

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. Dermody*, 2026 NSPC 7

**Date:** 20260213

**Docket:** 8849130

**Registry:** Dartmouth

**Between:**

His Majesty the King

v.

Carolyn Dermody

**Judge:** The Honourable Judge Timothy Daley

**Heard:** May 9 and July 15 and September 15, 2025, and January 29, 2026, in  
Dartmouth, Nova Scotia

**Decision:** February 13, 2026

**Charge:** Section 267(b) of the *Criminal Code*

**Counsel:** Michael Blanchard, for the Crown  
Donald Murray KC, for the Accused

**By the Court:**

**Introduction**

[1] This is the sentencing decision for Carolyn Ann Patricia Dermody for the following offence under the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*]:

Assault causing bodily harm contrary to section 267(b).

**The Facts**

[2] Summarizing the facts as contained in the decision by this court in *R. v. Dermody*, 2025 NSPC 36, Ms. Dermody and the victim, Pamela Hubley, were inmates at the Central Nova Scotia Correctional Facility on the day in question. Ms. Dermody and Ms. Hubley, as well as two other female inmates were admitted to the airing court, an enclosed area with no roof which contains some equipment and supplies for activities. It is used to provide an opportunity for exercise, smoking, interaction with other inmates and experiencing some amount of fresh air and sunshine.

[3] The video of that airing court revealed that the four women began discussions and ultimately Ms. Dermody and Miss Hubley separated from the other two and went to a corner of the airing court. Ms. Dermody had her back to

the wall and Ms. Hubley was facing her. Ms. Dermody said they were discussing the fact that she and others believed that Hubley was a "rat", or informant, in the Facility.

[4] At one point during that conversation, Ms. Hubley extends her right hand in a manner suggesting she wanted to shake hands with Ms. Dermody, who waved off the offer with the gesture. A moment later, Ms. Hubley again extended her right hand as if to shake hands and, after a brief pause, Ms. Dermody begins to strike her.

[5] I accepted Ms. Dermody's evidence that she felt vulnerable in that corner of the airing court with a concrete wall to her back and a concern that she had no avenue for escape. I accepted her evidence that Ms. Hubley was left hand dominant and Ms. Dermody was right hand dominant. I accepted her evidence that when Ms. Hubley extended her right hand, if she is engaged in a handshake with her, she was concerned that Ms. Hubley would strike her with her dominant left hand and she then felt the need to defend herself, which she did by striking Ms. Hubley.

[6] I also found as fact that at no time during the altercation did Ms. Hubley attempt to strike Ms. Dermody in any manner. I found that Ms. Hubley was being held down by Ms. Dermody who held either Ms. Hubley's sweatshirt or her hair

and Ms. Hubley was face down while standing and face down when she fell to her knees during the altercation.

[7] I found that in the initial portion of the altercation, Ms. Dermody struck or attempted to strike Ms. Hubley 22 times into her face by uppercuts or on the back of her head with a closed fist. During this portion of the altercation, the two women moved along the wall of the airing court and away from the corner where they began their discussion. At that point, Ms. Hubley fell to her knees, bent over and covered her head with her hands.

[8] This was the second portion of the altercation identified in my findings of fact. Ms. Dermody held Ms. Hubley by the sweatshirt and, at times, her hair, and struck her a total of 11 more times with uppercut punches to her face and hammer fist punches to her head. She also appears to kick Hubley three times in the face with her foot and struck her three times with knees to her face, all while Ms. Hubley was bent over.

[9] At that time Ms. Hubley moved to the exit door, hitting it several times, and eventually the door was opened, and an officer let her out of the airing court.

[10] In my decision, I found that the Crown had not disproven the defence of self defence by Ms. Dermody. I accepted her evidence that she was physically smaller

than Ms. Hubley, was invited by Ms. Hubley to that corner of the airing court for conversation, she felt threatened by the physical positioning of Ms. Hubley and her extension of her right hand for a handshake and that the conversation was not going well at that time.

