

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. C.B.*, 2023 NSPC 68

**Date:** 20231129

**Docket No:** 8511986, 8541495

**Registry:** Halifax

His Majesty the King

v.

C.B.

**Judge:** The Honourable Chief Judge Perry F. Borden

**Heard:** October 6, 2023, in Halifax, Nova Scotia

**Decision:** November 29, 2023

**Charge:** Section 95(1) of the *Criminal Code*  
Section 4(1) of the *Controlled Drugs and Substances Act*

**Counsel:** Steven Degen, for the Public Prosecution Service of Nova Scotia  
Timothy McLaughlin, K.C., for the Public Prosecution Service of  
Canada – Atlantic Region  
Patrick MacEwen, for the Defence

**By the Court:**

**Overview**

[1] C.B., a first-time offender, has pleaded guilty to the following offences:

1. possession of a prohibited restricted weapon, a loaded handgun, contrary to s. 95(1) of the *Criminal Code (Code)*; and
2. possession of a Schedule 1 controlled substance, cocaine, contrary to s. 4(1) of the *Controlled Drugs and Substances Act (CDSA)*.

[2] In assessing a fit punishment, I must determine whether a federal period of custody is warranted or whether a conditional sentence of imprisonment, to be served in the community, is appropriate for this offender in these circumstances.

**Circumstances of the Offences**

[3] On May 24, 2021, the police named C.B. in an Information to Obtain and a subsequent search warrant. The police arrested him on May 26, 2021, and their search of his motor vehicle uncovered a loaded 9-millimetre Glock handgun and 12 grams of cocaine. The police search of the residence where he sporadically stayed produced \$20,000 in Canadian currency and other paraphernalia indicative of the trafficking of drugs.

[4] C.B. has maintained his innocence in relation to any trafficking related offences and he is presumed innocent of those charges.

### **Position of the Parties**

[5] The Defence argues that a conditional sentence of two years less a day is appropriate. They rely upon the mitigating effect of an Impact of Race and Cultural Assessment (IRCA) in conjunction with the appellate cases of *R. v. Anderson*, 2021 NSCA 62 and *R. v. Wournell*, 2023 NSCA 53.

[6] The provincial Crown argues that there is a pathway to a federal custodial sentence and a competing avenue to a conditional sentence. They take issue with the IRCA's inability of demonstrating a nexus between the index offences and the offender's upbringing. However, they assert that if the Court imposes a conditional sentence, the severity of the offences warrants strict house arrest for the duration of the order.

[7] The federal Crown position is also quasi-neutral and they too acknowledge the competing purposes and principles of sentencing. They assert that if the Court imposes a custodial sentence for the *Code* offence, the sentence for the *CDSA* offence should run concurrently. However, they suggest that if I order a

conditional sentence for the *Code* offence, a fine would be the appropriate disposition for the *CDSA* offence.

## The Law

[8] The relevant sections of the governing legislation include:

*CDSA s. 4 (1)*

Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III.

...

Punishment

(3) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule I

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding seven years...

...

*Code s. 95 (1)*

Subject to subsection (3), every person commits an offence who, in any place, possesses a loaded prohibited firearm or restricted firearm, or an unloaded prohibited firearm or restricted firearm together with readily accessible ammunition that is capable of being discharged in the firearm, without being the holder of

(a) an authorization or a licence under which the person may possess the firearm in that place; and

(b) the registration certificate for the firearm.

Punishment

- (2) Every person who commits an offence under subsection (1)
- (a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years...

...

*Code s. 742.1*

If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if

- (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2...

[9] Determining a just and appropriate sentence is highly contextual and an individualized process. In crafting a fair disposition, I must balance the circumstances of these offences against C.B.'s circumstances.

[10] The primary purposes and principles of sentencing are enunciated in ss. 718-718.2 of the *Code*. The fundamental principle states that "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender". The gravity of an offence lies in the nature and comparative seriousness of the offence, the circumstances of its commission, and in the harm caused (*R. v. M(CA)*, [1996] S.C.J. No. 28, at paras. 91-92).

[11] The purpose of sentencing is achieved by blending the various objectives identified in s. 718(a) - (f). Judges are often tasked with the difficult challenge of determining which objective or combined objectives should take precedence.

[12] I have considered the other sentencing principles as set out in s. 718.2 of the *Code*, including subsection (a) which stipulates that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[13] I am also mindful of the principle of restraint which underlies the provisions of s. 718 of the *Code*.

