

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Shalaan*, 2020 NSPC 25

Date: 20200622

Docket: 8294447, 8296303, 8296305, 8296307

Registry: Kentville

Between:

Her Majesty the Queen

v.

Dhari Shalaan

Judge:	The Honourable Judge Ronda van der Hoek,
Heard:	June 22, 2020
Written Decision	July 5, 2020
Counsel:	Dan Rideout, for the Crown Trevor McGuigan, for the Defendant

By the Court:

Introduction:

[1] On June 22, 2020 I delivered my oral sentencing decision by video and Skype, these are the complete written reasons.

[2] During a routine traffic stop on Highway 101 in the Annapolis Valley, Mr. Shalaan scuffled with an arresting officer, drew a concealed firearm, and pointed it at him. The officer drew his own firearm and shot Mr. Shalaan in the hand. Mr. Shalaan fled the area and some time later he was apprehended, and the abandoned firearm was recovered from a field.

[3] Mr. Shalaan accepted responsibility for his actions and entered guilty pleas to four charges. He acknowledges assaulting Cst. Brad Savage contrary to section 270(1)(a) CC, pointing a firearm at the officer contrary to s. 87(1) CC, carrying a concealed restricted weapon contrary to s. 90 CC, and doing all these things while subject to a lifetime firearms prohibition, contrary to s. 117.01(1) CC.

[4] The Crown proceeded by indictment and the following maximum penalties apply:

1. Section 270(1)(a) CC, assaulting a peace officer engaged in his duty is subject to a maximum term of imprisonment not to exceed five years.

2. Pointing a firearm at another person, contrary to s. 87(1) CC carries a maximum term of imprisonment not to exceed five years.
3. Carrying a concealed weapon contrary to s. 90 CC is subject to a maximum term of imprisonment not to exceed five years.
4. Possessing a restricted weapon while prohibited from doing so by an order made under the *Criminal Code*, contrary to s. 117.01(1) CC carries a maximum term of incarceration not to exceed ten years.

[5] Mr. Shalaan has been in custody since his apprehension on December 11, 2018. As a result, he has spent 560 days in the institution, for which he will receive 840 days credit.

Issues:

- 1) Whether the time Mr. Shalaan spent in custody, some of which occurred during the Covid-19 national pandemic, should be assessed as two days for each day spent in custody.**
- 2) Has Mr. Shalaan served sufficient time in custody such that he should be immediately released or, more particularly, what is a fit and proper sentence.**

Decision:

[6] First, the Court is not persuaded that a 2-1 assessment of time spent in custody is appropriate in these circumstances. Mr. Shalaan has not endured anything out of the ordinary arising from Covid-19 institutional measures. There is no active spread of the disease in the facility and other than a restriction on services in the past ten weeks, he has not suffered sufficiently to warrant benefit of a 2-1 application for time served.

[7] A sentence necessary to meet the objectives of denunciation and deterrence requires Mr. Shalaan serve a lengthy period in custody. Pointing a gun at a police officer is a serious offence that must be strongly discouraged and the cost of engaging in such an action must be severe. As a result, Mr. Shalaan is sentenced accordingly:

1. Section 270 CC-3 years
2. Section 87 CC-3 years concurrent
3. Section 90 CC-1- year consecutive to sections 270 and 87
4. Section 117 CC-2 years concurrent to section 90 and consecutive to sections 270 and 87 for a total sentence of 5 years.

[8] These are my reasons for reaching this conclusion, but first the facts.

Circumstances of the Offence:

[9] An agreed statement of facts was prepared by Crown and defence and entered as an exhibit. It is short, and I can do no better than to simply reproduce a summary of it here.

1. On December 11th, 2018 at approximately 4:00 a.m. Constable Brad Savage of the Kingston RCMP conducted a traffic stop on Highway 101, near Berwick NS, on a vehicle that was operated by Dhari Shalaan.

2. The initial reason for the traffic stop was a burnt-out head light and speeding. There was also a passenger in the vehicle.

3. Interactions roadside with Mr. Shalaan led to Cst. Savage detaining him on an impaired driving investigation. Cst. Savage noticed Mr. Shalaan was acting oddly while inside the vehicle, tucking his elbows and moving his hands by his sides.

4. Mr. Shalaan was asked to step out of his vehicle, and did so, walking as directed towards Cst. Savage's police vehicle. While walking, Cst. Savage noted Mr. Shalaan was holding his arm to one side suggesting to the officer that there may be something secreted on his person, inside his jacket or coveralls.

5. Once at the police vehicle, Mr. Shalaan refused to cooperate with Cst. Savage's commands to facilitate a search for officer safety. After being warned, Mr. Shalaan was placed under arrest for obstruction, at which time he spun around and physically resisted Cst. Savage, resulting in the two being separated by several feet and facing each other.

6. Cst. Savage then saw what appeared to be a gun in Mr. Shalaan's hand, pointing at him. Mr. Shalaan yelled "freeze" at Cst. Savage who

responded by discharging his service pistol, resulting in Mr. Shalaan being struck in the thumb.

7. Mr. Shalaan fled the area on foot while Cst. Savage remained on scene for officer safety reasons, including the presence of the passenger in Mr. Shalaan's vehicle.

8. Cst. Savage communicated by radio to RCMP dispatch requesting assistance from other officers. When officers arrived on scene, immediate arrangements were made to alert local residents to stay inside, a local school remained closed for the day, Highway 101 between Berwick and Aylesford was closed, and a search for Mr. Shalaan commenced.

