**SUPREME COURT OF NOVA SCOTIA**
Citation: *R. v. Waterhouse*, 2020 NSSC 78

**Date:** 20200129
**Docket**: CRH 487537
**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Lee Lonsdale Waterhouse

**Sentencing Decision**

**Judge:** The Honourable Justice John P. Bodurtha

**Heard:** January 15, 2020 in Halifax, Nova Scotia

**Oral Decision**: January 29, 2020

**Written Decision**: February 27, 2020

**Counsel:** Max Kruger, for the Crown
Kevin Burke, for the Defence

By the Court (orally):

## Introduction

[1] On October 10, 2019, Lee Lonsdale Waterhouse (“Mr. Waterhouse”) entered a guilty plea to one count of possession of marihuana for the purpose of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act.*

[2] Section 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c. 19 ("*CDSA*") reads:

> 5(2) Possession for purpose of trafficking
>
> No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III, IV or V.

[3] The Crown’s position is that Mr. Waterhouse should be sentenced to a custodial sentence of 2 years plus a day in a federal penitentiary. The Crown also requests several ancillary orders.

[4] The Defence seeks a 90-day intermittent sentence, followed by a two-year probation period during which time Mr. Waterhouse would be subject to a curfew from 10:00 p.m. to 6:00 a.m. for a period of six months, followed by an 18-month period of probation with conditions as this Court deems fit.

[5] After hearing the oral submissions of counsel and comments to the Court from Mr. Waterhouse and reviewing the Pre-Sentence Report prepared by Danielle Timmons and the four character reference letters, I now must determine what is a fit and proper sentence for Mr. Waterhouse.

## Facts

[6] An agreed statement of facts was read into the record at the sentencing hearing as follows:

> 1. In the winter of 2018 Halifax Police received information that Brandon Quann was moving hundreds of pounds of marihuana and kilograms of cocaine.
> 2. The information received included that a Nevin Joseph Clark-Andrew was a possible “runner” for Quann, driving a gold coloured Volkswagen Passat.

3. The police believed that Quann was likely using a secure location to store his product ("stash house"), as well as the runner, do [sic] avoid detection and limit his liability.
4. Source information provided to police indicated that Quann was associating with the Hell's Angels Motorcycle Club in obtaining his product, and surveillance was conducted on him and his associates.
5. The gold Passat was seen on March 1 and 2, 2018 at 94 XXXXXX Drive Windsor Junction, NS, stopping for about 10 minutes. The police believed, based on other surveillance and source information, that this was the new "stash house".
6. The accused was not seen during the surveillance.
7. On March 2, 2018, Halifax Police executed a CDSA search warrant at 94 XXXXXX Drive, Windsor Junction, NS. Mr. Waterhouse was located in the residence.
8. No items were seized from the residence, but in the garage police located 11 large boxes three Tupperware containers and a hockey style bag containing the following:
    a) Vacuum sealer;
    b) Packaging materials;
    c) 12g of cannabis resin (shatter);
    d) 235.9 lbs of marihuana (107.11 kg).
9. The value of the marihuana seized would range from $354,219 to $1,606,710 depending on whether it was sold on the street ($10-$15 per gram) or in bulk ($1500 - $3000 per pound). The amounts seized are clearly for the purpose of trafficking.
10. Mr. Waterhouse was released on a promise to appear.

[7] The Crown takes no issue with the additional facts presented by defence counsel which are:

- Lee Waterhouse and Brandon Quann attended high school together and, while not friends, saw each other socially and attended parties together.
- After graduation Mr. Waterhouse attended NSCC and obtained a Certificate in Auto Mechanics. He subsequently repaired vehicles in his garage as a way of making extra money.
- In early 2019 he was contacted by Brandon Quann who wished some service work to be done on his motorcycle and subsequently some additional repairs done on his truck.

- It was during this time that Mr. Quann made a proposal to Mr. Waterhouse to store a quantity of marihuana in his garage in return for a payment of $2,000.00. This proposal was regretfully accepted by Mr. Waterhouse.
- Mr. Waterhouse was not at home when the marihuana was delivered to his garage, nor did he know anyone involved other than Mr. Quann or have any contact with anyone other than Mr. Quann.

## Circumstances of the Offence

[8] Mr. Waterhouse allowed his acquaintance, Mr. Brandon Quann, to store a large quantity of marihuana in his detached garage for $2,000. Mr. Quann had been under surveillance by the police. Mr. Waterhouse was not seen during the surveillance. Mr. Waterhouse was not at home when the marihuana was delivered to his garage.

[9] The police executed a search warrant at Mr. Waterhouse's home on March 2, 2018. No items were seized from the residence, but the police located 235.9 lbs. (107.11 kg) of marihuana, a vacuum sealer, packaging materials, and 12g of cannabis resin (shatter) in the garage. Mr. Waterhouse was subsequently charged and plead guilty to s. 5(2) of the *CDSA*.