[11] In my decision, I then went on to find that, while the initial response of Ms. Dermody to those circumstances was reasonable and proportionate in the beginning, it quickly changed to a circumstance where Ms. Dermody was assaulting Ms. Hubley for the purpose of aggression, dominance and vengeance.

[12] As the altercation continued, they moved from the corner of the airing court and Ms. Dermody had opportunity to cease the strikes and walk away. At no time did Ms. Hubley attempt to strike Ms. Dermody and was in no position to do so. After Ms. Hubley fell to her knees, it was Ms. Dermody who reengaged in the altercation by striking her many more times and I found that not to be in self defence, but rather an assault. The blows during that stage of the altercation were disproportionate to the threat posed and did not constitute self defence.

[13] By agreed statement of fact, evidence was entered that Ms. Hubley suffered significant bruising and swelling to soft tissue on her face and blurry vision, as well as pain and swelling to her left shoulder. She suffered no fractures or broken

bones, no airway obstruction nor did she have any brain bleed, or internal injuries and her cervical spine was intact. In essence, the impact of the injuries was not long-term.

### **Positions of the Parties**

[14] As to the positions of the parties, the Crown is seeking the following:

1. A term of incarceration of 12 months going forward;
2. A period of probation of 12 months;
3. A DNA order;
4. A Weapons Prohibition Order for life; and
5. An order that Ms. Dermody be prohibited from communicating with Ms. Hubley while they are in custody.

[15] The Defence seeks a period of incarceration of 90 days going forward.

[16] The Defence has no issue with the DNA and Weapons Prohibition Order or the noncommunication order.

### **Summary of the Law**

[17] As confirmed by the Supreme Court of Canada in the decision of *R. v.*

*Nasogaluak*, 2010 SCC 6 at paragraphs 39 to 45, sentencing judges are required to consider s. 718 of the *Criminal Code*:

[39] ... Judges are now directed in s.718 to consider the fundamental purpose of sentencing as that of contributing, along with crime prevention measures, to

“respect for the law and the maintenance of a just, peaceful and safe society”. This purpose is met by the imposition of “just sanctions” that reflect the usual array of sentencing objectives, as set out in the same provision: denunciation, general and specific deterrence, separation of offenders, rehabilitation, reparation, and a recent addition: the promotion of a sense of responsibility in the offender and acknowledgement of the harm caused to the victim and to the community.

...

[42] For one, it requires that a sentence not exceed what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence. In this sense, the principle serves a limiting or restraining function. However, the rights-based, protective angle of proportionality is counter-balanced by its alignment with the “just deserts” philosophy of sentencing, which seeks to ensure that offenders are held responsible for their actions and that the sentence properly reflects and condemns their role in the offence and the harm they caused ... Understood in this latter sense, sentencing is a form of judicial and social censure .... Whatever the rationale for proportionality, however, the degree of censure required to express society’s condemnation of the offence is always limited by the principle that an offender’s sentence must be equivalent to his or her moral culpability, and not greater than it. The two perspectives on proportionality thus converge in a sentence that both speaks out against the offence and punishes the offender no more than is necessary.

[43] The language in ss. 718 to 718.2 of the Code is sufficiently general to ensure that sentencing judges enjoy a broad discretion to craft a sentence that is tailored to the nature of the offence and the circumstances of the offender. The determination of a “fit” sentence is, subject to some specific statutory rules, an individualized process that requires the judge to weigh the objectives of sentencing in a manner that best reflects the circumstances of the case .... No one sentencing objective trumps the others and it falls to the sentencing judge to determine which objective or objectives merit the greatest weight, given the particulars of the case. The relative importance of any mitigating or aggravating factors will then push the sentence up or down the scale of appropriate sentences for similar offences. The judge’s discretion to decide on the particular blend of sentencing goals and the relevant aggravating or mitigating factors ensures that each case is decided on its facts, subject to the overarching guidelines and principles in the Code and in the case law.

[44] The wide discretion granted to sentencing judges has limits. It is fettered in part by the case law that has set down, in some circumstances, general ranges of sentences for particular offences, to encourage greater consistency between sentencing decisions in accordance with the principle of parity enshrined in the Code. But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of

appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.

