

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. West*, 2021 NSSC 113

**Date:** 20210330

**Docket:** Halifax, No. 503848

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Nirica Mariah Marie West

<p><b>Decision</b></p>
------------------------

**Judge:** The Honourable Justice Peter P. Rosinski

**Heard:** March 22, 2021, in Halifax, Nova Scotia

**Counsel:** Lisandra N. Hernandez, for the Crown  
Jonathan Hughes, for the Defendant

## By the Court:

### Introduction

[1] Ms. West pled guilty to over 40 separate charges arising from 19 separate Informations.

[2] All were summary conviction offences for appeal purposes per s. 822 *Criminal Code* [“CC”].<sup>1</sup>

[3] Thus, this court has jurisdiction to hear the Crown’s appeal from the sentence imposed in Provincial Court on January 6, 2021: 565 day Conditional Sentence Order [”CSO”] ordering 180 days house arrest, and to be followed by 30 months probation.

### The trial judge’s decision

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<sup>1</sup> In *R v Avard*, 2019 NSSC 161 I set out some of the considerations in a summary conviction sentence appeal. **Counsel should always pay particular attention to Civil Procedure Rules 63 and 90-91.** Of note, a transcribed *certified* copy of any oral decision should be provided to the trial judge in order to “be given the opportunity to approve, any transcript of a decision or ruling” – CPR 63.08; a *certified* transcript of the proceedings must be included in the Appeal Book – CPR 91.14(3); on criminal appeals, **the Appeal Book must include** a copy of any information or indictment (I interpret this as a *certified* copy provided by the court in question – which **shall include** any endorsements thereon made by the court during the proceedings); CPR 91.15(a)(iii) as well as per CPR 95.15 (3)(c) on sentence-only appeals any Pre-sentence Report or Impact of Race and Cultural Assessment/Gladue report; a statement of the accused’s criminal record that was before the sentencing court [or the Exhibit, if such was entered into the record of the trial court, as it was here]; and a copy of each order related to the sentence (again I interpret this as *certified* by the court in question). See also agreements the parties may make per CPR 91.16.

[4] Before the trial judge, the Crown and Defence agreed that 865 (less a 300-day pre-sentence credit) days was a reasonable total sentence. The Crown and Defence differed only in one material respect – the Crown argued for 565 days imprisonment whereas the Defence argued for the 565 days to be served in the community pursuant to a CSO.

[5] The trial judge stated:

**“The amount of time that’s being recommended on these charges... based on Ms. West’s prior record, and on any one of these charges the recommendation of time could be much greater than what it is... The total length of time that’s being recommended here, when looked at by totality, with Ms. West’s entering a guilty plea, the explanation that this was largely induced by intoxication [crack cocaine addiction], I’m satisfied that the total sentence is appropriate. The question is, of course, now whether or not, having regard to that length of time, where it’s less than two years, that Ms. West could serve that safely in the community... That is a total sentence of 865 days, less 300 days of pretrial custody credit, for 565 days going forward. I am satisfied that that can be served in the community under the following conditions and is otherwise consistent with the fundamental purpose and principles of sentencing and it will not endanger the safety of the community.”** (pp. 4 and 10 transcribed decision)

[My bolding added]

[6] No one at the sentencing raised a concern that the trial judge *could not* impose a CSO in the circumstances. I conclude that he erred in imposing a CSO.

### **The position of the Crown and Defence**

[7] The Crown now appeals asserting that the CSO was illegal as a result of the reasons in *R v Fice*, 2005 SCC 32 (and *R v Benoit*, 2007 NSCA 123).<sup>2</sup>

[8] It says the trial judge erred in law, and such error undermines his entire reasoning process, which affords this court the opportunity to sentence Ms. West afresh - it requests that I impose a sentence of 565 days imprisonment with credit on a 1:1 basis for her time served on the CSO to the date of this decision - *R v Dawson*, 2021 NSCA 29 at paras. 25 and 111. It supports its argument by pointing out that a CSO is not available, and even if it were, a CSO plus probation would not be in accordance with the principles of sentencing otherwise, including that it would not be a sufficiently deterrent or denunciatory sentence, given Ms. West's previous criminal history, the length of time over which she committed these offences, the frequency of her offending, and her blatant disregard or inability to comport herself in accordance with court orders and release conditions-which do not support a significantly rehabilitative – focused sentence.

[9] As I understood the full import of her argument, Ms. West argues that the trial judge committed no error in principle – that is, since judges are presumed to know the law, either in his implicit interpretation of *R v Fice* and his application

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<sup>2</sup> The Crown attorney on appeal was not the Crown representative at trial.

thereof to the circumstances of Ms. West’s case, **or** if he did not turn his mind to the reasons in *Fice*, it had no effect on the validity of the sentence outcome.

