

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R v Wint*, 2023 NSSC 412

**Date:** 20231220  
**Docket:** 513337  
**Registry:** Halifax

**Between:**

His Majesty The King

*Crown*

v

Andrew Curt Wint

*Defendant*

**Decision**

**Restriction on Publication: s. 539(1) Criminal Code**

**Judge:** The Honourable Justice John Keith

**Heard:** December 12, 2023, in Halifax, Nova Scotia

**Counsel:** Jude Hall, for the Crown  
Patrick MacEwan, for the Defendant

## Order restricting publication of evidence taken at preliminary inquiry

539 (1) Prior to the commencement of the taking of evidence at a preliminary inquiry, the justice holding the inquiry

(a) may, if application therefor is made by the prosecutor, and

(b) shall, if application therefor is made by any of the accused,

make an order directing that the evidence taken at the inquiry shall not be published in any document or broadcast or transmitted in any way before such time as, in respect of each of the accused,

(c) he or she is discharged, or

(d) if he or she is ordered to stand trial, the trial is ended.

## Accused to be informed of right to apply for order

(2) Where an accused is not represented by counsel at a preliminary inquiry, the justice holding the inquiry shall, prior to the commencement of the taking of evidence at the inquiry, inform the accused of his right to make application under subsection (1).

## Failure to comply with order

(3) Every one who fails to comply with an order made pursuant to subsection (1) is guilty of an offence punishable on summary conviction.

(4) [Repealed, 2005, c. 32, s. 18]

R.S., 1985, c. C-46, s. 539 R.S., 1985, c. 27 (1st Supp.), s. 97 2005, c. 32, s. 18

**By the Court:****INTRODUCTION**

[1] By Information dated March 22, 2022, Mr. Wint was charged with 8 counts of various offences, the most serious revolving around allegations of trafficking cocaine and fentanyl. After trial, Mr. Wint was found guilty of:

1. Unlawful possession of cocaine (a substance included in Schedule 1) for the purposes of trafficking, contrary to Section 5(2) of the *Controlled Drugs and Substances Act* (“*CDSA*”). Cocaine is listed as a prohibited drug in Schedule I of the *CDSA*. A person convicted of possessing and trafficking a Schedule I drug is liable to imprisonment for life. (section 5(3) of the *CDSA*);
2. Unlawful possession of fentanyl (a substance included in Schedule 1) for the purposes of trafficking, contrary to Section 5(2) of the *CDSA*. Fentanyl is also among the prohibited drugs listed in Schedule I of the *CDSA*. A person convicted of possessing and trafficking a Schedule I drug is liable to imprisonment for life. (section 5(3) of the *CDSA*)
3. Possessing cash exceeding \$5,000 and obtained through the commission of a criminal offence, contrary to section 354(1) of the *Criminal Code*. The Crown elected to proceed by indictment. A person found guilty of the indictable offence of possessing cash exceeding \$5,000 and obtained through the commission of a crime is liable to imprisonment for a term of not more than 10 years. (section 355(a)(i) of the *Criminal Code*).
4. Driving a vehicle when prohibited from doing so contrary to section 320.18(1) of the *Criminal Code*. The Crown again elected proceeded by indictment. A person found guilty of the indictable offence of driving while prohibited contrary to section 320.18(1) is liable to imprisonment for a term of not more than 10 years.

[2] All other charges in the Information were either dismissed or ended with an acquittal.<sup>1</sup>

[3] The trial decision is reported at 2023 NSSC 100.

[4] This decision turns to the issue of a fit, proper and just sentence for Mr. Wint.

### **CIRCUMSTANCES OF THE OFFENCE**

[5] The police received information indicating that a person using the pseudonym “Tommy” was operating a “dial-a-dope” mobile drug business. The actual identity of the person using this pseudonym was unknown to the police. However, the police did have a cell phone number connected to “Tommy’s” drug business.

[6] On November 12, 2020, Judge Rhonda Van Der Hoek granted a tracking warrant enabling the RCMP to find and follow the device attached to the cell phone number. The tracking technology led police to an apartment an apartment known municipally as Apartment 1106, 39 Seapoint Drive, Dartmouth, Nova Scotia and leased by Mr. Wint and Sarah Barnett (the “**Apartment**”).

[7] The police commenced surveillance at the Apartment and narrowed in on Mr. Wint, who they identified using a photo obtained from HRM police.