[18] Section 718 of the *Criminal Code* explains the purpose and principles of sentencing which include denunciation, general and specific deterrence, separation of offenders from society, when necessary, as well as rehabilitation, reparations, promotion of a sense of responsibility and acknowledgement of harm.

[19] Section 718.1 states that “A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.”

[20] In *R. v. Hamilton*, (2004) 186 CCC (3d) (ONCA) the Court stated that proportionality is a fundamental principle of sentencing. It considers the gravity of the offence and the degree of responsibility of the offender. In other words, the severity of a sanction for a crime should reflect the seriousness of the criminal conduct. A disproportionate sanction can never be a just sanction. Aggravating and mitigating factors, and the principles of parity, totality and restraint are also important principles that must be engaged in the sentencing process.

[21] Section 718.2 sets out the other principles that the sentencing court is mandated to take into consideration.

[22] I also acknowledge that under this section of the *Criminal Code* that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[23] With regard to the overall sentencing process, I note the words of Chief Justice Lamer in *R. v. C.A.M.*, [1996] SCJ No 28 at paras 91 & 92:

91. ...The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offense, while at all times taking into account the needs and current conditions of and in the community. The discretion of the sentencing judge should thus not be interfered with lightly.

92. ...It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime...Sentencing is an inherently individualized process and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offense should be expected to vary to some degree across various communities and regions of this country as the 'just and appropriate' mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred."

[24] In a rational system of sentencing the respective importance of restraint, prevention, deterrence, retribution and rehabilitation will vary according to the nature of the crime and the circumstances of the offender. There is no easy test that a judge can apply in weighing these factors.

[25] Denunciation is the communication of society's condemnation of the offender's conduct. A sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for

encroaching on our society's basic code of values as enshrined within our substantial criminal law.

[26] As noted by our Court of Appeal in *R. v. E.M.W.*, 2011 NSCA 87, rehabilitation is a much greater consideration for a sentencing judge when the offender has accepted responsibility.

[27] A court must exercise caution in placing too much weight on deterrence when choosing a sentence, especially incarceration. This caution arises from empirical research which suggests that the deterrent effect of incarceration is uncertain.

[28] I am mindful of the principles of sentencing as outlined in *R. v. Grady*, (1973) 5 NSR (2d) 264 (NSCA) where the court confirmed that the primary focus was on the protection of the public and how best to achieve that whether through deterrence or rehabilitation, or both. Protection of the public includes both protection of society from the particular offender as well as protection of society from this particular type of offense.

[29] The same court in *R. v. Fifield*, [1978] NSJ 42 stated at para 11, "We must constantly remind ourselves that sentencing to be an effective societal instrument

must be flexible and imaginative. We must guard against using...the cookie cutter approach.”

### **Victim Impact Statement**

[30] There was no Victim Impact Statement entered by the Crown from Ms. Hubley.

### **Pre-Sentence Report**

[31] A Pre-Sentence Report was completed for Ms. Dermody and has been considered by this court. That Report confirms that Ms. Dermody has experienced a difficult life.

[32] She is 27 years old and was born in North Sydney, Nova Scotia. Her parents separated when she was young, but she says that they were active in her life during her formative years. Unfortunately, both of her parents struggled with substance use disorder and her father was incarcerated many times.

[33] She was raised by her maternal great aunt whom she considers to be her grandmother and shared a positive relationship with her until her death in 2019. She also had a stepfather who was active in her life until his death in 2022. His death, along with that of her biological father, had a significant impact on her.

[34] She is one of eight children in her family. She describes her formative years as "pretty rough". Despite her grandmother's efforts, they grew up in poverty. On top of this, when she was four years old, she discovered the body of her younger sister's biological father who had died as a result of an overdose. Needless to say, this was a traumatic experience for her.

[35] In addition, she describes being the victim of sexual abuse on numerous occasions by various family members and neighbours from when she was in grade 2 until she was a teenager. She was also kidnapped by one of her neighbours, who was also an abuser, when she threatened to report him to the authorities.

