

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R v Graham*, 2022 NSPC 42

Date: 20220719

Docket: 8538075 8538076 8538077
8538078 8538080 8538081 8538087

Registry: Pictou

Between:

Her Majesty the Queen

v

Justin Daniel Graham

SENTENCING DECISION

Judge: The Honourable Judge Del W Atwood

Heard: 2022: 4, 15, 19 July 2022 in Pictou, Nova Scotia

Charge: Sections 145, 320.13, 320.17, 320.18, 354, 733.1 *Criminal Code*

Counsel: T William Gorman for the Nova Scotia Public Prosecution
Service
Stephen Robertson for Justin Daniel Graham

By the Court:

Synopsis

[1] Justin Daniel Graham is before the court for sentencing for an array of offences committed between 8 December 2021 and 7 January 2022.

[2] The prosecution seeks the imposition of terms of imprisonment totalling 26 months (from which should be deducted an appropriate remand credit) followed by a term of probation, along with prohibition orders under § 320.24(4) of the *Criminal Code*.

[3] Defence counsel argues that, after giving credit for remand time, Mr Graham be sentenced to a conditional-sentence-of-imprisonment order [CSO] of two years less a day. Defence later modified this recommendation to a conditional-sentence order of approximately 13 months.

[4] For the reasons that follow, I sentence Mr Graham to a CSO of 10 months, along with ancillary orders and victim surcharges.

Summary of offences

[5] Mr Graham elected trial in this court for counts proceeding by indictment, and pleaded guilty to ten counts.

Case	Charge	Process (S=summary I=indictment)	Circumstances of offence
8542506	354(1)(a): Possession stolen property	S	8 December 2021: Mr Graham found in possession of a stolen licence plate attached to a silver BMW which he informed police he had recently purchased.
8542507	733.1: Breach of probation	S	8 December 2021: Mr Graham subject to probation order # 2303662 issued on 21 April 2021 when found in possession of the stolen plate.
8538075	320.18: Operation of conveyance while prohibited	I	15 December 2021 1833 hrs: An off-duty officer observes Mr Graham at a gas bar in New Glasgow operating a silver BMW. Other officers arrive on the scene. Mr Graham drives away dangerously, narrowly missing two officers; he flees the scene at a high rate of speed, leaving tire marks on the paved road surface. Mr Graham was subject to probation order # 2303662, and a 10-year driving-prohibition order imposed 20 Nov 2018 in Kenora ON.
8538076	320.13: Dangerous operation	I	See case 8538075.
8538077	320.17: Flight from police	I	See case 8538075.
8538078	733.1: Breach of probation	I	See case 8538075.
8538087	145(5)(a)	S	15 December 2021 2145 hours: Mr Graham not at home at time of curfew check; 2000 hrs curfew in

			place in virtue of release order # 2315878.
8538080	320.18: Operation while prohibited	I	16 December 2020: 1433 hrs police continue a search for Mr Graham as a result of the incidents of 15 December; police observe Mr Graham operating silver BMW displaying a stolen plate; police follow Mr Graham surreptitiously and arrest him at an apartment in Stellarton.
8538081	733.1: Breach of probation	I	See case 8538080.
8540692	145(5)(a)	S	7 Jan 2022: Following his arrest for the 15-16 December 2021 cases, Mr Graham's bail is cancelled, and a new release order 2331644 issued following a contested bail hearing. This release order places Mr Graham on house arrest. On 7 Jan 2022 2100hrs Mr Graham is found in a vehicle operated by a Richard Thompson. Mr Graham arrested for house-arrest violation. Mr Graham has been on remand since that date.

Circumstances of Mr Graham

[6] The court has reviewed a presentence report dated 27 June 2022.

Presentence report biography

[7] Mr Graham is a 28-year-old male. He was raised in an abusive household. His

family moved to Pictou County when he was 13 years old. He began

associating with negative peers. This led to a number of conflicts with the law that started when he was a young person continued after his eighteenth birthday.

[8] Mr Graham's adult bail report from Nova Scotia records the following:

- 334/354: 7 findings of guilt;
- 733.1: 5 findings of guilt;
- 145: 1 finding of guilt; and
- 137 YCJA: 6 findings of guilt.