[14] Moreover, I am cognizant of the reasoning advanced in *R. v. Proulx*, 2000 SCC 5, at para. 69, where the Supreme Court of Canada instructed how I am to assess the danger to the community:

...to assess the danger to the community posed by the offender while serving his or her sentence in the community, two factors must be taken into account: (1) the risk of the offender re-offending; and (2) the gravity of the damage that could ensue in the event of re-offence. If the judge finds that there is a real risk of re-offence, incarceration should be imposed. Of course, there is always some risk that an offender may re-offend. If the judge thinks this risk is minimal, the gravity of the damage that could follow were the offender to re-offend should also be taken into consideration. In certain cases, the minimal risk of re-offending will be offset by the possibility of a great prejudice, thereby precluding a conditional sentence.

[15] In addition, I have considered ss. 718.2(b) - (e) and their application to C.B. In *Anderson* our Court of Appeal drew parallels to *R. v. Gladue*, [1999] S.C.R. 688. I have considered the Supreme Court of Canada's helpful guidance as summarized in *Gladue* at para. 93.

[16] I also note that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (s. 718.2(b)).

[17] However, finding a case that is precisely comparable for a particular offender often becomes an exercise in futility. It is difficult, if not impossible, to find a precedent that is indistinguishable from the case at hand. Thus, the genesis of the description of sentencing as more of an art rather than a science. The case-specific facts and circumstances of every offence and every offender are always unique.

### **Circumstances of the offender**

[18] The reports filed with the Court establish that C.B. has a grade 12 education and that he is an exceptional basketball player. It is also evident that C.B. suffered a fractured upbringing.

[19] That is not to say that he was not loved and nurtured. To the contrary, it is evident from the IRCA that his mother, Ms. J, played a significant role in his upbringing and made many sacrifices for the benefit and protection of her children. I note her attendance for many of his court appearances. He is also supported by his girlfriend and his grandmother, and I acknowledge their attendance in these proceedings.

[20] His father, however, was routinely absent. His father is heavily embedded in the criminal subculture and was essentially an uninvolved parent. During his upbringing C.B.'s household tittered on the brink of poverty. When his father was not incarcerated, his dad was living a fast and lavish lifestyle and neglected his fatherly responsibilities.

[21] Astonishingly, at age 8, C.B. had a firearm pointed at his head by one of his father's foes. C.B. and his immediate family members then relocated to Ontario in hopes of a better life, and in some respects, to escape to the discernible risks to his safety here in Nova Scotia.

[22] While living in Ontario, C.B.'s family moved around a lot. At one point C.B. family was living across the street from his high school. It was during that



time when the police executed a search warrant at the family's residence to arrest his brother.

[23] The manner in which the police executed the search warrant at the residence was harrowing and traumatic for C.B.. The officers deployed flashbang distraction devices, crashed through the door of the residence, and pointed firearms at C.B. and his family while smoke alarms wailed in the background. The police arrested C.B.'s brother. I am told that his brother was ultimately not convicted of any charges arising out of that investigation.

[24] If that ordeal was not traumatizing enough, C.B. then had to endure the stigma and embarrassment of his schoolmates watching this incident unfold from the schoolyard across the street. Further exacerbating the trauma from that experience going forward was the fact the electric, retractable bleachers at the school emitted an alarm that was similar to the sound of the smoke alarm that went off in his family's residence during the execution of the warrant. Thereafter, while engaged in elite level basketball, the bleacher alarm sound served as a constant reminder of the trauma he experienced when officers stormed his house and held him at gunpoint.

[25] When C.B. and his family moved back to Nova Scotia, a close friend of his was shot and killed in Halifax. Immediately thereafter, he went to live with his father as he felt safer there given the gun-related violence in the community.

### **Aggravating and Mitigating Circumstances**

[26] The determination of a fit and appropriate sentence requires a consideration of the unique circumstances of the offences and the offender.

[27] The aggravating features are as follows:

- C.B. possessed a loaded prohibited and restricted weapon;
- The firearm was concealed in a bag in his vehicle;
- C.B. does not have a firearms licence; and
- The nature of the CDSA substance – cocaine.

[28] The mitigating circumstances are as follows:

- C.B. is a young man and was only three months past his 18th birthday when the police arrested him;
- C.B. does not have a criminal record;
- He entered guilty pleas to the charges before the Court, relieving the Crown of the burden of proving the elements of the offence. The witnesses were not required to testify;

- He has tremendous family support. However, I also recognize that despite their support, he still engaged in the illegal activity that brings him before the Court;
- His African Nova Scotian heritage and his lived experience of racism and significant firearm-related trauma identified by the IRCA;
- His compliance with stringent release conditions; and
- His expression of remorse.

