NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Chase*, 2019 NSCA 36

Date: 20190513
Docket: CAC 477337
Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Matthew James Chase

Respondent

Judge:	The Honourable Justice Jamie W.S. Saunders
Appeal Heard:	February 6, 2019, in Halifax, Nova Scotia
Subject:	**Principles of Sentencing. Possession of Cocaine for the Purpose of Trafficking. Denunciation. Deterrence. Rehabilitation. Leniency. Proportionality. Parity. Deference. Standard of Review.**
Summary:	The Crown appealed a 90-day intermittent jail sentence following a guilty plea to possessing six grams of cocaine for the purpose of trafficking. In the Crown's view, the sentence was out of step with binding precedent, virtually ignored the principal objectives of deterrence and denunciation, and reflected an alarming trend towards similarly lenient sentences for serious drug-related crimes.
Held:	Appeal dismissed. While this result was a "close call", upon reading the judge's reasons as a whole, it cannot be said that she either erred in principle, exercised her broad discretion unreasonably, or imposed a sentence that was manifestly unfit. Nothing has changed this Court's repeated and consistent warning that deterrence and denunciation will continue to be the primary objectives when sentencing persons who choose

to traffic in cocaine, and that convictions will normally attract a federal prison term.

In this case, the trial judge's comprehensive analysis explained why the combination of numerous mitigating factors called for a more lenient sentence and justified a departure from the traditional punishment of federal incarceration. The judge gave proper consideration to the principles of proportionality, and parity, and the respondent's Aboriginal heritage.

While the Crown's concerns that the judge's decision in this case reflected a disturbing trend in the Provincial Court to impose light sentences for serious drug offences were worrisome and deserved careful scrutiny, they were not – on this record – borne out.

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Appellant

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Respondent

Judges:	Beveridge, Saunders and Bryson, JJ.A.
Appeal Heard:	February 6, 2019, in Halifax, Nova Scotia
Held:	Leave to appeal granted, appeal dismissed per reasons for judgment of Saunders, J.A.; Beveridge and Bryson, JJ.A. concurring.
Counsel:	Paul Adams, for the appellant Roger A. Burrill and Christine Cooper, for the respondent

Reasons for judgment:

[1] The Crown appeals from the sentence imposed by a Provincial Court judge following Mr. Chase's conviction for possession of cocaine for the purpose of trafficking. The Crown says the sentence is so obviously inadequate and out of step with legal precedent as to be demonstrably unfit; it reflects what in the Crown's view is an alarming trend towards similarly lenient sentences for serious drug-related crimes; and if left undisturbed the decision in the court below will unleash a flood of ineffective sentences that will undermine any meaningful consideration of the objectives of denunciation and deterrence.

[2] Despite the very strong submissions of counsel for the Crown, I am not persuaded the sentencing judge erred in a way that would allow us to intervene. Accordingly, for the reasons that follow, I would grant leave but dismiss the appeal.

[3] I will begin with a brief summary of the facts, adding further detail as may be required in my analysis of the principal issues on appeal.

Background

[4] The respondent, Matthew James Chase, pled guilty to possessing six grams of cocaine for the purpose of trafficking. Nova Scotia Provincial Court Judge Alanna Murphy sentenced the respondent to 90 days' incarceration to be served intermittently from 8 p.m. on Fridays to 6 a.m. on Mondays. The custodial portion of the sentence commenced on May 11, 2018. Mr. Chase successfully completed his intermittent jail sentence on August 20, 2018 and is currently completing three years' probation with conditions. For the first year, he must abide by a curfew to remain in his residence every night from 11 p.m. until 7 a.m. Thereafter, Mr. Chase will be supervised by a probation officer in the community for two more years.

[5] At the sentencing hearing the parties presented Murphy, P.C.J. with an Agreed Statement of Facts (ASOF). The record, which the judge described as comprising "a great deal of material", also included a lengthy Pre-Sentence Report (PSR), a detailed Gladue Report, and several letters of support written by people prepared to vouch for the appellant's recent good character and the remarkable changes he had made in his life.

[6] The ASOF read:

> 1. THAT on December 10, 2016, Mr. Chase was arrested in his driveway at [*] in Dartmouth, Nova Scotia;

2. THAT police were responding to a driving complaint;

3. THAT after arresting Mr. Chase for possession of a weapon, they searched [him] and his car subsequent to that arrest;

4. THAT in searching Mr. Chase's person, police found a small baggy, with multiple little packages of what appeared to be cocaine in Mr. Chase's right rear pocket;

5. THAT in searching Mr. Chase's mobile phone, texts were found which showed he was possession of the cocaine for the purpose of trafficking;

6. THAT texts in Mr. Chase's phone, from the same day, December 10th, 2016, also revealed that Mr. Chase was going to stop trafficking drugs, to focus on his relationship, and employment with GFL;

7. THAT the texts also reveal that Mr. Chase was offered a position with Green For Life Environmental (GFL) on December 12th, while his phone was in Police custody;

8. THAT Mr. Chase has been employed through Sam Seal Paving, and temporary agencies (Talent Core), including integrated staffing, since January of 2016;

9. THAT after working through a temp agency for GFL, Mr. Chase was hired on by the company itself, on full-time basis, on July 3rd, 2017;

10. THAT Mr. Chase has been working, typically, 50 hours a week for GFL.

[7] At the time of sentencing, Mr. Chase was 28 years of age. He had 13 prior convictions, which included violent offences and breaches of court orders. The most serious prior conviction was for robbery in 2009 for which he received a sentence of three years' imprisonment in a federal penitentiary. His most recent convictions were for assaulting a peace officer and breach of undertaking in October 2013, for which he received a four month conditional sentence plus two years' probation.

[8] When interviewed for a PSR, Mr. Chase indicated that at the time of the offence he had reunited with a negative peer group and decided to engage in selling drugs for "fast cash" but that he only wanted to do so until he could obtain full-time employment. He said, "I tried to take the easy way out, I got lazy, because I couldn't find a job".

[9] The PSR also detailed Mr. Chase's family background and personal history. It described a difficult childhood, where the respondent spent time in foster care. Judge Murphy accepted that the respondent had a "dysfunctional and abusive upbringing". Mr. Chase acknowledged having had alcohol abuse problems, but said he had been sober for five years at the time the PSR was prepared.

