

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Thompson*, 2022 NSPC 25

Date: 20220622

Docket: 8338597

Registry: Dartmouth

Between:

Her Majesty the Queen

v.

Randall Dwight Thompson

Judge:	The Honourable Judge Theodore Tax,
Heard:	April 27, 2022, in Dartmouth, Nova Scotia
Decision	June 22, 2022
Charge:	Section 267(b) of the Criminal Code of Canada
Counsel:	Lisandra Hernandez, for the Public Prosecution of Nova Scotia Quy Linh, for the Counsel for the Defence

By the Court:

[1] Following a trial, Mr. Randall Thompson was found guilty of having assaulted Paul Harris, which caused bodily harm to Mr. Harris, contrary to section 267(b) of the **Criminal Code**. The offence occurred on October 27, 2018, at the Central Nova Scotia Correctional Facility located in Dartmouth, Nova Scotia.

Positions of the Parties:

[2] The Crown Attorney submits that Mr. Thompson's assault of Mr. Harris while the two of them were in custody caused significant bodily harm which included a broken nose, swelling around his eye and lacerations to Mr. Harris's face. Lacerations on his head from the assault required several staples to close the wound and took three months to heal. It is the position of the Crown that the just and appropriate sentence should be 15 months in jail, followed by 24 months of probation to stress deterrence and denunciation since this was an unprovoked attack of another person in custody at the Correctional Facility. The Crown Attorney also seeks a DNA order as the offence is a primary designated defence pursuant to section 487.051 of the **Criminal Code** and also a section 110 **Code** firearms prohibition order.

[3] Defence Counsel submits that the range of sentence for this offence could be from a suspended sentence to up to two years in jail. Deterrence and denunciation have already been accomplished as Mr. Thompson has been on conditions of release, with a surety for over three years and there has been no breach of those conditions or further incidents. There is a positive PSR and a Race and Culture Assessment report, which notes that he has had problems with addictions and mental health issues for many years. However, since the incident, Mr. Thompson has attended programming and now has stable housing as a support person providing daily insulin to the person with whom he resides.

[4] In addition, Defence Counsel advised the Court that Mr. Thompson and the victim who had been friends prior to the incident, have reconciled and Mr. Harris was willing to speak on behalf of Mr. Thompson at the sentencing hearing. In those circumstances, Defence Counsel submits that a suspended sentence or, in the alternative, a Conditional Sentence Order of imprisonment in the community would be the just and appropriate sentence.

[5] Given the fact that this incident occurred at a Correctional Facility, the Court asked counsel to provide supplemental sentencing recommendations based upon the location of the incident and some of the recent decisions of the Nova Scotia Supreme Court where an individual was attacked by a group with other individuals aiding and abetting that attack.

[6] Based upon the comments of the Justice Campbell in the **LaDelpha** case, the Crown Attorney did not alter her position indicating that the Courts have stressed that deterrence and denunciation of violence in a jail are the paramount sentencing considerations especially where there are serious injuries as in this case. The Crown Attorney acknowledges that this case was not like the **LaDelpha** case as it did not involve a coordinated attack on the victim. However, she submits that sentencing decision must reflect the fact that the rule of law applies in prisons and that there should be serious consequences for violence in that setting.

[7] For his part, Defence Counsel maintained the same sentencing recommendation of a Conditional Sentence Order, as the Crown had elected to proceed summarily with the consent of the defence, given the fact that the information was laid well after six months of the date of the incident. He submits that the cases referred to by the Crown Attorney can be distinguished as those sentences dealt with the more serious offence of aggravated assault and placed much less emphasis on objective of the rehabilitation, which is equally prominent in this case. There have been no breaches of the release order, no contact with the victim and that Mr. Thompson is now in a very stable position in the community.

Circumstances of the Offence:

[8] During the trial, Mr. Paul Harris testified that, on October 27, 2018, around 3:30 PM, he was attacked while he was being held in custody at the Central Nova Scotia Correctional Facility located in Burnside, Nova Scotia. Mr. Harris stated that he had been placed in custody in relation to a driving while impaired charge. Mr. Harris has known the offender for several years when Mr. Thompson was in “dire straits” and for some time, they were “close friends” as Mr. Harris had supported Mr. Thompson by letting him stay at his house, providing him with clothes, food and money for alcohol.

[9] Mr. Harris stated that, on the date in question, he believed that Mr. Thompson was not “happy” with him as Mr. Thompson may have believed that Mr. Harris had helped the police arrest him in relation to another matter. Mr. Harris

had been placed in a general population cell on the upper tier of Range 3 at the Correctional Facility. Mr. Thompson was also placed in that same range and came up to his cell and told him that he had to get off the range because people were “going to get” him.

[10] Moments after that, while Mr. Harris had his back to the cell door and listening to a radio with earbuds, he was attacked from behind by Mr. Thompson. Mr. Thompson shoved him in the back and in falling, his head hit a metal shelf causing a gash which ultimately needed seven staples to close the wound. He had a black eye and a broken nose. The attack happened quickly, and it was from behind, giving him no opportunity to defend himself. After his head hit the metal shelf, then, Mr. Thompson punched him several times in the head, which broke his nose. He was taken to the hospital for medical treatment, and it took three months to heal the injuries.

[11] A video played during the trial showed Mr. Thompson going into Mr. Harris’ cell at the time indicated by Mr. Harris when the assault occurred. The video showed that a couple of other people, who were in that same unit, were standing outside the door of his cell. Mr. Harris stated during the trial, that he would have preferred not to cooperate with the police and provide a statement, but having done so, he had been called to court and indicated that he had sworn to tell the truth.

Circumstances of the Offender:

[12] Mr. Thompson is presently 58 years old. He spent his early childhood and youth in the care of his father and paternal grandmother, as his mother suffered from substance abuse issues and moved out of the province during his formative years. He maintains a positive relationship with his father and grandmother, and they are very supportive of him. He left the family home at age 26 and was in three long-term relationships, being the father of three children aged 30, 25 and 16. He maintains a positive relationship with the two youngest children. When the Pre-Sentence Report was prepared in September 2021, Mr. Thompson was not in an intimate partner relationship and was residing at the Salvation Army’s Centre of Hope on Gottingen St. in Halifax.