### **Analysis**

[29] C.B. is a young man who has pleaded guilty to serious charges. The challenge in this case, given the nature of offences, is to craft a sentence that meaningfully addresses denunciation and deterrence but also considers rehabilitation. The resulting sentence must not be a crushing disposition that removes all hope and undermines his rehabilitation.

[30] I conclude the gravity of these offences, while not at the upper tier of seriousness, are nonetheless extremely concerning.

[31] Unfortunately for Nova Scotians, and indeed many Canadians, gun violence and firearms-related offenses are far too common in our society. One need only reflect upon the Portapique mass shooting in 2020 that left 22 dead or recall the stray bullet that killed 8-year-old Lee'Marion Cain in Dartmouth in 2021.

Those examples demonstrate what can happen when individuals possess illegal firearms.

[32] While there were no elements of actual violence associated with these charges, there is always the risk. The risk is grounded in the potential carnage that can happen when those who are not legally entitled to possess guns choose to arm themselves. The risk is not limited to their rivals and enemies. Rather the ripple effect of the risk reverberates and encompasses police officers, immediate family members, friends, and complete strangers.

[33] But for the seminal case of *R. v. Nur*, 2015 SCC 15, C.B. would be facing a three-year mandatory minimum sentence. In spite of the determination that the mandatory minimum punishment was unconstitutional, I note that the Court still found that a fit and proper punishment in the circumstances of that case was a three-year custodial sentence.

[34] I raise this fact to address the often misconstrued precedential value of *Nur*.

[35] On the one hand, the Court was alive to the broad range of offenders who would get caught in the dragnet of a three-year mandatory minimum sentence. The overreach of the mandatory minimum regime captured individuals whose conduct and circumstances were far beyond the intended scope of legislation.

[36] However, it appears that the declaration of the unconstitutionality of the mandatory minimum sentence is often the focus. In my view the case represents a bifurcated sentencing precedent in that: 1) the mandatory minimum three-year sentence for s. 95 is unconstitutional; and 2) a three-year sentence for s. 95 may still be an acceptable punishment for this offence depending on the case-specific facts.

[37] The three-year sentence that the Court imposed on *Nur* was intended to denounce his unlawful conduct and to deter him, C.B., and other like-minded individuals from committing these offenses. Within the context of firearm-related offences, these charges are inherently dangerous and pose tangible risks. Accordingly, there is a need for swift and severe consequences for people who unlawfully possess prohibited and restricted firearms. Protection of the public is paramount. C.B., and other like-minded individuals must comprehend society's condemnation of these offenses.

[38] I take little comfort in the fact that no one was injured. The reality is that C.B. armed himself with a prohibited and restricted firearm and put many people at risk of injury or death. Nothing good was going to come from him arming himself with that weapon.

[39] The *CDSA* charges are equally concerning. My colleague Judge Buckle succinctly articulated the risks and dangers of cocaine in *R. v. Rushton*, 2017 NSPC 2 at para. 71. She referenced the description of the “creeping evil” of this drug as articulated by our Court of Appeal in *R. v. Huskins*, [1990] N.S.J. No. 46. She was also guided by our Court of Appeal’s comments in *R. v. Butt*, 2010 NSCA 56, at para. 13, that cocaine is “a deadly and devastating drug that ravages lives”.

[40] That said, the jurisprudence and the codification of s. 718.2(e) dictate that I am obligated to consider all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community.

[41] In *Anderson*, our Court of Appeal opined on the utility of lived experiences being incorporated into sentencing and concluded, beginning at para. 114, that;

Taking account of IRCA evidence ensures relevant systemic and background factors are integrated in the crafting of a fit sentence, one that is proportionate to the gravity of the offence and the moral culpability of the offender. In its factum, the ANSDPAD Coalition quoted from Professor Maria Dugas’ article, “Committing to Justice: The Case for Impact of Race and Culture Assessments in Sentencing African Canadian Offenders” where she discussed the role IRCAs are designed to play in sentencing:

IRCAs operate from the assumption that a person's race and culture are important factors in crafting a fit sentence. They provide the court with necessary information about the effect of systemic anti-Black racism on people of African descent. They connect this information to the individual's lived experience, articulating how the experience of racism has informed the circumstances of the offender, the offence, and how it might inform the offender's experience of the carceral state.

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..."