[9] His youth justice bail report records the following:

- 266: 2 findings of guilt;
- 430: 5 findings of guilt;
- 137: 8 findings of guilt; and
- 177: 1 finding of guilt.

[10] While awaiting sentencing in 2013 for a number of offences committed while an adult, Mr Graham fled the province, and a warrant was issued for his arrest.

[11] While wanted in Nova Scotia, Mr Graham's conflicts with the law continued between 2014 and 2018, in Ontario, Alberta and Saskatchewan.

[12] His out-of-province CPIC report records the following:

- 2014 Owen Sound ON: theft of vehicle, breach of bail—90-day prison term and probation;
- July 2017 Grande Prairie AB: possession of stolen property—\$400 fine;
- August 2017 Grande Prairie: flight from police—30-day prison term; 1-year prohibition;
- August 2017 St Paul AB: flight from police—30-day prison term; 1-year prohibition;
- November 2017 St Paul AB: driving while prohibited, possession of stolen property—45 days concurrent to time being served, 1-year prohibition;
- December 2017 Fort Saskatchewan AB: possession of stolen property, obstruction, fail to attend court—60-day intermittent sentence and probation;

- March 2018 Kenora ON: Flight, driving while prohibited: 147 days and probation; 3-year prohibition order; and
- November 2018 Bonnyville AB: flight, resisting arrest, driving while disqualified, bail violation: 30-month federal term (less 3-mo remand credit); prohibition order with an expiry date 20 March 2030.

[13] Mr Graham was paroled in March 2020. His parole was revoked later that year, and he was recommitted to custody for six months. He was paroled again in September 2020, and his sentence expired in November 2020.

[14] In December 2020, Mr Graham appeared in Pictou for the continuation of his sentencing hearing that had begun in 2013, and the court ordered the preparation of a presentence report. He failed to appear for his sentencing hearing 11 Feb 2021, and a warrant was issued for his arrest.

[15] Mr Graham was arrested 14 March 2021 and held in custody until he was sentenced on 21 April 2021; on that date, he was ordered to serve a 6-month term of imprisonment, followed by a 9-month term of probation, imposed for his charges that had been in suspension since 2013 when he fled the jurisdiction, as well as for offences committed while he was on parole. For the short period of time he was not in custody while on probation (August-

December 2021), his reporting habits were recorded by his probation officer as having been poor.

[16] Mr Graham has never been sentenced to a CSO.

[17] Mr Graham completed grade 10; however, his secondary schooling was interrupted by a custodial sentence imposed when he was a young person. He hopes to complete the GED program and pursue trades training in community college.

[18] Mr Graham worked in the oil fields from 2013-2018 and has also held a number of odd jobs.

[19] Mr Graham has experienced chronic substance-use disorder, and was using cocaine before he was arrested and remanded for the charges before the court.

[20] Mr Graham's conduct while on remand has been exemplary. He completed the Options to Anger Program, has been a valued worker in the institution's kitchen, he has completed his GED, and is hoping to enrol in community college when released.

Allocution to the court

[21] Mr Graham acknowledged that his dangerous driving on 15 December 2021 could have hurt someone. He assured the court that his reckless lifestyle is behind him. His common-law partner is expecting a child, and he wants to be present for the birth. When Mr Graham was born, his biological father was serving a prison sentence, and he wishes to avoid his child suffering that sort of family history.

[22] Mr Graham informed the court that, beginning 27 April 2022, he was on lockdown for 23.5 hours per day at the Northeast Nova Scotia Institution due to a COVID-19 outbreak. He and his cellmate ended up infected.

Statutory range of penalty

[23] None of the charges before the court is subject to a mandatory-minimum penalty. The counts that are proceeding summarily are subject to the statutory maximums set out in the general-penalty provisions of § 787 of the *Code*: two-years-less-a-day imprisonment and a \$5000 fine. The indictable conveyance-related charges carry maximum penalties of 10-years' imprisonment; they are secondary-designated-DNA-collection offences, and may incur discretionary conveyance-operation prohibitions under § 320.24(4) of up to 10 years. The

dangerous-driving count may be subject to a § 109 weapons prohibition if determined to have constituted a violent offence under ¶ 109(1)(a) of the *Code*.