[36] She described herself as a young person who needed more attention than most, but also that she was known as "Care Bear" because she protected her siblings, expressing "I took the trauma for everybody." She acted out during her formative years, and Child Protection Services were involved with her family though she was never removed from her home.

[37] She moved out of her family home at 16 to reside with her boyfriend and that relationship was "either really good or really bad." It did evolve into a healthy union over the years, and she had two children by him, but both were removed from her care and adopted.

[38] She has limited education, having completed grade 9 with the At Risk Program. She attended high school for a time but dropped out and has attended classes while incarcerated at the Waterville Youth Facility. She recalls being suspended many times, primarily due to fighting which she attributes to being bullied.

[39] With respect to continuing education, she reports she is enrolled at the Canadian Adult Education Curriculum while incarcerated and is two credits short of obtaining her grade 12 education.

[40] Before incarceration, she was in receipt of income assistance benefits and only reports brief periods of employment prior to that.

[41] Ms. Dermody indicates that she had has suffered from depression and anxiety and has been formally diagnosed with Attention Deficit Hyperactivity Disorder, Posttraumatic Stress Disorder and Borderline Personality Disorder. She is prescribed medication but was not on that medication at the time of these events.

[42] Regarding substances, Ms. Dermody reports consuming alcohol from the age of 13, and other substances daily from the ages of 16 to 18. She reports she rarely consumes alcohol since that time but does admit to smoking cannabis, initially at the age of 11 and regularly from the age of 13. She became addicted to

opiates at the age of 13, and a struggle with an addiction throughout her life. She used crack cocaine when she was 15, but opiates have always been the drug of choice.

[43] She has been involved with the Opiate Recovery Program for the past two years. She reported abstaining from illicit substances after having her two children, but when they were removed from her care in 2019, she relapsed to heavy use of crack cocaine. She had been using and relapsing for some time thereafter. She remains connected with various agencies while incarcerated, including the Elizabeth Fry Society and intends to maintain those contacts when released.

[44] She reported having difficulty controlling her emotions in the past, saying, "I had big problems with anger, but I have grown up a lot since being in jail and I'm involved with spirituality, and medication which also helps."

[45] In discussing this matter, Ms. Dermody accepted responsibility for her actions.

[46] When reviewing her correction's history, the author noted that Ms. Dermody has been incarcerated since December 1, 2023, and during that time has completed many programs, such as Core programs, Substance Abuse Management, Options to Anger, and Healing Trauma. She attends Narcotics Anonymous and works with a

teacher on financial literacy and employment skills. She enjoys participating in the Elder Program as well as gym activities. She has also completed programs with outside agencies, including Beyond Violence, through Coverdale, a parenting program through East Preston Daycare Centre and Roots and Relationships through the Elizabeth Fry Society.

### **Prior Record**

[47] In reviewing her prior record, most of the offences for which Ms. Dermody has been sentenced involve failures to comply with recognizance or undertakings, some resisting peace officer charges and three involving the unauthorized possession of a firearm.

[48] There is only one prior assault from September 17 of 2018, some eight years ago.

### **Aggravating Factors**

[49] As to aggravating factors, these include the violent nature of the assault which caused bodily harm to the victim. While the defence describes this as a circumstance of excessive self defence, I disagree. My finding at trial was that this

had changed from self defence to one of assault for the purpose of aggression, dominance and vengeance. This, I find, to be aggravating.

[50] It is also aggravating that the victim was defenceless, having been held over or always bent over, falling to her knees at one point and covering her head with her arms and yet the strikes continued.

[51] As noted, the injuries consisted of swelling and bruising to her face and a shoulder injury. She also urinated herself on exiting the airing court and was taken to hospital.

[52] While these injuries were not as serious as first thought and did not result in a concussion or any seizures and no long-lasting effects, they are nonetheless aggravating in their nature.

[53] The Crown suggests that there is evidence of other incidents while Ms. Dermody has been in custody, but I am unclear as to the details of any of these as described in the PSR and will not take them into consideration in this matter.

