

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Smith*, 2022 NSPC 11

Date: 20220401

Docket: 8196958

Registry: Amherst

Between:

Her Majesty the Queen

v.

Ryan Joseph Smith

DECISION ON SENTENCE

Judge: The Honourable Judge Rosalind Michie

Heard: 8 December 2021, in Amherst, Nova Scotia

Decision: 23 February 2022

Charge: Section 5(1) *Controlled Drugs and Substances Act*

Counsel: Mr. Douglas Shatford, for the Crown
Mr. Jim O'Neil, for the Defence

By the Court:

[1] This is my sentencing decision with respect to Her Majesty the Queen v. Ryan Smith as defendant. Mr. Smith was jointly charged with Brent Cameron on a multi-count information from circumstances that arose on December 7, 2017.

[2] On June 4, 2018, Mr. Smith entered a not guilty plea to the charges.

[3] On April 8, 2019, Mr. Smith changed his plea to guilty to count 1 of the information which alleged that:

On or about the 7th day of December A.D. 2017 at, or near Amherst, Nova Scotia, did traffic in a substance included in Schedule I to wit: cocaine contrary to section 5(1) of the Controlled Drugs and Substances Act.

The matter was adjourned for sentence to a later date, and defence counsel has indicated a waiver of his client's section 11(b) *Charter* rights throughout the intervening period between change of plea and sentence.

[4] A pre-sentence report and a subsequent update were prepared on September 21, 2020 and January 11, 2021 respectively, to assist the court in sentencing Mr. Smith. The court also received the following documents from defence counsel in addition to their written submissions on sentence:

- Two progress reports from clinical therapist Carolyn Westin from Hopewell Counseling dated January 15 and June 10, 2021;
- T-4 slips for the taxation years 2017 to 2019;
- Certificate of Completion from New Brunswick Community College Automotive Service Technical program dated June 11, 2021; and
- Letter dated June 25, 2021 from Richard Leblanc, Manager of Apprenticeship and Occupational Certification confirming that Ryan Smith successfully completed his Block 1 written examination for the occupation of automotive service technician.

Position of the Parties

[5] The crown is asking the court to impose a sentence in the range of 18 months to two years incarceration.

[6] Defence counsel says the court should impose a period of probation in the range of three years.

Facts

[7] The facts can be summarized as follows:

- On December 7, 2017 the RCMP Cumberland County Street Crime Enforcement Unit (SCEU) became aware that Brent Cameron (co-accused) was trafficking cocaine.
- Using the alias “Becky”, members of SCEU contacted Cameron by phone and were told to contact Mr. Smith.
- Mr. Smith was subsequently contacted and agreed to sell two (2) grams of cocaine and to rendezvous at a set location.
- Ryan Smith was subsequently arrested and had 2 grams of cocaine on his person.
- A search was conducted of Mr. Smith’s residence and 87 grams of cocaine and other drugs were found. As indicated in the detailed police report, Mr. Smith essentially obtained the cocaine from Mr. Cameron for sale.

[8] On July 17, 2019, co-accused Brent Cameron pled guilty to possession of cocaine for the purpose of trafficking contrary to section 5(2) *CDSA*. On November 5, 2019, Mr. Cameron was sentenced by this court to a six month period of custody followed by an 18 month period of probation.

Law

[9] Trafficking cocaine carries a maximum sentence of life imprisonment. Absent certain aggravating factors, there is no legislated mandatory minimum sentence. A conditional sentence is not a legal sentencing option for this offence at present.

[10] There are changes on the horizon for sentencing criminal offences. *R. v. Sharma*, 2020 ONCA 478, struck down the *Criminal Code* provisions, s. 742(1)(c) and s. 742(1)(e). These sections removed the availability of conditional sentences for particular types of offences as they were found to violate sections 7 and 15 of the *Charter*. The Court of Appeal held that neither violation was saved under s. 1 of the *Charter*. On January 14, 2021, the Supreme Court of Canada (“SCC”) granted leave to appeal, meaning they will hear this case in the future.

[11] More recently, Bill C-5 was tabled by the liberal government in December 2021. Bill C-5 purports to eliminate mandatory minimum penalties for a number of offences, including drug offences and also amends the provisions of s. 742 of the *Criminal Code*. These amendments would permit the use of conditional sentence orders as a sentencing option for drug offences in certain prescribed circumstances. Currently this Bill has passed first reading in the House of Commons.

