SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Chaisson, 2013 NSSC 168

Date: 20130510
Docket: CRANT 410523
Registry: Antigonish

Between:

Her Majesty the Queen

v.

Gabriel George Chaisson

SENTENCING DECISION

Judge:	The Honourable Justice Patrick J. Duncan
Heard:	May 10th, 2013, in Antigonish, Nova Scotia
Written Decision:	May 27th, 2013
Counsel:	Wayne MacMillan, for the Federal Crown Gerald MacDonald, for the Defendant

By the Court: (Orally)

[1] This is the matter of the sentencing of Gabriel Chaisson. First of all, let me thank counsel, both you, Mr. MacMillan, and you, Mr. MacDonald, for what I thought was a very good effort in terms of representing your respective positions, both in terms of your written materials and your oral submissions, and I thank you both.

[2] Mr. Chaisson, I acknowledge your comments as well ... you don't have to get up, sir ... and I have tried to take those into consideration in reaching the conclusions that I have.

[3] The facts behind this matter are as follows. On March 5th, 2013, Mr. Chaisson entered pleas of guilty to having committed five offences contrary to Section 5(2) of the ***Controlled Drugs and Substances Act***. By his pleas the offender has admitted that on November 18th, 2012, he had in his possession for the purpose of trafficking five different and dangerous drugs.

[4] The facts underpinning these offences are uncomplicated and have been set out by the Crown as follows. Members of the RCMP executed a search warrant at Mr. Chaisson's residence. They conducted a forced entry and discovered the offender either ... I am a little confused as to whether he was still in the washroom or exiting from the washroom: the materials today and materials submitted beforehand are a little bit different. Either way, his arms and hands were observed to be dripping wet, cocaine or a white residue understood to be cocaine was found in the toilet bowl, which the Crown suggests is evidence of an attempt to or an actual successful destruction of some cocaine and perhaps other drugs as well.

[5] A further search resulted in the seizure of 84 grams of cocaine, some methamphetamine, 41 grams of cannabis marihuana, 14.6 grams of hashish and some pills that, as I understand it from the offender in particular, were a blend of legal and illegal substances, but in the end was found to include bath salts and BZP. There was some drug paraphernalia located. The street value of the cocaine has been estimated variously according to values at purchase, values at sale. So we are talking about 84 grams of coke at $80.00 ... which has an actual value of closer to seven or $8,000.00. Now I recognize that this is not necessarily the value to the seller, but at the end of the day in terms of what society's expectations are,

this is putting drugs on the street that have a value of around $8,000.00, plus or minus according to the calculation.

[6] The Crown would go further and say that I should infer from the fact that the accused flushed drugs or attempted to do so and thus in doing so minimized the appearances of the extent of his involvement in the drug trafficking trade. I will say what is obvious, that on sentencing I can only rely on what was actually seized, but I do accept from all of the evidence, looking at it in totality, that this was a situation where Mr. Chaisson had been engaged in an ongoing trafficking of drugs, the category of which we have heard some discussion, and I will speak to that shortly.

[7] The Crown seeks a sentence of five years in prison relying on a one to one credit for time served on remand pending disposition of these charges. The Crown suggests that I should view Mr. Chaisson as a large scale retailer and commercial wholesaler. The Crown has not been influenced in its position by the allegations that the offender committed these offences while under a form of coercion or duress.

[8] The offender seeks the imposition of a sentence of two years less one day and that the period of incarceration be served in the community in accordance with the terms of a conditional sentence order. He further seeks credit of one point five days to one for each day served on remand.

[9] Counsel for the offender says that an appropriate range of sentence could be a period of between three and five years of incarceration having regard to the drugs involved and Mr. Chaisson's personal history. However, counsel submits that Mr. Chaisson was subjected to coercion and duress which caused him to commit these offences and so a lesser penalty is justified.

[10] I have been asked to consider where Mr. Chaisson's activities fall in the range of drug offences. In this regard I have been referred to the categories set up by the Court of Appeal in the case of ***R. v. Fifield*** (1978) 25 N.S.R.(2d) 407. I will characterize them in this way, and the typical ways the courts look at it, as either an accommodator, a petty retailer, someone who is involved in a larger scale distribution, a commercial distribution for example, and then importers being a totally different group in themselves. Within each of these categories, of course,

the courts have recognized ranges - there can be low-end petty retailers and high-end petty retailers for example.