[10] Mr. Chase has Aboriginal ancestry on his father's side. His paternal grandparents are both Aboriginal from New Brunswick. He became aware of his Aboriginal lineage in 2015 and was unsure of the designation or status of his grandparents' heritage. He did not self-identify as being Aboriginal. As a result of his heritage, a Gladue Report was prepared, which described him as a "non-status off reserve Aboriginal male" and identified a number of "Gladue factors" for consideration.

[11] At the time of sentencing, Mr. Chase had full-time employment with Green For Life (GFL), a garbage disposal company, where he has worked as a residential helper since July 2017.

[12] He was living in a stable relationship with his girlfriend, who was pregnant. She and other friends or family provided letters attesting to the considerable progress Mr. Chase had achieved in turning his life around.

[13] At the sentencing hearing the Crown recommended a sentence of two years in a federal penitentiary. Mr. Chase's counsel asked for a suspended sentence with three years' probation.

[14] After considering the evidence, the submissions and the jurisprudence, Judge Murphy imposed a 90 day jail sentence to be served intermittently followed by three years' probation. As noted in ¶4 above, the Probation Order included a night time curfew but no other substantial restrictions on Mr. Chase's liberty.

Issues

[15] To properly consider the merits of this appeal, I will address the two principal questions posed by the Crown in its submissions:

(i) Did the trial judge err in the interpretation and application of the relevant purposes and principles of sentencing, particularly proportionality, parity and the paramount objectives of denunciation, deterrence and protection of the public, and by over-emphasizing the personal circumstances and rehabilitation of the respondent?

(ii) Did the trial judge err by imposing a sentence that is demonstrably unfit or manifestly inadequate, given the circumstances of the offence and the offender?

Standard of Review

[16] The standard of appellate review on a sentence appeal is a deferential one. A trial judge "enjoys considerable discretion because of the individualized nature of the process" (*R. v. L.M.*, 2008 SCC 31 at ¶17). It is settled law that our role on appeal is not to substitute our discretion for that of the sentencing judge; nor set aside the sentence simply because we would have imposed a different one.

[17] A sentencing judge's decision will not be disturbed lightly. We will only intervene in cases where the sentencing judge erred in principle, failed to consider a relevant factor, or over-emphasized a relevant factor in a way that influenced the sentence, or where the sentence is demonstrably unfit (*R. v. Lacasse*, 2015 SCC 64 at ¶11; see also *R. v. Oickle*, 2015 NSCA 87 at ¶21 and the cases cited therein).

[18] Our Court recently considered these well-established principles in *R. v. Espinosa Ribadeneira*, 2019 NSCA 7. There Oland, J.A. observed:

> [34] Sentencing involves the exercise of discretion by the sentencing judge. An appellate court should only interfere if the sentence was demonstrably unfit or if it reflected an error in principle, the failure to consider a relevant factor, or the over-emphasis of the appropriate factors. An error of law or an error in principle will only justify appellate intervention if the error had an impact on the sentence. An appellate court is not to interfere with a sentence simply because it would have weighed the relevant factors differently. See *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500 at ¶90; *R. v. Nasogaluak*, 2010 SCC 6 at ¶46; *R. v. Lacasse*, 2015 SCC 64 at ¶43-44 and ¶49.

[19] The purpose and principles of sentencing have been codified in ss. 718, 718.1, and 718.2 of the *Criminal Code*, R.S.C. 1985, c. C-46. Judges are required to address the fundamental purpose of sentencing through the imposition of just sanctions that reflect a variety of objectives:

> **718** The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> **(a)** to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
>
> **(b)** to deter the offender and other persons from committing offences;
>
> **(c)** to separate offenders from society, where necessary;
>
> **(d)** to assist in rehabilitating offenders;
>
> **(e)** to provide reparations for harm done to victims or to the community; and
>
> **(f)** to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[20] Section 718.1 directs that a sentence must respect the fundamental principle of proportionality:

> **718.1** A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[21] Section 718.2 provides additional sentencing principles for consideration, including that of restraint in the use of incarceration. It reads in part:

> **718.2** A court that imposes a sentence shall also take into consideration the following principles:
>
> **(a)** a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender …
>
> ...
>
> **(b)** a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> …
>
> **(d)** an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> **(e)** all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[22] In a series of well-known cases the Supreme Court of Canada has provided helpful clarification concerning the proper application of these principles. I will be referring to several of those cases in the course of my reasons. In particular, I will emphasize Justice Wagner's (as he then was) majority judgment in *R. v. Lacasse*, *supra*. His decision provides a virtual roadmap to guide both trial judges in the sentencing process, and appellate judges when those sentences are challenged on appeal.

[23] To set the stage for the analysis that follows, three discrete points are particularly relevant in this case. First, demonstrating that the sentencing judge made a mistake is not enough. The legal error must have been one that impacted the result (*Lacasse* at ¶44). Second, the principle of proportionality is fundamental to the sentencing process. Proportionality is to be determined both on an individual basis (linking the accused to the crime) and by comparing sentences imposed for similar offences committed in similar circumstances. Accordingly, individualization and parity of sentences must be reconciled if a sentence is to be proportionate (*Lacasse* at ¶53). Proportionality will be reached through "complicated calculus" whose elements trial judges understand better than anyone

else (*L.M.* at ¶22). Proportionality "is grounded in elemental notions of justice and fairness, and is indispensable to the public's confidence in the justice system". (*R. v. Safarzadeh-Markhali*, 2016 SCC 14 at ¶70). Third, the principle of parity of sentences is secondary to the fundamental principle of proportionality. Trial judges are seized with the responsibility of properly weighing the "various principles and objectives, whose relative importance will necessarily vary with the nature of the crime and the circumstances in which it was committed" (*Lacasse* at ¶54).

[24] I will now apply those well-established principles to my analysis of the Crown's appeal.

