18] His criminal record includes a total of 30 offences spanning several years. Unlike some of those involved in the Burnside incident Mr. Lambert's criminal record is extensive. It should be noted however that the sentence he is now serving is his first penitentiary term.

## **Background**

[19] Mr. Lambert is now 39 years old. He was born and grew up in British Columbia.

[20] Dr. Robert G. Ley provided an expert report as a forensic psychologist. That report sets out some of the details of Mr. Lambert's early life as Mr. Lambert related them to Dr. Ley.

[21] His father was described as a "successful venture capitalist" who prospered in the Vancouver stock market for many years. His mother looked after the couple's four children. Dr. Ley reported that Mr. Lambert described his father in positive terms as being "really smart" and a "good guy", but there were negative sides as well. He was loud and argumentative as well as being easily frustrated. Dr. Ley said that Mr. Lambert rationalized the harsh corporal punishment he got as being deserved, although it verged on being abusive.

[22] Mr. Lambert's sister provided a letter describing her relationship with her brother and her confidence in him. She described a traumatic upbringing. Their father was an abusive alcoholic. Their parents used corporal punishment using both a wooden spoon and a belt. She described her brother as being uncontrollable as a child. Their mother would at times tie him to the railing of the stairs.

[23] Mr. Lambert reported to Dr. Ley that his parents had a highly conflictual relationship. He was exposed to physical violence but never saw his mother being hit or beaten by his father.

[24] Mr. Lambert's sister said that he acted impulsively and engaged in risky and dangerous behaviour. He struggled with emotional regulation and became the subject of bullying. That led to his becoming involved with "the wrong crowd" and that derailed his life. That was reflected in Dr. Ley's report as well. Dr. Ley noted that Mr. Lambert told him that school was frustrating for him and he acted in ways to get attention.

[25] As a child he was diagnosed as having severe ADHD and described himself as having been a poorly behaved child. He told the writer of a pre-sentence report that he had poor impulse control and no desire to abide by rules. He was placed in foster care at the age of 14 and returned to his family at 17. When he reached 18 he was asked to leave the family home and went to live on his own in Vancouver.

[26] His ADHD interfered with his employment, as it had done with his schooling. He had only short-term or transient jobs. Mr. Lambert was expelled from high school for behavioural issues and truancy. He was sent to specialized schools and was removed from them as well.

[27] It was only after he was incarcerated that Mr. Lambert began to have his ADHD treated. His sister noted that his treatment for ADHD while incarcerated has resulted in a remarkable transformation. She said that she believes he has the potential to be a positive influence and has made great strides in overcoming his traumatic background. He received his GED while incarcerated in Springhill. He also got a certificate as a Flooring Technician and took a course on building barns and small homes. He has also registered for several other courses.

[28] Mr. Lambert is married and has a 5-year-old daughter in British Columbia. He was married in 2018 though the relationship with his wife began in 2010. His incarceration on the other side of the country is, not surprisingly, placing stresses on that relationship. His wife and her family are very supportive of Mr. Lambert and they have provided letters describing the kind of person they understand him to be.

[29] Mr. Lambert's family are in British Columbia where he lived until 2018. He travelled to the east coast as part of the drug importation plan and was placed in custody when apprehended in Nova Scotia by the police. He has remained in custody since then.

[30] Obviously, Mr. Lambert's time in custody has not been without incident. He was in the Burnside facility when the assault on Stephen Anderson took place. But, from 2019 until now, there has been a marked change. That may relate to the treatment that he has received. His parole officer has been supervising him since August 2021. She reported that Mr. Lambert has been employed within the institution during the time that she has been supervising him. He is housed in a privileged unit, which is an apartment style arrangement. His behaviour has been consistently good which is why he can live in that unit. Mr. Lambert has been staying out of trouble and focusing on training for job skills.

[31] It is not necessary to rely on the evidence gathered by Dr. Ley from his interview with Mr. Lambert to make the inference that Mr. Lambert's behaviour and general outlook have improved. He would not be housed where he is housed if he were resistant to counselling and acting violently.

[32] That stands in stark contrast to his behaviour in December of 2019 at the Burnside facility.

### **Burnside December 2, 2019**

[33] Mr. Lambert was found guilty of aggravated assault for his part in the assault on Stephen Anderson. The facts are as set out in *R. v. Ladelpha*, 2021 NSSC 324.

[34] As could be seen on the surveillance video from the dayroom, Stephen Anderson entered his cell at 7:29 pm on December 2, 2019.