[13] The Probation Officer spoke to Mr. Thompson’s most recent intimate partner who has known him for 25 years. During that time, he had good jobs, but ultimately developed addiction issues and was experiencing mental health issues

because of issues in his early childhood. During the last 10 years, Mr. Thompson has been impacted by the deaths of his mother, father, grandmother and several other family members. She noted that substance abuse issues began in his mid-30s when he began to use alcohol and drugs after his boxing career ended following the 1996 Summer Olympics. His eldest daughter believes that her father requires stable housing, regular access to mental health and addiction resources and that he is very motivated to make changes now.

[14] Mr. Thompson stated that he left the public school system after grade 9, enrolled in high school but never attended. In his mid-20s, he did obtain the General Equivalency Diploma, but no further upgrading since then. When the PSR was prepared, Mr. Thompson was unemployed and had been on an income assistance disability pension for about seven years. Prior to 2014, he had maintained steady employment but since then, he has provided personal training services for friends and acquaintances who were interested in “boxing and fitness.” About half of his limited disability income was used to pay rent at the Centre of Hope.

[15] In terms of his health and lifestyle, he has been prescribed medication for high blood pressure and anxiety by his family physician. He has attended the withdrawal management program at the Nova Scotia Hospital in Dartmouth on several occasions, but ultimately did not complete the suggested time for detox. At the time of the PSR, Mr. Thompson acknowledged that he continued to use cocaine and alcohol on a regular basis but stated that he was ready to attend a residential treatment program outside of the Metro area to be away from past associates who use those substances. Mr. Thompson was regarded as a “very good tenant” during his 13 months at the Salvation Army Centre for Hope and had expressed an interest in the Salvation Army’s Anchorage Addictions program.

[16] The Probation Officer referred to the contact made with Mr. Thompson’s boxing coach in relation to a prior PSR, as the coach had recently passed away. The former coach who had known Mr. Thompson at that point for about 35 years confirmed that Mr. Thompson was a “great athlete with a lot of potential as a youth” and that he regularly visited a gym in Lower Sackville and that he remains popular with younger boxers. However, he had stated that Mr. Thompson has few “coping mechanisms” and that addiction issues have negatively impacted his life.

[17] Mr. Thompson has had several prior convictions for criminal offences, the most recent ones being for breaches of probation and failure to comply with release

conditions in 2018 for which he was sentenced in early 2019. The Court ordered an intermittent sentence, which was deemed served by presentence custody credits. In addition, as noted by the Probation Officer, Mr. Thompson was sentenced on June 27, 2018, for a domestic assault and another assault to a 90-day period of the intermittent custody, which was ultimately collapsed into a straight time order, followed by two years on probation. The Probation Officer noted that the “new” assault charge was incurred while Mr. Thompson was incarcerated. Upon his release, Mr. Thompson was referred to numerous programs, but due to substance abuse, homelessness and the Covid pandemic, he was unable to participate.

[18] Mr. Thompson also has a very dated, related record for assault causing bodily harm in March 1993 for which he received a suspended sentence and probation of two years, an assault charge in November 1997 for which he was placed on probation for six months and a threats charge from May 2003 for which he was placed on probation for 18 months.

[19] For the current offence, the Probation Officer noted that Mr. Thompson had accepted full responsibility for his behaviour and openly acknowledged that he has a serious substance-abuse condition. If a community disposition was ordered, Mr. Thompson would require support to manage his dependency on alcohol and cocaine and would likely benefit from a residential treatment program, preferably outside the HRM.

Randall Thompson - Impact of Race and Culture Assessment (IRCA):

[20] The authors of the IRCA have noted generally that adverse childhood experiences have a tremendous impact on future violence victimization, perpetration, lifelong health and opportunities. They note that Mr. Thompson’s formative years were tumultuous and were filled with a variety of forms of neglect. Mr. Thompson was initially raised by his mother who had her own mental health and substance concerns until he was removed from the home by his father and placed in the care of his paternal grandmother, where he had a loving and supportive household.

[21] As mentioned in the PSR, Mr. Thompson had three significant relationships which resulted in the birth of three children. The eldest daughter had resided with her mother in Toronto, but he has reconnected with her. Mr. Thompson’s second daughter had been living in Ottawa with her mother but recently came to Nova Scotia to attend university. He has a very good relationship with her and they

regularly speak to each other. Mr. Thompson's 16-year-old son currently resides in the HRM with his mother [Ms. Goree] who has known Mr. Thompson for many years, although their relationship ended in 2008. She remains very supportive of Mr. Thompson and often attends many meetings with him.

[22] Mr. Thompson's education was as described in the PSR, that is, completing grade 9, enrolling in the high school but finding it more difficult so he stopped attending. Later, he earned his General Equivalency Diploma. Mr. Thompson has always been a "gifted athlete" and his athleticism and friendly personality helped him make friends very quickly. Ms. Goree believes that Mr. Thompson may have had ADHD symptoms as a child as well as a learning disability.

[23] In terms of his employment history, the authors of the IRCA have noted that black men and women have struggled to secure full-time, steady employment for a long time. They point out that African Nova Scotians had a 50% higher unemployment rate than the rest of Nova Scotians and a slightly higher rate of unemployment than African Canadians across Canada. There is a similar gap in the average incomes for African Nova Scotia males compared to Nova Scotian males.

[24] When the IRCA report was prepared in March 2022, the authors noted that Mr. Thompson was not currently employed and had not been employed for several years. His main occupation was boxing for many years, and he had represented Canada at the 1996 Olympics. After his boxing career, he had jobs at car dealerships in two different cities and then at a bakery, which eventually closed in Halifax. He would like to gain employment at a boxing club in the future to share his knowledge but has not pursued that possibility due to the uncertainty of the outcome of this case.