[12] In the case at bar, defence counsel is not making a Constitutional or *Charter* argument seeking a conditional sentence at this time, but urges this court to consider a lengthy period of probation as a suitable sentencing option for Mr. Smith.

Circumstances of Mr. Smith

[13] Both the pre-sentence report prepared September 21, 2020 and the update of January 11, 2021 were prepared by probation officer Jennifer L. Haigh. The PSR and written and oral submissions of defence counsel reveal the following:

- Mr. Smith is 24 years of age. He is in a relationship with his girlfriend, SC. They are the parents of a young son, KS, who is almost three years of age. The offender described his relationship with SC as “rocky”, but they are working on it. Mr. Smith reported one of the most important things in his life is his young son to whom he is very devoted. Mr. Smith credits his son for changing his life as someone who he wishes to set a good example.
- Mr. Smith has one older sister, HS, age 26 of Ottawa, Ontario. He shares a good relationship with her and reported that he grew up in a positive family

environment throughout his life. His parents are disappointed in him, but he continues to enjoy the full support of his family.

- The offender attended school until grade 12, at which point he dropped out, but he later completed high school through the adult learning program through the Nova Scotia Community College in February 2020.
- Mr. Smith has completed the one year auto service technician course at the NBCC Moncton campus with honours, graduating in June 2021.
- Mr. Smith successfully passed his Level 1 exam with Apprenticeship NB on June 25, 2021. I understand that Mr. Smith is currently making attempts to become an apprentice technician at Amherst Toyota and he also has an offer in Moncton at a shop to continue his work and training as an automotive technician.
- Mr. Smith comes before the court as a first-time offender with no prior adult criminal record.
- Mr. Smith reports that he is in good physical health but suffers from diagnosed depression and anxiety for which he was previously prescribed

medication, but has subsequently made the decision not to continue taking his prescribed medication.

- Mr. Smith currently accesses counseling services with Carolyn Westin, a licensed counseling therapist at Hopewell Counseling Centre in Sackville, New Brunswick. According to the offender, he initiated services himself with Ms. Westin following his arrest.
- Mr. Smith reported that he started using cocaine around age 17, noting that at the time he felt as if he “fit in everywhere, but nowhere”. He noted at the time that the people receiving the most attention were dealing drugs, which was the appeal to him. He has since realized that these individuals were receiving attention for the wrong reasons. His cocaine use progressed from .5 to 1.0 grams on weekends to approximately 3.5 grams of cocaine daily. Mr. Smith reported that he began selling cocaine to support his personal habit.
- Mr. Smith stated that he has not used any illicit drugs since his arrest and he does not currently believe that he requires addictions treatment, but he is willing to participate in any counseling or treatment that may be ordered.

- Counselor Carolyn Westin of the Hopewell Centre wrote two letters confirming that Mr. Smith began accessing counseling services with her in October 2019. The appointments were initially in person, but due to Covid restrictions these meetings transitioned to telephone appointments. Both letters of update were very positive and note that Mr. Smith has developed tools that assist him in dealing with challenging situations in an appropriate and mature manner noting that he is now more able to focus his energy on reaching goals.

Sentencing Principles

[14] In sentencing Mr. Smith, I must apply the sentencing provisions contained in sections 718, 718.1 and 718.2 of the *Criminal Code* and section 10 of the *Controlled Drugs and Substances Act (CDSA)*.

[15] The objectives of sentencing are to protect the public and to contribute to respect for the law and the maintenance of a safe society. Section 718 instructs that this is to be achieved by imposing just sanctions that have, as their goal, one or more of the following: denunciation; general and specific deterrence; separation of offenders from society where necessary; rehabilitation of the offender; promotion

of responsibility and offenders; and acknowledgment of the harm done to victims and to the community.

[16] Section 718.1 states that the fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[17] Section 718.2 requires consideration of 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; and that 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.

[18] Section 10 of the *CDSA* reads:

10(1) Without restricting the generality of the Criminal Code, the fundamental purpose of any sentence for any offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

[19] Sentencing is one of the more difficult tasks performed by a trial judge, and this case is no exception. The issue for the court is what is a fit and proper sentence for Mr. Smith?

[20] The trafficking of a Schedule I drug is a serious offence. Trafficking cocaine has been an ongoing issue addressed by the courts and the devastating effect of drug trafficking on communities cannot be understated.