[11] In my view, the variety, the quantity and the character of the seized drugs here do seriously aggravate the position of Mr. Chaisson in assessing what a fit and proper sentence would be. The Crown has put it in different language, but it is and it appeared to be a bit of a drug store and one that was being operated by Mr. Chaisson for profit. I say that, acknowledging the defence argument that the profit was to pay off his criminal associates for past debts incurred. I also acknowledge that the focus of the trafficking activity here and the intended purpose of the possession of these drugs was really primarily associated with the cocaine and perhaps to the cannabis products as well. The remaining drugs, representing the other three counts of the indictment, were by all accounts, and there is nothing to contradict this, nominal amounts found in a way that was not likely to be subject to an ongoing trafficking activity. In the end, whether that is the case or not, I do not have evidence before me to suggest that there was any active trafficking in these other drugs. But certainly there is ample evidence of the trafficking in cocaine and cannabis products.

[12] So, having regard to the information before me, I would characterize Mr. Chaisson as a high-end petty retailer. I have been directed to disclosure that describes him as a street dealer. That would be consistent with my assessment since it can mean one who is dealing to others who sell, or one who is out there selling in small amounts without a middle man. The evidence does not support a conclusion that he was a significant commercial distributor or supplier. In this category you would find suppliers ... it sounds like Mr. Roach would probably fall into that category. These are the individuals who provide to people like Mr. Chaisson who supply to the mid and low-end petty retailers.

[13] I note in reaching this assessment of Mr. Chaisson's activities the absence of some of the typical paraphernalia that we would associate with a larger scale distributor, things like score sheets, packaging and other things that Mr. MacDonald referred to. For all of that I am not ignoring however the Crown's concerns with respect to the ongoing activity and the fact that Mr. Chaisson demonstrated an ability to access fairly significant quantities and a variety of types of drugs, which certainly are a grave and aggravating concern. Mr. MacMillan said, and not unfairly, that to have incurred a drug debt of $30,000.00 from the last time that this gentleman was apprehended would be indicative of some fairly

substantial activity. But you have been sentenced for that, I am not sentencing you again for that. But the question that it raises is, and I think a fair one that it raises: is it a predictor or an indicator of what your activities were again on this occasion?

[14] Courts have often referred to, and I certainly emphasize my own agreement, with the fact that these drugs, all of these drugs, are in varying degrees known to have destructive effects and potentially lethal effects on people. Cocaine, in particular, has been identified repeatedly for the damage that it does to those who use it, those around them, their loved ones, for example, and on society at large. It is an addictive and indeed, in my view, a soul destroying drug. Courts have repeatedly said that incarceration and indeed lengthy incarceration should be the normal consideration for such offences.

[15] The maximum penalties for the offences that are before me today reflect the seriousness that Parliament has attached to these offences. For **Schedule I** offences, which include the cocaine, the methamphetamine and the MDPV, or more commonly known as bath salts, carries a maximum of life imprisonment. Cannabis marihuana is a **Schedule II** drug, and in this case the quantity was less than three kilograms so the liability to imprisonment is for a term not greater than

five years less a day. The BZP, the benzylpiperazine, if I have pronounced that correctly, is a **Schedule III** drug, but even it carries on indictment, as this one is, a maximum of ten years imprisonment.

[16] I have considered the pre-sentence report, the materials submitted by counsel, together with Mr. MacDonald's representations, and as I have indicated, I have also considered your comments today, Mr. Chaisson. In the context of the principles of sentencing there are some reasons to believe that you, Mr. Chaisson, could one day be a productive and a law-abiding member of your community.

[17] Mr. Chaisson has accepted responsibility for his crimes, both by his guilty pleas and by his admissions to the pre-sentence report author, and again here today. He shows some insight to his current predicament. Certainly, this is a factor in his one day being able to live a life without crime. So he is to be given full credit for accepting responsibility for his actions. However, he has some impediments to achieving a crime free life, and the question is: how will he overcome those impediments and what role, if any, does the sentence that I pass play in returning him to society without committing further illegal acts? In this sense, it is not just about your rehabilitation, Mr. Chaisson, but it is also about

how I protect society by employing the sentencing tools that are available to a court.