## Circumstances of the offender

[10] Defence counsel's brief states: "Mr. Waterhouse's pre-sentence report indicates a 29-year-old male with a grade 12 education who comes from a good home, involved in athletics and upon completing high school completed a 2-year autobody and technician course at NSCC. Mr. Waterhouse is described as a hard worker with excellent prospects. He accepted full responsibility for his behaviour and realizes the stupidity of his mistake." I will elaborate in more detail with respect to the favourable pre-sentence report prepared by Danielle Timmons, a probation officer, dated December 18, 2019.

[11] Mr. Waterhouse was born in October 1990. He is a somewhat youthful offender with no prior criminal record. He has a supportive family and is currently employed.

[12] Mr. Waterhouse comes from a positive family environment; he was well provided for and was given the opportunity to play sports as a young child. He did not have any issues with substance dependency, nor did he witness any form of

abuse within his home. He continues to enjoy a positive relationship with his parents, his sisters and his sisters' children.

[13] Mr. Waterhouse successfully graduated grade 12 in 2009 at Lockview High School and described himself as an average student.

[14] He has been in a three-year relationship with Ms. Kim Sheppard, age 27, and they have been living common law for the past year. Mr. Waterhouse owns his own home in Windsor Junction, and has been living there for the past three years.

[15] His sister, Ms. Kelly Brooks, spoke with the probation officer and stated that she was shocked upon hearing of the incident, adding it was totally out of character for Mr. Waterhouse. She indicated that Mr. Waterhouse was aware he made a mistake and is accepting full responsibility for his actions. She described her brother as a very caring, thoughtful and sensitive individual, who is the "best uncle". Ms. Brooks revealed there is no family history of mental health issues within the family, nor did she believe that Mr. Waterhouse has any current mental health issues that need to be addressed. She commented that Mr. Waterhouse has a great support system in his family and that she believes this is a "one-time, huge mistake" that will never happen again.

[16] Mr. Waterhouse is currently employed at Top Coat Automatic where he does autobody work and paints cars. He has been employed with them for the past 1.5 years. Mr. Robbie Shreenan, a partner at Top Coat Automatic, was also contacted for the purpose of the PSR and he advised that Mr. Waterhouse was his "right hand man." He added, "no one expected this of Lee." He described the subject as a great worker, who is dedicated, shows up every day and is very reliable. He advised that if Mr. Waterhouse were to receive a period of incarceration, he is not sure what would happen to his job.

[17] Financially, Mr. Waterhouse advised he earns $75,000 per year in his current position with Top Coat Automatic. Physically, he is healthy and not on any prescribed medication. He has never been diagnosed with any form of mental health disorders, nor has he received any psychological treatment. He drinks beer on a social basis. He does not have any history of substance dependency for either drugs or alcohol. His leisure time consists of playing video games, taking walks with his girlfriend and travelling.

[18] In the offender profile portion of the report Mr. Waterhouse admits to hanging out with old friends and agreed to let them "hold product" in his detached garage. He feels terrible about the situation adding it was the "the worst decision I have ever made". He indicated that he takes full responsibility for his bad judgement and decision. He wants to move forward and show his parents, family and girlfriend that it was a mistake he will not repeat. He stated that his family and girlfriend have been very supportive throughout the incident and his legal commitments.

[19] He does not want to receive a period of incarceration because it would affect his employment and the ability of his employer to fill his spot with a reliable person. He feels that he could abide by house arrest conditions and would be available to report to a probation officer, if given the privilege of a community-based disposition.

[20] Ms. Sandra McKenzie, a friend of Mr. Waterhouse's mother was also contacted for the purpose of the report, she advised that she had the opportunity to speak with Mr. Waterhouse, adding that he is embarrassed and disappointed in himself and believes he "looks stupid". She indicated that he takes full responsibility for his actions and is accountable for his poor decision-making in this situation. He believes it was a "stupid mistake" and he is concerned about what it will mean for his future. She advises that she has seen Mr. Waterhouse mature over the last several months, as a result of the situation. She does not believe that Mr. Waterhouse uses illicit drugs and believes he was involved in this incident because he thought it was "easy money". She advises that Mr. Waterhouse comes from a very good family who are supportive. She hopes that if Mr. Waterhouse was to receive a period of incarceration it would be on the weekends, so he could keep his job and continue to be successful in his life and business.

[21] In closing, the writer of the presentence report stated that:

> Mr. Lee Waterhouse is a 29-year-old individual who does not possess a prior criminal record. The subject admits guilt in the current offence and has vocalized his disappointment in himself to this writer. Mr. Waterhouse is employed on a full-time basis and appears to have a great deal of support from both his immediate family and friends. The subject has not self-identified any substance dependency issues or mental health concerns, which has been confirmed with all collateral contacts.

> If the Court is contemplating a period of community-based supervision, Mr. Waterhouse appears to be a suitable candidate…

[22] I have reviewed the Pre-Sentence Report and the character reference letters filed in support of Mr. Waterhouse to learn more about his background and current circumstances.