[10] She says that I should view each of the 19 Informations as constituting a separate proceeding, therefore leading to a separate “sentence” from all the rest, such that each individual Information would necessarily involve a sentence of less than two years, notionally permitting 19 separate CSOs (plus probation) – effectively rendering legal the global sentence that the trial judge imposed.<sup>3</sup>

[11] She notes that had she dealt with these matters individually, rather collectively as a consolidation of her outstanding charges, a trial judge would not have been prevented from imposing CSOs on each of the Informations- her present predicament will therefore discourage others from efficiently consolidating their outstanding charges by pleading guilty to all at one time. With all due respect, Ms.

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<sup>3</sup> When pronounced at a single sitting by the judge presiding over the summary conviction offences before them, a “sentence” as defined and referenced in ss. 785, and 822/687 *CC* respectively, while individually ordered in relation to each count to which a guilty finding is made or guilty plea is entered, is accurately considered to be as the result of one sentencing process— as a matter of procedure. In the circumstances of this case specifically, it is artificial and inaccurate to characterize the process as if there are 19 CSOs in existence – one for each Information. There was but one sentencing process, and there was one global outcome – collectively the offences were all contained in one CSO and a consecutive 30-month probation order. I note that acceptance of Ms. West’s argument in the present circumstances, would circumvent Parliament’s intention regarding the availability and appropriateness of CSOs. On the other hand, it is possible to order separate sentences (E.g. “time served” on some of the separate Informations, and custody and probation on some of the other separate Informations) when consolidating a number of offences arising on different Informations - for the definition of “indictment” see section 2; and in relation to an “information” see sections 504-506 and 785, and 788 *CC*.

West's predicament arises because neither counsel nor the court identified as an issue the effect of the Supreme Court of Canada's reasons in *Fice*.

[12] She argues that I should either remit the matter to the trial judge for sentencing (I note that I am statutorily prevented from doing so - see sections 822 and 687 of the *Criminal Code*); or alternatively, that even if I find the trial judge erred, in re-sentencing her, I should order some of her sentences be considered "time served" (instead of a partial pre-sentence remand credit allocated among *all* the individual counts to which she pled guilty) in the amount of 300 days for the earliest dates of offences she committed, such that the remaining 565 days, which would allow for a CSO to be imposed by me - she cites Justice Wood's (as he then was) reasons in *R v Perry*, 2018 NSSC 16.

### **Why the CSO was illegal**

[13] Regrettably, the *Fice* case was not brought to the trial judge's attention by counsel. His reasons strongly suggest that he did not recognize its applicability to the circumstances of Ms. West.

[14] Because Ms. West relied upon s. 139 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("*CCRA*"), I start by observing that in considering when probation orders may be made consecutive to terms of imprisonment per s.

731(1)(b) CC – whether pre-sentence remand credit is properly deducted before a court considers if the length of the sentence is “not exceeding two years” (“sentencing the offender to imprisonment for a term *not exceeding two years*” which bears some similarity to the wording in s. 742.1 CC “if... the court imposes a sentence of imprisonment of less than two years, the court may... order that the offender serve the sentence in the community...”) Justice Fish for the court in *R v Knott*, 2012 SCC 42 stated:

28 For the most part, these decisions relied implicitly, if not explicitly, on the sentence merger provisions in s. 139 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“CCRA”) and its predecessors. This is no longer possible in light of *Middleton*, where the majority held that **s. 139 was enacted for administrative purposes relating to parole and remission, and had no substantive impact on an offender's eligibility for an otherwise lawful sentence.**

[My bolding added]

[15] The court held that it is the remainder of the sentence after deduction of pre-sentence remand credit that should be looked to in assessing whether the sentence is “exceeding two years”. This conclusion was largely driven by the rehabilitative focus of probation orders.

[16] In *R v. Goeujon*, 2006 BCCA 61 we find a succinct summary of the majority’s reasons in *Fice*:

41 The question in *Fice* was whether pre-sentence custody should affect a sentencing judge's determination of the availability of a conditional sentence. I have reproduced s. 719(3) earlier in these reasons. Section 742.1(a) of the Code provides:

742.1 Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court

(a) imposes a sentence of less than two years, and

(b) ....

The court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

[Emphasis added]

42 Mr. Justice Bastarache, writing for the majority in Fice , held that s. 742.1 required a sentencing judge to make a preliminary determination of the appropriate range of available sentencing in determining whether to impose a conditional sentence. The court reasoned that the object of the requirement is to exclude categories of offenders from the conditional sentence regime on the basis of the range of sentence that would apply to them. Thus, it was fitting that the total punishment (pre and post-sentence custody) imposed would determine whether a conditional sentence was available to a particular offender.