[25] Mr. Thompson's relationship history in the IRCA is the same as what was reported in the PSR. Ms. Dawn Goree has known Mr. Thompson and his family for almost 30 years. They were in an intimate relationship for over nine years, and he is the father of her son, born about two years before they broke up as a couple. She described Mr. Thompson as a supportive father who has regular contact with his son and has been a very positive influence on him. She is very supportive of Mr. Thompson but stated that his addictions were responsible for the breakdown in their relationship. He also gets along very well with his daughters.

[26] In terms of his medical and mental health history, Mr. Thompson openly discussed his physical and mental health issues with the authors. He reported having medical concerns related to his prostate and kidneys as well as high blood

pressure for which he takes medication. He also stated that there is a family medical history that includes cancer, diabetes, heart concerns as well as Alzheimer's disease. As mentioned, he engaged in many sports and was a competitive boxer in his youth and young adult years, from which he suffered many injuries, specifically numerous concussions. From those injuries, he reported that he has issues related to memory loss, scattered thoughts, disorganization and forgetfulness. The concerns around memory loss, forgetfulness and difficulty expressing himself were also mentioned by collateral contacts to the report.

[27] In terms of his mental health, Mr. Thompson stated that he had ADHD as a child and currently suffers from anxiety for which he has been prescribed medication. He has had difficulty getting into the doctor's office to monitor the medications and as a result, there have been significant periods when he did not have his medication, which caused mental health issues, inability to sleep through the night and always wanting to be "on the go". Mr. Thompson reported historical suicidal ideation with the most recent attempt being during his last period of incarceration. However, he stated that he does not have any current suicidal ideation and refers to his children as being protective factors.

[28] Mr. Thompson reported a family history of substance abuse and that both of his parents had issues with substance addiction. He reports ongoing substance use including drugs and alcohol to "soothe the pain." He could not recall a time when he had not used substances daily, aside from those times when he was incarcerated. As mentioned in the PSR, he is open to treatment but would prefer to do so outside of the province as there are too many connections within the province who would find substances for him. His substance abuse became problematic after his boxing career ended in his mid-30s.

[29] In terms of Mr. Thompson's involvement with the criminal justice system, it started at a later age and corresponded with his increasing use of substances. Some of his offences occurred while he was intoxicated, but the offence before the court, occurred while he was incarcerated. Mr. Thompson advised the authors that he engaged in an altercation with another incarcerated individual who made a racial slur. Mr. Thompson also reported that a previous altercation in his late 20s which resulted in another charge was also based on racial slurs and that most of his other charges were breaches or failures to comply.

[30] Mr. Thompson has previously experienced racism both in school and in his neighbourhood when he was a child. He advised the authors that playing sports and

hanging around with kids from the community helped combat his experiences with racism, but being outside the community was more challenging, especially when playing hockey. While Mr. Thompson stated that he has experienced racism in the past, he did not focus on racism, as Ms. Goree advised the authors that Mr. Thompson has family members who are of different races.

[31] Mr. Thompson's family originally resided in Africville, where he was born in 1964, but his family suffered trauma from being uprooted from their houses and community. The authors noted that these types of racist and traumatic experiences within the African Nova Scotia community have led to intergenerational trauma for the former residents and their offspring from the Africville community.

[32] As a young child, Ms. Goree advised the authors that both alcohol and substance abuse in his immediate family were present throughout his childhood. She also noted that his mother was a drug addict who abandoned him, and she believes this has been an unresolved issue in Mr. Thompson's life. She also stated he has been impacted by the recent deaths of a number of close friends and family. Mr. Thompson reported that he is currently dealing with anxiety, depression and addictions, combined with possible brain injuries from boxing.

[33] The authors contacted a family friend, Mr. George Moore, who has known Mr. Thompson since they were four years old. Mr. Moore recently suffered a stroke and spent six months in hospital. Following his release, Mr. Moore needed additional support at home and was able to arrange for Mr. Thompson to assist him with cooking, cleaning, grocery shopping and assisting with his activities of daily living. Mr. Moore is aware that Mr. Thompson struggles with addiction and he wants to continue to support him. Since the initial interview Mr. Moore has moved into seniors' residence due to his health.

[34] Ms. Dawn Goree described Mr. Thompson as a friendly, happy, and kind person who has always encouraged people to do the right thing. She actively supports Mr. Thompson, and she noted that he maintains regular contact with his son and is a positive influence on him. She stated that Mr. Thompson's addictions were responsible for the breakdown of their relationship, but she still supports him.

[35] In terms of the obstacles that Mr. Thompson has had to deal with in his life, Ms. Goree stated that while they were in the relationship, they had numerous conversations about his childhood, and she believes that he had undiagnosed ADHD. She also believes that Mr. Thompson has endured lifelong trauma from his

early childhood to the present day, which likely started with the intergenerational trauma from the family being dislocated from their Africville homes.

[36] Ms. Goree also shared that Mr. Thompson's family were bootleggers in the community and that he was surrounded by alcohol and substance abuse throughout his childhood. She feels that Mr. Thompson's drug abuse and alcoholism have brought about memory loss "similar to dementia" and that his boxing career may have also led to brain injury. She noted that he was very close to his boxing coach who was a huge support in his life, acting like a father figure providing encouragement and employment opportunities. The recent death of his boxing coach and his father has had a profound impact on his well-being.

[37] Ms. Goree noted that Mr. Thompson was reluctant to share information with respect to the current charge until she was asked to participate in the PSR and IRCA reports. It was only then that he told her that he got into a fight in the jail but didn't want to share the specific details. She told the authors that given Mr. Thompson's complex needs, jail is not the right place to address them. Mr. Thompson has experienced nightmares and is terrified with the prospect of having to spend more time in jail.