(i) **Did the trial judge err in the interpretation and application of the relevant purposes and principles of sentencing, particularly proportionality, parity and the paramount objectives of denunciation, deterrence and protection of the public, and by over-emphasizing the personal circumstances and rehabilitation of the respondent?**

[25] The thrust of the Crown's complaints can be seen in these extracts from the Crown's factum:

> 25. … this Court has consistently and repeatedly emphasized that denunciation, deterrence and protection of the public must be the predominant considerations when sentencing those involved in trafficking Schedule I drugs such as cocaine. …
>
> 26. For 30 years, this Court has remained steadfast in emphasizing that denunciation and deterrence must be the primary consideration when sentencing individuals for cocaine trafficking.
>
> …
>
> 32. In the present case, the Respondent made a considered and deliberate choice to traffic cocaine. The offence was not an isolated incident or the result of momentary lapse in judgment. … Rather, he was trafficking purely for profit. …
>
> 33. Furthermore, engaging in serious criminal conduct was hardly out of character or an aberration for the Respondent. He had 13 prior convictions for serious criminal offences and a 3 year federal penitentiary sentence for robbery had obviously had no deterrent impact.
>
> 34. The offence for which the Respondent was convicted must be classified as extremely serious and his degree of blameworthiness high. Nonetheless, he was sentenced to a 90 day intermittent jail plus probation. … the sentence imposed in no way corresponds to the gravity of the offence and the degree of responsibility of the offender as is required by the fundamental principle of proportionality…

[26] The Crown undertook an extensive review of this Court's jurisprudence including *R. v. Byers* (1989), 90 N.S.R. (2d) 263 (N.S.S.C. (A.D.)); *R. v. Downey*, (1989), 94 N.S.R. (2d) 71 (N.S.S.C.(A.D.)); *R. v. Huskins* (1990), 95 N.S.R. (2d) 109 (N.S.S.C.(A.D.)); *R. v. Scott*, 2013 NSCA 28; and *R. v. Oickle, supra*, to buttress its argument that the circumstances of this case did not, by a long shot, justify a sentence of less than two years' imprisonment.

[27] Respectfully, I am not persuaded by the Crown's able submissions. While I will say that the disposition of this appeal is a "close call", after reading the trial judge's reasons as a whole, I am not prepared to conclude the sentence she imposed is one that calls for intervention.

[28] Judge Murphy explicitly canvassed the principles of sentencing when she referenced s. 718 of the *Criminal Code* and s. 10 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (*CDSA*). She did not ignore previous decisions of this Court that have repeatedly emphasized the primacy of denunciation and deterrence when sentencing for trafficking in cocaine, as well as the lengthy period of imprisonment that will likely ensue. In fact, Judge Murphy expressly referred to many of those cases, including *R. v. Steeves*, 2007 NSCA 130, where Justice Oland on behalf of the Court said:

> [18] This court has been steadfast in emphasizing that deterrence is a primary consideration in sentencing for drug offences. …
>
> [19] Trafficking in cocaine, or its possession for the purpose of trafficking, has traditionally attracted a federal term of incarceration. … this court confirmed that a penitentiary sentence is the norm in Nova Scotia in cases involving trafficking in cocaine. …

[29] Having canvassed many of these leading authorities, Judge Murphy properly observed:

> In Nova Scotia, the sentences for possession of cocaine for the purpose have usually resulted in sentences of two years, or more. …

[30] Judge Murphy was well aware of Mr. Chase's criminal record and took those prior convictions into account as aggravating factors in his case. She said:

> The Accused has a previous record, which is acknowledged by him. He has 13 prior convictions, the most serious being one for robbery, for which he was sentenced in 2009, and for which he received a three-year period of imprisonment in a federal institution. His most recent conviction involved an assault of a police officer, and a breach of a Court Order in 2013, and for that, he was placed on a conditional sentence in the community for a period of four months.

[31] Later in her reasons the judge said:

> This case involved possession for the purpose, with a Schedule I substance, so that is an aggravating factor in relation to this matter, and Mr. Chase's previous convictions are aggravating factors that need to be considered by the Court. …

[32] Given the seriousness of the offence, Judge Murphy rejected the defence position that sentence ought to be suspended. The judge said, in part:

> In this case, I'm mindful, as with all cases where persons possess Schedule I substance for the purpose of trafficking, that denunciation and general deterrence need to be emphasized … [R]ecognizing that the normal range of sentence is a sentence of two years, or more, I am of the view that a custodial sentence is warranted, followed by a significant period of probation … [T]he cumulative [weight of] all of Mr. Chase's circumstances justify a degree of leniency in the imposition of a custodial disposition, but given the aggravating factors that are present, in my view, do not merit the sentence be suspended.

[33] Further, the judge addressed the fundamental principle of proportionality. She properly considered it, first on an individual basis, and later from a comparative perspective. Judge Murphy recognized that Mr. Chase's motivation was deliberate and driven by personal gain. She referred explicitly to the facts disclosed in the PSR that Mr. Chase had reunited with his old associates, had chosen the easy way out and intentionally reverted to selling drugs for fast cash.

[34] Then, as the law required, Judge Murphy went on to closely consider the particular circumstances of this offence and this offender. In crafting a proper sentence for Mr. Chase it is obvious the trial judge was impressed by the remarkable changes he had made in his life and his strong prospects for rehabilitation. For example, Judge Murphy referred to a number of letters filed by relatives and friends who supported Mr. Chase which spoke of "a very positive change" in his life; to the PSR which described him as a "very engaged parent", and to the facts that Mr. Chase had secured "full employment, with the possibility of advancement", was "in a stable and supportive relationship, with concrete plans for his future … and [was] a significant contributor to his household, financially".

[35] In a thoughtful and thorough analysis of the evidence, Judge Murphy contrasted these laudable changes with the very difficult upbringing Mr. Chase had experienced as a youth. She then went on to give further consideration to other sentencing principles that were particularly relevant to Mr. Chase and the crime to which he pleaded guilty:

> …Mr. Chase began living independently from his parents at the age of 15. Prior to this, his home life was one with lack of support, stability, and he

experienced a great deal of the negativity that results from addiction for both his mother, and his stepfather.

Not surprisingly, he engaged in criminal activity at an early age, and was addicted to alcohol, himself. As a result of the other -- as well as the other principles of sentencing, I am mindful, and do consider that the restraint principle, and more specifically how it's manifested in the sad life principle, has a role in the case before the Court.