[8] Police observed Mr. Wint from a fixed location outside the Apartment building. They also followed Mr. Wint when he drove from the Apartment building in a leased vehicle. By this time, the police discovered that Mr. Wint was subject to an Order dated September 23, 2020 which prohibited him from operating a motor vehicle on any street, road, highway or other public place in Canada for the period September 23, 2020 – September 22, 2021. Because the police observed Mr. Wint driving a motor vehicle to and from the Apartment, they believed Mr. Wint was also breaching this outstanding Order.

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<sup>1</sup> Mr. Wint was acquitted of unlawfully possessing cannabis for the purpose of distribution (Count 4 in the Information) and escaping lawful custody (Count 6 in the Information). At the Crown’s invitation, the two remaining offences alleged in the information were dismissed on the basis that there was no reasonable or realistic prospect of conviction based on the evidence presented at trial. They were unlawful production of a drug listed in Schedule I of the *CDSA* (Count 2 in the Information) and resisting arrest (Count 7 in the Information)

[9] On December 22, 2020, Mr. Wint drove from the Apartment to a Walmart Supercentre located on Damascus Drive in Bedford, Nova Scotia. The police followed and arrested Mr. Wint at about 10:30 a.m. near the Walmart parking lot.

[10] In a subsequent search of Mr. Wint's vehicle conducted that afternoon, the police found five baggies in the driver's door pocket each containing cocaine. The total weight of the five plastic baggies was 44 grams broken down as follows: two baggies each containing 11 grams of cocaine; one baggie containing 12.7 grams of cocaine; one baggie containing 4.9 grams of cocaine; and one baggie containing 5 grams of cocaine.

[11] That same day, the police also executed a search warrant at Mr. Wint's Apartment. In terms of gross volumes, the police found and seized:

1. 1,103 grams (2.43 pounds) of cocaine. The Crown called and qualified Sergeant Tyson Nelson as an expert witness on:
  - a. The unlawful possession of cocaine, fentanyl, cannabis and methamphetamines for the purposes of trafficking; and
  - b. The practical or logistical details around trafficking illegal drugs tracks including distribution methods, packaging and pricing.

Sergeant Nelson suggested that this volume of cocaine was indicative of a "high level local dealer".

2. 23.6 grams of fentanyl and part of another 6.7 gram package that was in a single sealed package which also contained cocaine. Sergeant Nelson testified that this was a very large amount of fentanyl, particularly in Atlantic Canada where it's use to date has been relatively low compared to other jurisdictions. However, the parties agreed that there was insufficient evidence to confidently conclude that possession of these volumes revealed anything beyond a "street level" dealer.

[12] The following chart summarizes how these drugs were packaged and stored in various locations around the Apartment.

| ITEM | PACKAGING AND WEIGHT | LOCATION |
|------|----------------------|----------|
|------|----------------------|----------|

|                      |   |   |
|----------------------|---|---|
| Cocaine              | 32 g (bag)  | Locked in a Nike Bag or Satchel found on the floor propped up against the kitchen island (the “ <b>Nike Bag</b> ”)  |
| Fentanyl             | 23.6 g (bag)  | Nike Bag  |
| Cocaine              | 27.6 g (bag)  | Nike Bag  |
| Cocaine              | 10.4 g (base form)  | Nike Bag  |
| Cocaine              | 26 g (bag)  | Located on a microwave in the kitchen but below eye level and recessed in an open cabinet space such that it was necessary to bend down in order to actually see the microwave top where the cocaine was sitting. (the “ <b>Top of Microwave</b> ”) |
| Cocaine              | 26 g (bag)  | Top of Microwave  |
| Cocaine              | 25.8 g (bag)  | Top of Microwave  |
| Cocaine              | 12.5 g (bag)  | Top of Microwave  |
| Cocaine and Fentanyl | 6.7 g – combined weight (Bag with cocaine (white substance) and fentanyl (blue substance) patch together) | Top of Microwave  |
| Cocaine              | 210.6 g (large bag)   | Located in a closed cabinet under the kitchen sink. The cabinet was not locked but it was necessary to open the cabinet doors to see the items found in this location (the “ <b>Kitchen Sink Cupboard</b> ”)  |
| Cocaine              | 376.5 g (large bag)   | The Kitchen Sink Cupboard   |
| Cocaine              | 20.8 g (bag)  | The Kitchen Sink Cupboard   |
| Cocaine              | 261.8 g   | Master Bedroom  |

[13] Finally, the police also seized a total of \$32,000 in cash. The cash was found in the Master Bedroom. Some of it was in a jacket pocket but most was in a laundry hamper, bundled together in \$5,000 stacks.