Denunciation, Deterrence and Protection of the Public

[21] The Nova Scotia Court of Appeal has sent a consistent message that denunciation and general deterrence are to be the primary considerations when sentencing offenders who traffic Schedule I drugs. Cocaine trafficking at any level has consistently attracted substantial periods of imprisonment, even for first offenders, with the norm being a federal period of incarceration (see *R. v. Byers*, 1989 CanLII 200 (NSCA); *R. v. Huskins*, 1990 CanLII 2339 (NSCA); *R. v. Dawe*, 2002 NSCA 147, at para. 6; *R. v. Steeves*, 2007 NSCA 130 at para. 18; *R. v. Knickle*, 2009 NSCA 59 at para. 18; *R. v. Butt*, 2010 NSCA 56 at para. 13, *R. v. Jamieson*, 2011 NSCA 122, at para. 38; *R. v. Scott*, 2013 NSCA 28, at paras. 88-91; *R. v. Oickle*, 2015 NSCA 97, at paras. 30-32; *R. v. Chase*, 2019 NSCA 36, at paras. 28, 48).

[22] The position of the crown is that the correct approach to be taken when sentencing traffickers of Schedule I drugs is that of the Nova Scotia Court of Appeal in *R. v. Oickle* (supra), which sets out that in the majority of cases of trafficking a Schedule 1 drug, a federal term of imprisonment will be imposed, which means a minimum of two years, and that sentences more lenient than that, such as the sentence sought in this case by the defence, will be “rare” and imposed and truly exceptional circumstances. The crown has suggested a sentence in the range of 18-24 months incarceration.

[23] The crown, in its written submissions, referenced the decision of *R. v. Chase*, 2019 NSCA 36, at paragraph 48 wherein the court reiterated that “nothing has changed this court’s repeated and consistent warning that deterrence and denunciation will continue to be the primary objectives” and that cocaine trafficking “will normally attract a federal prison term”. The crown also noted that as stated in *Lacasse*, “in all cases in which general or specific deterrence and denunciation must be emphasized, the courts have very few options other than imprisonment for meeting these objectives, which are essential to the maintenance of a just, peaceful and law-abiding society”.

[24] The crown also noted that our Nova Scotia Court of Appeal recently gave two cocaine traffickers each 18 month periods of incarceration, and endorsed a suspended sentence for a third hydromorphone trafficker, in *R. v. Livingstone*; *R. v. Lungal*; *R. v. Terris*, 2020 NSCA 5. The court said that the deviation from the “typical” sentence of two years or more can be appropriate as long as the sentence still honours the purposes and principles of sentencing. In the cases of Mr. Livingstone and Terris, the Court of Appeal found that a sentence of 18 months would recognize the mitigating factors present for each man, yet still send a message of deterrence. At paragraph 52 of that decision Justice Farrar wrote:

...An appropriate sentence for Mr. Livingstone’s circumstances would be 18 months incarceration. This is somewhat less than the typical two year custodial sentence, taking into account the appropriate mitigating factors identified by the sentencing judge, but sending the clear message that trafficking in controlled substances is a serious offence, at any level, and will usually result in imprisonment.

[25] I will discuss the sentence of Ms. Lungal further along in my decision, as she received a suspended sentence and a three year period of probation.

[26] In *R. v. Scott*, 2013 NSCA 28, Justice Beveridge, writing for the majority, as well as the dissenting opinion of Justice Saunders, wrote that with respect to

sentences to be imposed in *CDSA* matters that drugs are a scourge on society, destructive of people's lives, and enhances or breeds further crime.

[27] The *Scott* decision was one of the first in this province to de-emphasize the requirement for "exceptional circumstances", and instead focused on where within the range of permissible sentences a particular case falls.

[28] Crown and defence counsel have provided a plethora of caselaw addressing the appropriate sentence range for trafficking Schedule I substance offences, for which I am grateful. I have reviewed and considered those cases in determining the appropriate sentence in the case of Mr. Smith.

[29] Defence counsel urges me to consider a sentence at the low end of the sentencing range, a suspended sentence with lengthy probation.

[30] Judge Buckle, in *R. v. Rushton*, 2017 NSPC 2 at para. 85 noted that certain factors were generally present in cases where the courts have imposed a sentence at the lower end of the range including addictions, youth, dated or no prior record, small quantity of drugs, hope of rehabilitation and the absence of other aggravating factors.