The sad life principle is premised on the principle of restraint, and, thus, often considered in cases where the offender has demonstrated a genuine interest in rehabilitation. These cases often involve offenders who have been victims of sexual, or physical abuse, or have experienced a horrific upbringing. In this case, I'm satisfied that Mr. Chase did suffer a dysfunctional, and abusive upbringing.

A sentencing judge must -- to consider all of the offender's personal antecedents and put the present offences into that context in crafting a sentence which underscores the principle of restraint. This approach usually underscores a reluctance to re-incarcerate an offender, or to impose a lengthy period of incarceration, where one would otherwise have been imposed. In these situations, the objective is to fashion a sentence that will promote self-rehabilitation, and thus, protect the public in the long term.

In this instance, I accept that Mr. Chase has expressed a genuine interest in rehabilitation. In fact, unfortunately for him, that desire, or fortunately, I guess, for him, that desire was expressed in text messages while this offence was taking place.

Currently, he appears to have a good handle on his addiction. He has been five years sober. He is in a committed and loving, stable relationship which has been very supportive, and no doubt instrumental in him committing to a law-abiding lifestyle. In addition to assuming responsibility for a parenting role with his girlfriend's five-year-old son, he is enthusiastically planning for the birth of their child. Ms. [Rayner's] and his relationship with her is unquestionably, it has been a positive influence on Mr. Chase's life.

It is clear, from collateral sources, which have been presented through letters, and through the two reports that were prepared, that Mr. Chase's change has been noted by other people in his life. Truly, they do say glowing things about him. Most do speak to the change in his attitude and lifestyle that has occurred, and Mr. Chase clearly has the support of many friends and family.

In addition to these very important improvements in his personal life, Mr. Chase has obtained good employment which provides a good income for him, and his family, and provides him with a sense of pride, and purpose, and provides him with hope for advancement in his future. For someone like Mr. Chase, with his particular background, this is a very momentous thing.

I also appreciate what Mr. [Lichti] had said in relation to Mr. Chase's newfound recognition of his Aboriginal heritage. Mr. Chase has not suffered all of his life's disadvantages as a result of his Aboriginal heritage. It does seem that his non-Aboriginal parent did suffer from a great deal of things, which are factors

> which may normally consider -- come up in the Gladue context, however, and it does appear that his paternal Aboriginal line has provided him more support.
>
> I think the cases are clear that Gladue factors are often generational, passed down through a systemic injury which has plagued the Aboriginal community since colonization. It is, no doubt, difficult in certain situations to extract what factors have a discreet source (sic) these systemic issues.
>
> Regardless, it is a factor that the Court considers, but perhaps not -- doesn't give it the same weight as one would if there were -- was a clear, or bright line to the Gladue factors, but there has been, certainly, a loss of cultural linkage by Mr. Chase as a result of the breakdown of his parents' relationship, and the fact that his mother had kept his father out of his life for a great number of years.
>
> And it does appear that Mr. Chase was buoyed when he did re-connect with his father and did appear to -- that it did appear to contribute significantly to a rehabilitation. Obviously, this offence occurred after that, and it -- but it did appear that that support was important.
>
> Mr. Chase has expressed remorse, and I conclude that the remorse is genuine remorse.

[36] These and other conclusions evident in the judge's reasons led her to find that leniency was justified and warranted a departure from the traditional punishment of incarceration in a federal institution. She said:

> Having considered all of the aggravating, mitigating, and other factors identified in this case, as well as the seriousness of the offence for which Mr. Chase is being sentenced, and recognizing that the normal range of sentence is a sentence of two years, or more, I am of the view that a custodial sentence is warranted, followed by a significant period of probation, which acknowledges that Mr. Chase's circumstances, given the mitigating factors, in my view, are exceptional. In his specific circumstances. in the view of the Court, the cumulative [weight of] all of Mr. Chase's circumstances justify a degree of leniency in the imposition of a custodial disposition, but given the aggravating factors that are present, in my view, do not merit the sentence be suspended.
>
> As stated by Judge Hoskins in the *Masters* case, the case law does not clearly define, or delineate factors to consider in determining when a case is exceptional towards the sentence, outside of the usual range. In *Masters*, Judge Hoskins considered the nature and quantity of the illicit substance, the offender's involvement, and motivation to commit the offence, the age of the offender, more particularly how it relates to real potential for a successful rehabilitation, and a significant, remarkable change in circumstances since the commission of the offence.
>
> In this instance, I am satisfied that for the mitigating factors that are present, and very specifically, Mr. Chase's still rather youthful age, his significant potential for successful rehabilitation, a significant and remarkable change in circumstances since the commission of the offence, that a sentence of 90 days is warranted, followed by three years probation.

[37] In its submissions the Crown says Mr. Chase's personal circumstances are insufficient to qualify for leniency and attract a soft sentence. I agree that finding a job and providing some financial support for a pregnant girlfriend are, in and of themselves, hardly enough to entitle a convicted cocaine trafficker to a "break" on sentence. Such efforts, while laudable, should be *expected*.

[38] But there was more to Mr. Chase's situation than that. The combination of many mitigating factors described in detail by Judge Murphy obviously impressed her and gave her confidence that upon his release, Mr. Chase's prospects for rehabilitation and becoming a successful and productive member of his community were high. She concluded that the primary objectives of deterrence, denunciation, and protecting society could be achieved by an intermittent period of incarceration followed by a lengthy period of probation. On this record I am not prepared to second guess her judgment.

[39] To say that Mr. Chase's sentence falls outside what would normally be the appropriate range of sentence, does not mean that the sentence Judge Murphy imposed against Mr. Chase was necessarily unfit. In *Lacasse, supra*, Justice Wagner observed at ¶58:

> [58] There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case. LeBel J. commented as follows on this subject:
>
> > A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.
>
> (*Nasogaluak*, at para. 44)

[40] As noted earlier, part of the Crown's complaint is that the judge erred by giving little if any weight to the principle of parity. I respectfully disagree. The parity principle is not a straightjacket forcing trial judges to conduct a pointless search for a perfect facsimile or uniform sentence. Parity does not require that

sentences handed down to persons who committed the same crime always be the same. In *Lacasse*, Wagner, J. said:

> [54] The determination of whether a sentence is fit also requires that the sentencing objectives set out in s. 718 of the *Criminal Code* and the other sentencing principles set out in s. 718.2 be taken into account. Once again, however, it is up to the trial judge to properly weigh these various principles and objectives, whose relative importance will necessarily vary with the nature of the crime and the circumstances in which it was committed. The principle of parity of sentences, on which the Court of Appeal relied, is secondary to the fundamental principle of proportionality. This Court explained this as follows in *M. (C.A.)*:
>
> > It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime. . . . Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. [para. 92]

[41] What the parity principle requires is that the difference in sentences be understandable. See, for example, *R. v. Choquette*, 2010 ONCA 327 at ¶11; *R. v. Safarzadeh-Markhali*, 2014 ONCA 627 at ¶98; aff'd 2016 SCC 14; *Lacasse* at ¶67. I am satisfied that the differences Judge Murphy saw in Mr. Chase's case were supported on the evidence, and her choosing to depart from a sentence that might otherwise have been imposed can be reconciled for the reasons she expressed.