[23] Mr. Waterhouse addressed the Court during his sentencing hearing. He expressed remorse to the Court and his family. He accepted responsibility for his actions and was genuine and sincere in his comments. He said that he has learned his lesson and will not be repeating it.

[24] The character reference letters provided by defence counsel speak highly of Mr. Waterhouse and his family. The letters express how they were surprised to hear about Mr. Waterhouse being involved in the incident and they all indicated this is "not the Lee I know". They believe that Mr. Waterhouse understands the terrible decision he made and believe that Mr. Waterhouse will not engage in this type of activity again.

**Position of the Parties**

[25] The Crown says the appropriate sentence in this case is a federal sentence of two years and one day. At the time of the offence the maximum penalty for an offence under s. 5(2) of the *CDSA* was life in prison. With the legalization of cannabis and the proclamation of the *Cannabis Act*, the maximum penalty is now 14 years. Parliament continues to treat marihuana offences seriously.

[26] The Crown is also seeking several ancillary orders:

- DNA (secondary) pursuant to s. 487.051 of the *Criminal Code*;
- Weapons prohibition (10 years) pursuant to s. 109 of the *Criminal Code*; and
- Forfeiture Order (of the items seized in the garage) pursuant to ss. 16(1) of the *CDSA*.

[27] The Crown submits that a fit and proper sentence is two years plus one day imprisonment.

[28] The Defence position is a 90-day intermittent sentence, followed by a two-year probation period during which time Mr. Waterhouse would be subject to a

curfew from 10:00 p.m. to 6:00 a.m. for a period of six months, followed by an 18-month period of probation with conditions as this Court deems fit. The Defence does not oppose the ancillary orders put forward by the Crown.

## Principles of Sentencing

[29] In imposing an appropriate sentence, I must apply the purpose and principles of sentencing set out in ss. 718, 718.1, 718.2 of the *Criminal Code* and section 10(1) of the *CDSA* and s. 15(1) of the *Cannabis Act*. These provisions provide me with the general principles and factors I should consider in reaching a just sentence. The purpose of sentencing is to protect society and to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the objectives outlined in s. 718 of the *Criminal Code* and section 10(1) of the *CDSA* and s. 15(1) of the *Cannabis Act*.

[30] Section 718 of the *Criminal Code* reads as follows:

> **Purpose and Principles of Sentencing**
>
> Purpose
>
> 718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;
>
> (c) to separate offenders from society, where necessary;
>
> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[31] Section 10(1) of the *CDSA* reads as follows:

> 10(1) Purpose of sentencing
>
> Without restricting the generality of the Criminal Code, the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

[32] Section 15(1) of the *Cannabis Act* mirrors the *CDSA* purpose of sentencing and reads:

> **15(1) Sentencing**
>
> Without restricting the generality of the *Criminal Code*, the fundamental purpose of any sentence for an offence under this Division is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

[33] Section 718.1 of the *Criminal Code* says that the fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[34] Section 718.2 requires that I consider specific sentencing principles, including the mitigating or aggravating factors relating to the offence or the offender. Section 718.2 reads:

> **Other sentencing principles**
>
> 718.2 A court that imposes a sentence shall also take into consideration the following principles:
>
> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
>
> (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
>
> (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
>
> (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
>
> (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
>
> (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
>
> (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,

> (v) evidence that the offence was a terrorism offence, or
>
> (vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act*.
>
> shall be deemed to be aggravating circumstances;
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[35] Any sentencing hearing requires a careful consideration of the unique circumstances of the offender and the offence. It requires a balancing of sentencing objectives (see: *R. c. Lacasse*, 2015 SCC 64 (S.C.C.) at para. 1).

**Analysis - Aggravating and Mitigating factors**

**A. Aggravating**

[36] Large scale trafficking in marihuana – 107.11 kilograms (235.9 lbs)

**B. Mitigating Factors**

- Acceptance of Responsibility and Expression of Remorse
- Relative youthfulness
- First time offender
- Guilty plea
- His previous good character
- Community support

- Mr. Waterhouse has been subject to conditions as part of his bail recognizance since May 2017 and has not breached this Order or committed further offences.
- Working fulltime for the last two years.
- Favourable PSR.

[37] On the facts before the Court, Mr. Waterhouse has excellent prospects for rehabilitation.