[24] None of the charges before the court falls within the statutory exclusions from the CSO regime, covered in ¶ 742.1(b)-(f) of the *Code*.

Initial prosecution submissions

[25] The prosecution recommended a global sentence of 26 months imprisonment (less a 279-day remand credit), followed by a 9-month term of probation, and a 9-year prohibition order to be served consecutively to the 10-year order imposed 20 November 2018 in Kenora ON. When invited by the court to provide a count-by-count breakdown, the prosecution sought:

- Case 8542506, 8 Dec possession of license plate—2 months;
- Case 8542507, 8 Dec related breach of probation—2 months, concurrent;
- Case 8538087, 15 Dec breach of curfew—1 month, consecutive;
- Case 8538075, 15 Dec prohibited operation—4 months, consecutive;
- Case 8538076, 15 Dec dangerous operation—2 months, consecutive;
- Case 8538077, 15 Dec flight from police—5 months, consecutive;

- Case 8538078, 15 Dec breach of probation—3 months, consecutive;
- Case 8538080, 16 Dec prohibited operation—5 months, consecutive;
- Case 8538081, 16 Dec breach of probation—3 months, concurrent
- Case 8540692, 7 Jan 2022 breach of house arrest—4 months, consecutive

TOTAL: 26 months.

Initial defence submissions

[26] Defence counsel started out by advocating for an enhanced remand credit of 286 days, due to the COVID-19-related institutional lockdown which Mr Graham described in his allocution. With that enhanced credit, defence counsel sought a sentence of a two-year-less-a-day CSO.

[27] I sought clarification from defence regarding the range of penalty being sought. Defence restated that, given the remand credit, the court ought to impose a global sentence of two-years-less-a-day served in the community under the terms of a CSO. Defence counsel did not provide the court with a count-by-count breakdown of proposed penalties for Mr Graham.

Analytical process in multiple-count sentencing cases and in assessing eligibility for conditional sentencing

[28] Global recommendations in multiple-count sentencing hearings are problematic, as they invite the court to reason backwards from a notional overall total in assigning individual penalties for each count. This sort of sentencing methodology evades the reasoned assignment of proportionate sentences for individual counts, and may lead to errors in principle: *R v Adams*, 2010 NSCA 42 at ¶ 23-28 [*Adams*]; *R v Campbell*, 2022 NSCA 29 at ¶ 55-62 [*Campbell*], in which the Court discussed the problem of the goal-oriented approach to sentencing for multiple offences; and *R v Laing*, 2022 NSCA 23 at ¶ 16, 29 [*Laing*]. I intend to apply the *Adams* methodology at the end of this decision in calculating Mr Graham's sentence.

[29] Furthermore, in determining whether an accused is eligible for a CSO, the court must reckon what would be the appropriate range of sentence prior to the deduction of remand credit; this is because time spent on remand is part of the total punishment imposed, and is not a mitigating factor affecting the range of sentence and the availability of a CSO: *R v Fice*, 2005 SCC 32 at ¶ 14-28 [*Fice*].

[30] The prosecution has advocated for penalties that would go beyond the less-than-two-years limit for CSO eligibility set out in § 742.1 of the *Code*.

[31] Similarly, the original defence recommendation of a two-year-less-a-day CSO, but following the deduction of a 286-day remand credit, would situate Mr Graham's offences beyond the reach of a CSO, given the binding authority in *Fice*.

[32] The court is not bound to follow the sentencing submissions of counsel.

[33] After hearing oral argument, the court sought written submissions, with supporting cases, to assist the court in determining appropriate sentences for each of the charges against Mr Graham, and to allow the court to determine whether a CSO would be a legal and fit one.

