

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Percy*, 2021 NSSC 110

Date: 20210331

Docket: *Halifax*, No. 481119

Registry: Halifax

Between:

Her Majesty the Queen

v.

Matthew Albert Percy

Restriction on Publication: s.486.4 and s.486.5 cc

DECISION ON SENTENCING

Judge: The Honourable Justice Joshua Arnold
Heard: March 5, 2021, in Halifax, Nova Scotia
Final Written Submissions: March 10, 2021
Counsel: Rick Woodburn, for the Crown
Michelle James, for Matthew Percy

Overview

[1] Matthew Percy committed the crime of sexual assault causing bodily harm against B.W. during her nineteenth birthday celebrations.

[2] B.W. was an intoxicated university student who had been at a bar with a friend and did not know Mr. Percy prior to the night of the assault. Mr. Percy was a 31-year old bricklayer and cook, although that night he told B.W. he was only twenty-four. Having met B.W. outside as she was leaving the bar, he lent her his sweatshirt, went back into the bar to retrieve his coat, went with her for poutine, took a taxi with her to her university dormitory room and, following some consensual sexual activity, had forced anal and vaginal sex with her, during which he slapped her, bit her, and pulled her hair.

[3] Mr. Percy is now 37 years old. He has been remanded in custody since his arrest on these charges. Following his conviction, a Comprehensive Forensic Sexual Behaviour Presentence Assessment, as well as a Presentence Report, were prepared.

Facts

[4] Matthew Percy was convicted at trial of sexual assault causing bodily harm against B.W. (*R. v. Percy*, 2020 NSSC 138). The most pertinent facts are detailed in that decision, during an analysis of honest but mistaken consent:

[154] Again, Mr. Percy and B.W. met very shortly before these events. They were completely unfamiliar with each other. Mr. Percy was a physically fit 31-year-old man. He knew that B.W. was a highly intoxicated petite 19-year-old. Rough oral sex and anal intercourse are highly invasive forms of sexual activity. Once he began anal intercourse without seeking or receiving consent, B.W. clearly said “no” repeatedly, but Mr. Percy continued by force nonetheless. After that, B.W.’s silence or passivity did not equate to the communication of consent, and Mr. Percy made no attempt to obtain or ascertain consent. There were no reasonable steps taken by Mr. Percy to determine B.W.’s consent.

[155] Mr. Percy told the police that he was stressed on December 5, 2014, and that he wanted to blow off steam through a one-night stand. He found a highly intoxicated 19-year-old outside a bar, offered her his sweatshirt, lied about his age, asked her to get something to eat, paid for a taxi to her residence, undressed her and discouraged her from using a condom. He also said in his statement that having control of B.W. was a sexual turn-on for him. What followed included rough oral sex, moving her hands away from his thighs and directing “no hands” when she tried to push away, saying “no teeth” when her teeth grazed his penis

and then holding B.W. by her hair, turning her around, putting her down on the sink, forcing anal intercourse, slapping her backside hard enough to leave finger shaped bruises, biting her neck and back hard enough to leave large bruises. He then directed her into the shower and had vaginal intercourse with her. When he was no longer interested in sex, he asked “How does it feel to have been fucked by a 31-year-old?” Mr. Percy left B.W. traumatized, obviously bruised and so sore that she was unable to sit down or have a bowel movement for two days. Mr. Percy took no reasonable steps to determine B.W.’s consent to anal intercourse in the bathroom and vaginal intercourse in the shower.

[5] As noted, Mr. Percy had forced, non-consensual anal intercourse with B.W. in her residence pod bathroom. During that sexual assault he held B.W. by the hair, bit her, and slapped her. Mr. Percy then had non-consensual vaginal intercourse with B.W. in her shower. She reported the sexual assault to the police shortly thereafter, underwent a detailed examination by two SANE nurses, and was given medication to prevent the possibility of sexually transmitted diseases. She was bruised and so sore she could not sit down or have a bowel movement for several days.