[18] Mr. Chaisson has been fortunate to enjoy generally good health. He has had some issues with alcohol abuse which has resulted in criminal consequences for impaired driving. He has sought out and continues even now while in custody to seek out counselling and that is a positive thing. He has developed a number of employable skills and has the ambition to train as a pipe fitter. If he follows through on these goals he can earn a living in an honest way. The employment history supports the conclusion that Mr. Chaisson can earn a living in a legitimate way, but being employed has not been enough in the past to divert him from criminal activity. So simply holding a job does not provide a guarantee that he is going to stay on the straight and narrow.

[19] Mr. Chaisson had a positive upbringing. He enjoys the support of his grandmother and his common-law spouse, both of whom seem to be responsible persons. Both are understandably very disappointed in his conduct and he knows that. He expresses remorse for creating that disappointment that they feel. It may be that will encourage him in the future to avoid criminal activity. However, Mr.

Chaisson is a mature man who needs to find it in himself to act differently and he has not done that yet. Their influence, his grandmother and his common-law spouse, has not been enough in the past to help him stay out of trouble, and it is unlikely by itself to be enough in the future. So Mr. Chaisson's family background, the favourable, ongoing family support he enjoys, his physical and his mental capabilities, his educational background and his employment history, all say that he is entirely capable of being rehabilitated and ultimately leading a law-abiding life. The question becomes, why has this not already happened and what does it mean for predicting Mr. Chaisson's future.

[20] The past can be a predictor of the future. Mr. Chaisson has a criminal and provincial offence record, which I have been presented with. On the 26th of September, 2006, he was found guilty of an offence contrary to 342(1) of the ***Criminal Code*** for an offence committed in February of 2006, and he received a suspension of the passing of sentence and probation for a period of six months. Later in 2006, in July, he committed an offence for which he was sentenced, but not until May of 2008, under the ***Fatality Investigations Act***, Section 40, for failure to notify a medical examiner. He received a penalty of a $1,000.00 fine for that.

[21] Then on June 16th, 2010, there was a series of charges and I am just going to outline them. There was forgery charges under Section 367 where apparently the offence dates took place over a period of 2002 until 2004. Now, remember, this is not being sentenced until June of 2010. There was a 4(3) of the ***Controlled Drugs and Substances Act*** committed in December of 2008, sentenced in June of 2010; a 5(2) ***CDSA***, the same offence for which he is here before me today - the offence date, according to the material presented to me, was also December 2008, although he was being sentenced in June of 2010. On the same date he was sentenced in relation to careless use of a firearm under Section 86(1) of the ***Criminal Code***, another offence date in December 2008.

[22] Then we move to a series of offences that occurred in 2009, but also being sentenced that same day in June of 2010. There was a 355(b), that would be possession of stolen goods or goods obtained by crime of a value under $5,000.00, I am assuming. Then there was another 5(2) ***CDSA***. Now this one - the offence date is December of 2009. So although you are being sentenced, by my understanding of the Record, on one day in June of 2010 the 5(2) ***CDSA*** offences,

the same types that I am dealing with here today, occurred once in December of 2008 and once in December of 2009.

[23] Then on the same date from June of 2009 there is a 145(5.1), breach of a form of court order, probably undertaking or recognizance, and then the 254(5), the impaired driving I spoke of earlier. The totality of the sentence imposed in June of 2010 was 26 months which resulted in going to a federal institution.

[24] There are aggravating factors when considering the current offences in light of this background. In the June 2010 sentencing there were three related convictions to the matters before me and they were serious enough to warrant a period of 23 months incarceration in relation to the drug charges alone. When the current offences are seen against this backdrop it suggests that Mr. Chaisson may be prone to returning to old ways, to recidivism that is.

[25] Now the defence quite correctly points out that Mr. Chaisson's involvement this time comes about under very different circumstances than in the past and argues that it mitigates the sentence to be imposed, notwithstanding this background that I have just outlined. The defence has presented evidence and

submissions to support a conclusion that the offender committed these crimes in response to coercion or duress. It is acknowledged that there is an insufficient evidentiary basis to support a defence of duress. However, the defence relies on various judicial statements indicating that in some circumstances duress can act to mitigate the penalty that otherwise would be imposed.