9. A few hours later, Mr. Shalaan was located by police in a nearby wooded area.

10. Highway 101 remained closed for several days as officers searched for the gun that was eventually found on December 17, 2018. Testing at the RCMP Forensic Laboratory determined it was not in operating condition upon receipt because the trigger/hammer mechanism would not operate. The side plate was removed, and the trigger/hammer function was restored. As such, the revolver was determined to be a revolver meeting the definition of

“firearm” under section 2 of the Criminal Code and a “restricted firearm” as defined by section 84 of the Criminal Code. There was no ammunition located in the revolver.

11. A spot of blood found on the handle/grip of the revolver was tested and determined to be that of Mr. Shalaan. This revolver was the same one Mr. Shalaan pointed at Cst. Savage on the roadside.

12. Based on the foregoing, Mr. Shalaan possessed the revolver, a restricted firearm, in breach of a lifetime Firearms Prohibition imposed on May 1, 2014, pursuant to section 109 of the Criminal Code.

Circumstances of the Offender:

[10] A thorough and detailed presentence report, prepared while Mr. Shalaan was on remand, aided the parties in formulating their sentencing submissions.

[11] Mr. Shalaan is no stranger to the feelings he engendered in Cst. Savage. The report disclosed that Mr. Shalaan is the 27-year-old son of a father who was murdered by his mother and uncle when Mr. Shalaan was but three years of age. His family had moved to Canada only a year earlier to seek better health care for Mr. Shalaan’s congenital hip problem for which he required extensive treatment.

[12] Defence counsel advises Mr. Shalaan's mother was found not guilty of the crime, but fled the country leaving the children behind and in foster care.

[13] The report outlines the arrival soon after of a cousin from Kuwait who became the boys' primary care provider until they reached the age of 18. That was not a happy placement and Mr. Shalaan endured an upbringing void of emotional attachment and the warmth of a father figure. The cousin was cold, physically abusive, and did not allow the boys to discuss their father or their feelings related to his murder. In retrospect, and without minimizing the abuse he and his brother experienced under his care, Mr. Shalaan believes his cousin was not emotionally equipped to provide proper care and likely did the best he could. Overall, Mr. Shalaan does not have any positive relationships with members of his extended family.

[14] At 15 years of age, Mr. Shalaan, and his brother, relocated to the United States for three years where their cousin found employment. When the three returned to Canada Mr. Shalaan and his brother were able to access their inheritance and bought a house. The cousin returned to Kuwait.

[15] The return to Canada was challenging and Mr. Shalaan had a difficult time fitting in. He was taken advantage of by his peers who were aware that he and his brother had inherited a substantial amount of money from their father's estate.

[16] Mr. Shalaan recalled a time when he was on a Court-ordered curfew and, "some guys showed up" to try to cause problems for him. He says the men tried to "rush in" to the house and he felt unsafe in his surroundings as a result. His contact with police did not leave him feeling protected by them.

[17] Mr. Shalaan, a victim of abuse at various stages in his life, lives with guilt and feelings of shame as a result of these experiences; fortunately, he understands the situations are not his fault.

[18] His current family- Mr. Shalaan has a five-year-old son from a six-year committed relationship. While he and the mother are no longer together, he provides financial support and hopes to be an integral part of his son's life when he returns to the community.

[19] His education-Mr. Shalaan completed high school in the US where he was a good maths student. Not surprisingly, his troubled youth led to physical altercations with peers due to his anger arising from problems in his home. As a result, he was suspended from school on more than one occasion.

[20] After returning to Canada he obtained a welding certificate from the Nova Scotia Community College (2011), and he would like to return to the school to study in the Communications Program.

[21] Employment History- Since 2017 Mr. Shalaan worked for 4th Generation Contracting, a business owned by his friend John Murphy. Mr. Murphy says he intends to rehire Mr. Shalaan to work 40 hours per week as a carpenter upon release from custody. Mr. Murphy is supportive of Mr. Shalaan and described him as a good and reliable person who attends work as scheduled and interacts positively with other employees.

[22] In the past, Mr. Shalaan has also volunteered with Habitat for Humanity where he assisted in building a house. Overall, he expresses a hope to return to society to be a productive employee who will not allow his criminal history to negatively impact his ability to be a good father and member of his community.

[23] Counselling- While in foster care, Mr. Shalaan received therapy services from Ken Osbourne which continued from age three to sixteen. At therapy he addressed issues surrounding the murder of his father and the arrest of his mother for the murder. Since then their contact has been sporadic with no communication or sessions in the past year. Mr. Shalaan did express willingness to re-connect with

this therapist to address personal and mental health issues. In 2011, Dr. Holland diagnosed Mr. Shalaan with Post Traumatic Stress Disorder.

[24] Mr. Shalaan holds strong religious beliefs that do not align with the use of alcohol or drugs. He attends services daily and is active in the prison chapel. He also enjoys active time with his son and is physically fit.

[25] The PSR author says Mr. Shalaan presented as polite, respectful, and answered all questions posed in a direct and, what appeared to be, forthright manner. He offered personal strengths such as being knowledgeable, supportive, of strong opinions, reliable, and punctual. As a personal weakness he listed serious issues with trust and always longing for close family relationships which were never accessible to him as a child.

[26] His current peer group is reportedly very small consisting of his brother and his boss. The friendship with the latter began when the two attended a year of school together and has developed into a supportive friendship.

[27] Mr. Shalaan told the author of the PSR that he takes responsibility for his actions, maintaining they arose as a trauma response based on a history of abuse and neglect spanning the course of his life. He says he was triggered when the police officer physically restrained him, and he was already in a heightened state of

fear and not trusting people in his surroundings due to an attempted break-in at his home.