[38] Mr. Waterhouse is a youthful first-time offender. He stands before the Court today as a 29-year-old looking at a period of incarceration. A mitigating factor is his age and, in this regard, I refer to the Ontario Court of Appeal decision in *R. v. Priest*, [1996] O.J. No. 3369, where Rosenberg, J.A. highlighted the primary objectives, in sentencing first-time offenders, are individual deterrence and rehabilitation:

> 17 The primary objectives in sentencing a first offender are individual deterrence and rehabilitation. Except for very serious offences and offences involving violence, this court has held that these objectives are not only paramount but best achieved by either a suspended sentence and probation or a very short term of imprisonment followed by a term of probation. In *R. v. Stein* (1974), 15 C.C.C. (2d) 376 (Ont. C.A.) at page 377, Martin J.A. made it clear that in the case of a first offender, the court should explore all other dispositions before imposing a custodial sentence. …

[39] Rosenberg, J.A. also commented on youthful first offenders:

> 22 The rule laid down by this court is that ordinarily for youthful offenders, as for first offenders, the objectives of individual deterrence and rehabilitation are paramount. See *R. v. Demeter and Whitmore* (1976) 32 C.C.C. (2d) 379 (Ont. C.A.). These objectives can be realized in the case of a youthful offender committing a nonviolent offence only if the trial judge gives proper consideration to alternatives to incarceration.
>
> 23 Even if a custodial sentence was appropriate in this case, it is a well-established principle of sentencing laid down by this court that a first sentence of imprisonment should be as short as possible and tailored to the individual circumstances of the accused rather than solely for the purpose of general deterrence….
>
> 24 Martin J.A. also stated that this emphasis on individual deterrence rather than general deterrence was particularly applicable in the case of a youthful first offender. Those statements of principle were binding on the trial judge in this

> case and should have been applied. He should not have imposed a sentence, to paraphrase MacKenna J., that was very long, disproportionate to the gravity of the offence, and imposed as a warning to others.

[40] In applying the comments of Justice Rosenberg to this case, Mr. Waterhouse is a somewhat youthful offender, but one must look at the offence that was committed. Also, I am mindful of the comments from this Court and the Court of Appeal that general deterrence and denunciation are paramount in sentencing with respect to drug offences.

**Proportionality principle**

[41] Section 718.1 reads "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

[42] It requires that a sentence not be more severe than what is just and appropriate given the seriousness of the offence and the moral blameworthiness of Mr. Waterhouse. The Supreme Court of Canada in *R. v. Lacasse*, 2015 SCC 64, described it as:

> [12] … In other words, the severity of a sentence depends not only on the seriousness of the crime's consequences, but also on the moral blameworthiness of the offender. Determining a proportionate sentence is a delicate task. As I mentioned above, sentences that are too lenient and sentences that are too harsh can undermine public confidence in the administration of justice.

[43] The Supreme Court of Canada in *Lacasse* further explained the principles of proportionality and parity at paras. 53 and 54:

> 53 This inquiry must be focused on the fundamental principle of proportionality stated in s. 718.1 of the *Criminal Code*, which provides that a sentence must be "proportionate to the gravity of the offence and the degree of responsibility of the offender". A sentence will therefore be demonstrably unfit if it constitutes an unreasonable departure from this principle. Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances. Individualization and parity of sentences must be reconciled for a sentence to be proportionate: s. 718.2(a) and (b) of the *Criminal Code*.
>
> 54 The determination of whether a sentence is fit also requires that the sentencing objectives set out in s. 718 of the *Criminal Code* and the other sentencing principles set out in s. 718.2 be taken into account. Once again,

> however, it is up to the trial judge to properly weigh these various principles and objectives, whose relative importance will necessarily vary with the nature of the crime and the circumstances in which it was committed. The principle of parity of sentences, on which the Court of Appeal relied, is secondary to the fundamental principle of proportionality. This Court explained this as follows in *M. (C.A.)*:
>
> > 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. [para. 92]

[44] Assessing the gravity of the offence requires me to consider both the gravity of these offences in general and the gravity of Mr. Waterhouse's specific offending behaviour.

[45] Nova Scotia courts have routinely emphasized that deterrence and denunciation are the primary sentencing principles when sentencing for drug offences: see *R. v. Chase*, 2019 NSCA 36, at para 28 and also, *R v. Rushton*, 2017 NSPC 2, *R. v. Jones*, 2003 NSCA 48 and *R. v. Collette*, 1999 NSCA 169.

[46] Justice Oland in *R. v. Steeves*, 2007 NSCA 130, said:

> 18 This court has been steadfast in emphasizing that deterrence is a primary consideration in sentencing for drug offences. In *R. v. Robins,* [1993] N.S.J. No. 152 (N.S. C.A.), Chief Justice Clarke stated at p. 1:
>
> > . . . The position of this court, repeated in many of our decisions since **Byers**, is that there are no exceptional circumstances where cocaine is involved. We are persuaded that general deterrence must be prominently addressed if the public is to be protected from the nefarious trade that has developed in this drug that is so crippling to our society.
>
> See also, for example, *R. v. McCurdy*, [2002] N.S.J. No. 459 (N.S. C.A.) at ¶ 15.
>
> 19 Trafficking in cocaine, or its possession for the purpose of trafficking, has traditionally attracted a federal term of incarceration. In *R. v. Dawe,* [2002] N.S.J. No. 504 (N.S. C.A.), this court confirmed that a penitentiary sentence is the norm in Nova Scotia in cases involving trafficking in cocaine.…

[47] When considering the circumstances of this particular offender and specific deterrence, the facts suggest that this was an impulsive, reckless decision made by Mr. Waterhouse. There is no evidence of any other involvement by Mr. Waterhouse with Mr. Quann and his operation, or in fact, any involvement with illegal drugs or drug activity. Regrettably, Mr. Waterhouse never considered the

consequences when he accepted $2,000 to store drugs for Mr. Quann. This decision will result in significant consequences to him.