[54] Ms. Dermody's prior record is somewhat aggravating. But, as noted earlier, most of the offences are breaches and nonviolent offences. There was some term of custody served for the firearms offences and the longest period of custody is 45 days.

[55] The Crown argues that the fact that this assault occurred in a prison is aggravating as well. The Crown cites the decision of *R. v. Aldred*, 2015 BCSC 1645 in which the court held at paragraph 54 through 56 as follows:

54. I agree with the Crown that the motive of both assaults was to assert Mr. Russell's dominance and that they were both premeditated.

55. Offenders are put in prison to keep them from re-offending; here, Mr. Russell committed violent offences in prison, where inmates are necessarily in close proximity to each other and vulnerable. See, e.g., *R. v. J.P.B.*; *R. v. Nelson*, 2006 BCPC 102.

56. Mr. Russell also engaged in a show of force to intimidate both victims by enlisting the aid of his fellow inmates.

[56] The Crown also cites the decision in *R. v. Nelson*, 2006 BCPC 102 from the British Columbia Provincial Court for the court held at paragraph 6 as follows:

6. Second, the assault took place inside a jail cell in full view of the corrections officers, who saw the incident on the surveillance cameras, and in the presence of numerous witnesses. I find the location of the offence aggravating because of the need to generally deter others from committing acts of violence in a jail, where inmates are vulnerable and should expect that they will be safe from attack by other prisoners.

[57] I acknowledge that there is a contrary line of reasoning that holds that prisons are inherently violent places where such assaults can and do occur on a regular basis and that this should not be an aggravating factor.

[58] In this matter, I find the former argument to be more persuasive. The fact that the assault took place in an airing court in the women's prison facility where the assault changed from one of self defence to aggression, dominance and vengeance is an aggravating factor. I agree with both courts cited that when

inmates are in close proximity in such environments, they are vulnerable, far more than they would be outside of the facility, and it is important to send a message of deterrence in such circumstances of assault.

### **Mitigating Factors**

[59] There are several mitigating factors at play. In the Pre-Sentence Report, Ms. Dermody has expressed acceptance of her responsibility for the assault.

[60] The description of her childhood through her adult life is difficult to fathom. Without repeating it in detail, she had suffered significant neglect and abuse, including sexual abuse as a child, had been traumatized by finding a dead body at a very young age, became involved in the use of illicit substances at a young age and has been diagnosed with multiple mental health disorders, all of which are perfectly understandable given that extremely difficult life that she experienced as a child and young adult.

[61] Her efforts at rehabilitation while in custody are also mitigating. She is engaged in multiple programs and educational opportunities to address the challenges that she faces. She is taking medication for her mental health disorders and appears to be working towards preparation for life outside of custody which may be more pro-social than it has been in the past.

[62] It is also mitigating that this assault was not premeditated and began as a circumstance of self defence. This by no means excuses the assault which occurred or the bodily harm that resulted from that, but does provide some mitigation.

[63] The Defence argues that the brevity of the event is somewhat mitigating. Yet, when weighing the time it took for the assault against the number of blows attempted or completed, even though it may have been brief in time it was certainly significant in effect.

[64] When considering the range of sentencing for similar offences, the Defence presented three cases to establish a range for assault causing bodily harm.

[65] Specifically, in *R. v. Khesro-Mohamed-Rasheed*, 2024 ONCJ 97 the Ontario Court of Justice considered a matter with Rashed and the victim along with a woman were at the victim's apartment after being out at a bar earlier. The victim testified that Rasheed went into the room where the woman was unconscious and tried to be sexual with her. Rasheed testified it was the opposite with the victim entering the bedroom. The woman could not recall what happened.

[66] Shortly after, there was an argument between the two men in the living room about that woman. Rasheed insulted the victim. The victim slapped Rasheed who then punched the victim repeatedly and fled, leaving the victim bleeding on the

floor. The victim suffered cuts on the bridge of his nose and around his left eye, which was bruised, red and swollen shut, a broken nose and a chipped tooth. He was hospitalized and released.