[28] Leanne Nash, Case Management Officer at the Northeast Nova Scotia Correctional Facility, reported that Mr. Shalaan was involved in a total of eight incidents during his current time in custody, the last incident occurred in October 2019. The incidents involved altercations with other offenders, disobeying orders, and detrimental behaviour. CMO Nash did note an improvement in Mr. Shalaan's behaviour since that time and notes he has been engaged in positive interactions with other offenders on the unit.

[29] She also confirmed Mr. Shalaan has completed the Options to Anger Program (O2A) as well as a course offered through the Nova Scotia Community College while on remand.

The Criminal Record:

[30] Helpfully provided by the Crown in chart format is the criminal record, reproduced here for ease of reference.

OFFENCE	SENTENCING DATE	SENTENCE ORDERED
Section 267(a) CC Assault with a weapon	May 2, 2012	Conditional Discharge, Probation Order (2 years)
Section 267(a) CC	May 2, 2012	Conditional Discharge, Probation

Assault with a weapon		Order (2 years)
Section 733.1(1) CC Breach of probation	May 1, 2014	1 day jail deemed served
Section 355(b) CC Possession stolen property	May 1, 2014	1 day jail deemed served
Section 92(1) CC Possession of firearm knowing possession unauthorized	May 1, 2014	1 year jail consecutive Firearms Prohibition (s. 109) – lifetime
Section 733.1(1) CC Breach of probation	May 1, 2014	1 day jail deemed served
Section 95(1) CC Possession of a prohibited or restricted firearm with ammunition	May 1, 2014	3 years jail Firearms Prohibition (s. 109) – lifetime
Section 5(2) CDSA Possession for the purpose of trafficking	May 1, 2014	2 years jail (concurrent) Firearms Prohibition (s. 109) – 10 years
Section 88(1) CC Possession of a weapon for a dangerous purpose	April 5, 2018	45 days jail (concurrent to time serving at Federal facility)(60 days of pre-sentence custody served)

[31] To summarize, this is the fourth time Mr. Shalaan has been before a court in his young life. In May 2012, he received a conditional discharge and a 10-year s. 109 CC firearm prohibition for two counts of assault with a weapon occurring March 2011. Two years later, in May 2014, he was sentenced for serious matters arising in August 2013. Specifically, he received a 4-year federal sentence for s. 5(2) CDSA-2 years, s. 95(1) CC -3 years concurrent, s. 92(1) CC- 1-year consecutive, and a day on each of two s. 733.1 CC and s. 355(b) CC. In February 2018, he possessed a weapon for a dangerous purpose, a taser, and was sentenced in April 2018 to 45 days as a parole violator. Ten months later, Mr. Shalaan committed the offences before this court.

[32] The Crown, with consent, elaborated on the offences for which Mr. Shalaan was sentenced on May 1, 2014. And while unusual to hear such a level of detail at a sentence hearing, it did serve to inform the Court that Mr. Shalaan was, on another occasion, stopped in a vehicle by police and a gun, that time cocked and loaded, was located and attributed to him. That gun was hidden under the passenger seat and bore Mr. Shalaan's fingerprints. Others were later found in his residence.

[33] At the time of his significant sentencing hearing he was 22 years old with a welding certificate and trying to turn his life around. Judge Buchan accepted the joint sentence recommendation and invited Mr. Shalaan to take services in jail. His sentence was meant to reflect, in some part, the need for rehabilitation. However, he was released back to the community and was back before the court in short order, possessing a taser at a traffic stop contrary to section 88(1) CC for which he was sentenced to 45 days incarceration on April 5, 2018, as a parole violator. Ten months after release, he faces these new offences.

[34] The theme- Mr. Shalaan continues to make dangerous and unwise decisions. The very nature of the offences speaks to the dangerous and cavalier actions that are consistent with his record, but I am not sentencing him for the past offences,

instead I must focus on the ones before me ever mindful of the nature of the related matters.

The Victim Impact Statement:

[35] After hearing the Agreed Statement of Facts, Cst. Brad Savage elected to read his victim impact statement from the Kentville Courtroom while the Court observed by video from a different location. This situation arose due to the Covid-19 national pandemic that rendered in-person proceedings unavailable for this court location. Mr. Shalaan also benefited from observing and hearing Cst. Savage from a video conferencing room at the jail.

[36] Cst. Savage's statement was both moving and powerful in its honesty, while at the same time demonstrating his compelling sense of humanity, representing the highest level of dignity expected of a fine RCMP officer serving this country.

[37] While difficult to imagine the turmoil Cst Savage experienced looking down the barrel of a gun, he was well able to state it in a compelling and sincere manner. His life flashed before his eyes and the thought of his young children left fatherless has left him grappling with PTSD symptoms. That Cst. Savage says he is "glad he did not kill Dhari", is a testament to his own excellent character.

Position of the Parties:

[38] The Crown seeks a total of seven to eight-years' incarceration as follows: s. 270(1) CC, three or four-years; s. 87(1) CC a concurrent three-years; s. 90 CC an additional year consecutive to the former; and for s. 117.01(1) CC three years consecutive.

[39] The Crown says each day spent on remand should count as 1.5 days, and that time should be applied to and deducted from the sentence imposed on the s. 117.01(1) CC offence.

[40] It is mandatory that the Court impose both a s. 109 CC firearms prohibition order for life and a s. 491 CC forfeiture order for the firearm, and I grant both orders which shall apply to the s. 270 CC charge.