[26] Mr. Chaisson alleges that he owed $30,000.00 to a previous drug supplier, a Mr. Roach, and that upon his release from prison Mr. Chaisson received a demand for payment which he could not or would not pay. He was apparently able to forestall collection from his release in April 2012 until the end of his warrant expiry in August of 2012. On August 29th, 2012, the evidence suggests that an associate of Mr. Roach's assaulted Mr. Chaisson resulting in two cracked teeth that had to be restored and an injury to his eye, a concussion and a broken nose, which contributed to a period of 12 days in bed to recover. It has been asserted to me that the purpose of the assault was to induce the offender to sell drugs presumably in order to pay off his drug debt.

[27] There's no real issue taken with the fact that such a beating took place or that such a beating was for the reasons that have been indicated. There is a dispute

I suppose, and I will deal with this more formally in a minute, as to whether or not the beating was to force you to sell drugs or to force you to pay and then you took to selling drugs to pay. There is a difference I guess in how you perceive what the purpose of the beating was and what impact it should have on the outcome here.

[28] So in considering this argument I have had regard to the decision of the Supreme Court of Canada in ***R. v. Ryan***, 2013 SCC 3, in which the court discussed the requirements for duress as a full defence to a criminal charge. I have also considered the decision in ***R. v. Domke***, 2006 ABPC 252.

[29] In my view, the circumstances surrounding Mr. Chaisson's return to the drug trade, while very unfortunate, speak really to a lack of commitment to doing what was necessary to break free of the criminal lifestyle. When confronted with violence to his own person he opted to engage in selling dangerous drugs apparently over a period of some time rather than extricating himself. The threat to his personal safety, while obviously a continuing one, was not an ever present one. That is, there was no one standing beside him for days or months at a time issuing threats to keep him engaged in the criminal activity.

[30] I have evidence that the threats continued after his apprehension, but that again was in the wake of being apprehended, which apparently seems to be a source of some of the dispute. Mr. Roach has been supplying to Mr. Chaisson, Mr. Chaisson gets caught, the drugs get seized, money gets seized, Mr. Roach is out the money, Mr. Roach wants Mr. Chaisson to pay him. That seems to be what happened. While Mr. Chaisson could have sought out the assistance of the police he chose not to. I fully understand the reluctance in all of the circumstances that you would have. But I am troubled by the fact that you would be prepared to assist the police, but only after you got caught, and not to help yourself before you got involved in the criminal activity in the beginning. So if the issue is to get Roach off the street to save yourself, you know, the question ... and it is a rhetorical question ... but it is a question of, why not do something to get him off the street earlier. I think I can guess why. I have been around criminal law long enough to understand what the potential risks are. But it goes to the whole assessment of what the options are at the end of the day for you when you are caught in that problem.

[31] Mr. Chaisson had ample opportunity to leave the area. In fact, in reading the materials before me, it may have even been urged by his common-law spouse

that he do just that. Yet he remained here, knowing that in doing so he was facing the potential violence to his person and that in doing so he was leading himself down a path by his own admission to commit crime, the crimes that he is here for today.

[32] The onus is on Mr. Chaisson to show me that he had no real alternatives in order to justifiably claim a mitigation of the penalty. Ironically, if he had left the area and obtained gainful employment he may have been able to gather the money to pay off the drug debt. There is evidence he has a home with equity in it. I do not know why he did not use that to pay off some of the debt. There might be an explanation. It is not before me today and I am at the stage where I have heard the explanations that I am going to hear. What else I have heard is that I am being asked to return a Rolex watch that is valued at $12,000.00 and that there was $15,000.00 of cash in the house. If the debt was $30,000.00 you are pretty close to paying it off just with those things before you get to the Escalade.

[33] I am also troubled by the fact that the comment with respect to a threat to Ms. McNevin, “if you do not turn over your vehicle ...”; I understand it is an older model Cadillac Escalade ... the inference that I am left with is that you would

rather hang on to the Escalade than turn it over to Roach to save Ms. McNevin. Now whether that is accurate or not is not really germane at the end of the day. It is the totality of the picture before me says that I have a real absence of evidence that shows me that there were not other good alternatives. And, in fact, I have some evidence that says that there were alternatives that were not taken for whatever reason.