Mr. Lambert, one of the accused on this indictment, was the second person into the cell. He entered about 14 seconds after Mr. Anderson. He looked toward Cell 8 as Stephen Anderson went in, and he stood up almost immediately and started making his way toward the door. Others stood up at the same time and moved in the same direction. It is not difficult to trace Mr. Lambert's movements in the minutes before he went into the cell. He was assigned to Cell 32. He can be followed on the video leaving that cell at 7:06 pm. He can be followed right up to the time when he entered Stephen Anderson's cell and picked up again after he left.

It is abundantly clear that Mathew Lambert entered Cell 8, occupied by Stephen Anderson and that he did so along with two other inmates in the space of 3 seconds. Three more arrived in the 4 seconds that followed. Six inmates entered Cell 8 in 7 seconds. Five of them had been together just outside the cell, and they arrived together. The sixth, Colin Ladelpha, ran from upstairs. A seventh inmate, Kirk Carridice, arrived about 10 seconds later. There is no indication that they were at cross purposes. Mr. Lambert was not trying to stop anyone from going into the cell. They quickly filed in. The last members of the group appeared to be pushing their way in. There was no time for much of an exchange of views about whether Stephen Anderson should consider asking to leave North 3. (*R. v. Ladelpha*, 2021 NSSC 324, paras. 21-22)

[35] Mr. Lambert was not a person who held back to watch, or who reluctantly engaged in blocking officers from intervening. He was the first person to enter Mr. Anderson's cell and it was clear that the intent was not merely to have a conversation or even to make threats or issue an ultimatum. Stephen Anderson was seriously assaulted as soon as the group got into his cell and Mr. Lambert was the first person to go inside.

[36] Mr. Anderson was seriously injured. No weapon was recovered but Mr. Anderson's injuries were consistent with a sharp weapon of some kind having been used to puncture his chest.

## Parity

[37] The goal in every case is to impose a fair, fit and principled sanction. All sentencing starts with the principle that sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[38] No one sentencing goal or objective trumps the others. Different goals may be given different weights in each sentencing and the importance of mitigating or aggravating factors may push the sentence up or down for offences that are similar. So, while parity is a principle it is not a presumption. Mr. Lambert is the last of those sentenced in the matter among the group of those in respect of whom no dangerous offender application has been made. But he must be sentenced as an individual.

[39] Similarly situated offenders who have been found guilty of similar crimes in similar circumstances should receive similar sentences. That principle of sentencing invokes a basic concept of fairness. It would not be fair if people who committed essentially the same crime were sentenced in substantially different ways. But that principle operates in tension with other principles, one of which is that people are sentenced having regard to their own circumstances. A sentencing judge cannot lose sight of the importance of parity but at the same time must consider how each person who has been convicted of a crime comes to the court with their own unique background.

[40] In this case, parity can have the potential to take an outsized role. Parity applies generally, in the sense that other people at other times have committed similar offences and received a range of sentences. When a group of people, acting together, commit the same crime, against the same victim at the same time, it can become even more difficult to justify sentences that are different. It is important to guard against parity entirely taking over the process so that the sentence of the last person to be sentenced appears to be predetermined by what has gone before.

[41] As has been noted in the other sentencing decisions related to this matter, there have been other cases that have addressed sentencing in individual assaults within a prison. They can range from 3.5 years to 10 years in length. All stress the importance of deterrence. *R. v. McNeil*, 2020 ONCA 595, *R. v. Laverdiere*, 2020 ABCA 290, *R. v. Slade*, 2007 NBQB 415, and *R. v. Thompson*, 2017 NBQB 81.

[42] Aggravated assault is a broad-spectrum offence. It covers a broad range of offences, from a less serious stab wound to a case in which the victim is very close



to death. It can happen in a broad range of circumstances. They can involve bar fights or premediated gang beatings.

[43] Sentencing is an individualized process so comparison with other cases can be difficult. There is no “standard” aggravated assault and each person who is sentenced receives a sentence that reflects their moral blameworthiness and their own circumstances.

[44] Case law does make it clear that assaults that take place within jails and prisons are regarded seriously. When people are held together against their will and some of them have a disposition toward the use of violence, there must be a level of control to protect some against others. People who are convicted of crimes and sentenced to a term of imprisonment are not left to fend for themselves within a prison culture of violence and intimidation. Treating violence within these institutions seriously is not an act of retribution against the incarcerated population. It is a statement that those who are incarcerated should be entitled to the protection of the law. They should not have to live in fear of others who have chosen to live by an arbitrary code that they define and enforce.

[45] Those convicted of the assault of Stehpen Anderson have received sentences ranging from 4 to 6 years. Mr. Coaker’s sentence of 4 years reflected his lower level of moral culpability particularly given the nature of his involvement. Mr. Cox’s sentence of 4½ years reflected the factors established by the Court of Appeal in *R. v. Anderson*, 2021 NSCA 62.