[41] Defence counsel takes an entirely different position on a fit and proper sentence, asking the Court to impose 18 months on all offences concurrent one to the other, and a consecutive sentence of 9 months on the s. 117.01 CC offence. This would total 27 months and, as a result, his time would be deemed served by his remand time.

[42] Defence also seeks a two-year period of probation to address rehabilitation, pointing out that Mr. Shalaan can still be rehabilitated and needs the help. Finally, he says the sentence should not be so long as to crush that hope.

[43] The Court is also asked to consider assessing time in custody on a 2-1 calculation because of the Covid-19 pandemic. In recent matters, I have received a letter from Corrections Services setting out the measures and limitations affecting prisoners during this time. For example, reduced programming, inability to access the gym and more time spent alone without others.

[44] Without information as to how a particular offender is personally impacted by the risk Covid-19 presents, for example, particular frailties of health, I am not prepared to consider 2:1 credit for time spent on remand.

[45] Mr. Shalaan is a healthy young man without physical medical challenges. As a member of the Justice Covid-19 committee that met daily until recently, I am aware that prisoners are confined to single cells, there is no double-bunking, and the only case of Covid-19 was confined to the prison infirmary resulting in zero community spread within the facility.

Principles of Sentencing:

[46] The relevant sentencing provisions are found at ss. 718, 718.1, 718.2 and 718.02 of the Criminal Code. They provide the general principles and factors I must consider in fashioning a sentence that serves to protect the public and contribute to respect for the law and the maintenance of a safe society.

[47] Section 718 instructs me to impose a just sanction that has, as its goal, one or more of the following: denunciation; general and specific deterrence; separation from society where necessary; rehabilitation of the offender; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community.

[48] Section 718.1 says it is a fundamental principle of sentencing that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[49] Section 718.2 requires a court to consider the aggravating and mitigating factors relating to the offence and to the offender, the principles of parity and proportionality, that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances. I am directed to consider all available sanctions, other than imprisonment, that are reasonable in the

circumstances and consistent with the harm done to victims or to the community, all with particular attention paid to the circumstances of aboriginal offenders.

[50] Section 718.02 addresses offences against police officers, and requires a court imposing sentence for a s. 270 offence, to give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

[51] It is well established that sentencing has an overarching goal of promoting the long-term protection of the public. I must keep that at the fore when balancing the principles and purposes of sentencing to arrive at a fit and proper sentence for Mr. Shalaan.

[52] The common law also provides guidance for interpreting and balancing sentencing principles and directs how they should be applied to different categories of offences. In following that direction, I must consider the offender and the circumstances of the offence, recognizing that both are unique in each case. Afterall, I am sentencing the offender before me, not applying a mandatory sentence for a specific offence. (*R. v. Lacasse*, 2015 SCC 64, and *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 49, 91-92).

Denunciation and Deterrence:

[53] There is no dispute that denunciation and deterrence are the overriding sentencing principles in sentencing both weapons offences and offences involving assaults committed against police officers. Our Court of Appeal has repeatedly reconfirmed same. (See *R. v. Skinner*, 2016 NSCA 54, and *R. v. Phinn*, 2015 NSCA 27)

[54] The Crown is also correct that while those principles take priority, the Court should not ignore the need to consider rehabilitation. Saying so, demonstrates fairness and appropriate consideration of Mr. Shalaan's circumstances. That said, the Crown also argues while his role is not to "go high and defence to go low", but rehabilitation must in this case take a back seat because Mr. Shalaan has not rehabilitated himself to date despite engaging in similar offences for which he received lengthy periods of incarceration followed by probationary orders.

[55] In *R. v. Miller*, 2002 CanLII 45072, the Ontario Court of Appeal addressed the role of police in society.

[7] ...Police officers, in the performance of their duties, are the representatives of the whole community, and an attack upon them is an attack upon the structure of a civilized society. Further, police officers, in the performance of their duties, are often in a position of special vulnerability and are entitled to such protection as the law can give. (*R. v. Forrest*, (1986) 15 O.A.C. 104, per Zuber J.A.)

[56] The Court in *R. v. Bal*, 2013 BCPC 21, specifically addressed the role s. 718.02 CC plays in such sentencings at para. 93:

[93] Police officers occupy a special and unique position in our society. Section 718.02 gives primary consideration for denunciation and deterrence in cases of persons assaulting peace officers. "The public places a great deal of trust in police officers [...]" *Regina v. Sweet*, 2007 BCPC 240, para. 31.

Gravity of the offence:

[57] Section 718.1 CC requires sentences be proportionate to the gravity of the offence and the degree of responsibility of the offender. Mr. Shalaan's acts were serious and potentially deadly. Over the course of the pandemic this province has seen the full impact of out of control gun possession. Guns in the wrong hands are a serious problem, so much so that the government is taking further legal steps to reduce their availability in the country. Weapons such as the one attributed to Mr. Shalaan are not used for hunting animals, they are used to confront and terrify other people if deemed necessary by the holder. I am reminded that the charge under s. 87 applies whether ammunition is in the gun or not, because the person facing it would not know the difference. There is no suggestion there was ammunition in this gun or that it was readily able to fire at the roadside.

[58] That said, possessing a gun on a busy 100 series highway, even if in the wee hours, creates a risk to the public and to the police who would enforce the *Motor Vehicle Act*.

[59] Mr. Shalaan's previous involvement with the criminal justice system had already been deemed serious enough that a court prohibited him from possessing firearms for life. Deliberate actions are required to breach such an order.

[60] Concealing a firearm on your person is also a serious offence.

[61] Police officers in the execution of their duties should not expect to be assaulted. There is no suggestion Cst. Savage did anything out of the ordinary at this traffic stop before he was assaulted. Likewise a reckless and serious action.