[48] Next, looking at the degree of responsibility of the offender, Mr. Waterhouse has accepted complete responsibility for his actions. His age does reduce his moral blameworthiness but, as pointed out by the Crown, there were no other extenuating health circumstances such as mental health issues or substance abuse issues. This was a reckless one-time decision by Mr. Waterhouse.

[49] As far as general deterrence and denunciation, large scale marihuana operations are illegal and will be dealt with by the courts. As previously mentioned, Nova Scotia courts have strict sentencing provisions when it comes to the trafficking of cocaine. The drug in the case before me was marihuana. Certain amounts of this drug are now considered legal. We have the new *Cannabis Act* which outlines the prohibited and legal use of marihuana. Public views on marihuana have changed. It is not considered a hard drug like cocaine or heroin; however, large scale illegal possession of marihuana will still attract severe sentences. In terms of deterrence and denunciation, Mr. Waterhouse will be going to jail for a period of time. In addition, he will be under a period of probation for a significant time. His liberty will be reduced whether he serves his sentence inside or outside of prison. Should the sentence not be one of incarceration there is an opportunity that this will allow Mr. Waterhouse to keep his job and remain a productive member of society. In reviewing the offence and the conditions proposed by Defence and the Crown, this Court sees no need to punish Mr. Waterhouse any longer than necessary to achieve deterrence for this offence or to imprison him long-term in an environment that may foster a criminal career.

[50] In reviewing the gravity of the offence and the degree of responsibility of the offender, a 90-day intermittent sentence, with two years' probation for this offender is proportionate. This is a significant sentence for a first time, somewhat youthful offender with excellent prospects for rehabilitation. It will have repercussions on Mr. Waterhouse, should he wish to travel internationally, and it may hamper his employment prospects.

**Rehabilitation**

[51] Even in cases requiring that denunciation and deterrence be emphasized, rehabilitation continues to be a relevant objective. Rehabilitation of offenders continues to be one of the main objectives of Canadian criminal law and it helps the courts impose just and appropriate sentences. (*R. v. Lacasse, supra*, at para. 4).

[52] Our Court of Appeal has recognized the importance of rehabilitative sentencing for youthful offenders. In *R v. Bratzer*, 2001 NSCA 166, a youthful offender convicted of three counts of robbery was given a conditional sentence. The Court of Appeal upheld the sentence and said at para. 40:

> 40 There is ample authority for the proposition that sentences for youthful offenders should be directed at rehabilitation and reformation, not general deterrence. (*R. v. Leask*, [1996] M.J. No. 587 (Man. C.A.); *R. v. Demeter* (1976), 32 C.C.C. (2d) 379 (Ont. C.A.); *R. v. Casey*, [1977] O.J. No. 214 (Ont. C.A.)) This is common sense. A youthful offender, particularly one such as Mr. Bratzer, who has an interest in a vocation and can be equipped with the tools to earn an honest living, is more likely to be diverted from a life of crime than would a career criminal.

[53] Mr. Waterhouse is an excellent candidate for rehabilitation. He has excellent prospects for employment, he is a first-time offender with no prior criminal record. He accepts full responsibility for his actions. He has an extremely positive PSR and works full-time as an auto mechanic. He is a productive member of the community and has the support of his family.

[54] Sentencing is not an exact science, and it is incumbent upon the Court to view the circumstances of each offender and the circumstances of the offence. Each case is different and in Mr. Waterhouse's circumstances, after taking into consideration deterrence and denunciation as the primary factors for his crime, as a secondary factor, I must consider rehabilitation regarding this somewhat youthful offender. Is there an opportunity for the Court to be lenient if there is something positive weighing in the offender's favour (see: *R. v. Bratzer*, 2001 NSCA 166 at para. 41).

[55] I agree with Judge Buckle's comments in *Ruston, supra,* at para. 66:

> …In the case of a youthful offender, rehabilitation has to be given real consideration; in many cases, it is more than a theoretical objective, it is a reasonable and viable hope.