[34] Having said all that I am inclined to accept that Mr. Chaisson exited prison the last time with the full intention of remaining crime free. We hope that prison can have that impact on people. But, unfortunately, as I have alluded to here, when confronted with the option of committing crime or finding a legitimate way to pay off a drug debt or simply evading the violence of Mr. Roach and his associates by leaving the area he chose the path of committing crime. The fact that he made that choice undermines the argument, in my view, for mitigation of sentence because of the violence he suffered and, more importantly, undermines the confidence that I would have in his ability to remain crime free in the future. He demonstrated that he was still making bad choices in 2012, which leaves little confidence that he can remain crime free in the future. The appearance, as I have

indicated, suggests that there was a choice made to maintain material assets rather than to pay off those who would threaten him.

[35] So the question I have still to answer is: having regard to the principles of sentencing, the circumstances of these offences and of Mr. Chaisson, what is a fit and proper sentence to impose? In arriving at my conclusion I have turned my mind to the principles of sentencing as set out in Section 718 and 718.1. I have also reviewed Section 718.2 of the ***Criminal Code***. I find there are no deemed aggravating factors in this case arising from that provision of the ***Code***. However, Section 10 (2) (b) of the ***Controlled Drugs and Substances Act*** makes it an aggravating factor that I have to consider that Mr. Chaisson has a prior related record to the offences for which I am to sentence him.

[36] The case law presented by counsel and by my own reading of the law makes it clear that the court is to give primary consideration to the objectives of denunciation and general deterrence. Satisfying these objectives in the circumstances of this case requires a period of incarceration. The issue I have to resolve is the length of that period.

[37] I have been asked to consider the imposition of a conditional sentence pursuant to Section 742.1 of the ***Criminal Code***. I have concluded that this is not an appropriate case for such a disposition. A fit and proper sentence in this case necessarily involves a sentence of not less than two years in a federal institution. This conclusion alone disqualifies Mr. Chaisson from eligibility for a conditional sentence.

[38] Even if it was appropriate to consider a sentence of less than two years as one that would be fit and proper in the circumstances of this case, then the court would turn to the next criteria, which is whether I am satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the principles of sentencing in Sections 718 to 718.2. Mr. Chaisson has not demonstrated an ability or willingness to comply with court orders or other legal restrictions on his liberty. It appears that a number of his past criminal offences were committed while pending other offences in the period of December 2008 to December 2009. One of the offences he served time for was breach of a court order. After being incarcerated he was provided an opportunity to return to the community while on parole. He violated his conditions and was returned to custody.

[39] The current offences occurred just three months after the warrant expiry for the 2010 offences. He was still dealing when arrested. If I am to believe that he was only dealing to pay drug debts then he obviously still owed monies on the debts if he was still dealing. So that would suggest that he likely still owes money from prior to this event. And so one poses the question, having more drugs seized or flushed and more monies owing does he have even more debt that is outstanding. What is going to happen if and when you go back to the streets, Mr. Chaisson? I am not asking you to answer that question. I am posing, again rhetorically, but my fear is that you still owe money and you probably may even owe more now within the drug culture. I do not mean in any legal way obviously. So how are you going to respond the next time somebody comes knocking on your door looking for money?

[40] The history is inconsistent with the consideration of a community based sentence. There is no reason to believe that Mr. Chaisson has developed the coping skills or the conviction that he will abide by court ordered conditions. They have been tried and failed repeatedly. He is not a young person who does not know any better. He will need to create a much better history of compliance

before a court is going to reasonably justify release into the community under the terms of a conditional sentence order.

[41] I am not satisfied that if released into the community he would not represent a risk of reoffence during the service of his sentence. I am also of the view that such a penalty, having regard to the circumstances of Mr. Chaisson and of these offences, would fail to satisfy the purposes and objectives set out in Section 718 of the ***Code*** and Section 10 of the ***Controlled Drugs and Substances Act***. In short, such a sentence would, in my view, offend most of the principles upon which such orders are granted.

[42] So what is an appropriate period of incarceration in this case? In those cases where the ***CDSA*** offence sections do not set out a specific sentence, only a maximum sentence, or even where there is a specific minimum sentence, but a range from that to a higher maximum sentence, the court must seek out a mechanism to determine an appropriate sentence that falls within that broad discretion.