[42] Section 718.2(e), *Gladue* Reports, and IRCAs do not equate to bypassing meaningful consequences for one's actions. Rather, the statutory obligations and the detailed reports work in tandem to highlight the constellation of variables that are relevant to assessing a fit and proper sentence for an individual offender.

[43] Without question, these types of offences present a heightened risk to the community.

[44] On the one hand, we have a young African Nova Scotian male who possessed a lethal weapon and had a nexus to the illicit drug industry.

[45] On the other hand, this same young man has tangible trauma from gun violence. He witnessed a shooting in grade two, he has experienced two separate incidents where firearms were pointed at him, and he lost a close friend due to gun violence. In addition, his father's illicit activities and reputation have placed a target on his son's back.

[46] Despite those risk variables, this same young man has demonstrated that he has potential for an upward trajectory, and that he can comply with court imposed conditions. In addition, he is steadily employed and he and his partner are expecting their first child.

[47] My challenge is to reconcile the risk to our community against C.B.'s significant proactive and prosocial strides in a positive direction. Without question, a repeat of this type of offence brings with it a host of significant collateral consequences for our society. Alternatively, ordering C.B. to serve a federal sentence will likely stall his proactive endeavours and may have a permanent negative impact on his prosocial potential, see *R. v. W.(J.)* 1997 CarswellOnt 969 at paragraph 49.

## **Conclusion**



[48] Gun violence affects every member of our society. The toll that these offenses have on our citizens is profound. Every member of our society is entitled to feel safe within their homes and while out in public. The last thing they should have to worry about while engaged in their daily routine is whether they or someone they know will be the victim of gun violence.

[49] It is not lost upon me that far too often members of our African Nova Scotian communities are affected by these offenses. Too often some of our young men are arming themselves with prohibited and restricted weapons. Too often, African Nova Scotian men are the targets of gun violence and frequently they are shot in our city streets. This has often resulted in their families burying these otherwise healthy young men who were in the early stages of their lives.

[50] Perhaps the saddest aspect of this endemic is that there are no tangible solutions for the gun crisis in our African Nova Scotian communities.

Mandatory minimums and custodial sentences have not served to curb or act as a deterrent to prevent or eradicate these offenses.

[51] Furthermore, conditional sentence orders, while potentially addressing some aspects of the over-incarceration crisis of African Nova Scotian offenders, also provide cold comfort to the Court with respect to efforts to change the mindset

of some offenders with respect to deterrence. There is a misinformed ideology among some young African Nova Scotia offenders that gun offence convictions equate to a slap on the wrist.

[52] That ideology is entirely inaccurate. Conditional sentence orders may be a viable option for some offenders in appropriate cases. However, *Anderson* does not stand for the proposition that a conditional sentence order is guaranteed - or automatic - for all African Nova Scotian offenders convicted of s. 95(1) offences.

[53] As discussed, the potential risk for these types of offences is readily apparent. I take no solace in the fact that C.B. did not use or threaten to use his gun. The possibility of violence is enough and it is palpable. The toll that these offences have on our citizens and our community is significant. Accordingly, that is why general and specific deterrence take a leading role in many sentencing decisions for these offences. The protection of the public is paramount.

[54] However, it is not lost upon me the significant strides that C.B. has made in the past two years towards a more positive and prosocial lifestyle. I am not aware of any additional charges, he and his girlfriend are expecting a child, and

he is gainfully employed. It appears that he has put his criminal past behind him. These are significant considerations for me in assessing an appropriate disposition.

[55] The Crown cannot be faulted for its position. There are pathways to both a custodial sentence and a conditional sentence. Similarly, the Defence is not wrong in advancing a sentence that recognizes C.B.'s youthfulness, his lived experiences, his prosocial endeavors, and his existing support structure. Our Court of Appeal recognized those arguments in *Anderson* and *Wournell*.

[56] Recent legislative amendments also permit a conditional sentence for the firearms offence.

[57] As noted previously, C.B. is African Nova Scotian. I highlight this point because I am cognizant of the overrepresentation of African Nova Scotian peoples housed within prisons and penitentiaries throughout this province and the country.

[58] Upon my review of the law for these types of offences, I conclude that the sentencing range spans from probation to a conditional sentence order to a penitentiary sentence (See *Rushton*; *Anderson*; *Wournell*; and *Nur*).

[59] In balancing the competing variables confronting C.B. against the governing jurisprudence, I conclude that sentencing him to a conditional sentence order of two years less a day to be followed by probation for two years is consistent with the fundamental purposes and principles of sentencing.