**Range of Sentence**

[56] Section 718.2 requires consideration of the principle of parity. Within reason, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This requires an examination of the range of sentences imposed for each of the offences, taking into consideration that each sentence must reflect the unique circumstances of the offence and the offender. I quote from *R. v. Chase*, 2019 NSCA 36, a decision that was referred to by both the Crown and the Defence, at paragraph 46:

> 46 Both the appellant and the respondent cite this Court's decision in *R. v. Scott*, 2013 NSCA 28 (N.S. C.A.). It is a good place to begin. Although Judge Murphy incorrectly quoted from the dissenting opinion in her reasons, nothing here turns on that minor slip. In *Scott*, my colleague Justice Beveridge, writing for the majority, rejected the notion that proof of "exceptional circumstances" operated as a kind of condition precedent before a sentencing judge could consider imposing a lesser sentence than federal imprisonment, following a conviction for a serious drug offence. To introduce such a requirement would, in effect, amount to a revision of the criminal law and thereby usurp Parliament's legislative authority. At para. 53, Beveridge, J.A. outlined the proper approach lower courts must take when sentencing traffickers of Schedule I drugs in Nova Scotia:
>
> > [53] There is no question that this Court has long stressed the need to emphasize deterrence and denunciation for those that traffic in cocaine, and depending on the circumstances of the offence and of the offender, may well mean that a sentence of federal incarceration is called for. With all due respect, what I cannot accept is that these or any other cases make a federal prison term mandatory — to be avoided only if an offender can demonstrate "exceptional circumstances".
>
> 47 That approach was reiterated by this Court a few months later in *R. v. Howell*, 2013 NSCA 67 (N.S. C.A.) where Beveridge, J.A. observed:
>
> > [9] In *R. v. Scott*, the majority judgment of this Court emphasized that deference is owed to a trial judge's determination of sentence via the usual and appropriate balancing of the objectives and principles of sentence. And that determination is not to be supplanted by a new paradigm about whether or not there are exceptional circumstances. ...
>
> 48 From all of this it can be said with certainty that nothing has changed this Court's repeated and consistent warning that deterrence and denunciation will continue to be the primary objectives when sentencing persons who choose to traffic in cocaine, and that convictions will normally attract a federal prison term. However, that does not mean that in an appropriate case, depending upon the particular circumstances of the offence and the offender, a lesser sentence cannot be imposed.

[57] I share Judge Buckle's view in interpreting Justice Beveridge's comments and understand those comments to mean that it is not necessary for me to make a finding of exceptional circumstances should I choose to impose a sentence lower than federal time for a cocaine trafficker where the proper application of sentencing principles justifies that result (see *Rushton, supra,* para. 83).

[58] Judge Buckle spoke about sentencing principles in *Rushton, supra,* at paragraphs 87 and 88:

> 87 Sentencing ranges are important. They are intended to encourage greater consistency between sentences and respect for the principle of parity. However, "they are guidelines rather than hard and fast rules" (*R. v. Nasogaluak*, 2010 SCC 6 (S.C.C.) at para. 44). This was recognized by Scanlan, J.A. in *Oickle* (supra) at para. 40 when he said "it is not appropriate to set a bottom range or a top range for a particular offence without regard for the offender or other sentencing principles". He went on to quote Justice Farrar in *R. v. Phinn*, 2015 NSCA 27 (N.S. C.A.) where he refers to *R. v. N. (A.)*, 2011 NSCA 21 (N.S. C.A.):
>
> > [34] Unless expressed in the *Code*, there is no universal range with fixed boundaries for all instances of an offence: [Authorities omitted]. The range moves sympathetically with the circumstances, and is proportionate to the *Code*'s sentencing principles that include fundamentally the offence's gravity and the offender's culpability. ...
>
> 88 Sentencing judges are permitted to go outside the established range for a given offence as long as the sentence imposed is a lawful sentence that adequately reflects the principles and purposes of sentencing (*Nasogaluak* (supra), at para. 44). This was recently affirmed by the Supreme Court of Canada in *Lacasse* (supra), where Wagner, J., writing for the majority, said as follows:
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> > 58 There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case. ...

[59] I also was referred to the cases of *R. v. Jones*, 2003 NSCA 48, and *R. v. Withrow*, 2019 NSSC 270, by the Crown but neither of these decisions share the same circumstances of Mr. Waterhouse.

[60] In *Withrow*, the investigation established that the accused played a critical role in the conspiracy to traffick marihuana. He would meet couriers at the airport and collect suitcases of cannabis for delivery to the purchasers. He then would collect suitcases of cash and would drive the courier and cash back to the airport (para. 7). The conspiracy would not have worked without Mr. Withrow's role on the ground (para. 9). Justice Coady established the range for this kind of case to be from 1 to 4.5 years' incarceration (para. 16). He sentenced Mr. Withrow to 30 months' imprisonment.

[61] In this case, the surveillance and tracking of Mr. Quann continued for several months but did not include Mr. Waterhouse. Nothing came to the attention of the police that Mr. Waterhouse was involved in the drug operation. There are clear distinguishing features from Mr. Withrow who was a primary target of the police. Mr. Withrow's vehicle was tracked for a number of months. He was a vital member of the organization and the Court felt obligated to sentence him to a federal sentence of 30 months because of his vital role in the organisation.