43 In reaching this conclusion Mr. Justice Bastarache emphasized that the appeal before the court dealt only with the availability of a conditional sentence and the unique concerns that s. 742.1(a) attracts. The effect of pre-sentence custody on other sentencing measures, including a probation order, was specifically *not* in issue:

[42] First, at the outset of his reasons [dissenting reasons of Fish J.], my colleague raises the concern that pre-sentence custody could transform what would otherwise be a penitentiary range sentence into a suspended sentence, a probation order, a discharge or a fine but not a conditional sentence. With respect, I must emphasize that the effect of pre-sentence custody on the availability of a suspended sentence, a probation order, a discharge or a fine is an issue that is not before us in this appeal. Rather, this appeal is solely concerned with whether time spent in pre-sentence custody ought to affect a sentencing judge's determination of the range of sentence and therefore the availability of a conditional sentence. As noted by Lamer C.J. in *Proulx*, the conditional sentence was specifically enacted as a new sanction designed to reduce the use of prison as a sanction and to expand the use of restorative justice principles in sentencing (paras. 15 and 21). Given that the conditional sentence is a new sanction with a unique combination of objectives, it should not be automatically equated with other sentencing alternatives, such as a suspended sentence, a probation order, a discharge or a fine. Accordingly, it is my position that the relationship between pre-sentence custody and the availability of a suspended sentence, a probation order, a discharge or a fine is an issue that is better left for another day.



...

47 In my view the analysis in *Fice* is, in any event, distinguishable from the analysis which is applicable in the context of probation orders. The analysis in *Fice* follows the purposive interpretation given to s. 742.1(a) in *R. v. Proulx*, 2000 SCC 5 (S.C.C.) , and is unique to conditional sentences which serve different objectives than probation orders.

48 In *Fice* , Mr. Justice Bastarache found that a conditional sentence cannot become available to an offender "who otherwise deserves a penitentiary term" (para. 4), and that Parliament, in enacting the conditional sentence regime, intended only to capture conduct serious enough to attract a sentence of incarceration but not so severe as to warrant a penitentiary term (para. 17). The availability of a conditional sentence is dependent upon the gravity of the offence and the degree of responsibility of the offender. Time spent in pre-sentence custody does not change those factors (para. 24). Therefore, time spent in pre-sentence custody should not function as a mitigating factor that can affect the range of sentence and the availability of a conditional sentence (para. 22).

[17] Ms. West has presented no jurisprudence that this clear direction from the Supreme Court of Canada is not applicable to her circumstances.

[18] For present purposes, the trial judge's reasoning should have followed the binding authority of *Fice* : namely, he should have considered the first stage, which involves a consideration of whether a CSO is *available*; and if so satisfied should have gone on to the second stage which involves a consideration of whether a CSO is *appropriate*.

[19] I am not satisfied that he considered the reasons in *Fice*. Therefore, he erred in principle.

[20] Moreover, even if I could infer that he considered the reasons in *Fice*, his reasoning does not accord with a proper application of the principles in *Fice* (i.e. the *availability* of a CSO ) – he therefore also erred in that respect.

[21] Regarding the *appropriateness* of a CSO (+30 months probation), while keeping in mind Ms. West did plead guilty to a large number of offences, which is an indicator of remorse and therefore rehabilitative potential, I nevertheless conclude that there was no reliable evidence of Ms. West's suitability and preparedness to make rehabilitative progress in the community – to the contrary, her lengthy criminal record, and the fact that her offence dates for which she was sentenced occurred between October 1, 2018 and September 10, 2020 suggest she was out of control until she was arrested (sometime in September 2020 –Tab 4 AB p. 53(1) per Ms. West). Notably, she was repeatedly released and given the opportunity to demonstrate her ability to continue to live in the community yet was unable to do so in a crime-free manner.

[22] Her rehabilitative prospects were largely based on a hope that she would follow through with rehabilitative efforts. While Ms. West may have subjectively and sincerely intended at the date of her sentencing to diligently pursue her rehabilitation, there was little evidence in the circumstances that the CSO was an appropriate outcome.

[23] I appreciate that the trial judge may have been well-intentioned, and from his past experience with Ms. West may have had some basis for his confidence that a CSO (+30 months' probation) was appropriate in the circumstances.

[24] However, the trial judge did not reference his past experience (if any) with Ms. West; there was no evidence presented at her sentencing; no Pre-sentence Report or Impact of Race and Cultural Assessment, each of which could have provided an *individualized* basis for concluding she is an appropriate candidate for a CSO.

[25] Crack cocaine has fueled her crimes, and there was no evidence that she had been able to effectively address that addiction while in custody (though on remand and during the Covid 19 conditions, I recognize that this was through no fault of her own ) before she was released into the community on the CSO.

[26] Collectively, the offences for which she was sentenced required a strongly deterrent and denunciatory sentence, with less immediate emphasis on rehabilitation.