## **CIRCUMSTANCES OF THE OFFENDER**

[14] The parties filed a pre-sentence report prepared by William Middleton and dated April 20, 2023. This report offers the following insights into Mr. Wint's background:

1. Mr. Wint was born in Kingston, Jamaica on February 20, 1976. He is 47 years old. Mr. Wint has had four common relationships which produced 8 children. He is currently single but paying child support in the amount of \$800/month. In addition, he is paying his daughter tuition while she attends Dalhousie University.
2. Mr. Wint moved with his family from Jamaica to Brampton, Ontario when he was about 7 years old. His mother, Rose Wint, is retired and still lives in Brampton. Mr. Wint's mother and father, Roy, separated when Mr. Wint was about 16 years old. Roy Wint moved to England. The evidence does not indicate whether Mr. Wint maintained any meaningful relationship with his father although it casts some doubt over that possibility because Mr. Wint advises that he suffered physical abuse at the hands of his father. I return to that issue.
3. Mr. Wint's sister, Choralie, lives in Toronto and his brother, Ian, lives in Florida.
4. As a young person, Mr. Wint attended school in Brampton. When he was about 16 years old and in Grade 11, however, he became increasingly inclined towards conflict. His relationships at home fractured. His mother asked Mr. Wint to leave the family home and he did. Not surprisingly, the next few years of Mr. Wint's life were disordered and often reduced to whatever was required for day-to-day survival. He lived with friends at times but also spent significant amounts of time being homeless and on the streets.
5. At around this same time, Mr. Wint left school. He did not finish Grade 11, and would not return to finish high school until much later in life. Some years later, while incarcerated at Springhill Institution, Mr. Wint successfully completed Grade 12 through the General Education Development programme.

6. In his 20s, Mr. Wint's life began to stabilize a bit with full-time work at businesses such as Tim Horton's, Foot Locker and a temporary employment agency that supplied workers for warehouses.
7. At the age of 29, Mr. Wint moved to Nova Scotia where he began working for a landscaping company and then doing odd jobs for a property management firm. At some point in time, he also completed one year of the Culinary Arts program at Nova Scotia Community College.
8. In or around 2017, when he was about 41 years old, Mr. Wint opened a painting business and a vending machine business. I understand that both are operated out of a warehouse on Bruce Street in Dartmouth. Mr. Wint states that they businesses now generate an annual income of \$70,000.
9. As to Mr. Wint's his personal habits, the report records Mr. Wint as being healthy and a light, occasional user of alcohol. He told the probation officer that he never used illicit substances or gambled. This statement does not entirely square with a prior 2007 sentencing decision of Justice Durno in Ontario's Superior Court 2007 CarswellOnt 4820. Justice Durno referred to Mr. Wint's substance abuse assessment, a history of cocaine dependency and, as well, Mr. Wint's commitment to abstain and live a clean life. Justice Durno specifically raised the issue of drug rehabilitation and the fact that the drug screening done at that time showed that he was cocaine free but not drug-free. (at paragraphs 6, 7 and 17 – 20).
10. Finally, the Pre-Sentence Report quotes from three friends (Pierre Tannous and Eli Tannous who own a local convenience store and deli business; and Sharon Smith). All three speak very highly of Mr. Wint as a quiet man who is devoted to his children. They all say that these charges are not at all reflective of the person they know.

[15] I have also read and taken into account an Impact of Race and Culture Assessment (“**IRCA**”) completed by Dr. Patrina Duhaney and dated October 1, 2023. Mr. Wint is of Jamaican and African descent.



[16] Dr. Duhaney interviewed Mr. Wint on several occasions and also spoke with Mr. Wint's mother, friend Pierre Tannous and sister.

[17] Dr. Duhaney begins by observing that the black person's experience in Nova Scotia continues to be overshadowed by racism, social exclusion, and related inequities in education housing and employment. [At page 9] she identifies the statistical evidence in which racism becomes reflected in the criminal justice system including for example black men being five times more likely than white men to be incarcerated and as well the likelihood of increased increased severity of punishment once incarcerated [page 9]

[18] In terms of Mr. Wint's own personal experiences, Dr. Duhaney's makes the following comments:

1. while young, Mr. Wint says he experienced physical violence at the hand of his father and a certain degree of deprivation. At said he was close to his siblings growing up and expresses pride brother who moved to Florida, completed university and became very successful – although they do not maintain regular contact. That said, Mr. Wint believes his family has a fairly negative view of him. As a result, he is more focussed on “personal fulfilment and taking care of his children, rather than trying to make his family proud.”
2. Mr. Wint recalled growing up in white neighbourhoods in Brampton Ontario which were predominantly white and involved police harassment as a black minority. He was often called offensive slurs such as the N-word.
3. As McKay did Mr. Wint was kicked out of the family home at the age of 16. He learned to survive on the street but at the costs of significant deprivation and poverty.
4. At school he found most his teachers were rude to the point that the remembers his own surprise at the act of a simple kindness and compliment by one white teacher. Overall however he felt disheartened and ignored as a “dumb kid” without any potential.
5. Mr. Wint indicated that he had been arrested approximately 15 times maintains his innocence in 90% of those cases. He also said that he pled guilty to crimes he did not commit in order to obtain an early release from jail. He believes that his time in jail understandably added to the instability in his own life. However

these incidents of wrongful or unjust convictions included abusive and even threatening comments from the police including beating. Overall Mr. Wint has come to be distressful and fearful of the police because of his negative experiences with him with them in the justice system generally all of the additional persons with whom Dr. Duhaney spoke were very supportive of Mr. Wint. They included his friend Eli Tennous, a Lebanese immigrant who befriended Mr. Wint and has been very supportive of Mr. Wint. Mr. Wint's mother Rose went, P 10 news and his sister Michaela Houston Wint. All these witnesses also commented on observations regarding racist attitudes which they have observed being directed towards Mr. Wint.

6. Dr. Duhaney concluded that Mr. Wint has suffered the sort of discrimination and in negative stereotypes endemic among many black people in Canada. They include willingness with its ongoing emotional and psychological consequences in terms of how Mr. Wint perceives himself and others; homelessness and the ongoing feeling of insecurity lacking safety and isolation. The police violence in his past has also left Mr. Wint mistrusting the police and having little confidence in law enforcement.
7. In her conclusions and Dr. suggest that Mr. Wint has a strong desire to continue to make positive changes in his life. She sees him as having significant resilient strength and motivation which will hopefully over time overcome the negative thinking and self-doubt caused by past traumatic experiences.

[19] Finally, Mr. Wint criminal record is relevant. It is significant and includes 11 prior CDSA offences (8 possession related offences constituting breaches of section 4(1) of the CDSA and 3 trafficking offences constituting breaches of section 5(2) of the CDSA). The first trafficking offences occurred in 2007 when Justice Durno of the Ontario Superior Court sentenced Mr. Wint to 3 months and 15 days for his first trafficking offence. I referred to this decision above. Based on Dr. Duhaney's comments, it is not clear to me whether Mr. Wint is now saying that he only pled guilty to this crime in order to obtain a lighter sentence. That comment by Mr. Wint may not apply to this trafficking offence (Mr. Wint's first) and, on that, I am compelled to say that this explanation does not entirely explain all of the related drug testing and assessments which were ongoing. Mr. Wint was sentenced for the second and third trafficking offences in 2013. The prohibited substance in both

cases was cocaine. He was sentence to 2 years and 6 months for one offence and 2 years concurrent for the other. That said, other than a failure to comply with recognizance in 2018, Mr. Wint was not charged with any drug-related or other criminal offences from 2013 until these charges in December, 2020

## **GENERAL PRINCIPLES OF SENTENCING**

[20] A fit and proper sentence is necessarily contextualized and individualized. Among other things, each offence involves a unique accused and unique surrounding circumstances.

[21] The analysis is informed by section 718 of the *Criminal Code* which confirms that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing “just sanctions”.

[22] Section 718 further confirms that this purpose is achieved by imposing a “just sanction” that has one or more of the following objectives:

1. Denunciation (section 718(a));
2. Deterrence (section 718(b));
3. Separating offenders from society (section 718(c));
4. Rehabilitation (section 718(d));
5. Reparations to the victim or community (section 718(e)); and
6. Promoting accountability and the need to accept responsibility for harms done to victims and society (section 718(f)).

[23] As indicated, with respect to the drugs which Mr. Wint was convicted of trafficking (cocaine and fentanyl), deterrence and denunciation are key priorities when fashioning an appropriate sentence.