Victim Impact Statement

[6] B.W. submitted a Victim Impact Statement. In it she eloquently describes the physical and emotional harm inflicted on her by Mr. Percy. B.W. says that as a result of the sexual assault she was robbed of her innocence, has an uncomfortable relationship with her mother, has trouble trusting men, and has anxiety being in certain locations. She says that her university experience for the year following the sexual assault was ruined. After she left Halifax and returned home, B.W. continued to worry about Mr. Percy being at large in the city. B.W. says variously in her Victim Impact Statement:

The rape happened when I was going out to celebrate my 19th birthday. This was one of the first opportunities I had to go out and experience the downtown nightlife as an “of age” individual with my friends. I was young and very trusting of other people. The rest of my nightlife experiences after being raped by Percy were dictated by the fact that someone tricked me and then raped me. I have had an extremely difficult time trusting others, as well as simply going out in public by myself since that night. He ruined the comfort I took in being able to be alone in public situations. I constantly felt the need to be in a group setting anywhere just to feel that I wasn’t at risk of getting attacked again. A person shouldn’t have to constantly worry about if the stranger walking in front of you on the sidewalk is plotting to rape you, or have any ill intentions against you whatsoever. Since that traumatic event my life has been forever changed.

...

My body was marked for a time, reminding me daily of the event, but when the physical marks had faded I was still left with a shattered mental image of myself and flashbacks to the acts that Percy had committed against me. The injuries were a temporary reminder, but the mental and emotional scars from that night will never leave me.

...

Trying to create any kind of relationship (friendship/partnership/etc.) with anyone has been difficult for me because of that fear and distrust I had, and will always have, towards other people. I trusted Percy that night of the rape and since he mutilated not only my body but my mind as well, it has prevented me from being able to trust others.

...

There have been many times that an unfamiliar man has walked into my place of work and I have become so apprehensive and uncomfortable because he has a similar look, or attitude as Percy. My safety is constantly at the front of my mind now. I am always concerned about who is out there with sinister motives of trying to harm myself and other young women.

...

I spent five years trying to forget the violent nature of the sex assault. I tried to create a new life for myself, and move on from that night by moving out of Halifax. Five long years of living in constant fear from that night has taken an immense emotional and physical toll on me personally. Although I am working on healing and am able to live my life each day, the trauma that Percy has caused me from that night will never leave me.

Matthew Percy

Comprehensive Forensic Sexual Behaviour Presentence Assessment

[7] Dr. Angela Connors prepared a Comprehensive Forensic Sexual Behaviour Presentence Assessment respecting Mr. Percy. Dr. Connors testified at the sentencing hearing. She was provided a variety of materials about Mr. Percy by the Crown, and also conducted a 7.5 hour interview with him, which included the following tests:

- Beck Depression Inventory (BDI)
- Millon Clinical Multiaxial Inventory-III (MCMI-III)
- Minnesota Multiphasic Personality Inventory (MMPI-2)

- Paulhaus Deception Scale (PDS)
- State-Trait Anger Expression Inventory (STAXI-2)
- PPG Assessment

[8] Counsel for Mr. Percy suggests that Dr. Connors' report is of lesser weight because, in addition to a host of relevant materials, the Crown forwarded a copy of materials relating to one crime for which Mr. Percy was acquitted and one crime for which he is still awaiting trial. Dr. Connors says that while she received and read those materials, she did not rely on them in preparing her report. She was cross-examined on these issues. Dr. Connors repeatedly maintained that her opinion was not influenced, and that those materials were irrelevant. Cross-examination did not erode her credibility in this regard.

[9] Dr. Connors did rely on information respecting a matter that occurred after the sexual assault on B.W., but for which Mr. Percy had been convicted before this matter came to trial. The victim in that matter was "T.J.". Dr. Connors relied on the evidence from T.J.'s case in assessing Mr. Percy and determining his level of risk to reoffend sexually. In her report Dr. Connors says variously:

Thus, while Mr. Percy made clear statements of personal responsibility vis-à-vis forcing anal intercourse with Ms. BW against her consent, he did not accept that the event occurred in the manner accepted by the court, and he did not reconcile these statements with his ongoing disbelief that he was found guilty (which he mentioned a number of times) and his belief that various changes could have resulted in "a different outcome" (i.e., acquittal). The failure to reconcile these disparate beliefs is suggestive that Mr. Percy's statements of personal responsibility are not well integrated at this time. Similarly, personal responsibility and regret (which he voiced) is also inconsistent with the guarded and suspicious approach that Mr. Percy took to discussing his sexual offence convictions.