[27] In my opinion, the trial judge erred both in finding a CSO was *available* in Ms. West's circumstances (while recognizing that the global range of sentence for

the offences before the court includes this low end of the range - 865 days in custody), and in concluding that a CSO was *appropriate*.

[28] I must therefore re-sentence Ms. West.

### **Re-sentencing Ms. West**

[29] I must first examine the appropriate global range of sentences available for the offences (I must bear in mind that the Crown proceeded by summary conviction procedure). Can I exclude penitentiary terms and probation?

[30] I conclude it unnecessary to conduct an exhaustive determination of the range of sentence for the various offences comprising the 42 offences for which Ms. West was sentenced. The sheer volume and nature of the offences makes such a determination unnecessary.<sup>4</sup>

[31] I note the trial judge observed that (although *after* considering the aggravating and mitigating factors):

“The amount of time that’s being recommended on these charges... based on Ms. West’s prior record, and on any one of these charges the recommendation of time could be much greater than what it is...”

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<sup>4</sup> However, in relation to the s. 145(3) offences, see *R v Young*, 2014 NSCA 16, at para. 27.

[32] In my respectful opinion, while any reasonable view would preclude a global suspended sentence/a freestanding probation order(s); considering *inter alia* the frequency and time span during which the offences occurred, and that the charges include break and enter into a commercial premises, theft of a motor vehicle, dangerous driving, repeated thefts from vehicles and stores, and a litany of breaches of court orders and release conditions, one could *not* preclude a global sentence of imprisonment in a penitentiary (before deducting pre-sentence remand credit).

[33] Therefore, Ms. West is *not* eligible for a CSO on that basis (see *Fice* at paras. 6-13).

[34] *Fice* at paras. 28 and 33, also makes clear that “the time spent in pre-sentence custody ought to be considered at the second stage of the analysis with respect to the duration of the sentence rather than at the first stage with respect to sentence range... The time spent in presentence custody should not affect the sentencing judge’s determination of the range of sentence and therefore the availability of a conditional sentence. Rather, it is a factor that ought to be considered in the course of the judge’s determination of the duration of the actual sentence imposed.”

[35] As noted in *Dawson* at para. 111:

“Where a conditional sentence is set aside and incarceration is substituted, the variation to the original sentence – in this case, the imposition of penitentiary terms – takes effect from the date of the original sentence. Credit is given for the time spent on the conditional sentence, the norm being 1:1 credit... Although a more flexible approach allowing a Court of Appeal to consider all the relevant factors in determining the appropriate amount of credit has been an endorsed...”

[36] Before the trial judge, counsel and the court agreed that a global sentence of 865 days was well within the range, and that the 200 days in custody should receive a 300-day credit per s. 719(3.1) CC. On appeal, counsel do not take issue with those positions.<sup>5</sup>

## **Conclusion**

[37] I allow the Crown sentence appeal.<sup>6</sup>

[38] The 565-day CSO and 30 months probation are hereby quashed. The ancillary orders of the trial judge will continue in full force and effect as I will order them, namely: the secondary DNA Order s. 487.051(3)(b) CC on the s. 348 offences; and a one year driving prohibition order under s. 320.24(5) for the s.

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<sup>5</sup> Attached as Appendix “A” is the “Consolidation Sheet” the Defence and Crown submitted to the trial judge.

<sup>6</sup> See Justice Saunders reasons in *R v Bernard*, 2011 NSCA 53 at para. 25.

320.13 offence. I approve his waiving of the victim surcharge, for reasons of hardship per s. 737(2.1) CC.

[39] Bearing in mind the principles of sentencing, the circumstances of the offences and of Ms. West, the mitigating and aggravating factors apparent here, and the fact that Ms. West had already served an effective sentence of 300 days, I substitute as her sentence in this court, effective January 6, 2021, 565 days' imprisonment, less a one-for-one credit for every day served on the CSO between January 6, 2021 and the date Ms. West is taken into custody, plus 30 months probation on the same conditions ordered by the trial judge.<sup>7</sup> As to the distribution of those served days between January 6 and March 30, 2021, which total 84 days, I allocate those credits between the following counts:

April 19, 2020	CC 348(1)(b)	180 DAYS CUSTODY LESS 112 DAYS OF PRE-TRIAL CUSTODY = 68 DAYS CUSTODY CONSECUTIVE
June 2, 2020	CC 334(b)	30 DAYS CUSTODY LESS 27 DAYS OF PRE-TRIAL CUSTODY = 3 DAYS CUSTODY CONSECUTIVE
June 14, 2020	CC 333.1(1)	120 DAYS CUSTODY LESS 64 DAYS OF PRE-TRIAL CUSTODY = 56 DAYS CUSTODY CONSECUTIVE

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<sup>7</sup> On the same conditions as the trial judge imposed, with necessary modifications – a copy of that Probation Order is attached as Appendix “B”.