[24] Section 718.1 and 781. 2 provides additional principles which the Court must apply to realize the fundamental purpose and related objectives of sentencing. The sequence in which these statutory provisions appear somewhat reflects the analytical path followed when determining a fit and proper sentence:

1. Section 718.1 codifies the principle of proportionality or, more specifically, that: “[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender”;
2. Section 718.2(a) identifies the need to consider aggravating and mitigation circumstances that may increase or decrease the appropriate sentence. It also provides a non-exhaustive list of examples that constitute aggravating circumstances. None are applicable in this case.
3. Section 718.2(b) of the *Code* speaks to the notion of parity. The underlying premise is that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. The principle of parity differs from that of proportionality, codified in section 718.1 and discussed above. Proportionality demands that a just sentence reflect the unique, particular circumstances of the offender and the offence. By contrast, a sentencing regime that is just and fair strives for parity so that similar sentences are imposed in similar situations. To achieve parity, the Court looks beyond the single case before it and searches for appropriate comparisons in the jurisprudence. In doing so, the Court not only achieves parity but invokes the collective wisdom of other judges facing similar issues. These two principles (proportionality and parity) do not work at cross-purposes. On the contrary, they work in tandem towards a just and proportionate sentence. Thus, in *R v Friesen*, 2020 SCC 9, the Supreme Court of Canada wrote: “Parity is an expression of proportionality. A consistent application of proportionality will lead to parity. Conversely, an approach that assigns the same sentence to unlike cases can achieve neither parity nor proportionality” (at paragraph 32).
4. Section 718.2(c) speaks to the notion of totality. This means that where consecutive sentences are imposed and a preliminary determination of sentence is made, the Court stands back and consider the total sentence in the aggregate. In doing so, the Court takes a sober second look to ensure that the sentence is not unduly long or harsh.
5. Section 718.2(d) and (e) engages the notion of restraint and the obligation to consider less restrictive sanctions if appropriate.

## **ADDITIONAL CONSIDERATIONS SPECIFIC TO CERTAIN OFFENCES UNDER THE CDSA**

[25] For the trafficking offences under CDSA, there are two additional principles bear comment:

1. The drugs in this case, cocaine and fentanyl, are described as “hard drugs” for which the jurisprudence confirm that the sentencing principles of denunciation and deterrence are a priority;
2. Section 10 is also relevant. It states:

10 (1) Without restricting the generality of the criminal code, the fundamental purpose of any sentence for an offensive under this part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment and appropriate circumstances, of offenders and acknowledge the harm done to victims and to the community.

(2) If a person is convicted of a designated substance offence, the court imposing sentence on the person shall consider any relevant aggravating factors including that the person

a) in relation to the commission of the offence

i) carried, used or threatened to use a weapon

ii) used or threatened to use violence

iii) trafficked in a substance included in the schedule one, two, three, four or five, or possess such a substance for the purpose of trafficking in or near her school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years, or

iv) trafficked in a substance including included in schedule one, two, three, four or five, or possess such a substance for the purpose of trafficking, to a person under the age of 18 years

b) was previously convicted of a designated substance offence, as defined in subsection 2 [1] of this act, or designated defence, as defined in subsection 2 [1] of the cannabis act

(c) use the services of a person under the age of 18 years to commit, or involve such a person in the commission of, the offence

(3) If under subsection [1] the court is satisfied of the existence of one or more of the aggravating factors enumerated in paragraphs 28C but decides not to send the person to imprisonment, the court shall give reasons for that decision.

### **THE SIGNIFICANCE OF AN IRCA IN SENTENCING**

[26] Finally, as mentioned, Mr. Wint is a black Nova Scotian. Dr. Duhany prepared an IRCA report focussing on Mr. Wint's experiences as a black person and Jamaican immigrant living in Canada.

[27] In Mr. Wint's case, the IRCA report has a significance well beyond merely providing additional informing regarding the "Circumstances of the Offender".

[28] The recent Nova Scotia Court of Appeal decisions in *R v Anderson*, 2021 NSCA 62 ("*Anderson*") and *R v R.B.W.*, 2023 NSCA 58 make it clear that, when conducting the highly individualized process of sentencing an offender, the Court must carefully consider historic injustices associated with racism and weigh its affect on the offender. Thus, for example, at paragraphs 145 – 146 of *Anderson*, the Court wrote:

[145] Even where the offence is very serious, consideration must be given to the impact of systemic racism and its effects on the offender. The objective gravity of a crime is not the sole driver of the sentencing determination which must reflect a careful weighing of all sentencing objectives.

[146] The moral culpability of an African Nova Scotian offender has to be assessed in the context of historic factors and systemic racism, as was done in this case. The African Nova Scotian offender's background and social context may have a mitigating effect on moral blameworthiness. In *Ipeelee*, the Supreme Court of Canada recognized this principle in relation to Indigenous offenders. It should be applied in sentencing African Nova Scotians. Sentencing judges should take into account the impact that social and economic deprivation, historical disadvantage, diminished and non-existent opportunities, and restricted options may have had on the offender's moral responsibility...