When personal responsibility is adopted for extrinsic motivations and not well integrated, it cannot be relied upon as an enduring representation of insight to internally motivate change.

...

The implicit theories that appear evident in consideration Mr. Percy's sexual offences and his comments about them are: entitlement to sexual access, women as sexual objects, and discounting the nature of harm caused by a sexual assault.

[as appears in original]

[10] Dr. Connors described Mr. Percy's behaviour in the two sexual crimes for which he was convicted as exhibiting "progressively more controlling sexual acts to achieve arousal." She went on:

...For example, Mr. Percy acknowledged that he "wasn't getting hard" and therefore took control of Ms. BW's head to push her mouth down on his penis during fellatio to the point that she gagged, and that he ordered Ms. BW "no hands" when she tried to push away, in what Mr. Percy termed a "rough blow job" because "it turns me on". He similarly reported that he did not think he would ejaculate from vaginal sex alone, and therefore proceeded to (unprotected) anal intercourse while holding Ms. BW in place by her hair and biting/slapping her until he ejaculated.

...

Of course, proceeding with intercourse with an unconscious person is indicative of a high level of control, as does surreptitious filming remove the ability for control from the filmed individual to provide or refuse consent to the activity. Thus, in both situations, a high level of non-consensual control is present, although the control is manifest in a more directly physically aggressive fashion with Ms. BW. The specific use of non-consenting control to enhance sexual arousal can be indicative of a specific paraphilic interest; however, Mr. Percy has not reached the level of personal responsibility and honest introspection where he can engage in a meaningful discussion and reflection on these topics.

...

In the case of Ms. BW, she was leaving the bar intoxicated to go home when she encountered Mr. Percy who was previously a stranger to her. It is at this point, when Ms. BW is already intoxicated and ready to go home, that Mr. Percy engages with Ms. BW. He is solicitous of her (gives her his sweatshirt, suggests they attend to the poutinerie) and lies about his age to portray himself as closer to Ms. BW's age of recently turning 19. The question is, is Mr. Percy manipulating an intoxicated female with the intention to access agreement to sex, or to access opportunity for sexual assault regardless of agreement, or did it matter to him which might occur?

[11] Dr. Connors observed that in any scenario, Mr. Percy remained "in the position of taking advantage of a young intoxicated adult female in order to access sex." She described him as taking advantage of points of vulnerability in exercising control over his victims:

...The repetitious seeking of these same points of vulnerability to take advantage of suggests intentionality, which would be predatory in nature. This point is underscored by the fact that in both instances the sexual acts progress from straightforward sexual access to engagement in sexual assaults that represent an

additional level of control (through physical violence, unconsciousness, and surreptitious digital recording), which additionally suggests a motive of satisfying possible paraphilic interests.

This motive (paraphilic interests) addresses the confusion of those who knew Mr. Percy that it seems ridiculous that he would force anyone in order to gain sexual access – given what appeared to be a favorable female response to Mr. Percy in general. However, this confusion dissipates if it was not exclusively simple sexual access that Mr. Percy was seeking.

...

While Mr. Percy appears primarily motivated in his sexual offending by seeking sexual access from vulnerable young women as well as seeking an outlet for his desire for sexual control and paraphilic interests, it is possible that there were additional factors impacting him by disinhibiting him to act on these motives. For example, Mr. Percy advised police that he went out to the bars with his friend on the night that the offense against Ms. BW occurred because he was “really stressed out, and I wanted to blow off some steam”. He also commented of the sexual encounter that “ I just wanted – to have a good time...with her and...maybe relieve some stress. I didn’t – I didn’t mean to hurt her.” In the current interview Mr. Percy contradicted himself, denying that he was looking for a one-night stand that night; “no one goes downtown to look for a one night stand”, and denying that his behaviour toward Ms. BW was impacted by his stress. The prominent use of sexual behaviour (offense related or otherwise) to mitigate negative emotional states (including stress) is a dynamic risk factor amongst those who commit sexual offenses.