Sentencing comparators

Defence memorandum

[34] Defence counsel briefed the court on a number of cases:

- *R v McCaskie*, 2006 BCCA 382: appeal dismissed from a 3-year sentence for dangerous driving and possession of a stolen conveyance; while the 32-year-old appellant had a prior record and was on probation at the time, he had never been convicted of a conveyance-related offence; a

lengthy, high-speed pursuit traversed school and hospital zones, and two pedestrians were hit.

- *R v McNulty*, 2017 BCCA 270: appeal dismissed from a 21-month sentence (less remand credit) for (1) dangerous operation, (2) flight, (3) breach of probation, (4) driving while prohibited, and (5) leaving the scene; the 38-year-old appellant led police on a two-hour chase over a distance of 50 km; she struggled with substance-use disorder; she had incurred 10 convictions between 2013-2016.
- *R v Lee*, 2013 ONCJ 704 [*Lee*]: the accused pleaded guilty to counts of (1) operation while prohibited, (2) dangerous driving, (3) flight from police, and (4) breach of probation, which occurred on two proximate dates in 2012-2013; the 27-year-old accused led police on two prolonged pursuits, one at high speeds; the court described the accused's record as "atrocious", populated with multiple findings of guilt under provincial legislation and the *Code* for flight, dangerous operation, and driving while prohibited. The court imposed a global sentence of 14-months' imprisonment, less a 6-month credit for remand time.
- *R v Curtis*, 2009 NLTD 14: the accused was sentenced to a one-year term of imprisonment for driving while prohibited and breach of probation;

he was 45 years old and had a lengthy record, which included findings of guilt for driving while prohibited (8 priors), impaired/refusal (6 priors), and breaches of court orders (7 priors); his allocution “showed no remorse, no insight into his criminal behaviour and . . . demonstrated a remarkable disregard for court orders.”

- *R v Melnick*, 2005 ABPC 241 [*Melnick*]: a 25-year-old accused with a substantial criminal record was sentenced to (1) 8 months in custody for flight (after granting a 250-day credit for remand time), (2) a 4-month concurrent sentence for dangerous driving, and (3) a 1-month concurrent sentence for a bail violation. The accused was a prohibited driver, and led police on a prolonged pursuit through red lights, into oncoming lanes, and against traffic on a one-way street.
- *R v Fedick*, 2005 ABPC 15 [*Fedick*]: a 22-year-old accused with a limited record (and no convictions for conveyance-related offences) broke into two cars, stole one of them, led police on a 40-block chase at speeds twice the posted limit, and caused significant property damage; the court imposed 18-month concurrent CSOs for theft, dangerous driving, and leaving the scene of an accident. There were no personal injuries, a

presentence report was positive, and the accused had the support of his family.

- *R v Cleary*, 2014 NSSC 333 [*Cleary*]: the court imposed sentences totalling two-years' imprisonment, followed by probation, for three counts each of dangerous driving, driving while prohibited and evading police, one count each of stealing a vehicle and resisting police, four counts of breach of recognizance and one count of failure to attend court; there was evidence of two prolonged pursuits at high speeds, and a passenger in the accused's vehicle was injured; the accused had a significant record involving conveyances (refuse/over 80: 5 priors; drive while prohibited: 7 priors; flight: 1 prior; dangerous operation: 1 prior).
- *R v Gore*, 2019 ONSC 376: a 12-month sentence of imprisonment was imposed for one count of driving while prohibited. The accused was stopped by police for a licensing check; he did not flee the scene. The accused had a significant record involving conveyances; however, he had undergone significant rehabilitation since 2011.
- *R v Hanna*, 2013 ABCA 134, leave to appeal refused [2013] SCCA No 454: a sentence of 5.5 years for driving while prohibited, dangerous driving and two counts of breach of recognizance was reduced on appeal to

3.5 years for driving while prohibited, and 15 months, to be served consecutively, for dangerous driving (following a 9-month credit for state misconduct arising from the use of excessive force at the time of arrest); there was a prolonged pursuit, and the 55-year-old appellant was a hardened dangerous driver.