[42] To conclude on this point, a fair reading of Judge Murphy's reasons as a whole satisfies me that she did not ignore the objectives of denunciation, deterrence and protection of the public as being paramount when sentencing for serious drug offences like this one. She gave proper consideration to the principles of proportionality and parity, together with Mr. Chase's personal circumstances including his Aboriginal heritage and his very positive prospects for successful rehabilitation. In light of those laudable efforts and the trial judge's findings that Mr. Chase accepted full responsibility for his actions, was genuinely remorseful, had "turned his life around" and fully intended to become a productive member of his community, I am satisfied that the less restrictive sanction of an intermittent sentence followed by a lengthy period of probation was not so inappropriate as to warrant this Court's intervention. In sum, the Crown has not demonstrated any error in principle that influenced the sentence. I would not intervene.

(ii) **Did the trial judge err by imposing a sentence that is demonstrably unfit or manifestly inadequate, given the circumstances of the offence and the offender?**

[43] Here, the Crown's submission reiterates certain elements of its parity complaint by criticizing the sentence as being completely at odds with this Court's repeated warnings that convictions for trafficking in cocaine or its possession for the purpose of trafficking, will normally attract a federal prison term, and that Mr. Chase's personal circumstances hardly justified a departure from that norm. I have already explained why I have, respectfully, rejected that particular complaint.

[44] However, there is another aspect to the Crown's challenge. In effect, the Crown argues that Judge Murphy's decision reflects what it views as a disturbing trend in the Provincial Court to impose light sentences for serious drug offences, something the Crown says subverts Parliament's will and undermines longstanding, binding jurisprudence in this province. The Crown's factum states:

> 71. … since the Provincial Court's decision in *R. v. Rushton*, [2017 NSPC 2] in January 2017, there have been at least 8 cases (including the present case) in which offenders in Nova Scotia have received either suspended sentences or relatively brief periods of incarceration (primarily 90 day intermittent jail sentences) for trafficking in Schedule I drugs. … [followed by brief summaries of those cases]
>
> 72. The predicate for this series of decisions appears to be the Provincial Court decision in *Rushton*. The ensuing decisions rely quite heavily on *Rushton* as a basis for imposing either a suspended sentence or relatively brief period of incarceration …
>
> 73. Aside from being dramatically outside the sentencing range … established by this Court, the apparently increasing frequency of the type of sentence imposed in this case … undermines Parliament's intent to address the gravity and moral blameworthiness of trafficking in Schedule I drugs.
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> …
>
> 78. As mentioned at the outset, should this Court endorse the sentence imposed on the Respondent, it will be read as a significant recalibration of the approach to sentencing Schedule I drug traffickers in this jurisdiction. It will no doubt contribute to the increasing frequency of this type of lenient sentence for such offenders – a trend that appears to have already taken hold in this Province.
>
> 79. If the imposition of such sentences were to become unexceptional or commonplace for Schedule I drug traffickers, it would significantly erode the strong denunciatory and deterrent message required to protect society from the devastating impact of these offences. Such sentences risk seriously diminishing the perceived gravity and expected consequence of such crime. …

[45] While the Crown's reasons for sounding the alarm are worrisome and deserve careful scrutiny, I am not persuaded – on this record – that they are made out.

[46] Both the appellant and the respondent cite this Court's decision in *R. v. Scott*, 2013 NSCA 28. It is a good place to begin. Although Judge Murphy incorrectly quoted from the dissenting opinion in her reasons, nothing here turns on that minor slip. In *Scott*, my colleague Justice Beveridge, writing for the majority, rejected the notion that proof of "exceptional circumstances" operated as a kind of condition precedent before a sentencing judge could consider imposing a lesser sentence than federal imprisonment, following a conviction for a serious drug offence. To introduce such a requirement would, in effect, amount to a revision of the criminal law and thereby usurp Parliament's legislative authority. At ¶53, Beveridge, J.A. outlined the proper approach lower courts must take when sentencing traffickers of Schedule I drugs in Nova Scotia:

> [53] There is no question that this Court has long stressed the need to emphasize deterrence and denunciation for those that traffic in cocaine, and depending on the circumstances of the offence and of the offender, may well mean that a sentence of federal incarceration is called for. With all due respect, what I cannot accept is that these or any other cases make a federal prison term mandatory – to be avoided only if an offender can demonstrate "exceptional circumstances".

[47] That approach was reiterated by this Court a few months later in *R. v. Howell*, 2013 NSCA 67 where Beveridge, J.A. observed:

> [9] In *R. v. Scott*, the majority judgment of this Court emphasized that deference is owed to a trial judge's determination of sentence via the usual and appropriate balancing of the objectives and principles of sentence. And that determination is not to be supplanted by a new paradigm about whether or not there are exceptional circumstances. …

[48] From all of this it can be said with certainty that nothing has changed this Court's repeated and consistent warning that deterrence and denunciation will continue to be the primary objectives when sentencing persons who choose to traffic in cocaine, and that convictions will normally attract a federal prison term. However, that does not mean that in an appropriate case, depending upon the particular circumstances of the offence and the offender, a lesser sentence cannot be imposed.

[49] In my respectful opinion, that is exactly the approach Judge Murphy took in this case.

[50] In its written and oral submissions the Crown included a list of other Provincial Court decisions, several of which we were advised are under appeal before this Court. It is for that reason that I will only refer to two cases from the

list of decisions the Crown has impugned, they being two that the Crown chose not to appeal.