[12] Dr. Connors commented on the significance of Mr. Percy’s choice of victims:

The convictions with respect to Ms. BW and Ms. TJ show that Mr. Percy targeted both a person that he knew in passing (Ms. TJ), as well as a total stranger (Ms. BW). The willingness to cross sexual boundaries with persons of different levels of relationship is a risk factor because the potential victim group is not contained to a specific nature of a relationship (in this case, generalized to both stranger and acquaintance groups). Put another way, neither level of relationship was sufficient to prompt an internal barrier in Mr. Percy to stop himself from committing a sexual assault. Moreover, the pool of potential victims, were Mr. Percy to recidivate, is larger than if his assaultive behavior was contained to individuals that he knew.

...

In the case of Mr. Percy, much like choosing younger women who were intoxicated, it was an effective strategy to make the effort to interact positively with the women that he ultimately assaulted.

[13] Dr. Connors further commented on Mr. Percy's lack of empathy and his capacity for self-control:

There were other considerations that could have prompted Mr. Percy to implement internal barriers including the specifics of his interactions with Ms. BW and Ms. TJ. For example, specifics such as indications from Ms. BW that she was in pain by crying, and Ms. TJ's lack of consciousness followed by making sounds that Mr. Percy previously agreed could have been pain, could have prompted an empathy response incompatible with sexual arousal, although this did not occur. Lack of caring response to these specifics of his interactions with each victim of his sexual offenses at the time, as well as now, suggests a lack of empathy for the victim's discomfort, pain and wellbeing relative to his own sexual gratification (and is consistent with possible control/coercion paraphilic interests).

...

In other words, when optimally motivated he could control himself from crossing these legal sexual boundaries.

Excellent control is also suggested by the fact that Mr. Percy did not reoffend after experiencing Adult Diversion in 2004, until 2014. However, once Mr. Percy moved from noncontact offending in 2004 to contact offending in 2014, he was not able to regain the same level of self-control to ensure a decade offense-free. It is likely that this situation was additionally heightened by a lack of consequences in 2014, resulting in another sexual assault in 2017.

...

Mr. Percy initially made comments indicative of an interest in treatment and programs. For example, Mr. Percy stated in reference to his upcoming sentence that, "I just want to get through it the best way I can, like diving deep into all the programs there are"... "I want to do the programs and I want to succeed and learn from this and never make a mistake like this again". However, when Mr. Percy was advised that his risk level was compatible with a referral to treatment at the level of intensity offered by CSC, Mr. Percy expressed upset and disagreement with this recommendation.

Sum:

...

Nonetheless, Mr. Percy's offense behaviour does not suggest a lack of capacity for control, instead it suggests the lack of internally driven motive to maintain control of himself in situations where he perceived access and opportunity to proceed with his sexual intentions regardless of the consent or assent of his sexual partner. In contrast, the motive to evade consequences appears much stronger, and there are indications of manipulation in each sexual offense suggestive of a desire to reduce both victim resistance and consequence for his actions.

Once arrested Mr. Percy did not accept culpability in his offenses. Post a finding of guilt Mr. Percy has (in both instances) voiced an intention to take the Judge's ruling seriously and take responsibility for his actions, but he has fully recanted these statements as they pertain to Ms. TJ (his first guilty verdict). With respect to Ms. BW Mr. Percy gave the impression of wanting to portray himself as responsive to the Judge's ruling, but as having not truly internalized the view of himself as having committed a sexual offense given his stated belief that he was found guilty in two situations in which he "had consent". Similarly, Mr. Percy wanted to portray himself as open to programming, but was not open to the programming that is suitable for his level of risk and number of risk indicators that he would benefit from addressing (including paraphilic interests, predatory behaviour, and implicit theories supportive of reoffending).

...

[14] Dr. Connors summarized her conclusion with respect to risk:

Overall, a combination of the static and dynamic risk variables applicable to Mr. Percy suggest that while Mr. Percy's overall risk for recidivism (including violent recidivism that is nonsexual in nature) is lower, **his risk for sexual reoffence specifically is higher in the moderate to moderate-high range; Risk Level IVa. As previously mentioned, Risk Level IVa reflects double the risk of the average individual convicted of sexually motivated crimes for sexual recidivism.**

...