August 16-17, 2020	CC 334(b)	60 DAYS CUSTODY LESS 32 DAYS OF PRE-TRIAL CUSTODY = 26 DAYS CUSTODY CONSECUTIVE
August 17-18, 2020	CC 348(1)(a)	180 DAYS CUSTODY LESS 104 DAYS OF PRE-TRIAL CUSTODY = 76 DAYS CUSTODY CONSECUTIVE

[40] I strongly recommend that Ms. West have ongoing regular access to an African Nova Scotian counsellor (s) regarding her addiction and mental health issues, and any other rehabilitative needs that should be identified as significant for her rehabilitation.

Rosinski, J.



## APPENDIX "A"

### Nirica West Sentencing Consolidation

Date: January 6, 2021 in HPC #1

	File	Guilty Pleas Entered or Sought	Sentence Sought by Crown	Total Custody By File
1	Offence Date: 1-OCT-2018  Crown File: DA-18-3025	Count 1 – 334(b) (LAWTONS)  Count 3 – 733.1(1) KTP	Count 1 – 10 days + \$253.34 restitution  Count 3 – 10 days conc.	10 days
2	Offence Date: 10-OCT-2018  Crown File: HA-18-4111	Count 1 – 342(1)(c) (BART LOVETT)  Count 3 – 733.1(1) KTP	Count 1 – 10 days  Count 3 – 10 days conc.	10 days
3	Offence Date: 13-OCT-2018 (2 thefts file at 12:05pm and 3:00pm)  Crown File: HA-18-4112	Count 1 – 334(b) (MARITIME BEAUTY HALIFAX)  Count 3 – 733.1(1) KTP  Count 4 – 334(b) (MARITIME BEAUTY HALIFAX)  Count 6 – 733.1(1) KTP	Count 1 – 15 days  Count 3 – 15 days conc.  Count 4 – 15 days consec.  Count 6 – 15 days conc.	30 days
4	Offence Date: 13-OCT-2018  Crown File: HA-18-3436	Count 1 – 334(b) (MARITIME BEAUTY DARTMOUTH)  Count 3 – 733.1(1) KTP	Count 1 – 30 days  Count 3 – 15 days conc.	30 days
5	Offence Date: 15-OCT-2018  Crown File: HA-18-3366	Count 1 – 334(b) (ALVIN THEASTON WHITE)  Count 3 – 380(1)(b) (ALVIN THEASTON WHITE)	Count 1 – 30 days  Count 3 – 30 days conc.	30 days

		Count 9 – 733.1(1) KTP	Count 9 – 15 days conc.	
6	Offence Date: 25-OCT-2018  Crown File: HA-18-4113	Count 1 – 145(3) (PROVE COMPLIANCE)	Count 1 – 10 days	10 days
7	Offence Date: 4- NOV-2018 to 20- NOV-2018  Crown File: HA-19-0510	Count 1 – 733.1(1) (REPORT)	Count 1 – 10 days	10 days
8	Offence Date: 5- DEC-2018  Crown File: HA- 20-1359	Count 1 – 145(2)(b)	Count 1 – 30 days	30 days
9	Offence Date: 19/20-APR-2020  Crown File: HA- 20-1368	Count 1 – 348(1)(b) (DEPT LANDS AND FORESTRY)	Count 1 – 180 days (6 months) + \$243.61 restitution (taxi chits)	180 days (6 months)
10	Offence Date: 20-MAY-2020  Crown File: HA-20-1367	Count 2 – 145(5)(a) (DO NOT ASSOC.)  Count 3 – 145(5)(a) (HA)	Count 2 – 15 days  Count 3 – 15 days conc.	15 days
11	Offence Date: 2 JUNE-2020  Crown File: HA-20-1526	Count 1 – 145(5)(a) (HA)	Count 1 – 15 days	15 days
12	Offence Date: 2- JUNE-2020  Crown File: HA- 20-1563	Count 1 – 334(b) (KEVIN TULK)  Count 3 – 145(5)(a) (HA)	Count 1 – 30 days  Count 3 – 30 days conc.	30 days