[43] So, for example, possession for the purpose of trafficking a **Schedule I** drug like cocaine provides a maximum penalty of life imprisonment. How does a court assess where, between no prison and life imprisonment, the sentence of Mr. Chaisson or any given offender should fall? So to meet this objective that I have to satisfy I have got to consider not only the principles of sentencing that I have previously outlined but also the guidance of other sentencing court decisions, in particular, appellate court decisions. In doing this the court seeks to determine what the appropriate range of sentence is and then to determine where the particular offender falls within that range. The goal is to fashion a sentence that would properly reflect the principles that I have previously outlined, while ensuring some consistency and predictability, that is driven by the particular facts of the case before the court. The sentence must be proportionate to the gravity of the offence and to Mr. Chaisson's responsibility. I refer to 718.1 in that regard. It must also be similar to that imposed on similar offenders for similar offences in similar circumstances. I refer to 718.2(b) of the ***Code*** in that regard.

[44] Mr. MacDonald has suggested that I consider two cases in particular as being similar offenders in similar circumstances. The first, ***R. v. Justin Goswell*** (January 2013 NSPC, unreported) , was someone else arrested in the same

operation as Mr. Chaisson. I will say at first blush when I looked at it I was troubled by it because it appeared to me quite frankly, to be a sentence that was certainly at the very bottom end of the range of sentences for what he had apparently done. So Mr. MacMillan on behalf of the Crown addressed that issue. It appears that the criminal record in his case is different and maybe it had been regarded by the court as not as serious as I see the record in your case, Mr. Chaisson. But a very important aspect of it is the fact that a joint submission was made. Mr. MacMillan is quite correct. The courts well recognize that joint submissions presented to the court by very experienced counsel when supported by a submission that demonstrates some form of exceptional circumstances can result in just the kind of a sentence that Mr. Goswell appeared to achieve which is something at the very low end of the range. I do not have a complete picture as it appears to me today. But, nevertheless, obviously in the range as found by the judge at that time or else the joint submission would not have been accepted.

[45] To the same effect, ***R. v. Archibald*** 2012 NLTD (G), the Newfoundland case that I was referred to, was another joint submission and I reiterate my comments. I also looked at the facts and there are some common elements. Both of you were subjected to intimidation, and in your case actual violence. There are

some other factual differences and I do not think it is necessary to go through it. I am satisfied that it is sufficiently different that it does not really assist your position here today.

[46] Sentences for possession for the purpose of trafficking or for trafficking in drugs are based in substantial measure on the type and amount of the drug involved and the level of involvement in the drug business. The maximum punishments that I have referred to in the ***CDSA*** reflect the relative seriousness of the types of drugs by categorizing them into these four Schedules. Then, as I have indicated previously, the cannabis products further divide punishment by the quantity that was involved.

[47] Persons trafficking in so-called hard drugs like cocaine will generally attract a period of incarceration in a federal institution, even for a first offence. I have been referred to, and it is often referred to as ***R. v. Knickle***, 2009 NSCA 59. I have also looked at a number of other cases, including ***R. v. Sampson*** 2009 NSSC 165: three and a half year sentence for ten grams of coke, $960.00 value, with an extensive criminal record.

[48] In my view the case law supports a sentence in the range of between three and five years. In looking at the Crown's submission, and in particular some of the cases, the actual amounts seized in this case are considerably less than in cases such as ***Knickle*** and ***R v. Dann*** 2002 NSSC 237, which were quite a bit more, but starting to get close to cases like ***R v. Banfield*** *2011 NSSC 56 (affirmed 2012 NSCA 98)*, which was 126 grams of coke. He got four years. ***R. v. Crossan*** (1993) 116 N.S.R. (2d) 352 (NSSCAD) : four and a half years with 116 grams of cocaine, 2,000 grams of hashish.

[49] Your last period of incarceration, Mr. Chaisson, was 26 months. I am concerned because that sentence appears to have failed to deter you from committing more crimes, even having regard to the circumstances that this occurred in. I am also concerned that people of like mind to you and in similar circumstances would need to understand that such conduct is denounced by the community and will result in significant punishment.

[50] Against all of this I have to balance the potential that you show for rehabilitation, Mr. Chaisson. You are quickly demonstrating a commitment to a

life of crime, but I believe that there is sufficient evidence to support a conclusion that you may yet return to society and live in a law-abiding fashion.

[51] Having regard to all of these comments then the following is the sentence of the court. In relation to Count 1, the possession of cocaine for the purpose of trafficking, contrary to 5(2) of the ***Controlled Drugs and Substances Act***, the sentence is four years. In relation to Count 2, in relation to the cannabis marihuana, one year, concurrent. In relation to Count 3, the methamphetamine, one year, concurrent. Count 4, the bath salts, six months, concurrent. Count 5, the BZP, six months, concurrent. Total sentence is four years.