- *R v Wolfe*, 2008 SKCA 66: a 2.5 year sentence for two offences of prohibited operation increased on appeal to 3.5 years; the 45-year-old respondent had a record for 24 conveyance-related offences, and he committed the second offence pending sentencing for the first.
- *R v Patterson*, 2018 NSPC 46: I imposed a suspended sentence for one count of prohibited operation and one count of dangerous driving; the 29-year-old accused had been sentenced in other judicial centres in the province for three counts of prohibited operation, one count of impaired operation, and one count of dangerous driving, all having occurred on dates that were proximate to the cases that were heard by me. The presentence report revealed that the accused had begun exhibiting erratic behaviour after sustaining serious head injuries.

[35] In a sentencing brief, defence counsel offered a revised recommendation of a 2-year-less-a-day sentence, from which would be deducted the proposed

enhanced remand credit; under this calculation, a CSO would be permissible.

This was a remarkable departure from the original recommendation of, yes, two years less a day, but *after* the deduction of the remand credit. It is no mystery that the revised calculation was intended to avoid the CSO barrier in *Fice*.

Prosecution memorandum

[36] The prosecution cited a number of authorities, including

- *R v Bennett*, 2019 NJ No 268 (PC) [*Bennett*], particularly at ¶ 41: A 25 year-old driver with extensive record—including multiple criminal and provincial-statute offences involving conveyances—was sentenced to a period of twelve months of incarceration (less credit for time served) for (1) driving while prohibited, (2) evading the police, (3) breach of undertaking, (4) possession of stolen goods, theft, (5) operating a motor vehicle without insurance and (6) speeding. I consider this to be a valid comparator as it describes a young, adult male with a significant criminal record, whose conduct is unregulated when operating a conveyance. It is also useful, as the sentencing judge employed the sentencing methodology for multi-count cases as mandated in *Adams*.

- *R v Brown*, 2011 ONCJ 462: an 18-year-old accused with a significant record—including for conveyance offences—was sentenced to 10-months’ imprisonment for flight and operation while prohibited; from this was deducted a 4-month remand credit, which appeared to have been reckoned on a 1-day-credit for 1-day-on-remand basis; the norm now is 1.5:1 as set out in *R v Carvery*, 2012 SCC 27 [*Carvery*].
- *R v Dafoe*, 2019 ONSC 5377: 30-months’ imprisonment for dangerous operation; a 27-month concurrent sentence for flight from police. I do not consider this a good comparator, as the case describes a major, high-velocity-police-pursuit operation, lasting 25 minutes, over a distance of 41km, traversing at times a number of densely-populated areas. These are offence circumstances significantly more serious than in Mr Graham’s case.
- *R v Simeunovich*, 2019 ONCA 856: appeal dismissed from 10-year sentence for bodily-harm negligence/drive while prohibited/leave the scene/possession of a counterfeit licence. The 40-year-old appellant was described as a “serious serial recidivist” who led police on a prolonged and dangerous pursuit that led to an innocent motorist being seriously injured.
- *R v Young*, 2020 SKQB 338, particularly at ¶33: the accused was sentenced to (1) 22 months for dangerous driving, (2) a consecutive term of

8 months for flight, (3) a consecutive term of 6 months for impaired operation, (4) a concurrent term of 6 months for leaving the scene, and (5) a concurrent term of 6 months for operation while prohibited.

- *R v Dillon*, 2022 SKCA 17: 70-month sentence affirmed for (1) dangerous operation, (2) flight, (3) unauthorized possession of a firearm in a conveyance, and (4) prohibited operation. The appellant was a member of a First Nation; he had a history of involvement in criminal gangs and a lengthy record.

Other relevant cases

[37] My own research identified *R v Sinclair*, 2021 MBCA 6 at ¶ 8 as a useful precedent. The Court observed that the *Code* was amended by SC 2018, c 21, in force variously by Royal Assent on 21 June 2018, and on 18 December 2018 in virtue of § 52 of the Act [the 2018 amendments]. The 2018 amendments realigned sentencing factors and ranges for conveyance-related offences, and included a statement of general principles about offences relating to conveyances (now in § 320.12). Driving is a privilege, and the abuse of that privilege through the hazardous/impaired/unlicensed operation of conveyances requires sentencing courts to place heightened emphasis on denunciation and deterrence. The 2018 amendments increased the maximum penalty for flight-

from-police and dangerous-operation offences from five years to ten years on indictment (now in § 320.19(5)). An increase in the upper-range of a sentence must be taken into account in the reckoning of proportionality: *R v Friesen*, 2020 SCC 9 at ¶ 97 [*Friesen*]; it reflects the judgment of Parliament that a class of offence be regarded as more serious than in the past.