		Count 5 – 733.1(1) (NOTIFY ADDRESS CHANGE)	Count 5 – 15 days conc.	
		Count 8 – 733.1(1) (DO NOT POSSESS CHEQUE ETC)	Count 8 – 15 days conc.	
13	Offence Date: 3- JUNE-2020  Crown File: HA-20-1564	Count 1 – 145(5)(a) (HA)  Count 5 – 733.1(1) (KTP)	Count 1 – 10 days  Count 5 – 10 days conc.	10 days
14	Offence Date: 5- JUNE-2020  Crown File: HA-20-1559	Count 1 – 334(b) (ROMEO DOWNEY)  Count 3 – 430(4) (ROMEO DOWNEY)  Count 4 – 145(5)(a) (HA)  Count 7 – 733.1(1) (KTP)	Count 1 – 30 days  Count 3 – 30 days consec.  Count 4 – 20 days conc.  Count 7 – 20 days conc.	60 days
15	Offence Date: 14-JUNE-2020  Crown File: HA-20-1567	Count 1 – 333.1(1) (JAMES CHISHOLM)  Count 2 – 320.13(1)  Count 8 – 145(5)(a) (HA)  Count 9 – 733.1(1) (KTP)	Count 1 – 120 days  Count 2 – 60 days conc. + 1 year DPO  Count 8 – 20 days conc.  Count 9 – 20 days conc.	120 days (4 months)
16	Offence Date: 7- AUG-2020  Crown File: HA-20-1991	Count 1 – 145(5)(a) (HA)	Count 1 – 15 days	15 days
17	Offence Date: 16/17-AUG-2020	Count 1 – 334(b) (LAURA WALZAK)	Count 1 – 60 days	60 days

Crown File: HA-20-2176	Count 3 – 145(4)(a) (HA)	Count 3 – 20 days conc.	
18 Offence Date: 17/18-AUG-2020	Count 1 – 348(1)(a) (JASON GILLIS)	Count 1 – 180 days	180 days (6 months)
Crown File: HA-20-2503	Count 4 – 145(5)(a) (HA)	Count 4 – 20 days conc.	
	Count 5 – 145(4)(a) (HA)	Count 5 – 20 days conc.	
19 Offence Date: 10-SEPT-2020	Count 1 – 355(b) (HECTOR MACISAAC)	Count 1 – 20 days	20 days
Crown File: HA-20-2306	Count 6 – 145(4)(a) (HA)	Count 6 – 20 days conc.	
Total Custody			865 days
Total days spent on remand as of January 6, 2021			200
Remand credit at 1:1.5			300
Custody going forward			565 days (almost 19 months)
Probation			2 ½ years

# APPENDIX "B"

Canada  
Province of Nova Scotia

## IN THE PROVINCIAL COURT

Her Majesty the Queen

v.

Nirica Mariah West, Jan. 16, 1993, 730757-34  
(Name, DOB, and I.D. Number of Accused)

Order # 2291169-1

NS Form 34/46  
Revised 07/02

Approved:

Judge

D/M/Y

## PROBATION ORDER

(Sec. 731 CC)

YOU, Nirica Mariah West of 2406 GOTTINGEN ST. APT. 212  
HALIFAX, NOVA SCOTIA

have been found guilty of the following offence(s):

Case no(s). and Brief Description of Offence(s)	Section	Date	Place
8275531 THEFT UNDER \$5000	CC 334(B)	Oct. 15, 2018	HALIFAX
8275535 FRAUD	CC 380(1)(B)	Oct. 15, 2018	HALIFAX
8275542 FAIL TO COMPLY WITH RECOGNIZANCE OR UNDERTAKING	CC 145(3)	Oct. 15, 2018	HALIFAX
8275552 THEFT UNDER \$5000	CC 334(B)	Oct. 13, 2018	DARTMOUTH
8275554 BREACH OF PROBATION	CC 733.1(1)(A)	Oct. 13, 2018	DARTMOUTH
8294911 THEFT UNDER \$5000	CC 334(B)	Oct. 13, 2018	HALIFAX
8294913 BREACH OF PROBATION	CC 733.1(1)(A)	Oct. 13, 2018	HALIFAX
8294914 THEFT UNDER \$5000	CC 334(B)	Oct. 13, 2018	HALIFAX
8294916 BREACH OF PROBATION	CC 733.1(1)(A)	Oct. 13, 2018	HALIFAX
8294918 POSSESS, USES OR TRAFFICS IN A CREDIT CARD	CC 342(1)(C)	Oct. 10, 2018	HALIFAX
8294920 BREACH OF PROBATION	CC 733.1(1)(A)	Oct. 10, 2018	HALIFAX
8294922 THEFT UNDER \$5000	CC 334(B)	Oct. 01, 2018	DARTMOUTH
8294924 BREACH OF PROBATION	CC 733.1(1)(A)	Oct. 01, 2018	DARTMOUTH
8294926 FAIL TO COMPLY WITH RECOGNIZANCE OR UNDERTAKING	CC 145(3)	Oct. 25, 2018	HALIFAX
8300152 BREACH OF PROBATION	CC 733.1	Nov. 04, 2018 to Nov. 20, 2018	HALIFAX
8447334 FAILS TO ATTEND COURT AS DIRECTED	CC 145(2)(B)	Dec. 05, 2018	HALIFAX
8447337 AT LARGE ON RELEASE ORDER FAILS TO COMPLY WITH CONDITION	CC 145(5)(A)	May. 20, 2020	HALIFAX
8447338 AT LARGE ON RELEASE ORDER FAILS TO COMPLY WITH CONDITION	CC 145(5)(A)	May. 20, 2020	HALIFAX
8448887 AT LARGE ON RELEASE ORDER FAILS TO	CC 145(5)(A)	Jun. 02, 2020	HALIFAX