[60] *Proulx* is illustrative that a conditional sentence order can reflect traditional punitive sentencing goals while at the same time advancing restorative objectives. I conclude that the length of the sentence and the strict terms and conditions I intend to impose will achieve the objectives of deterrence, denunciation, and rehabilitation.

[61] I have considered the criteria for assessing the safety of the community in *Proulx*. C.B. has demonstrated that he can comply with court orders while being prosocial and engaging in a productive lifestyle.

[62] C.B. has been living in the community on bail in excess of 32 months following his arrest without any further safety concerns. I conclude his risk of recidivism is low.

[63] Accordingly, the sentence will be apportioned as follows:

- a. Code s. 95(1): Two years less a day condition sentence order, to be followed by a two-year probation order. Contrary to the Crown's argument, I am not persuaded that C.B. should be

subject to a house arrest for the duration of the conditional sentence order; and

- b. CSDA s. 4(1): \$1000.00 fine.

[64] The conditions of the conditional sentence order will be as follows:

**Statutory Conditions:**

- Keep the peace and be of good behaviour.
- Appear before the court when required to do so by the court.
- Report to a supervisor at Halifax today and as directed thereafter.
- Remain in the province of Nova Scotia unless written permission is obtained.
- Notify promptly of any change of name, address, employment or occupation.

**In addition you shall:**

- Not take or consume alcohol or other intoxicating substances.
- Not take or consume controlled drug and substances as defined in the Controlled Drugs and Substances Act, except in accordance with a physician's prescription for you or a legal authorization.
- Not have in your possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance.
- Attend for a mental health assessment and counselling as directed by your supervisor.

- Attend for assessment, counselling or program as directed by your Conditional Sentence Supervisor.
- Make reasonable efforts to locate and maintain employment of an education program as directed by your Conditional Sentence Supervisor.
- You are to reside at [redacted], NS unless the Court gives you permission to reside elsewhere.

**House Arrest:**

From today, November 29, 2023, at 11:59 p.m. and continuing for 365 days, you will be subject to house arrest with the following exceptions:

- When dealing with a medical emergency or medical appointment involving you, or a member of your household.
- When at regularly scheduled employment.
- When attending court at a scheduled appearance or under subpoena.
- When attending an appointment with your supervisor.
- When you are performing community service in the community which your supervisor knows about in advance.
- With the prior written approval of your supervisor.
- When attending to personal needs for four hours per week, which your supervisor knows about in advance – and all travel to and from the destination must be by a direct route.

- You will come to the entrance of your home should police or your supervisor attend to ensure you are following your house arrest.

**Curfew:**

366 days from now, until 11:59 p.m. 363 days thereafter, you will be subject to a curfew from 11 p.m. until 6 a.m. the following day, seven days a week with the following exceptions:

- When dealing with a medical emergency or medical appointment involving you, or a member of your household.
- When at regularly scheduled employment.
- With the prior written approval of your supervisor.
- You will come to the entrance of your home should police or your probation officer attend to ensure you are following your curfew.

[65] Upon completion of the conditional sentence order, you will be subject to two years of probation. In addition to the statutory conditions, you will follow these conditions:

- You are to report to a probation officer as and when directed.
- Attend for assessment and counselling as directed with a specific focus on trauma, racial trauma, and grief.
- Mental health assessment and counselling as directed.
- Connection to a pro-social peer group, including but not limited to Men's brotherhood, local church, 902 ManUp or volunteer agency.

- Make reasonable efforts to locate and maintain employment or an educational program as directed by your probation officer.
- Continued support with Mr. Niles re: future planning, apprenticeship etc.
- Connect with other local leaders such as Mr. Colter Simmonds & Derico Symonds and Mr. Niles.
- Complete 100 hours of community service work approved in advance by your probation officer by March 2, 2026

**Ancillary Orders:**

[66] In addition, there will be the following ancillary orders:

- A firearms prohibition for 10 years, made pursuant to s. 109 of the Code, and a lifetime prohibition for restricted weapons.
- An order to forfeit the firearm seized in this case, pursuant to s. 491 of the Code
- A secondary DNA order pursuant to s. 487.04 of the Code
- No victim fine surcharge. In light of the fine that I have imposed, coupled with your child raising responsibilities I conclude it would cause undue hardship to impose a victim fine surcharge, so no surcharge payable.

[67] I direct that C.B. to report back to the Court nine months from today's date, September 10, 2024.

[68] I direct that Correctional Services provide a written update to me on the progress of C.B. in the interim.



[69] I dismiss all the remaining counts where the Crown has offered no evidence.

Judgment Accordingly.

Borden, CJPC