[46] Those who entered Mr. Anderson’s cell following Mr. Lambert included Mr. Ladelpha who was sentenced to 6 years, Mr. Clarke-McNeil who was sentenced to 6 years, Mr. Mitton who was sentenced to 6 years, and Mr. Hardiman who was sentenced to 6 years. Mr. McIntosh who was sentenced to 5½ years and Mr. Crawley who was sentenced to 5 years were sentenced having regard to the principles set out by the Nova Scotia Court of Appeal in *R. v. Anderson*.

### **Proportionality**

[47] Parity is not the only principle to consider. And it is not a kind of super-principle that can diminish the significance of others.

[48] Proportionality requires the judge to consider the moral blameworthiness of the offender and the gravity of the offence. But that is done having regard to all the

other factors. I have noted that in the sentencing of the others involved in this matter.

Deterrence and denunciation must be the primary purposes of the sentence in crimes of violence. An assault within a jail takes the aggravated assault to another level. Serious injuries take it further. Coordinated activity resulting in a gang assault take it even further. Open defiance of the authorities seeking to intervene, as part of the coordinated effort take this case to a level more serious than the other prison assaults provided as examples.

In any sentencing several factors remain in tension with each other. They are not necessarily contradictory, but they can pull in different directions. They are not merely a checklist of factors. Courts must consider the potential for rehabilitation. That may suggest a shorter sentence of incarceration. But the crime may be one that requires denunciation and deterrence, which cries out for a substantial punitive jail sentence. Similarly situated offenders should be treated similarly. But no two offenders commit the exact same offence, in the exact same way, with the same personal circumstances. A person may have a long criminal record, but it may be, in part, a function of the condition of that person's mental health. A person may be a member of a racialized group and the history of racism and marginalization of those groups as well as their overrepresentation in jails is a factor. Another person may not be a member of a racialized group but may come from an economically disadvantaged family. Parity in sentencing exists in tension with those considerations.

A person should be sentenced in a way that is proportional to their degree of moral blameworthiness. Deterrence may be a factor in crafting an appropriate sentence, but it should never descend to the point of making an example of a person.

Courts must keep all those tensions in mind. A list of sentencing factors may make it easier to explain what is being considered but it loses some of the nuance. Each factor exists in tension with all or some of the others and it is not possible to assign a percentage weight to each of them. Sentencing is not done by algorithm. (*R. v. Mitton*, 2022 NSSC 123, paras. 19-22)

[49] Mr. Lambert's role in the assault was significant. He was the first person in the cell after Mr. Anderson and appeared to enter on cue, right after Stephen Anderson. He was in no sense a bystander or half-hearted participant.

[50] His criminal record should not be used to make his situation worse. But he was not a first-time offender who just happened to make a mistake in the heat of the moment.

## **Totality**

[51] In Mr. Lambert's case the principle of totality must be addressed. He has been sentenced to 16 years for drug and robbery offences unrelated to this matter. He has 10 years left on that sentence.

[52] Totality is part of the principle of proportionality and serves to maintain that principle. When consecutive sentences are imposed, the combined sentence should not be unduly long or harsh. That is codified in s. 718.2(c) of the *Criminal Code*. Practically, if an offender is convicted of multiple break and enter offences each is sentenced as a separate offence. But the total of those sentences may exceed what would be just and appropriate in the circumstances. The sentences together would exceed the gravity of the offences and the overall culpability of the offender. The sentence must still relate to and reflect sentencing goals, including denunciation, deterrence, rehabilitation and the need to separate offenders from society. But where the ultimate effect of the sentence is to deprive the person of any hope of release or rehabilitation there is no value in the sentence itself.

[53] Canadian courts do not sentence people to periods of incarceration that are greater than their potential lifespans to "make a point".

[54] The principle does not only apply in the circumstances in which a judge is imposing a sentence for a series of offences. The Ontario Court of Appeal in *R. v. Johnson*, 2012 ONCA 339, described at least two circumstances where the principle of totality in the context of consecutive sentences may arise.

The first is where a single judge must deal with a series of offences, some of which require the imposition of consecutive sentences having regard to the criteria for such sentences. A second - which is the case here - concerns a situation where a sentencing judge must impose a fit sentence on an offender convicted of one of more offences where that offender is at the same time serving the remainder of a sentence for a previous conviction or convictions. (para. 19)

[55] The Court noted that the *Criminal Code* did not draw a distinction between those two circumstances. The Court noted that the potential for unduly harsh sentences to frustrate the goals of the process exists where the offender is incarcerated for an excessive period of time because of one sentence imposed by one judge or because of the combined effect of a new sentence imposed by a subsequent judge and the remainder of an existing sentence.