[29] For present purposes, the following principles can be distilled from *Anderson*:

1. An IRCA report is not a peripheral document which is afforded lip service, then denied any meaningful impact on the sentencing process. The Court must confront with the comments contained in the Report and articulate the extent to which they are significant in terms of developing a fit and proper sentence for the individual offender. The Court wrote:

“In explaining their sentences, judges should make more than passing reference to the background of an African Nova Scotian offender. It may not be enough to simply describe the offender's history in great detail. It should be possible on appeal for the court to determine, based on the record or the judge's reasons, that proper attention was given to the circumstances of the offender.”

(at paragraph 123)

2. Sentencing is a complicated and individualized process as mandated under sections 718.1 and 718.2 of the Criminal Code. *Anderson* neither amends nor erases the objectives and principles embedded within these statutory provisions including, for example, the notion of individual accountability for their crimes or parity. However, recall that parity requires similar sentences for *similar offenders* who committed similar offences in *similar circumstances*. The underlying concept of “similarity” necessarily invites comparison between the particular offender being sentenced and the offender described in “similar” or comparator jurisprudence. Ultimately, to achieve justice, the Court must confront the different and difficult realities of the individual offender’s experience including, in certain cases, the impact of racism. Reduced to its essence, *Anderson* calls upon judges to apply an appropriate degree of empathy by seriously and demonstrably considering the degree to which racism may have exerted a pernicious influence of an individual offender’s life. *Anderson* neither eliminates the concept of moral culpability nor collapses important differences between the seriousness of certain offences nor displaces the broader societal concerns reflected in sections 718.1 and 718.2 of the *Criminal Code*. Rather, as Justice Campbell described in *R v Fraser*, 2022 NSSC 215, it demands that the Court pay close “contextualizing attention” (at paragraph 57);

3. As indicated, the sentencing judge's reasons must reveal that the concerns expressed in *Anderson* were properly considered. However, those concerns are not individually scored and then precisely tabulated to arrive at the proper sentence. The discrete issues which a judge takes into account (e.g. the potential impact of racism on moral culpability or the effect of an aggravating factor) cannot be assigned units of prison time, like debits and credits on an accounting spreadsheet, the total of which is deemed to be the appropriate incarceration. The life of an offender and the circumstances that led to the criminal conviction cannot be so easily reduced to an algorithm – particularly for an Indigenous person or African Nova Scotian whose individual experiences may involve levels of societal deprivation or systemic disadvantage that cannot be properly expressed within such a rigid analytical framework.

## ANALYSIS

### **Trafficking offences under the CDSA (Cocaine and Fentanyl)**

[30] The potent and toxic effects of cocaine and fentanyl on society are clear and undeniable. Persons who peddle these drugs prey upon the vulnerable; monetize their weakness and suffering; promote addiction; and erode public safety. That said, not all persons who traffic prohibited drugs can be collectively assembled into a single category of moral blameworthiness. I attach as Schedule “A” is list of the cases which I read and considered as relevant to the trafficking offences before me.

[31] The court has developed a list which seeks to place an offender more precisely within the drug trade hierarchy based on their level of engagement or involvement. In the Nova Scotia Court of Appeal decision in *R v Fifield*, 1978 CarswellNS 20, 25 N.S.R. (2d) 407 (N.S.C.A.), Chief Justice MacKeigan, described the following three levels:

1. isolated persons or petty retailers;
2. large retailers or small wholesalers;
3. big-time operators.

[32] These three basic categories of trafficking have become fixed in the jurisprudence involving trafficking in cocaine.



[33] I find that Mr. Wint was operating a high level local dealer for cocaine. This is consistent with Sargeant Nelson's opinion which I accept.

[34] As to fentanyl, Sgt. Nelson testified that this was a very large amount of fentanyl, particularly in Atlantic Canada where its use to date has been relatively low compared to other jurisdictions. He said that police in Atlantic Canada usually see 2 grams or 5 grams of fentanyl in trafficking cases. However, that evidence, by itself, is insufficient to characterize Mr. Wint as anything beyond a street level dealer given the amounts of fentanyl seized (23.6 grams in total). While I repeat that, fortunately, fentanyl does not appear to have entered Nova Scotia in the same way as has occurred in other provinces, the case law in those other provinces appears to bear out my conclusions regarding Mr. Wint's involvement in the fentanyl drug trade.

[35] I turn now to an appropriate sentencing range and focus initially on Count 1 involving trafficking cocaine.