[62] Finally, assaulting a police officer during a routine traffic stop is bold, brazen, and incredibly dangerous. Men of colour die for much less at the hands of police as we have seen again and again in recent media accounts as we are forced to watch men die captured on video. Fortunately, Cst. Savage's training and even-handed approach demonstrated the best in policing for which Mr. Shalaan was able to leave the scene with his life.

Degree of Responsibility of the Offender:

[63] I do not know why Mr. Shalaan felt the need to arm himself, other than as a result of perceived or real threats in the community following a house break. But this activity of concealing a gun on his person occurred while he was far from Halifax and on the open Valley highway. Likewise, there were options available to

Mr. Shalaan who expressed no specific fear of police officers, he could have simply disclosed the possession and let the chips fall where they may. While some may argue taking such an action could place a person of colour at risk of a police shooting, I do not accept such on the facts as agreed to here.

[64] Defence counsel says it is a good question as to why someone commits an offence and the background often answers that question. He also says that I should consider that there was no real forethought engaged in by Mr. Shalaan. He correctly compares the active ongoing drug dealing operation to a sudden situation that does not afford opportunity to reflect. He says all the offences other than the concealed weapons offence were spontaneous and not the result of thought-out actions. He notes Mr. Shalaan was not planning this interaction with the officer, and his moral culpability must be on the lower end.

[65] I note, that is why he was banned from possessing firearms, his past actions demonstrated he must be prohibited in the first place.

[66] Mr. Shalaan appears to understand the seriousness of his actions. He is a young man with his future ahead of him. He has received an education and a trade. He has full time employment, responsibility for a child and the security of a home with his brother. He has a history of related offences, has served federal time for

same and was a parole violator in possession of a taser shortly after release. I am left with a man who made a series of bad decisions in resisting arrest, pointing a gun that had been concealed on his person, all while forbidden for life from possessing one. Against this, I balance his tragic life circumstances that he willingly shared with the court. Those events in his past matter to the Court and in some respect impact the choices he makes in his life.

[67] While there is a suggestion that Mr. Shalaan may have been impaired at the time of the incident, there is no certainty to that conclusion, because the investigation was thwarted by Mr. Shalaan's actions. So, I am left to accept that he was sober and lucid when he made these decisions. I temper this conclusion with consideration of his PTSD diagnosis that he blames for his actions when the officer placed hands on him and resulted in the refusal to submit to a search for officer safety. Mr. Shalaan would have known a search would disclose the firearm he was not authorized to possess.

[68] Once again, defence counsel asks me to temper this information by considering his reported PTSD diagnosis and troubled upbringing with the spontaneous nature of the actions at roadside. I cannot agree wholeheartedly that the actions were spontaneous. There were always other options, such as not speeding when in possession of a concealed weapon. And, as the Crown points out,

this did not happen during an ongoing criminal investigation but arose purely and organically out of traffic stop. There is no suggestion Mr. Shalaan was targeted by police for inspection.

[69] I must situate Mr. Shalaan's degree of responsibility for the offences at the higher end of the scale for serious category offences. I find he made a terrible decision to conceal a weapon in a car knowing he could not lawfully do so. I simply cannot accept otherwise. While his background is certainly empathetic, he continues to possess weapons and his actions in the instant case are consistent with his record.

[70] This situation and these offences are extremely serious and only the fact that he did not shoot the officer could have rendered them more serious. Mr. Shalaan's moral culpability is high- he brought a restricted weapon into a car while subject to a court ordered lifetime ban on possession and brandished it at an officer. He had a choice to make, he could have told the officer that the gun was in his clothes and offered it up- for which he would still face a substantial period of incarceration, but instead he amplified the situation by his actions.

Mitigating and Aggravating Factors:

[71] Mitigating factors must always be considered and I find Mr. Shalaan's early guilty pleas that spared approximately fifteen witnesses testifying, such a factor. His empathetic background that includes PTSD and childhood trauma, which the Crown says was not really placed before other sentencing courts in any depth, I also consider mitigating factors. However, I also agree that while there is more detail before this court, rehabilitation must, of necessity, take a back seat to denunciation and deterrence given his previous sentences. That said, he is also a youthful offender with a life ahead of him. He has a son and the prospect of gainful employment. He wishes to return to society as a productive member, and employment will aid that goal.

[72] The Crown asked the Court to treat his employment situation skeptically because the construction business has allowed its registration to lapse, and the employer is a same age friend. However, I accept that Mr. Shalaan is employable, and a good employee based on the submissions of the defence counsel who addressed the lapse of registration issue with Mr. Murphy who says he has now filed the documents noting the company was active without the registration.

[73] Mitigating also is Mr. Shalaan's acceptance of responsibility for the offences and his explanation that his own past traumas led to his response when scuffling with the officer. The Crown cautions asking, "why did he have a concealed

revolver if he did not want police involvement?”. I am inclined to believe his house was broken into, and his fear of being caught with the inoperable weapon led to the scuffle with Cst. Savage. PTSD seems to have clouded his judgement that the consequences of simply telling the officer that he had an inoperable unloaded weapon would certainly have led to a better result for all.

[74] The Crown says remorse runs a spectrum, arguing it is not aggravating to express none, but the PSR says nothing about Cst. Savage or the impact of the offences on him,

[75] I heard Mr. Shalaan’s allocution. He appears to somewhat understand the pain his actions caused Cst. Savage, although he did not comment on the seriousness of his offences. I cannot say it was the most enthusiastic statement of remorse, but his decision to make what may have been a difficult statement in the context of his upbringing and the sentencing milieu does hold weight with this court. In the context of his background, it may be the best he could do.