At the same time, there is an additional level of concern that comes into play where a subsequent sentence is imposed on top of the remainder of an existing

one, and, as a result, the totality principle has a somewhat tempered effect in such circumstances, in my view. (*Johnson*, para. 22)

[56] A person should not be seen as reaping the benefits from his “previous serious criminal conduct”. The principle of totality has a substantially reduced effect on a sentence where part of the total is based upon the remaining part of a sentence that is being served. That does not mean that it has “only a minimal application” in those situations. It will have a substantially reduced effect because there are other considerations regarding the need to protect the integrity of the sentencing process. A sentencing judge must consider the effect of the sentence being served but must also be conscious of the concern that an offender is not seen as getting a benefit that brings the sentence imposed outside the range of what would be just and appropriate.

[57] In *R. v. Campbell*, 2022 NSCA 29, the Nova Scotia Court of Appeal set out three factors to be considered when applying the principle of totality. The principle does not entitle an offender to a reduction in sentence, but a reduction of the aggregate sentence arises if the total is crushing or exceeds the overall culpability of the offender. The principle applies whether consecutive sentences are imposed at the same time or at different sentencing hearings. And where the sentences are imposed at different hearings the amount left to be served on the previous sentence must be considered.

[58] So, in this case, what is considered is not the full 16-year sentence that Mr. Lambert received but the 10 years that he has left to serve on it.

[59] It is necessary to take a “last look” at the sentence to determine if it would amount to a crushing sentence for Mr. Lambert.

### **What is the just and appropriate sentence?**

[60] Before totality is considered it is necessary to set out what the sentence would be for Mr. Lambert without having regard to the sentence that he is currently serving.

[61] While it would not be appropriate for me to generalize about the traumatic life experiences of those who find themselves in circumstances where they are being sentenced to jail, I can and should comment about those sentenced for their involvement in the Burnside incident. It is relevant to the issue of parity. Poverty, drug addiction, mental health issues, and various forms of trauma feature in most

of the reports. Several grew up in extreme poverty. Some had serious mental health and addiction issues. Some came from homes where they suffered from abuse. Despite what they did, they are people regarding whom anyone responsible for imposing a sentence must pause and reflect on the unfairness of life and wonder what might have become of any of them, had their circumstances been different.

[62] That said, they and Mr. Lambert are entitled to be and should be understood to be more than just the product of their circumstances. People can make decisions and should be held accountable for the choices they make. They may be victims in some senses, but they are more than just victims of circumstance. Sentencing should not be reduced to an assessment of who has had the worst childhood or the most severe forms of trauma over the course of their lives.

[63] In Mr. Lambert's case, he did have a difficult childhood. His parents' relationship was fraught, and he was subject to abusive physical punishment. His mental health issues were unaddressed during those years. But did not grow up in poverty. He was not subjected to racial discrimination.

[64] Mr. Lambert was not a first-time offender. He had a significant criminal record before being arrested on the drugs and robbery charges. It must be noted that this was his first penitentiary term.

[65] Mr. Lambert's role in the assault on Stephen Anderson involved him being the first enter Mr. Anderson's cell. He was not a follower.

[66] Mr. Lambert has shown a willingness to work toward his own rehabilitation. He has tried to stay out of trouble while incarcerated. He has continued to take programs.

[67] Like the others who entered Mr. Anderson's cell, the fit and appropriate sentence for Mr. Anderson, absent any considerations of race, as required to be applied in *R. v. Anderson*, would be 6 years.

### **Application of Totality**

[68] If a sentence of 6 years were added to the 10 years that Mr. Lambert is required to serve on his other sentence, he would have a total sentence of 16 years. He is now 39 years old. The years when people are in mid-career, bringing up children and looking toward a future, for Mr. Lambert will be spent in jail.

[69] He has shown an ability to improve his life. He has been assessed as being able to live in an apartment style arrangement while incarcerated. His mental health has improved with treatment. He has continued to maintain a relationship with his wife and child despite the obstacles.

[70] There should be some recognition of the fact that he is serving those ten years. But that cannot be at the cost of being arbitrary or inconsistent with respect the sentences that have been imposed on others. Mr. Lambert is not entitled to a “discount” in that sense, but his situation is different from that of the others who have been sentenced.

[71] The sentence imposed is 4 years. It remains within the range of those imposed on others who were involved in the assault but takes into account the fact that sentences extending to 16 years would be disproportionate to his moral blameworthiness.

[72] Matthew Lambert is sentenced to 4 years and he has no remand credit to apply to this sentencing, so that would be total of 1,460 days, without regard to leap years. Time served will be consecutive to the time he is currently serving.

[73] The s. 109 firearms prohibition and DNA order will be signed.

Campbell, J.