[38] The authors noted that it was difficult for Mr. Thompson to provide details to the questions posed and that most of his answers were brief and with little depth. In their opinion, Mr. Thompson's responses were not by choice, but likely due to previous head trauma from his boxing career as well as ongoing substance use. The history of substance abuse and unresolved mental health issues for which he has received limited support, services or treatment have all factored into the choices made and the present circumstances.

[39] The authors recommend that individual addiction and substance use counselling would be most beneficial, but he could participate in a structured residential treatment program such as Alcare Place. They also recommend that, since Mr. Thompson has had many experiences of racism and trauma throughout his life, he would benefit from culturally specific counselling to build skills to cope. Finally, the authors note that Mr. Thompson has been chronically underemployed, and that career and educational guidance and counselling would be beneficial through a therapist or through programs offered by the Black Business Initiative, the Valley African Nova Scotia and Development Association or the Cumberland African Nova Scotia Association.

Analysis:

[40] The determination of a just and appropriate sentence is a highly contextual and individualized process which depends upon the circumstances of the offence and the offender: see **R. v. Lacasse**, 2015 SCC 64, at para.1. The trial judge is required to carefully balance the societal goals of sentencing against the moral blameworthiness of the offender and the gravity of the offence, while at the same time, taking into account the victim or victims and the needs of and current conditions in the community: **R. v M. (C.A.)**, [1996] 1 SCR 500 at paras. 91-92.

[41] The fundamental purposes and principles of sentencing are set out in sections 718 to 718.2 of the **Criminal Code**. Those fundamental objectives of sentencing are to protect the public and to contribute to respect for the law and the maintenance of a safe society, by having one or more of the following goals: denunciation, general and specific deterrence, separation from society where necessary, rehabilitation of the offender, promotion of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[42] Section 718.1 of the **Criminal Code** sets out the fundamental principle of proportionality in sentencing. A sentence must be proportionate to the gravity or seriousness of the offence and the degree of responsibility or moral blameworthiness of the offender. In other words, the severity of the sanction for a crime should reflect or be proportionate to the seriousness of the criminal conduct.

[43] Pursuant to section 718.2 of the **Criminal Code**, the Court that imposes a sentence is also required to consider several other sentencing principles in determining the Just and Appropriate sanction. Section 718.2(a) of the **Code** requires the Court to consider the aggravating and mitigating circumstances which may either increase or reduce the appropriate sentence.

[44] The parity principle found in section 718.2 (b) **Code** requires the Court to consider that the sentence imposed should be similar to sentences imposed on similar offenders for similar offences which were committed in similar circumstances. On this point, I note that it is often difficult to find those similar cases, as the sentencing considerations in any case are highly individualized and based upon the circumstances of the offence and on the circumstances of the offender.

[45] In addition, in sections 718.2 (d) and (e) of the **Code**, Parliament has reminded sentencing judges that the offender should not be deprived of liberty if a less restrictive sanction may be appropriate in all the circumstances. Furthermore, the sentencing judge is required to consider all available sanctions, other than

imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of aboriginal offenders.

Aggravating and Mitigating Circumstances:

[46] I find that the Aggravating Circumstances are as follows:

- Mr. Thompson attacked the victim from behind in his jail cell at the Central Nova Scotia Correctional Facility while the victim was completely vulnerable with no opportunity to defend himself;
- Mr. Thompson's assault of the victim involved some degree of planning as a couple of other prisoners at the Correctional Facility stood outside the cell door to block the view of the attack from the correctional staff;
- The victim suffered bodily harm including a gash on his head and a broken nose, which injuries took about three months to heal;
- The offender has a significant prior related record for two separate common assaults [2018] and a dated related record for a common assault and assault of a peace officer [2007], a common assault [1997] and an assault causing bodily harm [1993].

[47] I find that the Mitigating Circumstances are as follows:

- Although the matter went to trial, which is not an aggravating circumstance, Mr. Thompson advised the Probation Officer that he accepts responsibility for the offence;
- There is a positive Pre-Sentence Report and also a very positive Impact of Race and Cultural Assessment Report;
- At the time of the offence, Mr. Thompson was experiencing significant substance abuse addictions, mental health issues and likely experienced brain injuries from his boxing career;
- The IRCA report indicates that Mr. Thompson has previously experienced racism and intergenerational trauma from his family being uprooted from their residence in the Africville community;
- Although he is on a long-term income assistance disability, Mr. Thompson recently found stable housing when he moved with a long-time

family friend, who had had a stroke to provide home support for his daily living and providing daily insulin to his friend.

The Principle of Proportionality and the Parity Principle:

[48] As I have previously mentioned, the fundamental principle in sentencing is proportionality which is codified in section 718.1 of the **Code**. Recently, in **R. v. Parranto**, 2021 SCC 46 at para. 44, the Supreme Court of Canada stated that:

“Sentencing judges are required to individualize the sentence in a way that accounts for both aspects of proportionality – the gravity of the offence and the offender’s individual circumstances and moral culpability. At the stage of individualizing the sentence, the sentencing judge must therefore consider “all of the relevant factors and circumstances, including the status and life experiences, of the person before them” (*Ipeelee*, at para. 75). Those factors and circumstances may well justify a significant downward or upward adjustment in the sentence imposed.”

[49] As I indicated previously, the parity principle found in section 718.2(b) of the **Code** requires the Court to consider that a sentence imposed should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A review of the sentencing precedents provided by counsel or reviewed by the Court may be considered to establish a range of sentence, as a guideline for the trial judge. It does not, however, create any hard and fast rules, nor does the consideration of an appropriate range preclude a greater sentence where the emphasis is upon denunciation, deterrence and the gravity of the offence or a lesser sentence based upon special or significant mitigating circumstances.

[50] In addition, the Supreme Court of Canada has stated on several occasions, most recently, in **Parranto**, *supra*. at para. 38 that “sentencing is an individualized process, and parity is secondary to proportionality.”