Order # 2291169-1

Case no(s). and Brief Description of Offence(s)	Section	Date	Place
COMPLY WITH CONDITION			
8450278 AT LARGE ON RELEASE ORDER FAILS TO COMPLY WITH CONDITION	CC 145(5)(A)	Jun. 03, 2020	HALIFAX
8450282 BREACH OF PROBATION	CC 733.1(1)(A)	Jun. 03, 2020	HALIFAX
8450283 THEFT UNDER \$5000	CC 334(B)	Jun. 02, 2020	HALIFAX
8450285 AT LARGE ON RELEASE ORDER FAILS TO COMPLY WITH CONDITION	CC 145(5)(A)	Jun. 02, 2020	HALIFAX
8450287 BREACH OF PROBATION	CC 733.1(1)(A)	Jun. 02, 2020	HALIFAX
8450290 BREACH OF PROBATION	CC 733.1(1)(A)	Jun. 02, 2020	HALIFAX
8450293 THEFT UNDER \$5000	CC 334(B)	Jun. 05, 2020	HALIFAX
8450295 MISCHIEF	CC 430(4)	Jun. 05, 2020	HALIFAX
8450296 AT LARGE ON RELEASE ORDER FAILS TO COMPLY WITH CONDITION	CC 145(5)(A)	Jun. 05, 2020	HALIFAX
8450299 BREACH OF PROBATION	CC 733.1(1)(A)	Jun. 05, 2020	HALIFAX
8450314 THEFT OF MOTOR VEHICLE	CC 333.1(1)	Jun. 14, 2020	HALIFAX
8450316 DANGEROUS OPERATION	CC 320.13(1)	Jun. 14, 2020	HALIFAX
8450323 AT LARGE ON RELEASE ORDER FAILS TO COMPLY WITH CONDITION	CC 145(5)(A)	Jun. 14, 2020	HALIFAX
8450324 BREACH OF PROBATION	CC 733.1(1)(A)	Jun. 14, 2020	HALIFAX
8459776 AT LARGE ON RELEASE ORDER FAILS TO COMPLY WITH CONDITION	CC 145(5)(A)	Aug. 07, 2020	HALIFAX
8462638 THEFT UNDER \$5000	CC 334(B)	Aug. 16, 2020 to Aug. 17, 2020	HALIFAX
8462642 AT LARGE ON RELEASE ORDER FAILS TO COMPLY WITH CONDITION	CC 145(5)(A)	Aug. 16, 2020 to Aug. 17, 2020	HALIFAX
8465426 TAKE MOTOR VEHICLE WITHOUT CONSENT	CC 335(B)	Sep. 10, 2020	HALIFAX
8465430 AT LARGE ON RELEASE ORDER FAILS TO COMPLY WITH CONDITION	CC 145(5)(A)	Sep. 10, 2020	HALIFAX
8472104 BREAK AND ENTER WITH INTENT	CC 348(1)(A)	Aug. 17, 2020 to Aug. 18, 2020	HALIFAX
8472107 AT LARGE ON RELEASE ORDER FAILS TO COMPLY WITH CONDITION	CC 145(5)(A)	Aug. 17, 2020 to Aug. 18, 2020	HALIFAX
8472108 AT LARGE ON UNDERTAKING, FAILS TO COMPLY WITH CONDITION	CC 145(4)(A)	Aug. 17, 2020 to Aug. 18, 2020	HALIFAX
8473577 BREAK AND ENTER AND COMMIT	CC 348(1)(B)	Apr. 19, 2020	HALIFAX

**THE COURT ORDERS THAT**

- (A) You serve a term of imprisonment under a Conditional Sentence Order for a period of 565 days.



Order # 2291169-1

**AND THAT YOU COMPLY WITH THE FOLLOWING TERMS AND CONDITIONS:**

upon the expiration of the sentence of Imprisonment imposed on you pursuant to paragraph (A) above for the period of 30 months.