[76] I also note he participated from jail with background noise of other prisoners being moved in and out of video conferencing rooms. He apologized to Cst Savage, appreciating that he could have lost his own life that night and left his son fatherless. He says he let a lot of people down that night including the child.

[77] I also consider aggravating the harm to society. These offences placed the local community in a state of fear, the local school was closed and the highway as well. The community was subjected to lockdown while police sought out an armed individual. People in these rural parts do not expect such things to happen here and the general sense was shock. I recall officers engaged in the searches were unavailable to come to court to testify in trials, and as such the impact of the offences was also felt in the local justice system.

[78] The impact on Cst. Savage is also aggravating and ongoing. Mr. Shalaan's flight after being shot might be understandable but it is also aggravating, as is his related criminal record.

[79] The Supreme Court of Canada in cases such as *R. v. Ipeelee*, 2012 SCC 13, where LeBel J., at para. 75, discussed the "fundamental duty" of sentencing judges, requires us to "engage in an individualized assessment of all of the relevant factors and circumstances, including the status and life experiences, of the person standing before them." At paragraph 86 the Court asks, "Who are courts sentencing if not the offender standing in front of them?"

[80] The need for sentence individualization was also addressed by the Supreme Court in *R. v. Lacasse*, *supra*, at para. 128:

If a judge fails to individualize a sentence and to consider the relevant mitigating factors while placing undue emphasis on the circumstances of the offence and the objectives of denunciation and deterrence, all that is done is to punish the crime. [*R. v. R. (M.)*, 2010 QCCA 16 (CanLII), 73 C.R. (6th) 136, at para. 49.]

[81] In *R. v. Nur*, 2015 SCC 15, the Court also clarified at para. 43 that, “imposing a proportionate sentence is a highly individualized exercise, tailored to the gravity of the offence, the blameworthiness of the offender, and the harm caused by the crime.” In *R. v. Hamilton and Mason*, 2004 CanLII 5549, 186 C.C.C. (3d) 129 (Ont. C.A.), at para. 87, Doherty J.A. said that, “the fixing of a fit sentence is the product of the combined effects of the circumstances of the specific offence with the unique attributes of the specific offender.”

Parity:

[82] The Court was provided numerous cases to assist in assessing the range for these offences. Many were factually very far off the matter before me and I do not intend to review them all. Instead, I have read and considered them all but will mention some of the ones that persuaded me and mention very briefly why others did not.

[83] Our Court of Appeal has addressed sentencing for weapons offences, and the Crown provided me a number of cases.

[84] *R. v. Skinner, supra*, involved the discharge of a firearm into a car filled with people in a public location in Halifax. The Crown asks this Court to consider how the Court of Appeal addressed the principle of totality, the application of consecutive and concurrent sentences and very generally as a guide to sentences for firearms offences. After review, I find this case primarily addresses concurrent versus consecutive sentencing when two sets of firearms offences are sentenced out of order and years apart. Not the case before me.

[85] Unlike Mr. Shalaan, Mr. Skinner discharged a firearm in the busy public hydrostone area in the middle of the day in some type of gangster-like manner. He had also been previously prohibited from possessing a firearm, had a related record and was sentenced to six and half years. His background was also mitigating in a manner similar to Mr. Shalaan.

[86] The defence says Mr. Skinner's facts cannot compare to Mr. Shalaan's, and I agree.

[87] *R. v. Phinn, supra*, involved possession of a loaded weapon in a vehicle during a police takedown. The Court upheld Judge Murphy's sentence of 72 months (s. 94 CC) and 25 months (s. 90 CC) for a 6-year total, noting Mr. Phinn's

history and that his offences were escalating in level of violence. As to range the Court said:

[67] It is settled law, but perhaps bears repeating, that when it comes to sentencing, one does not establish the “range” for an offence by traversing the distance or gap between “zero” and the maximum penalty expressed by Parliament in the Criminal Code. Such a divide between “nothing” and the theoretical upper limit fixed by statute is a meaningless orbit. A much more refined and particularized trajectory is needed. To fulfil their responsibilities in the often very difficult task of crafting a fit and proper sentence, trial judges look for guidance by seeking meaningful precedents which have some similarity, relevance and application to the circumstances before them. That is precisely the point made by Justice Bateman in *R. v. Cromwell*, 2005 NSCA 137 when she said:

[26] ...In my opinion the range is not the minimum to maximum possibilities for the offence but is narrowed by the context of the offence committed and the circumstances of the offender. ... The actual punishment may vary on a continuum taking into account aggravating and mitigating factors, the remedial focus required for the particular offender and the need to protect the public. This variation creates the range.

[88] While the sentence was lengthy, the appeal court determined Murphy J. properly considered all that was before her including a s. 117 CC lifetime firearm ban (charge withdrawn) and found her sentence decision considered all relevant factors. While she misspoke saying the range was from 12 months to 8 years, when each offence carried a maximum sentence of five years, the Court found she was speaking in generalities and not specifically addressing the charges before her.

[89] Justice Farrar, in a strong dissent, would have imposed a shorter sentence of 36 months and, in aid of such, reviewed various decisions with a focus on s. 94 -

the most serious offence. He also considered the one-year sentence imposed on the co-accused for s. 94(1) CC.

[90] Defence counsel reminds the Court Mr. Shalaan was not facing a section 94 charge, and Justice Farrar's assessment of other sentencing decisions for similar crimes show the range in this province is wide for firearms offences.