[67] In the decision, there were significant mitigating factors at play. Rasheed was described as a Permanent Resident from Iraq and had work since arriving in Canada. He had many friends, four of whom spoke highly of him in the Pre-Sentence report, describing his behaviours and characteristic and that he is not normally an aggressive person.

[68] There were 13 letters of support filed from, among others, a paralegal, controller, business owner, retired police officer, politician, and others who all described him as a generous, helpful, supportive, reliable, understanding and positive presence in each of their lives.

[69] The accused had participated in counselling sessions for Domestic Anger Abuse and Relapse Prevention and was open to further counselling. He completed 100 hours of community services on his own initiative. He acknowledged responsibility for his actions.

[70] In that matter, the Crown sought a sentence of three months of incarceration and 18 months probation along the two ancillary orders. The defence requested a

conditional discharge or a conditional sentence in the range of 3 to 6 months considering the mitigating factors.

[71] In the end, the court arrived at a four-month Conditional Sentence Order followed by 18 months of probation.

[72] Defence next refers to the decision of *R. v. Maslin*, 2025 CM 7002, a decision of the Canada Court-Martial, in which a guilty plea was entered at to a charge of assault causing bodily harm. There was a joint submission for 30 days incarceration which the court confirmed limited its discretion under *R. v. Anthony-Cook*, 2016 SCC 43 at paragraph 32, which states that “a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.”

[73] It is important to note as well that that court reminded us at paragraph 8 that there are differences between the military justice sentencing considerations and those for civilians under the *Criminal Code* as follows:

8. As noted by the SCC in *R. v. Edwards*, 2024 SCC 15 at paragraph 59 citing an earlier SCC decision in *R. v. Stillman*, 2019 SCC 40, “Canada’s separate system of military justice is designed to ‘foster discipline, efficiency, and morale in the military’”. This purpose is codified through section 55 of the NDA. Similarly, the purposes and principles of sentencing in the military justice system differ from that of the civilian justice system as noted at subsection 203.1(1) of the NDA that states,

“the fundamental purpose of sentencing is to maintain the discipline, efficiency and morale of the Canadian Forces.”

[74] I find that this decision is not helpful in this matter for two reasons. First, it involves an accused who a member of the Canadian Armed Forces in a Court Marshall proceeding and, as noted in that decision, there are different factors at play when sentencing someone in that circumstance.

[75] More importantly, this was a joint recommendation for sentencing which significantly affects the discretion of the court to impose a different sentence as directed by the Supreme Court of Canada. I therefore find it has no relevance here given that there is no joint recommendation before this court.

[76] Finally, Defence provided the decision of *R. v. Sachs*, 2018 ONSC 1199. In this circumstance, Sachs and the victim were incarcerated. The assault occurred in the courtyard area of the prison. There was a confrontation between the two, but this did not initially result in any assault by Sachs.

[77] Later there was a physical confrontation between the two. The court found that Sachs was considerably younger, bigger and healthier and the victim was much smaller, older and had multiple health issues.

[78] During that altercation, the victim suffered 15 traumatic injuries to his body with at least 14 caused by blunt force trauma in the form of blows. The victim fell

during the assault and Sachs continued the assault. Injuries included, broken ribs and a ruptured spleen, both of which contributed to hastening his demise. The victim later died and Sachs was convicted of assault causing bodily harm by a jury and proceeded to sentencing.

[79] The court found that Sachs had a significant violent criminal history and once incarcerated, committed 33 separate institutional offences, 11 of which were classified as "serious".

[80] The court found that a fit and proper sentence was one of 12 months incarceration and made those findings at paragraph 61 through 63 as follows:

[61] Offenders are put in prison to keep them from reoffending. But instead, you committed a further, violent, offence in prison, where inmates are necessarily in cross proximity to each other and, thus, vulnerable: see *R. v. Aldred*, 2015 BCSC 1645 (CanLII) at para. 55. The fact that an assault occurs in prison or custody can be an aggravating factor “because of the need to generally deter others from committing acts of violence in a jail, where inmates are vulnerable and should expect that they will be safe from attack by other prisoners.”: *R v. Nelson*, 2006 BCPC 102, at para. 6.