[51] The first is *R. v. Rushton,* 2017 NSPC 2, a case where Buckle, P.C.J. imposed a suspended sentence with three years' probation following the accused's guilty plea to the possession of cocaine (6 grams) and marihuana (2.5 pounds) for the purpose of trafficking contrary to s. 5(2) of the *CDSA*, possession of methamphetamine (5 tablets) contrary to s. 4(1) of the *CDSA*, and two counts of violating a youth sentence or disposition contrary to s. 137 of the *Youth Criminal Justice Act*, S.C. 2002, c. 1. There, Judge Buckle, in a comprehensive 26-page written decision, said in part:

> [80] Section 718.2 also requires consideration of the principles of parity. This requires an examination of the range of sentences imposed for trafficking cocaine or other Schedule I substances. A long line of cases from our Court of Appeal have established that cocaine traffickers should generally expect to be sentenced to imprisonment in a federal penitentiary (See: *Steeves*, 2007 NSCA 130; *Knickle*, 2009 NSCA 59; *Butt*, 2010 NSCA 56; *Jamieson*, 2011 NSCA 122; and *Oickle*, 2015 NSCA 87).
>
> [81] The Court, however, has never established that a federal penitentiary term is mandatory and has recognized that in some circumstances the principles of sentencing can be otherwise satisfied. In those cases, shorter periods of custody served in a provincial institution or in the community under a conditional sentence order, when those were available, have been accepted. (See for example: *R. v. Scott (supra)*; and, *R. v. Howell*, 2013 NSCA 67.)
>
> [82] In *R. v. Scott (supra)*, Beveridge, J.A., writing for the majority, concluded that it was not necessary for a sentencing judge to find "exceptional" circumstances to justify a sentence lower than two years for trafficking cocaine (at para. 53). The task of a sentencing judge in imposing a sentence for cocaine trafficking is the same as any other offence – "considering all of the relevant objectives and principles of sentence as set out in the *Criminal Code*, balancing those and arriving at what that judge concludes is a proper sentence" (para. 26).
>
> [83] I take from his reasons that while it may be rare for a cocaine trafficker to receive a sentence less than a federal penitentiary sentence, where the proper application of sentencing principles justifies that result, a sentencing judge is not required to make any specific conclusion that the circumstances are exceptional.
>
> …
>
> [97] Based on the circumstances in this case I conclude that the principles and purpose of sentencing, including denunciation and general deterrence do not require a penitentiary sentence.
>
> [98] If I were required to determine whether exceptional circumstances exist in this case, I would find that they do. I say this because of Mr. Rushton's youth (just barely an adult at the time of the offences), his limited prior youth record, his addiction and the circumstances that resulted in his addiction, and his

> behaviour since arrest which include seeking treatment, maintaining sobriety, complying with terms of release, completing high school, working, and his volunteer activity.
>
> …
>
> [102] I recognize that this sentence is not within the general range for this offence in Nova Scotia. However, I am satisfied that because of the circumstances, a sentence outside of the range is justified on proper application of the sentencing principles. In short, I am satisfied that leniency is warranted. I see real hope for rehabilitation in Mr. Rushton and I am prepared to take a chance on him.

[52] In my respectful view, the parts of Judge Buckle's decision I have quoted above are an accurate statement of the law and reflect a thoughtful and appropriate exercise of her judicial discretion.

[53] The other case is the decision of Hoskins, P.C.J. in *R. v. Masters*, 2017 NSPC 75 which I would say reflects the same careful application of sentencing principles and judicial discretion. There, Mr. Masters ultimately pleaded guilty to possessing 198 tablets of methamphetamine for the purpose of trafficking contrary to the *CDSA*. In a lengthy written decision Judge Hoskins said, in part:

> [8] The inherent nature of this offence, however, is aggravating because it requires a degree of planning and aforethought. Based on the undisputed facts, I am forced to the inescapable conclusion that Mr. Masters made a conscious and deliberate choice to engage in trafficking in a Schedule 1 substance.
>
> …
>
> [12] Mr. Masters has pleaded guilty and has accepted responsibility for the offence, thereby saving substantial resources to the justice system.
>
> [13] He has also expressed genuine remorse, and a sincere desire to seek treatment and/or counselling, which he understands and appreciates that he needs.
>
> [14] The Pre-Sentence Report is relatively positive, as it suggests that Mr. Masters is motivated to make the necessary changes in his life to assist in his rehabilitation, including participating in meaningful treatment programs and/or counselling.
>
> [15] Mr. Masters is a first offender. He has no criminal record.
>
> [16] He is only 24 years of age. He is a youthful, first offender.
>
> [17] Mr. Masters was motivated by his need to feed his drug addiction. In *R. v. Andrews*, [2005] O.J. No. 5708 (S.C.), Hill, J., emphasized the significance of the distinction between a drug addict, who is trafficking for the purpose of supplying his or her habit, and the non-addict, who is trafficking purely out of motives of greed.
>
> …

[19] Mr. Masters has recently gained more insight into his addiction, and perhaps the underlying causes of that addiction can be addressed. He has sought treatment and has expressed a desire to continue counselling and/or treatment.

…

[49] This is a very serious offence as reflected by Parliament's imposition of a maximum sentence of *life* imprisonment. Indeed, the Nova Scotia Court of Appeal has repeatedly stated, for more than 25 years (at least since 1984), that persons involved in trafficking in Schedule 1 offences will be subject to sentences of incarceration. For example, in *R. v. Steeves*, 2007 NSCA 130, at para. 18, the Court stated:

> [18] This court has been steadfast in emphasizing that deterrence is a primary consideration in sentencing for drug offences. In *R. v. Robins*, [1993] N.S.J. No. 152 (C.A.), Chief Justice Clarke stated at p. 1:
>
> > . . . The position of this court, repeated in many of our decisions since *Byers*, is that there are no exceptional circumstances where cocaine is involved. We are persuaded that general deterrence must be prominently addressed if the public is to be protected from the nefarious trade that has developed in this drug that is so crippling to our society.
>
> See also, for example, *R. v. McCurdy* [2002] N.S.J. No. 459 at para. 15.