[31] Defence counsel submits that exceptional circumstances in and of themselves are no longer required to impose a sentence that falls on the lower end of the sentencing range. Nonetheless, it was submitted that the personal circumstances of this particular offender are indeed very exceptional, and in fact merit a more lenient sentence.

[32] In *R. v. Chase* (supra), the court addressed concerns expressed by the federal crown that those “exceptional” cases which merited sentences on the lower end of the scale were becoming the norm and did not adequately address denunciation and deterrence. The lenient sentences referred to included brief periods of incarceration, including intermittent 90 day sentences. The Court of Appeal addressed this concern by noting that there are many unreported cases in which federal sentences were imposed for the trafficking of Schedule I drugs, and that matters where more lenient sentences were imposed were likely supported with written reasons.

[33] In the *Chase* decision, Justice Saunders provides a thorough and clear review of the sentencing principles that must be emphasized, including denunciation and deterrence, but further recognizes that there will be cases that are either not the norm, or not typical. In such cases, the sentencing judge retains

some discretion to impose the sentence which he or she finds to be a fit sentence, a proportionate sentence, and an appropriate one having regard to the sentencing principles contained in sections 718 to 718.2 of the *Criminal Code*. The fundamental principle is that a sentence must reflect the gravity of the offence and the degree of responsibility of the offender.

[34] Defence counsel urges me to consider and rely upon these principles as articulated in *Chase, Rushton* and *Livingstone et al.* and impose a sentence of a period of probation, far less than the starting point of a federal period of incarceration which has been set out previously by the Nova Scotia Court of Appeal.

[35] I am required to find the appropriate balance between the aggravating and mitigating factors. As stated in *Chase*, there is no uniform sentence for a particular offence.

[36] In *R. v. Knickle*, 2009 NSCA 59, at para. 17, Justice Roscoe observed that “...this court has consistently categorized drug traffickers, based on the type and amount of drug involved and the level of involvement in the drug business, to assist in placing them within the range”. As recently noted by Justice Rosinski in *R. v. Leblanc*, 2019 NSSC 192, at para. 10:

Trafficking in illegal drugs involves a hierarchy. In Nova Scotia, one's position in the hierarchy has been a significant determinant of the sentence that is imposed.

[37] Justice Rosinski, in *Leblanc*, referred to the *Fifield* decision in setting a range of sentence based on the quantity of drug involved. In *R. v. Fifield*, 1978 CanLII 812 (NSCA), the court articulated the general categories of drug traffickers starting with “the isolated accommodator of a friend”, moving up the scale to the “petty retailer, the large retailer or small wholesaler, or the big time operator”. While the quantity of drugs is not necessarily determinative with respect to a proportionate sentence, the “quantity is important in helping show the quality of the act or the probable category of the trafficker”.

[38] Both crown and defence say that the circumstances of the offence (including the amount of cocaine possessed by Mr. Smith for sale), situates him in the category of a petty retailer of cocaine, albeit sliding toward the lower end of that category. I would agree with that assessment and find that Mr. Smith was a petty retailer of cocaine. His co-accused Brent Cameron was situated higher up the scale relative to Mr. Smith, but still categorized as a petty retailer, and he was sentenced to six months incarceration plus a period of probation.

Rehabilitation

[39] Denunciation and deterrence must be emphasized when sentencing offenders for trafficking in Schedule I substances, but rehabilitation remains a relevant and important objective. In *Lacasse*, Justice Wagner noted at paragraph 4:

One of the main objectives of Canadian criminal law is the rehabilitation of offenders. Rehabilitation is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world, and it helps the courts impose sentences that are just and appropriate.

Proportionality

[40] Justice Warner reviewed the principle of proportionality in the context of sentencing a cocaine trafficker in *R. v. Forward*, 2017 NSSC 190, paras. 14-20:

14. The principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender requires that I first consider the gravity of the offence.

15. Possession of cocaine and MDMA, Schedule I substances, for the purpose of trafficking are very serious offences. That is reflected by the fact that Parliament has set the maximum sentence at life imprisonment and remove the offences from consideration for a conditional sentence order.

*16. The tremendous harm that comes from trafficking these substances has been repeatedly commented on by our Court of Appeal. It has recognized the “creeping evil” and danger of cocaine. In *Butt*, at para. 13, the court referred to cocaine as a deadly and devastating drug that ravages lives. People who traffic in cocaine take advantage of the vulnerabilities of others. Some do it for profit and some do it because they are themselves addicts with the same vulnerabilities as those they sell to.*

17. The other aspect of proportionality is the degree of responsibility of the offender. Mr. Forward was found in possession of significant amounts of powdered cocaine, MDMA and cannabis marijuana, paraphernalia, and cash. The crown and defence agree that he falls within the definition of a petty retailer, as that term is described in R. v. Fiefield, [1978] NSJ No. 42.