[51] The Nova Scotia Court of Appeal in **R. v. Rakeem Anderson**, 2021 NSCA 62, which was determined about six months before the Supreme Court of Canada’s decision in **Parranto**, incorporated those same comments from the **Ipeelee** decision in their decision to once again, highlight, the fact that sentencing is an “inherently individualized process.” In **Anderson**, *supra*, at paras. 115 and 116, Derrick J.A. stated:

“[115] Sentencing is an inherently individualized process. It is a fundamental duty of a sentencing judge to pay close attention to the circumstances of all offenders

in order to craft a sentence that is genuinely fit and proper. What is required in the sentencing of Indigenous offenders applies to offenders of African descent who are also entitled to ‘an individualized assessment of all of the relevant factors and circumstances, including the status and life experiences...’

[116] Sentencing judges play a significant role in how offenders are punished and rehabilitated through the criminal justice system. As in the case of Indigenous offenders, they decide whether an offender of African descent is incarcerated or receives a sentence that can play ‘a stronger role in restoring a sense of balance to the offender, victim, and community, and in preventing future crime.’

Notwithstanding that the sentencing judges are far downstream from the forces that have contributed to bringing offenders before them, they are influential at a critical juncture: they determine if incarceration and separation from society is the course to be followed or if a remedial option can serve the objectives of sentencing and achieve a just outcome.”

[52] In this case, given the fact that the victim suffered significant bodily harm which took several months to heal and the fact that this occurred at the Correctional Facility, the gravity or seriousness of this offence is very high. In view of the fact that the assault was perpetrated inside the prison walls on an unsuspecting and vulnerable fellow prisoner, I also find that Mr. Thompson’s degree of responsibility or moral blameworthiness for the offence is also high.

[53] The Crown Attorney has submitted that the offender committed a serious offence and that his actions represented a high degree of moral blameworthiness for which a CSO would be inconsistent with the key sentencing principles applicable in this case. She submits that, given the serious injuries suffered by Mr. Harris and the fact that the attack was perpetrated in the Correctional Facility, the predominant sentencing objectives should be specific and general deterrence to send a strong message to like-minded individuals that there will be a significant consequence for people committing similar offences in similar circumstances.

[54] In this case, the Crown had proceeded by way of summary conviction and, in those circumstances, and offence of assault causing bodily harm contrary to section 267(b) of the **Criminal Code** and in 2018, at the time of the incident, this offence was subject to a maximum sentence of 18 months in prison. There was not then, nor now, a minimum punishment stipulated for this offence.

[55] With respect to the maximum sentence, I note here that between the date of the offence at the Correctional Facility on October 27, 2018, and today’s date for the sentencing decision, as of September 19, 2019, the maximum sentence for the offence of assault causing bodily harm, proceeding summarily, had increased. The

current maximum sentence for the offence of assault causing bodily harm contrary to section 267(b) of the **Code** is two years less one day. Given the fact that there was not then, nor now, a minimum punishment and the fact that the maximum sentence was increased to two years less one day, the defence position with respect to a CSO in the community would still be an “available” sentencing option for the Court to consider as the just and appropriate sentence.

[56] However, it is important to note that Mr. Thompson’s sentencing decision is guided by section 11(i) of the **Charter of Rights and Freedoms** which provides, that if found guilty of the offence and the punishment for the offence has been varied between the time of the commission and the time of sentencing, as it was in this case, any person charged with the offence has the right to the benefit of the lesser punishment. As a result, with respect to the Crown Attorney’s sentencing submissions, the maximum sentence that could be imposed on Mr. Thompson is 18 months of imprisonment in a provincial Correctional Facility.

[57] In support of the Crown Attorney’s submissions on sentence, she referred to the following cases:

[58] **R. v. Russell**, 2015 BCSC 1645 - After several days of trial, Mr. Russell pled guilty to the charge of assaulting another inmate at the Correctional Centre. The first attack of another inmate had been planned and Mr. Russell had another inmate assist him in assaulting the victim, when he “sucker punched” the victim, who had no opportunity to defend himself. The victim suffered serious injuries which required immediate surgery, titanium pins being inserted and disfigured his lower jaw. Mr. Russell also assaulted the second person the next day in similar circumstances, but that second victim suffered less injuries because he was facing the offender when the assault occurred and was somewhat able to defend himself.

[59] The offender was 27 years old, raised in a home where his mother suffered from alcoholism and his biological father was also an alcoholic. Mr. Russell had a lengthy criminal record but was able to gain employment in carpentry in Alberta. He was in a long-term relationship and was the father of a two-year-old child. He wanted to remain at home with his son and partner. Mr. Russell also acknowledged that he struggled with addictions to non-prescription drugs such as crack cocaine, which led him to troubles with the criminal justice system. Mr. Russell was raised in a violent and dysfunctional home where his mother suffered from alcoholism, his father was also an alcoholic and he suffered violence from his father and stepfather. He was of Cree First Nation in ancestry through his mother’s side.

[60] The Court looked at other sentencing precedents for assault causing bodily harm in a prison context. One of the two victims had only suffered minor injuries because he was able to anticipate the punches. The Court heard Mr. Russell express regret but could not agree that it was a sincere expression of regret. The Court noted that Mr. Russell had a serious prior record with multiple convictions or guilty pleas for offences involving violence.

[61] The Court sentenced Mr. Russell to 24 months in jail for the serious assault on Mr. White, which caused bodily harm and 6 months consecutive for a less serious assault on a second inmate which occurred the day after the first incident. Mr. Russell had earned 17 months of credits, so he was ordered to serve a further 13 months in jail followed by two years probation. The Court stated that, given that the assault took place in a Correctional Centre and the victim was vulnerable and had been attacked by a group, there was a need for the Court to send a strong message of deterrence and denunciation.

[62] In **R. v. Larade**, 2017 NSSC 135, the offender was one of five people in a Correctional Centre who attacked the victim and delivered several punches and kicks to the victim. He was knocked unconscious, sustained of skull fracture and severe head laceration which required 40 stitches to close. The offender had pled guilty to the charge of aggravated assault contrary to section 268(1) of the **Code**. The offender was single, 27-year-old, and was the father of two children from previous relationships. The Court noted that he had accepted responsibility for the offence, and he also expressed his remorse in court.