[91] *R. v. Slack*, 2015 ONCA 94, involved an offender who fled an area leaving a loaded firearm in an unlocked running vehicle. He received an eight-year sentence for a s. 95 offence (possess prohibited weapon), upheld on appeal. The decision is useful as a reminder that in s. 95 cases, and presumably firearms matters in general, that matters involving "truly criminal conduct" and firearms require exemplary sentences that emphasize deterrence and denunciation.

[92] That offender's criminal record included a prior s. 95 CC offence for which he received four years and six months. Overall, he had a lengthy record of 18 priors, including using an imitation firearm in committing a robbery, breach of a prohibition order and possessing a prohibited weapon with ready access to ammunition, and other crimes of violence. The Court saw no reason to disturb the eight-year sentence.

[93] *R. v. Jackson*, 2002 CarswellOnt 886 (CA), is said to underscore the serious nature of firearms offences and that they warrant substantial periods of incarceration even for younger offenders with less of a record than Mr. Shalaan. This case involved an officer stopping two people riding double on a bike when the offender turned and shot twice at the officer. His total sentence of ten years was reduced to seven on appeal. The pointing charge had been stayed, and he was sentenced on discharging, possessing an unregistered weapon, carry a weapon for a dangerous purpose, and discharging with intent.

[94] On these arguably more serious facts, the appeal court confirmed a seven-year range, and reduced the seven- year sentence on the discharge offence to four years- the most serious charge.

[95] Mr. Shalaan, I would note, did not discharge the weapon at the officer.

[96] *R. v. Johnsrud*, 2014 ABCA 395, involved a 42- year-old offender with a lengthy related record who pulled a loaded handgun on a security guard while subject to a lifetime ban on possession. His appeal of a 7.5-year sentence failed as there were no reviewable errors on the part of the sentencing judge, for example, his argument that the sentences should have been concurrent did not persuade

Rowbotham J. who said concurrency would result in a free ride on the most serious offence (para 6).

[97] I don't disagree that Mr. Shalaan's situation is much closer aligned to some of the aggravating factors of this case than many others I have reviewed.

[98] *R. v. Russel*, 2015 SKQB 97, also somewhat similar to the facts before this court, involved an offender pulled over for an impaired driving investigation. He pointed a rifle at the officer saying not to move or he would shoot. The officer managed to get the rifle away from Mr. Russel and nobody was injured. Mr. Russel came before the Court without a criminal record, was 57 years old, and expressed remorse for the "inexplicable aberration... that probably flowed from intoxication" (para. 13)

[99] The Court imposed a global sentence of three years and six months, including 28 months for s. 270.01 CC and a one-year mandatory minimum sentence to be served consecutively for use of a firearm in committing the offence. The Court said:

[9] It is clear that the intention of Parliament in making these amendments to the Criminal Code was to direct the seriousness with which assaults on police officers and the commission of crimes involving the use of firearms are to be viewed and treated. Arguably the intent of Parliament was to increase the level of penalties for individuals convicted of such crimes beyond what had theretofore been imposed.

[10] The specific application of these recent amendments to the Criminal Code, in the circumstances of this case, have, with limited exceptions that I will discuss below, not been previously considered by a court. In particular, counsel were unable to provide me with any previous decisions of the courts where an offender has been sentenced for assault with a weapon under s. 270.01. My own research has identified no such precedent. Thus there is no established range of penalties for an offence under this section and the application of the principle of proportionality is therefore problematic.

[100] These facts are similar to those before me, however the personal characteristics are distinct. Mr. Shalaan's criminal record and his prohibition order must move his sentence higher.

[101] In *R. v. Johnsen*, 1999 BCCA 577, the Court upheld a 9 month sentence for careless use of a firearm (shooting into his mother's house door) and pointing a firearm at a police officer when he drove to the home of his girlfriend where police confronted him. Instead of complying with police directions, the offender pointed the rifle at a police officer and swore at him. He was impaired at the time with a history of alcohol abuse. He was youthful, was participating in alcohol rehabilitation programs, and had no adult record. While the decision does not disclose the breakdown, concurrency makes sense.

[102] This sentence is too low to act as a true comparator however youth (23 years of age) and intoxication were also factors considered in arriving at sentence. The Crown submitted this case because the Court mentioned the impact on the officer and the ambulance driver who attended the scene, noting both addressed the court.

[103] *R. v. Brown*, 2005 CanLII 46092 (ONSC), involved a 36-year-old, with a small child, and a lengthy record going back to youth, including assaults on police officers. He had received 3 1/2 years for criminal negligence causing death in 1994. He was sentenced for pointing a gun at a security guard who roused him in a crack apartment. It was considered a spontaneous act because the gun had been given Mr. Brown to sell only shortly before the guards arrived. He did not bring it to the location. Some factors considered in imposing a sentence of 4 years included drug addiction, impairment at the time, and the spontaneous nature of the act. Pointing was considered the most serious offence for which he received 18 months.

[104] Defence counsel also submitted caselaw for my consideration.

[105] *R. v. Swallow*, 2010 QCCQ 955,- a provincial court decision wherein an aboriginal shooter held off police at his home following a domestic incident and received 5 1/2 years incarceration. He fired both from within and without the home eventually sustaining injury from police gun fire. There is little of comparable worth in this decision because Mr. Shalaan is a repeat offender, subject to a lifetime firearm prohibition and not involved in an ongoing police interaction wherein he discharged a firearm. As the Crown says he was not subject to investigation for anything other than a routine traffic stop. In addition, Mr. Swallow was an aboriginal offender.