18. There is no evidence that anyone else was involved in the offence. Mr. Forward is solely responsible. Sometimes courts and held that moral blameworthiness is reduced when the offender is young or an addict (selling to support his or her addiction). Mr. Forward does not fit into either category.

19. In Oickle, Scanlan, J.A. questions whether addiction is properly considered a mitigating factor on sentencing for drug trafficking offences. He comments that the consequences of drug trafficking to individuals and communities is the same whether the trafficker is motivated by profit or addiction.

20. An addiction certainly does not excuse criminal behaviour, but it has been recognized by some courts as a factor which, when proven, can have a mitigating effect on sentence.

[41] Addressing Mr. Smith specifically, he trafficked cocaine, a Schedule I drug, which is a very serious offence. Two grams were found on his person subsequent to arrest, but a larger quantity of cocaine, 87 grams were found at his residence upon execution of a search warrant. At the time, Mr. Smith was addicted and supporting his own drug habit. He was a very young offender and there is evidence of an older co-accused involved who received a sentence of incarceration for his involvement in trafficking the cocaine. I have considered Mr. Smith's young age and addiction issues, which has some impact on his moral

blameworthiness, and although it does not excuse his criminal behaviour it has some mitigating effect on sentence.

Parity

[42] Section 718.2 sets out that a sentence should be similar to sentences imposed on similar offenders for like offences in similar circumstances.

Sentencing Range

[43] There is a large volume of caselaw addressing the appropriate sentence for traffickers of Schedule I substances. I have considered all of the cases provided to me by crown and defence which support their arguments and I thank them both for providing this court with those materials.

[44] The range of sentences in Nova Scotia for Schedule I trafficking offences is typically a custodial sentence of two years or more as noted earlier. However, deviation from a sentencing range is not an error in principle unless it departs significantly and for no reason from the contemplated range (*R. v. Lacasse*, supra).

[45] In *R. v. Livingstone; R. v. Lungal; R. v. Terris*, (supra), a trio of drug trafficking cases that were sentenced together by Judge Atwood, Justice Farrar, writing for the Nova Scotia Court of Appeal, upheld the sentence imposed with

respect to Ms. Lungal. Judge Atwood suspended the passing of sentence and placed Ms. Lungal on a period of probation for three years. In imposing a suspended sentence followed by probation, Judge Atwood considered the following factors:

- First time offender
- Petty retailer, small quantity of Schedule I drugs
- Ms. Lungal had a solid employment history, good family support
- No statutorily aggravating factors were present
- No weapons or violence were noted
- There was an early guilty plea
- Was compliant with release conditions
- Ms. Lungal exhibited good prospects for rehabilitation
- The accused cooperated with police

[46] Clearly, there are situations when a suspended sentence will be appropriate. Justice Farrar in *Livingstone, Lungal and Terris* conducted a very thorough review

of recent sentencing decisions for offences contrary to s. 5(2) of the *CDSA* in which suspended sentences were imposed in Nova Scotia and across Canada. I will not reproduce that exhaustive list in this decision. Justice Farrar at para. 23 stated:

23. I have provided this summary for two reasons: to illustrate that suspended sentences are not, as suggested by the crown, an aberration from the norm; and to illustrate the circumstances where courts suspend the passing of sentences.

[47] Justice Farrar noted the following at para. 24:

Based upon a review of this case law, Schedule I trafficking cases in which sentencing is suspended are cases wherein:

- 1. the mitigating factors substantially outweigh the aggravating factors;*
- 2. specific and general deterrence are satisfied by the imposition of a community-based sentence; and*
- 3. a custodial sentence would negatively impact the offender's rehabilitation progress.*

Mitigating Factors

I find the following mitigating factors to be present:

- Mr. Smith is a first time offender with no criminal or youth court record
- Youthful offender (20 years old when charged)
- Petty retailer to support a personal habit

- Lesser involvement than his co-accused partner
- Good family support
- No statutory aggravating factors
- Bail compliance for extended period
- No weapons or violence
- Excellent prospect for rehabilitation
- Accused was cooperative with police, pled guilty and accepted responsibility for the offence
- Sincere expression of remorse
- Accused has maintained employment and furthered his education
- Accused self referred to counseling and has attended on a consistent basis
- Mr. Smith co-parents his young son and is involved with him on a daily basis

Aggravating Factors

[48] Trafficking a Schedule I substance is a very serious offence and Mr. Smith has a high degree of moral culpability which is mitigated somewhat by his youth and his addiction at the time of the offence. There were no other aggravating factors present in this case.