[36] In terms of the sentencing range for cocaine, the jurisprudence has evolved to the point where there is a fairly predictable range of sentencing. Justice Rosinski's decision in *R v LeBlanc*, 2019 NSSC 192 includes an extensive review of the case law that range in this case is five – eight years. This range is also consistent with Justice Norton's decision in *R v Chaisson* and the Nova Scotia Court of Appeal decision in *R v White*, 2020 NSCA 33.

[37] There are cases which fall outside the range including the decision in *R v Hickey*, 2022 NSSC 235 where Mr. Hickey was sentenced to four years in prison for 1 kilogram found in Mr. Hickey's garage. However, I find that there are distinguishing features including, notably, the relative sophistication of Mr. Wint's business which I discuss below.

[38] The aggravating factors include:

1. the nature of the drugs and the quantity of the drugs found in Mr. Wint's apartment. Mr. Wint;
2. Mr. Wint has numerous prior offences related to cocaine; and
3. Mr. Wint's interests were purely commercial. He was not weakened or compelled into criminality by addiction as a user. He is not living in impoverished or deprived circumstances. Instead, his motivations were purely profit-oriented at the expense of others;

4. There was a certain level of sophistication to Mr. Wint's business model which included the dial-a-dope operation which allowed Mr. Wint to separate himself.

[39] In terms of mitigation:

1. There has been a significant gap in time since Mr. Wint's last trafficking offence (2013);
2. Mr. Wint has presented numerous, extremely positive statements from people beyond immediate family, all of whom speak to his potential rehabilitation prospects although, again, they are dimmed somewhat by his record;
3. I take into account Dr. Duhaney's compelling IRCA's report. Here I note that an IRCA report was considered in the *White* decision at paragraphs 61 – 64 and effectively neutralized by Justice Saunder's acceptance of the trial judge's eventual conclusion that "The fact that the [accused] had chosen to continuing lining his pockets with the profits gained as a mid-level trafficker of fentanyl, cocaine and crack cocaine, was not something the trial judge was prepared to ascribe to his race, culture, upbringing, or community." At the same time, this decision was released more than a year before Justice Derrick's decision in *Anderson* which shone a very bright light on racism and the way in which it exerts ongoing affects Black people in Nova Scotia.

[40] Given Mr. Wint's record alone and the volume of cocaine found in the Apartment, a fit and proper sentence for this charge would easily fall be 6-7 years incarceration – i.e. in the middle of the range for these types of offences.

[41] However, again, I am mindful of the *Anderson* decision and Mr. Wint's experience with racism. I must say that I am not convinced that Mr. Wint's crimes were entirely a reflection of racism. There were clearly experiences in his past that were difficult and traumatic, I do not diminish them and particularly do not discount the damaging impact of racism in his life. At the same time, Mr. Wint also had positive role models including his mother and his brother who pointed his life in a different direction. In addition, he has supportive friends and there is evidence that Mr. Wint is capable of working in a way which does not involve drug trafficking. Ultimately, in Mr. Wint's case, it is not as simple as saying he was consumed by unrelenting racism. Racism clearly cast a dark shadow over his life and had a

profound negative effect on him. But life is also complex and he did have people who helped illuminate a more positive path. Taking all this into account, I am not prepared to move Mr. Wint outside of the range confirmed by the case law; but I am prepared to move his down to the lowest end of the range.

[42] In my view, a fit and proper sentence for this offence is 5 years.

[43] Count 8 involving fentanyl is more problematic.

[44] On the one hand, the Supreme Court of Canada decision in *R v Parranto*, 2021 SCC 46 and the NS Court of Appeal decision in *White* speak very strongly and poignantly to the damaging effects of fentanyl. Fentanyl's potency and addictive power eclipses that of cocaine. Moreover, the risks associated with this drug are at an entirely different order of magnitude. Even a small overdose can be fatal. (see, for example, *White* at paragraphs 27, 36 – 42)

[45] In Nova Scotia, it has also been recognized that, fortunately, the scourge of fentanyl has yet to exert a presence in this province in the same way this drug has other invaded provinces. Thus, the Court of Appeal in *White* acknowledged that the Court did not yet have the experience (and the cases had not yet evolved in volume) sufficient to confidently establish a sentencing range for fentanyl.

[46] To make matters somewhat more complicated and based on the cases before me, it is not entirely clear whether a distinct separation is beginning to appear in the sentencing decisions of those provinces where there is a critical mass of relevant jurisprudence.