Dynamic risk indicators suggest that Mr. Percy possesses a number of criminogenic variables that remain active and could benefit from the intensity of treatment offered by CSC, in order to develop effective management of this level of risk.

...

In contrast to this evidence of excellent self-control, Mr. Percy is now known to have committed contact sexual offenses against two young women in 2014 and 2017 (representing an offense cluster given that all charges post-date the 2017 offense). Both of the offenses in 2014 and 2017 post-date an early experience of Adult diversion for having engaged in voyeuristic behaviour in 2004, previous to moving out west. Voyeuristic behaviour was once again indulged in during his 2017 sexual assault of Ms. TJ suggesting an enduring paraphilic interest. Further, Mr. Percy went past the point of achieving sexual access in both 2014 and 2017 to engage in controlling behaviours that violated consent; the 2014 offense demonstrating more physically aggressive control in comparison to the form of control utilized in 2017. Controlling behaviour beyond that required for victim compliance to sexual access is suggestive of an additional paraphilic interest.

Once Mr. Percy graduated from noncontact offending in 2004 to contact offending in 2014, there is an indication of escalation given the short time frame between 2014 and 2017 in comparison to between 2004 and 2014. The graduation to contact offending was likely facilitated by Mr. Percy gaining confidence both socially and sexually with females, such that he approached both Ms. BW and Ms. TJ when they were leaving bars in an intoxicated state, and was able to ensure that they felt at ease with him to the extent that he returned to each of their homes where the sexual offending occurred. The deliberate creation of opportunities to offend is suggestive of predatory behaviour versus that which is opportunistic in nature.

Actuarial risk assessment of Mr. Percy reveals that his risk for sexual reoffense falls in Risk Level IVa (“above average risk”) which reflects double the risk of the average individual convicted of sexually motivated crimes for sexual recidivism. Dynamic variables suggest that Mr. Percy possesses a number of criminogenic variables that remain active and could benefit from treatment, in order to effectively manage risk for sexual recidivism. At this level of risk Mr. Percy is best matched to the level of intensity of treatment programming offered by CSC. Mr. Percy possesses many strengths that he can draw upon to make use of treatment and address his sexual criminogenic variables, should he be able to overcome his guardedness and fully engage in the process of introspection and change.

RECOMMENDATIONS

1. Treatment to Address Criminogenic Need – **The best match of treatment intensity to Mr. Percy’s risk level is provided through CSC, to address his criminogenic needs and effectively manage his risk for sexual reoffense. Should it be appropriate to sentencing, it is recommended that this report be released to CSC to facilitate treatment planning.**
2. Future Concerns – Should Mr. Percy be convicted of further sexual offenses in the future, it is recommended that all of his convictions be considered in an assessment of the applicability of the Long Term Offender legislation to Mr. Percy’s circumstances (which may or may not apply).

[Emphasis Added]

[15] With regard to whether or not Mr. Percy actually accepts responsibility for his actions, Dr. Connors stated variously:

Mr. Percy denied intentional sexual boundary violations at any point in his history, although opined that he will accept the Judge’s finding with respect to Ms. BW that he should not have pushed for consent to engage in anal intercourse, and that he regrets this choice and action as well as the harm caused to Ms. BW.

...

Although Mr. Percy contended that he believed that he had consent from Ms. BW to engage in anal penetration, he acknowledged that she clearly said no to this act and that he continued on to try to get her to “let me” until she relented.

...

When asked when he believed he had crossed a line with Ms. BW, Mr. Percy opined that it was when they entered the bathroom. When asked to explain, he stated that “that was what was expressed in Court” as the time during which he crossed a line. Mr. Percy elaborated that “I took things too far and it was my fault” because “she said no toward the anal sex and I asked again...she said okay but I should’ve listened to her the first time”...”I just engaged in it”...”held onto her hair and was thrusting” and in response “she moaned”. In the current interview Mr. Percy stated that he did not think she made sounds of discomfort at any point, and he had previously been of the mind that receiving an “ok” from her constituted consent, whereas now he sees that “she said no and I continued to push the subject and I shouldn’t’ve”.