Analysis

[49] I do not believe it is necessary to incarcerate Ryan Smith for his specific deterrence, and the potential augmentation of general deterrence does not warrant imprisonment in this specific case.

[50] By imposing a sentence which would allow Mr. Smith to remain in the community, it will have a number of positive effects on his rehabilitative progress and allow him to continue to be a prosocial contributing member of his community who is able to work, further his education and support his family.

[51] At paragraph 32 of *Lungal et. al.* (supra), Justice Farrar notes that:

Rehabilitative progress is a key consideration as described by Clayton C. Ruby, Gerald J. Chan, and Nader R. Hassan, in Sentencing, 8th ed. (Markham, Ont: LexisNexis, 2012) at 1139:

23.784 Where the offender's participation in moderate-to low-level cocaine trafficking is seen to result partly from drug dependency, brief incarceration or non-custodial sentences may be imposed when the offender shows potential to

overcome the habit. [...] For low level cocaine trafficking, weight will be given to evidence demonstrating that the offender wishes to reform his life, whether or not he is an addict [citations omitted].”

[52] I accept that Mr. Smith has accepted responsibility for his actions and has expressed genuine remorse for his actions. Mr. Smith has no prior criminal record. Aside from this one aspect of his life, Mr. Smith has made a positive contribution to society. Judge Peter Ross said the following at para. 34 of *R. v. Morrison*, 2019 NSPC 38, and I cannot say it any better:

Calls for leniency are completely understandable in such a case but must be tempered by an awareness of the destructive effects of hard drugs. Many of the people wracked by drug abuse are just as worthy and capable as Mr. Morrison. They too have (or had) jobs and families. Drug abuse has the potential to ruin lives, destroy families, and damage the community. It can turn healthy people into sick and needy people. It can turn an honest person into an habitual liar. A user’s life goals shrink to one short-sighted objective – to get that next “bump”. The hard and important problems of life are cast aside in favour of the easy and quick fix.

[53] Mr. Smith has truly made extraordinary progress in his life, and he has clearly committed since his arrest to overcoming his addiction issues and moving on with his life in a prosocial way. I would categorize his progress as nothing short of remarkable.

[54] I find that the mitigating factors outweigh the aggravating factors in Mr. Smith’s case.

[55] The sale of Schedule I substances is always a serious matter in Canada. However, the courts have recognized that the ultimate objectives in sentencing – the protection of the public, to contribute to respect for the law and the maintenance of a safe society - can best be obtained in certain specific circumstances with non-custodial sentences.

[56] It is my conclusion that a period of imprisonment is not called for in this case, and that the imposition of a custodial sentence would negatively impact the offender's rehabilitation progress.

[57] I also conclude that specific and general deterrence are satisfied by the imposition of a community-based sentence, given the remarkable changes that Mr. Smith has made in his life and the factors that I addressed previously.

[58] Having considered all of the foregoing factors, the following sentence is imposed: Mr. Smith, I am suspending the passing of sentence and impose a 36 month period of probation, the terms of which are as follows:

- Statutory conditions – keep the peace and be of good behaviour, notify your probation officer in advance of any change of name or address or telephone

number, and promptly notify your probation officer of any change of employment or occupation.

- Report to a probation officer at 26-28 Prince Arthur Street, Amherst, Nova Scotia, on or before 4:00 p.m. today and thereafter as directed by your probation officer.
- Abstain from the possession or consumption of drugs except in accordance with a medical prescription.
- Follow the direction of health care providers and take all medications as prescribed.
- Make all reasonable efforts to locate and maintain employment or an educational program as directed by your probation officer.
- Attend for, participate in and complete any assessment and counseling as directed by your probation officer.
- You must not associate with or be found in the company of any person known by you to have a record of the *Criminal Code*, *Controlled Drugs and Substances Act* or *Youth Criminal Justice Act* except as may be incidental through employment.

[59] The ancillary orders sought by the crown are granted.

Rosalind Michie, JPC.