[38] I have also reviewed:

- *R v Greiner*, 2021 ONCJ 357: dangerous operation, assault with a weapon. Offences occurred during a police pursuit which developed following a theft of fuel from a gas bar. The accused had no record and a history of chronic mental-health issues. The court imposed a 9-month CSO followed by probation.
- *R v Hotomanie*, 2021 SKPC 38 [*Hotomanie*]: impaired operation, dangerous operation, operating while prohibited, breach of probation. A Gladue report described a traumatic personal history. The accused had a “horrendous” record, with 43 convictions for driving offences. A sentence of 2-years’ imprisonment was imposed for dangerous driving, to be served concurrently to other sentences.

Consecutive and concurrent sentencing

[39] The choice of consecutive or concurrent sentencing is governed by legal principles, with the selection of consecutive sentencing being informed primarily by § 718.3(4) of the *Code*, particularly when an accused is facing a charge of flight from police: § 718.3(4)(iii). The general rule is that offences that are so closely linked to each other as to constitute a single criminal adventure may, but are not required to, receive concurrent sentences, while all other offences are to receive consecutive sentences: *Friesen* at ¶ 155; *Campbell* at ¶ 29-35. Courts have recognized that even manifold offences might be part of “a single criminal adventure”: *Laing* at ¶ 53-54; “one continuous criminal act”: *R v Oldham* (1975), 11 NSR (2d) 312 (AD) at ¶ 13 (a principle recognized but not applied in that case, as Oldham's offences were done a week apart); “one single criminal enterprise”: *R v Brush* (1975), 13 NSR (2d) 669 (A.D.) at ¶ 9; “part of a linked series of acts within a single endeavour”: *R v Potts*, 2011 BCCA 9 at ¶ 88, leave to appeal refused, [2011] SCCA No 172.

[40] A breach of a court order will normally attract a consecutive sentence, even if the conduct that is the basis of the breach is connected directly to an offence for which a sentence is to be imposed: *R v Harvey*, [1993] NSJ No 211 (CA) [*Harvey*]; *R v BLL*, [1989] NSJ No 12 [*BLL*]; *R v McKenna*, 2014 NSPC 99 at ¶ 8-10, aff'd 2015 NSCA 58; *R v Lewis*, 2012 NLCA 11 at ¶ 78.

Range of penalty for Mr Graham

[41] My review of the cases satisfies me that the range of penalty for dangerous driving, driving while prohibited, and flight charges, for persons with conveyance-related records (but not at “horrendous” [*Hotomanie*] or “atrocious” [*Lee*] levels) would, prior to the 2018 amendments, have been in the one-to-three months range for cases not involving prolonged and high-speed pursuits. Taking into account the effect of the increase in the upper range of sentence brought about by the amendments, I would situate the range in this case to be 2 to 6 months for each of the counts.

[42] The breach-of-probation and breach-of-bail charges should fall in the 1-to-3 month range—*R v Young*, 2014 NSCA 16.

[43] The possession of stolen property count would fall in the 1-to-3 month range—*R v Probert*, 2013 NSCA 38 at ¶ 2.

[44] Taking into account these descriptive ranges, I determine that a purely probationary sentence would not be appropriate in this case. The need for denunciation, general deterrence and specific deterrence is too great. In any event, defence counsel did not advocate for probation only, and, as a matter of

practicality, Mr Graham has been on remand since 7 January 2022, so that a purely probationary sentence is a notion only.

[45] I would find a penitentiary term inappropriate, given the outcomes in the comparator cases of *Melnick*, *Fedick* and *Bennett*. It would be challenging to justify a penitentiary term, given the circumstances and outcome in *Cleary*, a case that involved a level of criminal conduct far more serious than Mr Graham's, and yet that resulted in a just-over-the-line two-year federal sentence.