[62] To the extent that there are any mitigating factors, I am satisfied that your assault on Mr. MacDonald was not premeditated in the sense that you had planned it or were looking for an altercation.

[63] Taking into account all of the circumstances I have discussed, I have concluded that you should serve a term of imprisonment of twelve months for the assault of Mr. MacDonald.

[81] In this matter, the Crown did not present any case law to establish the range of sentence for defence such as this. Having said that, in the submissions made and the case law presented by Defence and Crown on this and other issues, it is clear

that the sentences proposed by Defence and Crown are within the range for an assault causing bodily harm.

### **Analysis and Decision**

[82] In determining a fit and appropriate sentence in this matter for Ms. Dermody, I have taken into account the aggravating and mitigating circumstances as presented by counsel.

[83] In considering the aggravating factors at play, I find that this is a violent assault that caused bodily harm to the victim. However, it did not result in long term injuries and did not include concussion or seizures. In the absence of the Victim Impact Statement, I have no knowledge of the long-term effects of this assault on Ms. Hubley.

[84] As noted earlier, it is aggravating that Ms. Hubley was always defenceless during the assault.

[85] It is aggravating that Ms. Dermody has a prior record, but it is limited with respect to violent offences and terms of custody. I have given this limited weight.

[86] I do find it is aggravating that this assault took place in a prison. The necessity to maintain safety when a person is quite vulnerable in such restrictive

environments is important and when an assault occurs in that circumstance, it is aggravating.

[87] When I turned to the mitigating factors, these are significant. Beginning with Ms. Dermody's life experience from childhood to her adult years, it is difficult to comprehend what she went through including the abuse, both physical and sexual, exposure to a dead body at a young age, being kidnapped, growing up in poverty and all of the other circumstances described. I find that this significantly mitigates her moral culpability.

[88] It is quite clear from those circumstances that her initial reaction to a perceived threat was to strike. This does not, in any way, excuse the assault which occurred, but it does provide context and reduce her moral culpability.

[89] It is also significantly mitigating that she has entered into efforts to rehabilitate herself and her circumstances when she is released from custody. The various services she has engaged with seem targeted at bringing her to a more prosocial life going forward.

[90] As noted earlier, it is mitigating that this assault was not premeditated and began as a circumstance of self-defence.

[91] When I next turned to the purposes and principles of sentencing, I first consider the principle of denunciation. Any fit and proper sentence must denounce the behaviour and the harm done to the victim and to the community.

[92] This principle must be seen in the context of deterrence, both general and specific. Ms. Dermody has a criminal record, though most of it does not involve violent offences. This is the most serious offence she has committed. The sentence imposed must bring a clear message of deterrence to her to prevent further offensive behavior. It must also send a signal to the community at large that such offences carry significant consequences. In this matter, I find denunciation and deterrence to be important factors for consideration by the court.

[93] Separation of offenders from society where necessary is also a factor here. Both Defence and Crown are recommending periods of incarceration, though they differ in duration. For an assault such as this, separation from society of Ms. Dermody will be required.

[94] When looking at the issue of rehabilitation, I have already noted that Ms. Dermody has taken significant steps to move forward in her own rehabilitation through services available to her. Time will tell whether they are effective, but in

the meantime, this is a factor for the court to consider and weighs in her favour in reducing a sentence imposed.

[95] The other primary principle of sentencing to be considered is the promotion of a sense of responsibility in offenders and acknowledgement of the harm to victims and to the community. In this case, the Pre-Sentence Report makes clear that Ms. Dermody has taken responsibility for the assault and has acknowledged her part in it. A fit and proper sentence must reflect society's requirement that she take that responsibility going forward.

[96] The *Criminal Code* identifies the fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In this matter, this is a serious offence that caused bodily harm to the victim. On the other hand, the injuries suffered are not permanent and will not impact the victim long-term in the physical sense. The long-term impact on her psychological well-being is unknown to the court.