At the same time Mr. Percy described that he believed that they were “building up to that point” of anal sex during their sexual encounter because of the nature of the sex (“I’m not going to lie, we were definitely having rough sex”) and because she kept saying “take me, take me”. Nonetheless, when directly asked if he now believes that he “disregarded” a lack of consent as opposed to making an attempt to “negotiate” consent, he agreed that he had disregarded her lack of consent because he “just pushed into her”. However, Mr. Percy then could offer no explanation for why he would have disregarded consent in this situation; he denied that anal sex was that compelling to him, denied that he was concerned about his erectile functioning, and denied that he was being aggressive; “I was intoxicated and I made a poor decision, but we all make mistakes”.

When asked what he found to be so compelling that he has changed his mind about having consent for anal sex, Mr. Percy initially stated that “I need to change”, then elaborated that he was impacted by “seeing the way I hurt her” such as when he saw her “cry on the stand”. Nonetheless, this was not compelling enough for Mr. Percy to lower his confidence in receiving an acquittal, only compelling subsequent to the receipt of a guilty verdict. When asked what he believed made him vulnerable to a guilty verdict, Mr. Percy opined “I don’t know, my inability to see the result of my actions?” Mr. Percy elaborated that “*if she was upset I didn’t believe she was at the time – I thought she was fully engaged in sexual activity and I was wrong and I am very sorry for that*” (italics added). Nevertheless, Mr. Percy was aware that “I don’t think sorry is good enough now” because “nothing I said could take back my actions”.

Mr. Percy stated that he believes that he received an acquittal in one of his previous trials because he had a video of the sexual encounter. When asked if he believed that he would have had an acquittal regarding Ms. BW if he had a videotape of that encounter, Mr. Percy declined, stating “no, I believe my actions were not proper and I should have listened to what she said”, but in the case of

Ms. TJ, “I think I should’ve had a different outcome” at trial. Despite these claims, Mr. Percy harbored discontent about his most recent trial, stating his wish that he had taken the stand in his own defense which he thinks might have impacted the outcome. Mr. Percy explained that he was “very involved in all of my trials” such that “I don’t think I would’ve won that other one without diving in deep”. Further, he characterized his current willingness to take responsibility within the following context: “I lost two trials where I had consent, but if they say I didn’t, I have to accept that”.

Thus, while Mr. Percy made clear statements of personal responsibility vis-à-vis forcing anal intercourse with Ms. BW against her consent, he did not accept that the event occurred in the manner accepted by the court, and he did not reconcile these statements with his ongoing disbelief that he was found guilty (which he mentioned a number of times) and his belief that various changes could have resulted in “a different outcome” (i.e., acquittal). The failure to reconcile these disparate beliefs is suggestive that Mr. Percy’s statements of personal responsibility are not well integrated at this time. Similarly, personal responsibility and regret (which he voiced) is also inconsistent with the guarded and suspicious approach that Mr. Percy took to discussing his sexual offence convictions.

When personal responsibility is adopted for extrinsic motivations and not well integrated, it cannot be relied upon as an enduring representation of insight to internally motivate change.

[as appears in original]

Presentence Report

[16] A presentence report was prepared by Probation Officer Amber McDow in relation to Mr. Percy.

[17] Mr. Percy described growing up in suburban Halifax with a close relationship to family and friends. He said his upbringing was “really good.” He said his parents’ separation when he was 12 years old did not have a negative impact on him. He denied any abuse in his family, and said there were no problems in his family with substance abuse or involvement with outside agencies or the criminal justice system. He left home at 17, spent time in the Army Reserves, and worked for several years in western Canada. He returned to Halifax when his mother’s health began to decline. As to Mr. Percy’s current circumstances, the author of the pre-sentence report stated:

...

The offender advised he was placed in custody in December 2017 and continues to be remanded at Northeast Nova Scotia Correctional Facility. Mr. Percy informed he continues to enjoy a close relationship with his father, reporting having contact multiple times per week. The offender reported no contact with his mother who suffers from Alzheimer's Disease and is a nursing home resident in Halifax, NS. According to Mr. Percy, his family is very supportive, and he continues to maintain bi-weekly contact with his brother. The offender advised he is not currently in a relationship and reported no dependants.