[62] Mr. Waterhouse's situation is nowhere near analogous to Mr. Withrow based on the facts before me. There is no evidence that he had any prior involvement in the drug trade other than this one-time incident where he accepted cash to store marihuana in his garage. The evidence is that the police found no cash or drug paraphernalia when they conducted their search of Mr. Waterhouse's house. The drugs were found in his garage. This would indicate to me that he was not involved in the movement of the drugs or involved in illegal drug activity. There is no evidence before me that he had any other involvement in illegal drug activity.

[63] The second case the Crown provided me was *Jones, supra.* This case involved a courier, who had a significant criminal record (11 prior convictions).

[64] In *Jones*, Mr. Jones was a courier and the Crown appealed the sentence imposed on him for a possession for the purpose of trafficking cannabis (marihuana) offence and a possession of proceeds of crime offence. The accused was convicted of the offences after the police discovered 4.6 kg of cannabis resin

and $40,020 in the trunk of his vehicle. The sentencing judge imposed an 18-month conditional sentence.

[65] On appeal, the Nova Scotia Court of Appeal substituted a sentence of three years' incarceration. The Court found that in view of the seriousness of the offence, the events, the amount of cannabis involved, and the accused's criminal record, the conditional sentence that had been imposed by the trial judge was not a fit and proper sentence. The Court of Appeal said at paragraph 8:

> [8] Sentences for possession of narcotics for the purposes of trafficking imposed by this court over the last 25 years have consistently been largely influenced by the quantity of drugs involved and the function or position of the offender in the drug operation. Other factors considered either more or less relevant, depending on the circumstances, are the criminal record and age of the offender, whether he was on probation at the time of the events, and the sophistication and scope of the enterprise.
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> …
>
> [10] An examination of possession for the purposes cases, reveals that the typical range of sentences for small wholesalers or large retailers, the people on the third of the four rungs of the ladder identified in **Fifield**, is two to five years incarceration. It also appears from this survey that the quantity of cannabis resin necessary to categorize a person at this level is two to ten kilograms, with values in the tens of thousands of dollars range. The presence of exceptional mitigating circumstances, such as youth, or previous unblemished character, may, of course, take an offender out of the normal range. …

[66] The Court then conducted a review of some cases that were illustrative of these points.

[67] The only similarity between the *Jones* decision and the case before me is that Mr. Jones, like Mr. Waterhouse, saw the opportunity to make a fast buck. The similarities end there. Mr. Waterhouse stored the marihuana for Mr. Quann. His involvement in the illegal drug activity is much different from Mr. Jones. The Court described Mr. Jones's situation at paragraph 13:

> 13 There are no mitigating factors in this case which would remove the respondent from the normal range. He is not youthful and he has a significant criminal record. In fact, he was convicted of another drug offence while awaiting trial for this offence. He was not only paid $1,000 for transporting drugs, but was also entrusted with $40,000 cash by whomever was in charge of this inter-provincial transaction. Although the trial judge accepted that the respondent did not necessarily know the exact contents or quantity of drugs in the box he was

> delivering, he obviously must be taken to have known that the package was of significant value. It is fair to infer that he would not have been paid $1,000 to deliver a minor quantity of drugs. …

[68] Mr. Waterhouse has the mitigating factors that were not present in *Jones*.

[69] However, *Jones* is significant because it tells me that I must look at the quantity of the drugs and the position of the offender. Mr. Waterhouse made an impulsive decision when he agreed to store the drugs. He was not under any surveillance by the police and when they searched his residence nothing was found in the house. All the drugs were found in the garage. He allowed the product to be kept in his home which aided and abetted the criminal organization but there is no evidence before me that he held any position within the organization or had any involvement with it other than this one-time occurrence.

[70] There was discussion with counsel regarding the *Chase*, *supra*, decision but once again that decision is distinguishable from Mr. Waterhouse's situation on the basis that *Chase* involved cocaine and Mr. Chase was not a first-time offender. In *Chase* the Court described Mr. Chase as follows at paragraph 7:

> 7 At the time of sentencing, Mr. Chase was 28 years of age. He had 13 prior convictions, which included violent offences and breaches of court orders. The most serious prior conviction was for robbery in 2009 for which he received a sentence of three years' imprisonment in a federal penitentiary. His most recent convictions were for assaulting a peace officer and breach of undertaking in October 2013, for which he received a four month conditional sentence plus two years' probation.

**Conclusion**

[71] In conclusion, this is a serious offence. Mr. Waterhouse's moral blameworthiness is high. A sentence that emphasizes denunciation and deterrence is warranted in the circumstances.

[72] Having considered all of the aggravating, mitigating, and other factors identified in this case, and recognizing that the normal range of sentence for trafficking marihuana is 1 to 4.5 years, or more, I am of the view that a 90 day intermittent custodial sentence is warranted, followed by a significant period of probation of two years.