[97] Regarding the degree of responsibility of Ms. Dermody, she is certainly the aggressor in this matter, but it is important to recognize that it began within the context of self defence. It quickly changed to one of an assault as described but how it began affects the proportionality question under section 718.1.

[98] When I consider the principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances, I first turned to the cases provided by the defence.

[99] Regarding the decision in *R. v. Sachs, supra*, this is relevant to the sentencing consideration of the court. It occurred in prison and involved a significantly younger, healthier and stronger accused who assaulted a much older, smaller and physically compromised victim who ultimately died.

[100] The accused had a significant criminal history and behavioural history with the correctional system. This circumstance led the court to conclude that a fit and appropriate sentence was a period of 12 months less credit for pre-sentence custody. It also included a period of probation for two years with conditions. The court imposed a firearms prohibition for 10 years, and a secondary designated DNA order. I find this to be a comparable in many ways to the circumstances before this court in this matter.

[101] With respect to the third and final case presented by defence, that of *R. v. Khesro-Mohamed-Rasheed, supra*, it is easily distinguished on the basis of the circumstances of the offender. While there was significant injury suffered, the court noted the Pre-Sentence Report reflected no prior record, very prosocial

behaviour by that accused and of particular importance the comments made by his friends, the 13 letters of support filed, all of which described him as a very positive and prosocial person with no history of violence.

[102] In this circumstance, the evidence is that Ms. Dermody has a criminal history, a very traumatic childhood and early adult life, addiction issues and mental health challenges. That record, as noted, is not a significant factor, but it does distinguish it from *R. v. Khesro-Mohamed-Rasheed, supra* as does the circumstances of the offender.

[103] In this matter, I have also considered the principle that that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances, and all available sanctions other than a prison imprisonment should be considered. In this matter, I find that there are no less restrictive sanctions that should be imposed given the circumstances of this offence and that of the offender, as well as the impact on the victim. This is reflected in the submissions of both Defence and Crown for a period of incarceration going forward.

[104] It must be brought home to Ms. Dermody and to society at large that this type of offence is serious and it would not be fit and appropriate to award a sentence other than one of incarceration in the circumstances.

[105] Considering all the circumstances, I find that a fit and appropriate sentence in this circumstance will be a period of incarceration of 10 months going forward, followed by a period of probation of 12 months with conditions.

[106] Therefore you, Carolyn Dermody are hereby sentenced to 10 months to be served in the Central Nova Scotia Correctional Facility on a straight time, go forward basis.

[107] You are further sentenced to probation upon expiration of the sentence of imprisonment imposed upon you pursuant to straight time custody for a period of 12 months.

[108] The conditions of that probation order will be as follows:

Keep the peace and be of good behaviour;

Appear before the court when required to do so by the court;

Notify the court, probation officer, or supervisor in advance of any change of name, address, employment or occupation;

Report to a probation officer at 277 Pleasant St., Dartmouth within two days of the date of expiration of your sentence of imprisonment, and thereafter is directed by a probation officer or supervisor;

Remain within the province Nova Scotia unless you receive written permission from your probation officer;

Not to possess, take or consume alcohol or other intoxicating substances;

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 legal authorization;

Not to have in your possession any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance;

Have no direct or indirect contact or communication with Pamela Hubley;

Make reasonable efforts to locate and maintain employment or an educational program as directed by a probation officer;

Attend for mental health assessment and counselling as directed by a probation officer;

Attend for substance abuse assessment and counselling as directed by a probation officer;

Attend for assessment and counselling in anger management as directed by a probation officer;

Attend for assessment, counselling, or a program directed by a probation officer;

Participate in and cooperate with any assessment, counselling or program directed by the probation officer.

You shall be subject to a weapons prohibition order under S. 109 (3) for life;

You shall be subject to a DNA order pursuant to X.\*;

You will be subject to an order that you are prohibited from communicating directly or indirectly with Ms. Hubley while you are both in custody.

[109] Given Ms. Dermody's period of incarceration and that she has been on remand for some time, I find it would be an undue hardship to impose a victim fine surcharge on her and that surcharge is hereby waived.

Timothy Daley, JPC