[50] In *R. v. Butt*, [2010] N.S.J. No. 346 at para. 13, the Nova Scotia Court of Appeal, in addressing the devastating effects of cocaine, stated:

> [13] . . . cocaine has consistently been recognized by this Court as a deadly and devastating drug that ravages lives. Involvement in the cocaine trade, at any level, attracts substantial penalties (see, for example, *R. v. Conway*, 2009 NSCA 95; *R. v. Knickle*, 2009 NSCA 59, *R. v. Steeves*, 2007 NSCA 130; *R. v. Dawe*, 2002 NSCA 147; *R. v. Robins*, [1993] N.S.J. No. 152 (Q.L.) (C.A.); *R. v. Huskins*, [1990] N.S.J. No. 46 (Q.L.) (C.A.); and *R. v. Smith*, [1990] N.S.J. No. 30 (Q.L.) (C.A.)). It is significant that the *CDSA* classifies cocaine as one of the drugs for which trafficking can attract a life sentence.

[51] More recently, in *R. v. Oickle*, 2015 NSCA 87, Scanlan, J.A., stressed that sentences must continue to send a message that possessing Schedule 1 drugs for the purpose of trafficking, or trafficking in cocaine and morphine, will be treated most seriously by courts. He wrote, at para. 31:

> [31] This Court has consistently commented on the dangers to the communities posed by individuals who choose to traffic Schedule 1 drugs such as cocaine. Deterrence and denunciation remain at the forefront in terms of sentencing in relation to trafficking of Schedule 1 drugs.

[52] The Nova Scotia Court of Appeal has repeatedly emphasized that deterrence is a primary consideration in sentencing for drug offences, especially offences involving trafficking in Schedule 1 offences or for possessing it for the purpose of trafficking. Thus, in the present case there must be a strong emphasis on the principles of *denunciation* and *deterrence*. Sections 718(a) and (b) of the

Criminal Code identify denunciation and deterrence as appropriate objectives of sentencing. Where the primary objective of sentencing is denunciation, the sentence must publicly condemn the offender's conduct. Denunciation typically plays a more central role in drug offences involving dangerous drugs such as Schedule 1 offences because they pose an especially high risk to users and the community. Where the primary objective is also deterrence, the sentence must attempt to discourage individuals through specific deterrence as well as to deter other potential offenders from committing similar offences by way of general deterrence. Where, as in this case, the primary purpose of sentencing is to deter and denounce this type of behaviour, the Court must ensure its sentence is perceived by the public as strong condemnations of this type of behaviour.

[53] While the Nova Scotia Court of Appeal has repeatedly and consistently stated that offenders involved in trafficking Schedule 1 offences should receive a *federal* term of incarceration as the norm, the Court has clearly recognized that there is no minimum punishment of imprisonment mandated for these specific offences. In other words, the Court of Appeal had not precluded the possibility of the imposition of a conditional sentence for persons involved in trafficking in cocaine, or involved in the possession of it for the purposes of trafficking, when it was available.

…

[55] In *Steeves*, at para. 20, the Court held:

> [20] While time served in a federal penitentiary is the norm, this is not to say that conditional sentences are precluded for trafficking in cocaine. Conditional sentences have been imposed where the judge has determined that exceptional circumstances exist. See, for example *R. v. Cameron*, [2002] N.S.J. No. 163 (S.C.); *R. v. Provo*, [2001] N.S.J. No. 526, 2001 NSSC 189; *R. v. Messervey*, [2004] N.S.J. No. 520 (P.C.); and *R. v. Coombs*, [2005] N.S.J. No. 158, 2005 NSSC 90. Circumstances that are sufficiently exceptional as to change a sentence of incarceration for such a serious offence to one that can be served in the community are rare.

…

[59] In view of all of the foregoing, it seems that although the range for the offence of trafficking in Schedule 1 is two or more years, there are cases where the circumstances are sufficiently mitigating to warrant a sentence of less than two years of imprisonment. (See, for example: *Dawe*; and *Robbins*; *Rushton*; and *Christmas*). Indeed, there are cases where conditional sentences have been imposed where the judge has determined that *exceptional circumstances* exist. (See, for example: as noted in *Steeves*; *Cameron*; *Provo*; *Messervey*; *Coombs*; and more recently, *R. v. Scott*, [2012] N.S.J. No. 80).

…

[68] In view of these observations, the law does indeed confirm that there is a place for leniency when sentencing youthful offenders, even for serious offences such as the offence in the present case.

> [69] Having carefully considered and weighed all of the mitigating factors earlier identified in this case against the seriousness of the offence and the normal range of sentence for this specific offence and offender, I am of the view that a custodial sentence is warranted followed by a significant period of probation, which recognizes the mitigating factors surrounding the offence and offender, Mr. Masters. A custodial sentence is warranted, notwithstanding that Mr. Masters is a youthful, first offender. The cumulative weight of all of the mitigating factors justify leniency or reduction in the imposition of a custodial disposition, but does not warrant, in my view, a non-custodial disposition, as was the case in Rushton.
>
> [70] Put differently, I do not find that the cumulative weight of the mitigating factors sufficient to justify the imposition of a non-custodial disposition. Rather, I am the view that the cumulative weight of all of the mitigating factors present in this case justifies an imposition of a custodial sentence coupled with a significant period of probation.
>
> …
>
> [86] To conclude, I want to re-emphasize the important principles that have guided me in reaching my decision here today to impose a 90-day term of imprisonment coupled with a[three-year] period of probation; that is, the principles of denunciation and deterrence. These principles have been repeatedly and consistently emphasized by the Court of Appeal, as noted earlier in these reasons. I should add that while there was an emphasis on the principles of denunciation and deterrence in this case, it was not at the exclusion of other important principles of sentencing such as rehabilitation.
>
> [87] I am mindful that a proper sentence must take into account the aggravating factors of this offence; namely, the nature of the offence, the type of drugs involved, the prevalence of the offence in the community, and balance them against all of the mitigating factors identified earlier in these reasons including Mr. Masters' lack of criminal record, his plea of guilty, his expression of remorse, his relatively positive Pre-Sentence Report and his continued support of his family.
>
> [88] For all of the foregoing reasons, having carefully considered all of the circumstances surrounding the offence and Mr. Masters, I conclude that the appropriate sentence to be imposed upon Mr. Masters is a term of imprisonment of 90 days coupled with a three-year period of probation.