[73] Considering Mr. Waterhouse's mitigating circumstances and prospects for rehabilitation this is a fit and proper sentence for Mr. Waterhouse. This may not

be within the general range for this offence in Nova Scotia but I must look at the circumstances of each offender and after applying the applicable sentencing principles, I am satisfied that this is a fit and proper sentence for this individual.

[74] This sentence takes into account the primary factors of deterrence and denunciation. Spending any time in an institution for a youthful, first time offender is a significant deterrent. The protection of the public is served by a short, sharp, period of incarceration.

[75] Mr. Waterhouse, you are still relatively young, and the Court has shown you leniency today based on the facts before it. You will have choices to make in the future. You are fortunate that you have a supportive family and employment. You can continue to make something of yourself and lead a long and productive life or, you can disappoint all of us who believe this was an impulsive, reckless, one-time decision and return to illegal drug activity. That will be your choice, but the next time you are before the Court, I can assure you that the sentence will be significantly different. The choice going forward is yours. Choose wisely.

[76] The Crown has provided the Court with the following ancillary orders which I will grant:

- DNA (secondary) pursuant to s. 487.05(1) of the *Criminal Code*;
- Weapons prohibition (10 years) pursuant to s. 109 of the *Criminal Code*; and
- Forfeiture Order (of the items seized in the garage) pursuant to ss. 16(1) of the *CDSA.*

[77] That is my decision, Counsel.

[78] Regarding the 90-day intermittent sentence, you shall report to the institution on Friday at 7:00 p.m. and be released Monday morning at 6:00 a.m.

[79] Regarding the Probation Order conditions, the curfew of 10:00 p.m. to 6:00 a.m. for a period of 6 months will be effective today, followed by a period of 18 months' probation.

[80] You shall be on probation, with conditions, for a period of 2 years from the date of this Order, as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court; and
3. Notify the Court in advance of any changes of name or address, and promptly notify the Court or the Probation Officer of any changes of employment or occupation.

AND IN ADDITION, YOU SHALL:

4. Report to a Probation Officer in Bedford within 7 days from today and when required as directed by your Probation Officer or Supervisor.
5. Remain within the province of Nova Scotia unless you receive written permission from your Probation Officer.
6. Do not possess, take or consume alcohol or other intoxicating substances.
7. Do not 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.
8. Do not have in your possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance.
9. Complete 60 hours of community service work as directed by your probation officer by December 31, 2021.
10. No direct or indirect contact or communication with Brandon Quann.
11. Attend for mental health assessment and counselling as directed by your Probation Officer.
12. Attend for substance abuse assessment and counselling as directed by your Probation Officer.
13. Participate in and cooperate with any assessment, counselling or program directed by the Probation Officer, and pay the cost or portion of the cost as directed by your probation officer.
14. Do not associate or be in the company of the following person: Brandon Quann except incidental contact in an educational or treatment program or while at work.

15. Curfew - remain in your residence from 10:00 p.m. until 6:00 a.m. the following day, seven days a week beginning January 29, 2020 for a period of six months expect as indicated below:

    i. When at regularly scheduled employment and travelling to and from that employment by direct route.

    ii. When attending a regularly scheduled education program which your Probation Officer knows about, or at a school or educational activity supervised by a principal or teacher and travelling to and from the education program or the activity by a direct route.

    iii. When dealing with a medical emergency or medical appointment involving you or a member of your household and travelling to and from it by a direct route.

    iv. When attending a scheduled appointment with your lawyer or Probation Officer and travelling to and from the appointment by a direct route.

    v. When attending court at a scheduled appearance or under subpoena and travelling to and from court by a direct route.

    vi. When attending a counselling appointment, a treatment program or a meeting of AA or NA at the direction of, or with the permission of your probation officer and travelling to and from that appointment, program or meeting by a direct route.

    vii. When attending a regularly scheduled religious service and travelling to and from that service by a direct route.

    viii. When making applications for employment or attending job interviews, and travelling to and from that application or job interview by a direct route Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

    ix. With written approval of your Probation Officer given beforehand.

16. Prove compliance with the curfew condition by presenting yourself at the entrance of your residence should a Probation Officer or Peace Officer attend there to check compliance.

[81] I order a Victim Fine Surcharge of $200 payable within 30 days.

[82] Mr. Waterhouse, as I said before, you heard Mr. Kruger and his submissions. This is a serious offence. You have mitigating circumstances. This sentence is outside the general range, but I need to look at the circumstances of the offender and the circumstances of the offence. There is a lot going on for you, you have a lot that you can look forward to. I am sure, as your counsel will make you well aware, the sentence that you have now been given is one that demonstrates leniency but one which also, this Court believes, the public will see as a fit and proper sentence given the circumstances in your particular case. But, should you go back and make another careless, reckless decision you will be looking at a serious period of incarceration at that point in time. As I said before, choose wisely, the choice is yours. You have a supportive family, lean on them in times of need.

Bodurtha, J.