[52] With respect to time served there is a presumptive credit of one to one for time spent on remand. There is an exception to the presumption which is qualified. I have asked counsel whether or not there is a disqualification from a consideration of more than one to one by virtue of the reasons for denial of release on an earlier occasion. I do not have sufficient evidence to indicate to me one way or the other whether the judge at that time indicated on the record and in writing that the existence of the criminal record was the basis for the denial of bail so I am not bound by that limitation.

[53] So then the question becomes: are there circumstances that would justify a greater credit? I have been referred to and have considered the decision of the Court of Appeal in ***R. v. Carvery***, 2012 NSCA 107. It held, among other things, a grant of more than one to one to recognize the loss of earned remission time is a lawful interpretation of that section. In particular, I reference paragraphs 44 and 85 of that decision.

[54] The evidence in support of a conclusion that the circumstances justify a greater than one to one credit is the lack of programming in the local correctional facility where this gentleman has been held for about five and a half to six months, close to six months now I understand. He did have the benefit of Alcoholics Anonymous so there was something but it is not much, I agree. There is always the consideration of whether there is a loss of remission time. I am troubled in this case because usually the assumption is that people will successfully work through their sentences and take the benefit of earned remission, but in this case Mr. Chaisson lost some remission time on his last sentence, so there is no guarantee in this case if he will or will not, but we can all hope that by his lessons learned he will earn the right to at least be considered for early release.

[55] In the whole of the circumstances I am prepared to allow him some increase over one to one, but not very much. His time in custody I am told was six months. I am prepared to reduce the sentence by eight months, which is less than the one point five to one. That is intended as I have indicated to reflect the circumstances that I have before me.

[56] With respect to the ancillary orders, they are secondary offences within the meaning of 487.04 of the ***Code***. I have considered the factors set out in section 487.051(3)(b) and conclude that it is in the interests of the administration of justice to order Mr. Chaisson provide a DNA sample.

[57] Section 109 of the ***Criminal Code*** provides for a mandatory prohibition order and the Crown has taken the position that I should treat it as the first time through, and so therefore Mr. Chaisson shall be prohibited from having in his possession any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition and explosive substance for a period commencing today and expiring in ten years. Further, he is ordered to be prohibited from having in his possession any prohibited firearm, restricted firearm,

prohibited weapon, prohibited device and prohibited ammunition for life. I am sorry, I said for ten years commencing today, I think it is ten years commencing at the conclusion of the sentence, is it not?

MR. MACMILLAN: Yes, I believe so.

THE COURT: Yes, and I think that is ... so I will make that correction. Before signing the order I will double check the ***Criminal Code*** section to make sure that I have that correct.

[58] I am prepared to make an order for return of the following seized items based on the representations of the Crown and defence. The Rolex watch will be returned to Mr. Chaisson. The $1,200.00 seized, identified as being in U.S. funds, will be returned to Mr. Chaisson. The coin collection, which I understand both parties understand what that means, will be returned to its lawful owner, Ms. McNevin.

[59] Finally, with respect to the victim surcharge required to be considered under Section 737, having regard to the period of incarceration that I have imposed and

the negative impact that any further financial burdens would generate on this gentleman's family, I am declining to order victim surcharge. I have relied in this regard on the Presentence Report information and the effect of the sentence to satisfy me that it would impose an undue hardship.

[60] That concludes the sentencing comments. Anything further, Mr. MacMillan?

MR. MACMILLAN: The Crown, My Lord, will file the order of forfeiture later.

THE COURT: Fine. That is fine. There has been no representations to me on forfeiture in relation to anything else so if the Crown is bringing forward a forfeiture order that is not consented to by the defence then you will have to convene for a hearing on that matter. All right.

[61] Mr. MacDonald, anything?

MR. MACDONALD: No, I think that covers everything, My Lord.

[62] Mr. Chaisson, I know this is not the result you had hoped for and I will say to you, sir, that as I read through your pre-sentence report it did give me some reason to think that there is a future for you, but you have got to make much better choices, and I know you know that. Unfortunately, this realization has come too late this time, but you still have lots of life ahead of you and you have had lots of good support. Take advantage of that, sir.

MR. CHAISSON: I will.

J.