[54] Taking care, as I must, to restrict my comments to the decisions of Judge Buckle and Judge Hoskins in the *Rushton* and *Masters* cases referenced above, it seems to me that their approach reflects an accurate statement of the law and a reasonable exercise of judicial discretion. Judge Murphy did not err by endorsing the analysis undertaken by her colleagues in those matters or choosing a similar approach in this case.

[55] There are other good reasons to respectfully decline the Crown's attempt to sound a floodgates alarm. In this, I prefer the respondent's persuasive rebuttal found at ¶76-77 of his factum:

> 76. The Appellant has made reference to at least eight (8) other cases since January, 2017, where federal incarceration was not imposed for Schedule I trafficking related offences. This is a bit misleading. There has been no accounting for, what the Respondent would venture to say, is a sizable number of cases where federal time has been imposed. There are at least four reported decisions during this time period where federal incarceration was imposed for Schedule I trafficking related offences. This, of course, does not account for the myriad of unreported judgments that occur at the trial levels of court either through joint recommendations or otherwise. Indeed, inquiries of the Justice Enterprise Information Network (JEIN), Nova Scotia Department of Justice, since the initiation of this appeal, have led to the opposite conclusion. The Respondent has become aware that there have been 145 cases involving 130 people where federal sentences for charges under section 5 of the CDSA between February, 2017, and November, 2018, have been imposed. [case citations omitted]
>
> 77. There is an alarmist impression left by the tone of the Appellant's argument that Schedule I offences are being consistently dealt with by non-custodial or intermittent custodial sentences. The existence of eight (8) sentencing court judgments over two years is hardly a "crisis". …

[56] Furthermore, one can take judicial notice of the fact that Judges Murphy, Hoskins and Buckle are all very experienced trial judges who preside at two of the busiest Courthouses in Nova Scotia, one located in Dartmouth and the other in Halifax. If there happened to be a noticeable spike in the number of Schedule I drug offences taking place in the city, one can say with confidence that they would be the first to see it. Their unique vantage point as judges serving at the "front lines" of our justice system, is one of many reasons why such a heightened level of deference is paid to the broad discretion they wield in sentencing. These advantages of personal insight and familiarity were underscored by Chief Justice Lamer in *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500 at ¶91-92:

> [91] This deferential standard of review has profound functional justifications. … in the absence of a full trial, where the offender has pleaded guilty to an offence and the sentencing judge has only enjoyed the benefit of oral and written sentencing submissions … the argument in favour of deference remains compelling. A sentencing judge still enjoys a position of advantage over an appellate judge in being able to directly assess the sentencing submissions of both the Crown and the offender. A sentencing judge also possesses the unique qualifications of experience and judgment from having served on the front lines of our criminal justice system. Perhaps most importantly, the sentencing judge will normally preside near or within the community which has suffered the consequences of the offender's crime. As such, the sentencing judge will have a

> strong sense of the particular blend of sentencing goals that will be "just and appropriate" for the protection of that community. The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community. The discretion of a sentencing judge should thus not be interfered with lightly.
>
> [92] … courts of appeal must still exercise a margin of deference before intervening in the specialized discretion that Parliament has explicitly vested in sentencing judges. It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime. See *Mellstrom, Morrissette* and *Baldhead*. Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offence should be expected to vary to some degree across various communities and regions in this country, as the "just and appropriate" mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred. ….
>
> [Underlining mine]

See *R. v. MacDonald*, 2014 NSCA 102 at ¶54-55.

[57] *Lacasse* also reminds us of the significant deference owed by appellate courts when considering the weight a trial judge chooses to give to relevant factors in the delicate balancing process that sentencing requires. Here again the observations of Wagner, J. in *Lacasse* are instructive:

> [48] The reminder given by this Court about showing deference to a trial judge's exercise of discretion is readily understandable. First, the trial judge has the advantage of having observed the witnesses in the course of the trial and having heard the parties' sentencing submissions. Second, the sentencing judge is usually familiar with the circumstances in the district where he or she sits and therefore with the particular needs of the community in which the crime was committed: *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 91. Finally, as Doherty J.A. noted in *R. v. Ramage*, 2010 ONCA 488, 257 C.C.C. (3d) 261, the appropriate use of judicial resources is a consideration that must never be overlooked:
>
> > Appellate repetition of the exercise of judicial discretion by the trial judge, without any reason to think that the second effort will improve upon the results of the first, is a misuse of judicial resources. The exercise also delays the final resolution of the criminal process, without any countervailing benefit to the process. [para. 70]
>
> [49] For the same reasons, an appellate court may not intervene simply because it would have weighed the relevant factors differently. In *Nasogaluak*, LeBel J.

referred to *R. v. McKnight* (1999), 135 C.C.C. (3d) 41 (Ont. C.A.), at para. 35, in this regard:

> To suggest that a trial judge commits an error in principle because in an appellate court's opinion the trial judge gave too much weight to one relevant factor or not enough weight to another is to abandon deference altogether. The weighing of relevant factors, the balancing process is what the exercise of discretion is all about. To maintain deference to the trial judge's exercise of discretion, the weighing or balancing of relevant factors must be assessed against the reasonableness standard of review. Only if by emphasizing one factor or by not giving enough weight to another, the trial judge exercises his or her discretion unreasonably should an appellate court interfere with the sentence on the ground the trial judge erred in principle. [para. 46]

[Underlining mine]

[58] As a very experienced trial judge, Judge Murphy would be well aware of the realities that prevail in her community. Armed with that familiarity, she correctly applied proper sentencing principles to the circumstances that pertained to Mr. Chase and the crime to which he pled guilty, and then weighed all relevant factors as part of the delicate balancing process sentencing demands. Reading her decision as a whole, I am unable to say that she either erred in principle, exercised her broad discretion unreasonably, or imposed a sentence that was manifestly unfit.

Conclusion

[59] For all of these reasons, while I would grant leave, I would not disturb the sentence, and would dismiss the appeal. I would also record my thanks to both counsel for the quality of their written and oral submissions.

Saunders, J.A.

Concurred in:

Beveridge, J.A.

Bryson, J.A.