[18] The author went on to review the interviews conducted with other individuals:

In preparation of the Pre-Sentence Report, contact was established with Dane Percy, father of the offender, for his comments. Mr. Percy Sr. described a close and supportive relationship with the offender, reporting contact three to four times a week. The source advised since the Covid-19 pandemic, facility visits have been suspended, however he is able to enjoy video calls with his son. In discussing the offense, which places the offender before the Court for sentencing, the source stated he feels his son has learned from his mistakes and noted he has concerns regarding sentencing. Mr. Percy Sr. stated further incarceration will only be detrimental to the offender and is concerned for his safety.

For the purpose of the Pre-Sentence Report, contact was established with Steven Johnson, uncle of the offender, for his comments. In discussing the offence, which places Mr. Percy before the Court for sentencing, the source advised he was "totally surprised." Mr. Johnson advised he is the offender's uncle by marriage and even after separating from his ex-wife, he continued to be involved in the offender's life. The source explained he generally has phone contact with Mr. Percy once per week and he has made a few visits to the Correctional Facility over the past two years. Mr. Johnson informed he has been an ongoing support system for the offender since being placed in custody. He described the offender as an intelligent individual, who recognizes the seriousness of the offence that finds him before the Court. Mr. Johnson stated ongoing therapy may benefit the offender, stating he needs to work on rehabilitation.

[19] The author went on to review Mr. Percy's educational background, as well as his employment history:

"Mr. Percy advised he completed his grade 12 level of education from Queen Elizabeth High School in Halifax, NS in 2001. He stated his grades were "not the greatest," noting he was "not book smart," however, was "good with my hands." The offender recalled his attendance record was "not great" and reported he was never disciplined in the form of school suspensions. Following his graduation from high school, Mr. Percy advised he joined the Canadian Army Reserves, where he completed his cooks qualifying course. At the age of 21, the offender

advised he attended the Nova Scotia Community College (NSCC), Akerley Campus in Dartmouth, NS where he completed a two-year culinary diploma. He reported he returned to the NSCC, Aviation Institute campus when he was 30-years old and completed the A-Block Masonry Course.”

While incarcerated at Northeast Nova Scotia Correctional Facility the offender reported he completed the Communications Program through Nova Scotia Community College. In discussing future educational goals, the offender expressed a desire to obtain his Red Seal certification as a bricklayer.

...

“The offender advised he has worked in the kitchen at the Northeast Nova Scotia Correctional Facility since June 2018. Prior to being remanded into custody in December 2017, he reported employment with Coastal Restoration as a labourer. The offender advised he was employed with this company from 2012-2016 and again from September 2017 until December 2017. Mr. Percy reported he held the position of groundskeeper at Saint Mary’s University from 2016 until September 2017, when his employment was terminated due to the current offences which find him before the Court. He advised of previous employment with St. Vincent’s Nursing Home where he worked in the kitchen and on the floor for a period of five-years, until 2012. The offender reported he has worked in various restaurants including Atlantica Hotel for approximately two-years, Sage Bistro for one-year in Halifax, NS, Monks Grill in Whistler, BC, Raw Bar in Calgary, BC and three seasons at the Keltic Lodge in Cape Breton, NS.”

In relation to future employment, the offender stated he has connections with small business owners in the community who could provide employment opportunities upon his release from custody.

[20] The author noted that “Mr. Percy expressed remorse for the offence, stating ‘I’m very sorry’. The offender reported being under the influence of alcohol at the time of the offence and although he reported he accepts responsibility for the offence, he minimized his behaviour.” As to his corrections history, the author wrote:

...contact was made with Case Management Officer, Lewis MacKenzie with Northeast Nova Scotia Correctional Facility. He advised the offender “is always polite and respectful to staff and the other inmates.” Mr. MacKenzie advised the offender has completed several programs since being placed in custody including Substance Abuse Management, Respectful Relations, Options to Anger, educational upgrading, Naloxone training as well as health and wellness.