[106] *R. v. Crockwell*, 2013 NJ No. 77 (SC), involved discharging a firearm in the vicinity of police during a stand off. I cannot say this case warrants much consideration as it involved a mentally ill offender who was given a 4-year sentence that considered his very distinct circumstances. He was 57 and without a criminal record and sentenced as a first offender.

[107] *R. v. Takazo*, 2017 NWTSC 81: He received an eight-month period of incarceration for pointing a gun at a police officer. He was impaired at the time and subject to a weapons prohibition. He was also an aboriginal offender who was involved in an attempted “suicide by cop” scenario. This low sentence I can only conclude was very fact specific.

[108] *R. v. Wilson*, 2017 ONCJ 74, involved an absolute discharge for an officer who pointed an unloaded gun at a fellow officer in jest. Likewise, factually distinct.

[109] Based on the foregoing, I must agree with defence counsel that the range is quite wide for weapons offences, ranging from discharges on very particular facts to significant periods of incarceration for serious demonstrations of violence. He was correct to include these cases which demonstrate the range can be lower than that sought by the Crown in cases involving much more serious factual situations.

Overall, the higher range sentences appear closely connected to situations involving weapon discharge, which did not occur here, or in cases involving loaded weapons, likewise not present on these facts. As a result, I conclude that the sentence recommendation of the Crown is not outside the available range.

However, I must take into consideration the particular offences and the offender before the Court in fashioning a fit and proper sentence.

[110] The Crown reminds the Court that Mr. Shalaan's moral culpability is high. He was not responding to a threat from the officer and he brought a gun into play on a 100 series highway. There was no chaos from an ongoing investigation of any import, but instead a simple roadside traffic stop. Mr. Shalaan's actions led to serious alarm in the community and great effort by police to locate him and the gun.

[111] In advancing his position, the Crown says he is certainly not giving up hope, but it is clear Mr. Shalaan requires a sentence that protects the public.

Conclusion:

[112] Taking into consideration the purposes and principles of sentencing, the objectives of sentencing, including totality, restraint, the aggravating and mitigating factors, and all the foregoing information provided, I reach the

conclusion that a global sentence to 7-8 years is too high. Mr. Shalaan is still a very young man and a sentence in that range would be crushing.

[113] However, deterrence and denunciation require federal incarceration for matters such as this and for this offender. The message must be sent to Mr. Shalaan and others who would engage in such actions with police, that society strongly denounces such behaviour. That people continue to possess firearms when they are prohibited for life from doing so, also requires a strong message that court orders are not optional, instead they must be obeyed.

[114] Mr. Shalaan must receive a sentence that takes account of his antecedents and seeks to divert him from his path of dangerous criminality.

[115] While the Crown sought three to four years for assaulting the police officer, I find four years is too high given the maximum allowable sentence is not to exceed five years. He also seeks the same concurrent sentence for pointing the gun at the officer, which also carries a maximum sentence of five years. The Crown urged concurrency on these two offences and that makes sense since they essentially flow from one continuous action.

[116] Mr. Shalaan does not have a history of assaulting police officers; his behaviour does not begin to compare to the level of disdain shown by other

offenders in the cases reviewed. In many, those offenders received significantly shorter sentences: *Takazo, Johnsen*. Mr. Shalaan will be sentenced to 3 years for the assault on Cst. Savage, and he will also be sentenced to 3 years for pointing a firearm at the officer to run concurrently one to the other. This is more comparable to the 3 ½ years imposed in *Brown, supra*, where there was a history of assaults involving police.

[117] Carrying the concealed weapon carries a maximum of five years and the Crown seeks 1 year consecutive and three years for possessing while prohibited which carries a maximum of 10 years. I find carrying the concealed weapon while prohibited should be dealt with as part of the same transaction. I accept the recommendation and impose a one- year sentence for concealing.

[118] For possession while prohibited, I find a three-year sentence as recommended by the Crown is much too long. At the same time, one year is much too short and I therefore impose a sentence of two years. In reaching this conclusion, I consider his most recent sentence of 45 days for carrying a taser which demonstrates disregard for direction of court orders. These latter two sentences will be served concurrent to each other and run consecutive to the 3 years imposed on the first two counts. These offences arising in the same fact situation favour concurrency.

[119] As a result, the total sentence is 5 years. Deducted from this is 840 days deemed served, to be deducted first from the section 117 and 90 offences, and the remainder from the 270 and 87 offence.

[120] In totality, I find this sentence is not unduly harsh but serves to send the correct message while at the same time balancing the mitigating factors of Mr. Shalaan's life to this point, including significant abuse and mental health concerns arising therefrom. It also serves not to ignore the reality that he will leave custody, resume counselling, and find gainful employment.

[121] The foregoing sentence considers the need for a strong message of deterrence and denounces the offender's actions, while at the same time balancing his personal circumstances. I have exercised restraint in not imposing a sentence that would crush this young man's prospects for the future, while at the same time sending a message to the community that pointing firearms at police officers cannot be condoned. It also considers the aggravating and mitigating factors and the precedents that have been provided that are of course not on all fours with the fact situation before me.

[122] I trust that the sentence imposed today will serve to remind Mr. Shalaan that he must fashion a life that removes him from the fears and risks in the community

that lead him to believe breaching prohibition orders and carrying a weapon are his only recourse. Mr. Shalaan your actions could have led to the needless death of another person of colour at the hands of police, you are incredibly fortunate that the officer you engaged was skillful in his use of force against you. For that you should remain eternally grateful, if not for yourself, for your son who could have seen history repeating itself and setting him off on your current course. You have the chance to stop this madness, I implore you to accept the challenge.

van der Hoek J.