As a probationary and penitentiary terms are excluded, and as none of the offences before the court is excluded statutorily from the CSO provisions in ¶ 742.1(b)-(f) of the *Code*, the court shall proceed to determine whether a CSO would be consistent with the fundamental purposes and principles of sentencing, and would not endanger the safety of the community. Accordingly, the principles of sentencing in § 718-718.3 may now be assessed comprehensively: *R v Proulx*, [2000] 1 SCR 61 at ¶ 60.

Principles of sentencing

[46] In Canadian law, the fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law

and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more objectives, including denunciation, deterrence and rehabilitation: § 718 of the *Code*, and *R v Bissonnette*, 2022 SCC 23 at ¶ 45 [*Bissonnette*].

[47] All sentencing starts with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The principle of proportionality has long been central to Canadian sentencing law, and is now codified as the fundamental principle of sentencing in s. 718.1 of the *Code*: *Friesen* at ¶ 30.

[48] Section 718.2 provides a non-exhaustive list of secondary principles that must guide the sentencing process. These principles include

- the consideration of aggravating and mitigating circumstances,
- the principles of parity and totality,
- and the instruction to consider all available sanctions other than imprisonment that are reasonable in the circumstances.

[49] Parity requires that similar offenders who commit similar offences in similar circumstances receive similar sentences. A consistent application of

proportionality will lead to parity. Conversely, an approach that assigns the same sentence to unlike cases can achieve neither parity nor proportionality:

Friesen at ¶ 32.

[50] In applying and weighing these secondary sentencing principles, the court must ensure that the resulting sentence respect the fundamental principle of proportionality: *R v Nasogaluak*, 2010 SCC 6 at ¶ 40.

[51] Proportionality in sentencing is an essential factor in maintaining public confidence in the fairness and rationality of the criminal-justice system. It assures the public that the person to be sentenced deserved the punishment that was imposed. Proportionality has a restraining function, as it must guarantee that a sentence is individualized, just and appropriate. It is a cardinal principle: *Bissonnette* at ¶ 50.

[52] The sentencing component of denunciation expresses society's condemnation of the offence that was committed, and is the means by which society communicates its moral values. However, the denunciation criterion must be weighed carefully, as it could, if applied without restraint, be used to justify sentences of unlimited severity: *Bissonnette* at ¶ 46.

Application of sentencing principles to Mr Graham's circumstances

[53] Mr Graham's conduct involved serious criminal activity for which he is solely responsible.

[54] However, Mr Graham has made remarkable progress while on remand. He has engaged in rehabilitative programming and is set to pursue his GED.

[55] In his allocution, he made a firm commitment to be a responsible and present parent for the child he and his partner are expecting.

[56] And he has been on remand since 7 January 2022. Combined with earlier periods of remand, that accounts for a 10-month credit—a substantial sentence by any reckoning, considering the outcomes in *Melnick*, *Fedick* and *Bennett*. It operates as a strong individual deterrent to Mr Graham, and sends an unmistakable message to the public regarding the penal consequences for criminal conduct involving conveyances.

[57] I am satisfied that a CSO would be consistent with the fundamental purposes and principles of sentencing, and would not endanger public safety, given the restrictive conditions which the court will impose, and the favourable prospects for rehabilitation.

[58] The court must deal now with the duration of the sentence.

R v Adams first step: preliminary determination of a fit sentence for each offence

[59] In my view, the following individual sentences are appropriate; this is a preliminary calculation, and not the final sentence of the court.

- Case 8542506, possession of license plate— 1 month
- Case 8542507, related breach of probation— 1 month
- Case 8538087, breach of curfew— 1 month
- Case 8538075, 15 Dec prohibited operation— 3 months
- Case 8538076, 15 Dec dangerous operation— 6 months
- Case 8538077, 15 Dec flight from police— 3 months
- Case 8538078, 15 Dec related breach of probation— 2 months
- Case 8538080, 16 Dec prohibited operation— 3 months
- Case 8538081, 16 Dec breach of probation— 2 months
- Case 8540692, breach of house arrest— 3 months

R v Adams second step: consecutive or concurrent sentences

[60] Subject to my analysis in the next paragraph regarding the 16 December 2021 offences, the breach-of-bail, breach-of-probation and prohibited-operation counts should receive consecutive sentences based on *Harvey* and

BLL. The prohibited-operation, dangerous-driving and flight counts from 15 December 2021 should receive consecutive sentences in virtue of ¶ 718.3(4)(iii) of the *Code*.