[63] On the other hand, the Court noted that the aggravating factors were that the offender and four others had swarmed the victim and attacked him in a premeditated fashion, although not being a prolonged assault, it was very severe and there were repeated blows to the victim's head after he had been knocked to the floor. The offender had two prior convictions for assault. The court accepted a joint recommendation for two-year term of imprisonment followed by two years on probation.

[64] A more recent case which involved a large number of prisoners at the Correctional Centre committing an aggravated assault in a planned and deliberate manner on the victim, contrary to section 268(1) the **Code** is for example, **R. v. Clarke-McNeil**, 2022 NSSC 63. In that case, the offender was sentenced to six years in penitentiary less remand credit.

[65] In **Clarke-McNeil**, *supra*, at para. 35, Justice Campbell stated that this was a planned and coordinated attack within the jail. The rule of law applies there. Prison culture cannot be permitted to take its place. The safety of inmates and staff demands that the rule of law run through the internal working of correctional facilities of all kinds. Looking at other sentencing decisions, the Court noted that all of those decisions stressed deterrence in ordering significant jail sentences for the very serious offence of committing an aggravated assault, especially in circumstances where there was a concerted effort of many to perpetrate an aggravated assault on an individual.

The Just and Appropriate Sentence:

[66] As I had previously determined, the fundamental principle in sentencing is the principle of proportionality which is codified in section 718.1 of the **Code**. The determination of the just and appropriate sentence is a highly individualized process and proportionality is based upon the gravity of the offence and the degree of responsibility of the offender. I have found that the gravity or seriousness of the offence of assault causing bodily harm to Mr. Harris by Mr. Thompson was very high, given the nature of the injuries and the fact that this attack occurred on a vulnerable person in a Correctional Centre. In addition, in terms of Mr. Thompson's degree of responsibility or moral blameworthiness for this offence, given the number of aggravating circumstances, I have also found that his degree of responsibility for the offence is also very high.

[67] Having said that, in determining the just and appropriate sentence, there are several mitigating circumstances which I have outlined above and a very positive presentence report and an equally helpful IRCA report to provide a background to assess the moral culpability of an African Nova Scotia offender in the context of historic factors and systemic racism. As our Court of Appeal said in **Anderson**, *supra*, at para. 146:

“The African Nova Scotian offender's background and social context may have a mitigating effect on moral blameworthiness. In **Ipeelee**, the Supreme Court of Canada recognized this principle in relation to Indigenous offenders. It should also be applied in sentencing African Nova Scotians. Sentencing judges should take into account the impact of social and economic deprivation, historical disadvantage, diminished and nonexistent opportunities, and restricted options may have had on the offender's moral responsibility.”

[68] During their sentencing submissions, the Crown Attorney recommended a sentence of 15 months imprisonment followed by 24 months of probation to stress deterrence and denunciation of this unprovoked attack on another person in custody at the Central Nova Scotia Correctional Facility.

[69] Defence Counsel, on the other hand, submitted that deterrence and denunciation could be combined with restraint and taking into account that the moral blameworthiness of Mr. Thompson ought to be attenuated by the important factors outlined in the IRCA report. In those circumstances, he submitted that the individualized sentencing could meet all of the relevant purposes and principles of sentencing through either a lengthy suspended sentence or a Conditional Sentence Order (CSO) of imprisonment in the community on strict conditions which would accomplish deterrence and denunciation but also provide an equal focus on restraint and allow Mr. Thompson to continue on his positive steps towards rehabilitation and preventing future crime.

[70] In **R v. Proulx**, 2000 SCC 5 and in **R. v. Wells**, 2000 SCC 10, the Supreme Court of Canada determined that section 742.1 of the **Code** required the judge to determine, at a preliminary stage, whether there were any provisions that excluded a CSO from being considered as an available sentencing option and to exclude two possibilities, probationary measures, and a penitentiary term of more than two years.

[71] At the preliminary stage, the duration and venue of the sentence is not determined, the Court is required to consider the fundamental purpose and principles of sentencing set out in section 718 to 718.2 of the **Code** only to the extent necessary to narrow the range of sentence for the offender. In this case, the maximum sentence for this offence is 18 months and therefore, the just and appropriate sentence would not involve a penitentiary term of over two years.

[72] With respect to the second aspect, at this preliminary stage, although Defence Counsel recommended that the Court strongly consider the imposition of the suspended sentence and probation, with an alternative recommendation of a CSO of imprisonment in the community, in my opinion, a suspended sentence would not reflect the gravity of the offence and the injuries suffered as a result of the offender's attack on a vulnerable victim in a Correctional Facility. The sentence imposed in this case must have a significant focus on denunciation and deterrence of these random acts of violence to maintain the rule of law and order in penal institutions.

[73] Having considered the principle of proportionality and the mitigating and aggravating circumstances present in this case, in my opinion, a suspended sentence would not be a just and appropriate sanction. Mr. Thompson has a couple of very recent and directly related convictions for assault and there are several other more dated convictions for assaults. Those recent and related convictions as well several other dated convictions coupled with the nature of this assault in a Correctional Facility, represent significant aggravating circumstances, which need to emphasize deterrence and denunciation, which would tend to increase the sentence. So, having come to those conclusions, I find that the just and appropriate sentence would certainly not include a penitentiary term of over two years, nor would it include a suspended sentence given the seriousness of the assault and the number of aggravating circumstances present in this case.

[74] Furthermore, pursuant to section 742.1 of the **Code**, before determining whether a CSO is the appropriate sanction to order, the Court is required to confirm that there is no minimum term of imprisonment, and that the safety of the community would not be endangered by the offender serving the sentence in the community. There is no minimum sentence of imprisonment for this offence.