[47] For present purposes, however, the following basic observations are not controversial:

1. Without proper medical supervision from a qualified physician, fentanyl is an extremely dangerous drug;
2. Bringing fentanyl to the streets and trafficking in fentanyl for profit;
3. Factors such as volume and whether the fentanyl has been in anyway concealed to mask its potential danger (as occurred in *White*) is a relevant aggravating factor. See also *R v Loor*, 2017 ONCA 696 at paragraphs 35 – 39. However, for clarity, that did not occur here.

[48] In my view, volume found in Mr. Wint's Apartment attracts terms of incarceration of 4.5 years, having applied the same Anderson considerations I mentioned above. I also take into account the fact that, unlike the conviction for cocaine trafficking, the parties agree that Mr. Wint's engagement in the sale of fentanyl could not fairly be characterized as anything beyond street level.

[49] The aggravating and mitigating factors are much the same as they were with cocaine – including the impact of the IRCA report described above. Again, however, I am compelled to emphasize the increased degree of damage which street-sold fentanyl inflicts upon society as compared to cocaine.

[50] In my view, the appropriate sentence is 4.5 years.

[51] As to possession of property obtained the commission of a crime is related to his drug trafficking defences. One year period of incarceration is appropriate.

[52] With respect to driving while prohibited, I note that Mr. Wint has been convicted in the past of violating a court orders at least eight times. In my view, a period of incarceration of one-month for this offence is appropriate.

[53] I have considered section 718.3(4) and the extent to which the totality of the sentences achieve a fit, proper and just sentence, in the aggregate. I am satisfied that they do so. I'm also satisfied that notwithstanding severity of the crimes of these crimes, they have been moderated that that the punishment has been appropriately moderated by Mr. Wint's background.

[54] With respect of remand credit, Mr. Wint was spent eight days at on remand before being released by consent on bail. This equates to 12 days of credit which will be applied against his sentence.

[55] The following ancillary orders will also issue:

1. a mandatory weapons Prohibition Order under s. 109(1)(a) of the Criminal Code. The duration of this prohibition shall be for life and shall include all firearms, cross bows, ammunition, explosive substances and other restricted devices. Similarly and pursuant to section 291, Mr. Wint must forfeit any weapons and ammunition as described in the order
2. a DNA order pursuant to s. 487.051(1) of the *Criminal Code* and, specifically, to supply a sample of your DNA suitable for forensic analysis; and

3. A forfeiture order for the items seized.

[56] At the sentencing hearing, and for the first time, the Crown requested a further driving prohibition for 2 years which would begin only after Mr. Wint is released from prison. This is a discretionary order under the Code and I am not prepared to grant that Order. Respectfully, it represents an unnecessary, last-minute request that would be unduly harsh and unnecessarily interfere with Mr. Wint's legitimate and reasonable interests to re-integrate after completing his sentence and paying his debt for the crimes committed.

Keith, J.

## Schedule “A”

### **IRCA Considerations**

*R v Anderson*, 2021 NSCA 62 (“Anderson”)

*R v R.B.W.*, 2023 NSCA 58

### **Cases Involving Trafficking in Cocaine Only**

*R v Hickey*, 2022 NSSC 235

*R v LeBlanc*, 2019 NSSC

*R v Fifield*, 1978 CarswellNS 20, 25 N.S.R. (2d) 407 (N.S.C.A.)

*R v Shields*, 2014 NSPC 69

*R v Thomas-Hodges*, 2023 NSPC 7

*R v Robinson*, 2021 NSPC 1

*R v Chiasson*, 2023 NSSC 144

*R v Field*, 2013 NSPC 51

*R v Butt*, 2010 NSCA 56

### **Cases Which Include Trafficking in Fentanyl**

*R v Parranto*, 2021 SCC 46

*R v White*, 2020 NSCA 33

*R v Loor*, 2017 ONCA 696

*R v Lloyd*, 2019 BCCA 128

*R v Hubick*, 2023 BCPC 146

*R v Singh*, 2023 BCPC 70

*R v Renshaw*, 2022 BCSC 685

*R v M.M.A.*, 2018 ABQB 250

*R v Chin*, 2017 BCSC 501

*R v Shah*, 2018 BCSC 2238

*R v Lee*, 2018 BCPC 84

*R v Johal*, 2018 BCSC 549

*R v Boardman*, 2016 CarswellOnt 21908, [2016] O.J. No. 4379 (Ont. C.J.)

*R v Cinelli*, 2018 ONSC 4983

*R v Wheham*, 2023 ONCJ 379

*R v Brennan*, 2020 ONCJ 128

*R v Gill*, 2021 ONCJ 224