[61] However, I believe that the offences from 16 December are part of a single criminal adventure that started on 15 December, and should be the subject of concurrent sentencing.

[62] This would result in a pre-remand-credit sentence as follows:

- Case 8542506, possession of license plate— 1 month
- Case 8542507, related breach of probation— 1 month consecutive
- Case 8538087, breach of curfew— 1 month consecutive
- Case 8538075, 15 Dec prohibited operation— 3 months consecutive
- Case 8538076, 15 Dec dangerous operation— 6 months consecutive
- Case 8538077, 15 Dec flight from police— 3 months consecutive
- Case 8538078, 15 Dec breach of probation— 2 months consecutive
- Case 8538080, 16 Dec prohibited operation— 3 months concurrent
- Case 8538081, 16 Dec breach of probation— 2 months concurrent
- Case 8540692, breach of house arrest— 3 months consecutive

TOTAL PRE-REMAND-CREDIT SENTENCE: 20 months

R v Adams third step: last look and totality

[63] In my view, a CSO of 20 months would not constitute a disproportionate sentence. While greater than the 12-month prison term imposed in *Bennett*, it reflects the fact that, while punitive, a CSO is less restrictive than actual imprisonment—*Proulx* at ¶ 44 and 54. Further, a 20-month sentence takes into account the effect of the 2018 increased-penalty amendments.

Final step: remand credit

[64] Mr Graham is entitled to a remand credit of 300 days, based on the calculation of 279 days proposed by the prosecution on 4 July 2022 and taking into account the elapse of time since then. This credit is reckoned based on the 1.5:1 ratio set out in *Carvery*, as authorized in ¶ 719(3.1) of the Code; it is clear from the presentence report that Mr Graham's exemplary conduct while on remand would have assured him of earned remission had he been serving a sentence. I decline to allow enhanced remand credit, as it is clear the Mr Graham has been able to access many self-improvement programs while in custody.

[65] The court will treat this as a 10-month credit, which will be allocated as follows:

• Case 8538075, 15 Dec prohibited operation	2 months
• Case 8538076, 15 Dec dangerous operation	5 months
• Case 8538077, 15 Dec flight from police	2 months
• Case 8538078, 15 Dec breach of probation	1 months
TOTAL REMAND CREDIT:	10 months

[66] These credits will be endorsed on the paper and JEIN records in accordance with § 719(3.3) of the *Code*.

Sentence of the court

[67] The court imposes a 10-month CSO as follows:

- Case 8542506, possession of license plate— 1 month starting point
- Case 8542507, related breach of probation— 1 month consecutive
- Case 8538087, bail breach of curfew— 1 month consecutive
- Case 8538075, 15 Dec prohibited operation— 1 month consecutive
- Case 8538076, 15 Dec dangerous operation—1 month consecutive

- Case 8538077, 15 Dec flight from police— 1 month consecutive
- Case 8538078, 15 Dec breach of probation—1 month consecutive
- Case 8538080, 16 Dec prohibited operation—3 months concurrent
- Case 8538081, 16 Dec breach of probation—2 months concurrent
- Case 8540692, breach of house arrest— 3 months consecutive

[68] In relation to case 8538076, there will be a secondary-designated-offence DNA-collection order, and a 9-year-and-10-month prohibition order under § 320.24. Given the duration of the order, it will not run consecutively to any existing order.

[69] The terms of the CSO will be in accordance with the checklist which I have read to Mr Graham and reviewed with counsel.

[70] Given the duration of the CSO, no term of probation is ordered.

[71] There will be \$100 victim-surcharge amounts for each summary count, and \$200 amounts for each indictable count, to be paid within 24 months.

JPC