[75] As for the other criterion, given the number of previous convictions for violent offences, the gravity of that damage that could ensue from the offender committing a similar offence may be serious. However, I also find that there is a very positive PSR, the equally very positive statements in the IRCA which confirmed that Mr. Thompson has connected with strong supports in the community and has already participated in relevant programming in the community to address the numerous issues in his life during the last three years while he has been on very strict release conditions. During those three years, there have not been any breaches of those release conditions and taken together with the positive steps to address the previous issues in his life, I find that those factors tend to indicate that there is a low risk of Mr. Thompson reoffending.

[76] In **Proulx**, *supra*, at paras. 99-100, which were also cited with approval in **Wells**, *supra*, at para. 31, the Supreme Court of Canada noted that a conditional sentence can incorporate traditionally punitive goals of sentencing while also providing an opportunity to further the goals of restorative justice. It affords the sentencing judge the opportunity to craft a sentence with appropriate conditions that can lead to the rehabilitation of the offender, reparations to the community and the promotion of a sense of responsibility in ways that jail cannot. However, it is

also a punitive sanction, and it is that punitive aspect of strict conditions that distinguishes it from probation.

[77] In **Wells**, *supra*, at para. 33, the Supreme Court of Canada stated:

“The amount of denunciation and deterrence provided by a conditional sentence varies depending on the nature of the conditions imposed and the duration of the sentence. Since the imposition of any sentence is determined on an individual basis, each conditional sentence needs to be crafted with attention to the particular circumstances of the offence, offender and the community in which the offence took place. Consequently, conditions will vary according to these factors with it being generally true that “the more serious the offence and the greater the need for denunciation, the longer and more onerous the conditional sentence should be [Proulx, at para. 106].”

[78] As Justice Derrick noted in **Anderson**, *supra* at para. 118, the “method” employed for sentencing African Nova Scotian offenders should carefully consider the systemic and background factors detailed in the IRCA. It may amount to an error of law for sentencing judge to ignore or fail to inquire into those factors. These principles parallel the requirements in law established by the Supreme Court of Canada in relation to **Gladue** factors in the sentencing of Indigenous offenders.

[79] In reviewing the IRCA report, it is evident that Mr. Thompson has experienced racism, suffered from various forms of the neglect, mental health issues, substance abuse and addiction, homelessness and unemployment. He has also suffered the historical intergenerational trauma caused by his family being removed from their houses in the Africville community. Although he excelled at boxing and even represented Canada at the 1996 Olympic, that boxing career, according to collateral contacts in the IRCA, may have caused brain injuries and memory loss. In **Anderson** (*supra*, at para 118), the Nova Scotia Court of Appeal stated that “a judge does not have to be satisfied a causal link has been established ‘between “the systemic and background factors and the commission of the offence.’” However, when I consider all of those systemic and background factors that Mr. Thompson has experienced, I find that they may have certainly had a direct causal link to a large number of his prior offences, and I find that they would tend to attenuate Mr. Thompson’s moral culpability for this offence.

[80] However, I find that Mr. Thompson’s commission of a significant assault of Mr. Harris, which caused bodily harm to a vulnerable victim in a Correctional Centre where one would expect to be kept safe and secure from random violence of this nature, must still be regarded as involving a significant degree of moral

blameworthiness. Having said that, while the sentence imposed by the Court must highlight specific and general deterrence as well as denunciation of the unlawful conduct, I also find that those systemic and background factors need to be assessed contextually in sentencing an African Nova Scotian offender to determine, in a highly individualized process, whether those objectives can be satisfied effectively in the community under a Conditional Sentence Order rather than imposing a custodial sentence.

[81] In determining a just and appropriate sentence for an incident that occurred over three years ago, the IRCA and PSR have highlighted the fact, that in the meantime, after struggling for many years, Mr. Thompson has found stable housing, has reconnected with many supportive people, most importantly immediate members of his family, has a keen desire now that Covid restrictions have eased to participate in residential treatment programs to address dependency on alcohol and cocaine and he has been actively helping a long-time friend with personal care. He is also volunteering in the community to be a positive influence for his own children and also in steering young people in the right direction.

[82] The principles of Restraint are codified in section 718.2(d) and (e) of the **Criminal Code**, directing that less restrictive sanctions than custody should be assessed for their appropriateness and reasonable alternatives to incarceration must be considered for all offenders. Restraint as a principle of sentencing must also be considered as part of a sentencing matrix that includes denunciation and deterrence. As stated by Justice Derrick in **Anderson**, *supra* at para. 161: “Reversing the trend of over incarceration a Black offenders will require robust and consistent application of the restraint principle.”

[83] Having taken all of the facts and circumstances of this case into account, having considered the very positive Pre-Sentence Report and the equally helpful and positive IRCA report which provided information relating to all of the systemic and contextualized background factors experienced by Mr. Thompson, I find that the just and appropriate sanction in this case is to express significant deterrence and denunciation through strict terms and conditions of a Conditional Sentence Order of imprisonment in the community of 15 months.

[84] As mentioned previously, the **Proulx** case held that a Conditional Sentence Order could reflect traditional punitive sentencing goals while at the same time furthering restorative objectives. In this case, I find that the length of the sentence and the strict terms and conditions achieve the objects of deterrence and

denunciation of the unlawful conduct but at the same time, by not incarcerating Mr. Thompson, the CSO can play, as the Supreme Court of Canada said in **Gladue**, *supra*, at para. 65 “a stronger role in restoring a sense of balance to the offender, victim, and community, and in preventing future crime.”

[85] In concluding that the just and appropriate sanction, in all the circumstances of this case, is to impose a 15 month CSO of imprisonment in the community, I have found that the just and appropriate sentence to be imposed is less than two years of imprisonment and furthermore, I am satisfied that Mr. Thompson’s service of that sentence in the community would not endanger the safety of the community and would be consistent with all of the fundamental purpose and principles of sentencing set out in section 718 to 718.2 of the **Criminal Code**.