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 or the Probation Officer 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:**

- (a) REPORT TO A PROBATION OFFICER AT 1256 BARRINGTON STREET THOMPSON BUILDING 2ND FLOOR (424-4011) WITHIN 1 DAYS FROM THE DATE OF EXPIRATION OF YOUR SENTENCE OF IMPRISONMENT, AND WHEN REQUIRED, AS DIRECTED BY YOUR PROBATION OFFICER
- (b) DO NOT BE ON OR WITHIN 20 METRES OF;  
LAWTONS DRUGS - 46 PORTLAND ST. DARTMOUTH NS  
GOVERNMENT OF NS DEPT OF LAND AND FORRESTRY - 1701 HOLLIS ST, HFX NS  
MARITIME BEAUTY SUPPLY 3695 BARRINGTON ST, HFX, NS AND 18A - 250 BROWNLOW AVE, DART, NS
- (c) ATTEND FOR MENTAL HEALTH ASSESSMENT AND COUNSELLING AS DIRECTED BY PROBATION OFFICER.
- (d) ATTEND FOR SUBSTANCE ABUSE ASSESSMENT AND COUNSELLING AS DIRECTED BY PROBATION OFFICER.
- (e) ATTEND FOR ASSESSMENT, COUNSELLING OR PROGRAM AS DIRECTED BY PROBATION OFFICER.
- (f) YOU SHALL PARTICIPATE IN AND CO-OPERATE WITH ANY ASSESSMENT, COUNSELLING OR PROGRAM DIRECTED BY THE PROBATION OFFICER

DATED at HALIFAX, Nova Scotia, on January 6th, 2021.

**RYAN MCEWAN**  
A Justice of the Peace  
in and for the  
Province of Nova Scotia

  
Judge, Provincial Court Judge, Justice of the Peace, Clerk

Distribution: Court, Offender, Probation Officer,  
Halifax Regional Police, Cst S. Haines; 18-160158, Cst T. Fomier; 18-159560, Cst Alex Mceachern; 18-159068, Cst Myles Rattray; 18-157143, Cst Karen Misner; 18-152281, Cst Brian Cantfell; 18-165675  
Probation Officer, William Middleton  
Halifax Regional Police, Cst. Mclellan; , 2020-57319, Cst Ryan Morris; 2020-62289, Cst Morris; 20-62597, 20-62403, Cst Lawlor; 20-63352, Cst Cado; 20-67245, Cst. Morgan Macadam; 20-90799, Cst. Devon Norris; 2020-95223, Cst R. Legay; 20-106041, Cst. Devon Norris; 2020-4001126, D/C. Allan Maclellan; 2020-47714 - Judge Gregory E. Lenehan

**THE CRIMINAL CODE PROVIDES AS FOLLOWS:**

**SECTION 732.2(3)**

A court that makes a probation order may at any time, on application by the offender, the probation officer or the prosecutor, require the offender to appear before it and, after hearing the offender and one or both of the probation officer and the prosecutor,

- (a) make any changes to the optional conditions that in the opinion of the court are rendered desirable by a change in the circumstances since those conditions were prescribed,
- (b) relieve the offender, either absolutely or on such terms or for such period as the court deems desirable, of compliance with any optional condition, or
- (c) decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and, if it changes the optional conditions, inform the offender of its action and give the offender a copy of the order so endorsed.

**SECTION 732.2(5)**

Where an offender who is bound by a probation order is convicted of an offence, including an offence under Section 733.1, and

- (a) the time within which an appeal may be taken against that conviction has expired and the offender has not taken an appeal,
- (b) the offender has taken an appeal against that conviction and the appeal has been dismissed, or
- (c) the offender has given written notice to the court that convicted the offender that the offender elects not to appeal the conviction or has abandoned the appeal, as the case may be,

In addition to any punishment that may be imposed for that offence, the court that made the probation order may, on application by the prosecutor, require the offender to appear before it and, after hearing the prosecutor and the offender,

- (d) where the probation order was made under paragraph 731(1)(a), revoke the order and impose any sentence that could have been imposed if the passing of sentence had not been suspended, or
- (e) make such changes to the optional conditions as the court deems desirable, or extend the period for which the order is to remain in force for such period, not exceeding one year, as the court deems desirable,

and the court shall thereupon endorse the probation order accordingly and, if it changes the optional conditions or extends the period for which the order is to remain in force, inform the offender of its action and give the offender a copy of the order so endorsed.

**SECTION 733.1**

(1) An offender who is bound by a probation order and who, without reasonable excuse, fails or refuses to comply with that order is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding eighteen months, or to a fine not exceeding two thousand dollars, or both.



Order # 2291169-1

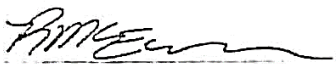
(2) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody, but where the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be instituted in that place without the consent of the Attorney General of that province.

ACKNOWLEDGEMENT

I HAVE received a copy of this Order; it has been read to or by me; I have read or have had read to me Sections 732.2(3), 732.2(5), and 733.1 of the Criminal Code; and I understand the meaning of this Order and Sections 732.2(3), 732.2(5), and 733.1 of the Criminal Code.

DATED at HALIFAX, Nova Scotia, on January 6th, 2021.

Witness:

  
Order Served by Above Witness  
RYAN MCEWAN  
A Justice of the Peace  
in and for the  
Province of Nova Scotia

  
Signature of Offender