[86] While I find that the strict terms and conditions of a 15-month CSO of imprisonment in the community will emphasize deterrence and denunciation of the unlawful conduct, I find that ordering a CSO of imprisonment in the community also incorporates the principles of restraint codified in section 718.2(d) and (e) of the **Criminal Code**. I find that a CSO of imprisonment in the community is the least restrictive sanction that is appropriate in all of the circumstances of the case and that it is not necessary to separate Mr. Thompson from society by ordering a sentence of imprisonment in a Correctional Centre.

[87] Following the 15-month conditional sentence order, I hereby order Mr. Thompson to be subject to the terms of a probation order for 15 months in order to ensure that all of the relevant counselling, treatment and programming will be made available to him, under the supervision of the Probation Officer or sentence supervisor during the duration of the two orders.

Conditional Sentence Order:

[88] The terms and conditions of the conditional sentence order of imprisonment in the community shall be served under the following conditions:

- keep the peace and be of good behaviour;
- appear before the Court as and when required to do so by the Court;
- notify the Court or supervisor, in advance, of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation;

- Report to a supervisor at Dartmouth today and thereafter as directed by the sentence supervisor;
- You are required to reside at a specified residence and not to move out of that address without the permission of the Court;
- remain within the province of Nova Scotia unless you receive written permission from your supervisor;
- you are not to possess, take or consume alcohol or other intoxicating substances;
- you are not to possess, take or consume a controlled substance as defined in the **Controlled Drugs and Substances Act** except in accordance with a physician's prescription for you or some other legal authorization;
- you are not to have in your possession any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance;
- you are not to have any direct or indirect contact or communication with Paul Harris except with his express consent which may be withdrawn at any time;
- you are not to be on or within 25m of the premises known as any home, school or workplace of Paul Harris and there are no exceptions to that;
- you are to attend for mental health assessment and counselling as directed by the supervisor or probation officer;
- you are to attend for substance abuse assessment and counselling as directed by the supervisor;
- you are to attend for such other assessments, counselling or treatment as directed by your sentence supervisor;
- you are to participate in and cooperate with any assessment counselling or program that may be directed by the sentence supervisor or probation officer

House Arrest and Curfew:

[89] For the first 9 months of the Conditional Sentence Order, you shall remain in your residence or within the four corners of the grounds of the residence 24 hours a

day, seven days a week, except where specifically permitted otherwise by the terms of this Conditional Sentence Order.

[90] For the final 6 months of the CSO, you shall keep a curfew and remain in your residence or on its grounds between the hours of 10 PM and 6 AM, seven days per week, except where specifically permitted otherwise by the terms of this order.

[91] For the first 9 months of this CSO, you may only be absent from your residence for the following reasons:

- when at regularly scheduled employment which your supervisor knows about and travelling to and from that employment by direct route;
- when attending a regularly scheduled education program which your supervisor knows about or at a school educational activities supervised by a principal or teacher and travelling to and from the education program or the activity by a direct route;
- when dealing with medical emergency or attending a medical appointment involving you or member of your household, with advance notice to your supervisor and travelling to and from it by a direct route;
- when attending any scheduled medical, dental or health-related appointments with the prior written approval of your sentence supervisor, travelling to and from those meetings or appointments by a direct route;
- when attending any substance abuse assessment and counselling as directed by the supervisor or probation officer, and travelling to and from by a direct route;
- when attending a scheduled appointment with your lawyer, your supervisor or probation officer and travelling to and from the appointments by a direct route;
- when attending court at a scheduled appearance or under subpoena and travelling to and from the court by direct route;
- when attending a counselling appointment, treatment program or meeting of Alcoholics Anonymous or Narcotics Anonymous at the direction of or with the permission of your supervisor and travelling to and from that appointment, program or meeting by a direct route;

- when attending a regularly scheduled religious service with the permission of your supervisor travelling to and from the service by a direct route;
- and while on the house arrest condition, you are not allowed to be out of your house for more than four (4) hours per week, approved in advance by your sentence supervisor for the purpose of attending to personal needs; and
- such other exceptions as approved, in advance, by your sentence supervisor.

[92] During the ensuing six (6) month period when you will be subject to the terms of a curfew to remain in your residence between the hours of 10 PM and 6 AM the following day, you may only be absent from your residence for the same reasons listed under the exceptions to the house arrest condition.

[93] Following the completion of the Conditional Sentence Order, you will be subject to 15 months on Probation with the following conditions:

- keep the peace and be of good behaviour;
- appear before the court when required to do so by the court; and
- notify the court or probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation;
- report to and be under the supervision of your probation officer at 277 Pleasant St., Dartmouth, NS, within two days of the completion of your CSO and thereafter as directed by the probation officer;
- you are not to have any contact or communication directly or indirectly with Paul Harris, except with his express consent which may be withdrawn at any time;
- you are to not be on or within 25 m of any premises known as the home, school or workplace of Paul Harris;
- you are not to have in your possession any weapons, firearms, ammunition or any explosive substances
- you are to make reasonable efforts to locate and maintain employment or an educational program as directed by the probation officer;

- you are to attend for mental health assessment and counselling as directed by the probation officer;
- you are to attend for any assessment counselling program or treatment that may be recommended or directed by your probation officer;
- you are to participate in and cooperate with any assessment, counselling or program that may be directed by the probation officer.

Ancillary Orders:

[94] In addition, I hereby make the following ancillary orders which were sought by the Crown Attorney: (1) a section 110(1) **Criminal Code** weapons prohibition for a period of 10 years and (2) a section 487.051 **Criminal Code** order as a section 267(b) **Code** conviction is a primary designated offence for the purpose of securing a DNA sample; and finally (3) I hereby waive the payment of \$100 as a victim surcharge pursuant to section 737 of the **Criminal Code** as it would be an undue hardship to impose that surcharge on Mr. Thompson.

[95] Judgment, accordingly,

Theodore K. Tax, JPC