Contact was established with Case Management Officer, Leann Nash with Northeast Nova Scotia Correctional Facility for her comments in preparation of the Pre-Sentence Report. Ms. Nash advised the offender has not received any incident levels to date during his term of custody. The source reported Mr. Percy

is currently in a position of trust, working in laundry and had previously worked in the kitchen until the Covid-19 pandemic. Ms. Nash informed the offender continuously engages in his case plan and has maintained a respectful attitude with staff at the facility.

In preparation of the Pre-Sentence Report, this writer spoke with Deputy Superintendent, John Landry with Northeast Nova Scotia Correctional Facility. Mr. Landry advised he has known the offender since his admissions into custody, describing Mr. Percy as quiet, polite and respectful. The source informed the offender meets expectations and has taken advantage of ongoing programming at the facility.

Character Reference Letters

[21] Mr. Percy submitted three character reference letters, each from an individual who has interacted with him during his incarceration. They state:

To whom it may concern

I have known Mr. Matthew Percy for over a year as a worker in the kitchen. I have found Mr. Percy to reliable, a hard worker and diligent in his duties. During Mr. Percy's tenure with us as a kitchen worker Mr. Percy has earned respect and trust with our staff and has displayed an open, honest and positive attitude.

Sincerely

Dan Cormier
Manager of Food Services

...

To whom it may concern:

Matthew PERCY (#566627) has been residing at NNSCF since 16 December 2017. While at our facility he has been keeping busy working (example kitchen) and keeps himself and his area clean and tidy. Inmate PERCY has been respectful, polite and willing to do whatever is asked of him to benefit the facility. There have been zero disciplinary reports on this inmate. He has participated in programming and his behaviour has been excellent.

John Landry
Deputy Superintendent NNSCF

...

To Whom This May Concern,

Please accept the following as a character letter with regards to Matthew Albert Percy as requested from his lawyer Michelle James.

Matthew has been actively engaged in following his case plan and reaching out for assistance when he requires it. Matthew and I have had many conversations regarding his short and long-term goals and lifestyle. During his custody term, Matthew has completed/attended Substance Abuse Management, Respectful Relationships, Options to Anger, NSCC Communications 1227, Garden program, Yoga program, guitar program, attended St. John Ambulance Dog Therapy program (no training but spending time with dogs in a therapeutic approach), resume writing and book club with John Howard Society volunteers. Matthew maintained employment in the kitchen and laundry through the incentive program until COVID restricted access to these areas.

Matthew is involved in prosocial activities on the living unit and has a passion for fitness. He has been incident/level free and is respectful and polite with staff and other inmates. He consistently demonstrates problem-solving skills and displays with a positive and honest attitude.

Respectfully Submitted

Leann Nash
Case Management Officer

[as appear in originals]

[22] In *R. v. Arcand*, 2010 ABCA 363, the majority explained the limitations of good character evidence in a sexual assault case:

[127] Fourth, where sexual offences are concerned, good character has limits to its scope. The good character premise is that an offender should be able to contend in mitigation that he or she has acted as a law-abiding citizen generally. It is difficult to see the logic of assigning mitigation credit for apparent prior compliance with social norms in the face of a serious sexual assault.

[23] In *R. v. Profit*, [1993] 3 SCR 637, Sopinka J. holding that the trial judge had dealt adequately with character evidence, said, for the court:

...The reasons of the trial judge must be viewed in light of the fact that as a matter of common sense, but not as a principle of law, a trial judge may take into account that in sexual assault cases involving children, sexual misconduct occurs in private and in most cases will not be reflected in the reputation in the community of the accused for morality.

[24] Justice Sopinka's words can be equally applied to an adult sexually assaulting another adult, as in this case. While in this case the court is determining the appropriate sentence in the face of good character evidence, as opposed to assessing the credibility of an accused's testimony, the general philosophy remains

the same. Individuals with otherwise pro-social tendencies, can be guilty of serious sexual misconduct. Regarding the determination of an appropriate sentence, sometimes the high moral blameworthiness of a crime can eclipse the good character of an offender.

Legislation

[25] Section 272 of the *Criminal Code* describes the offence of, and the punishment for, sexual assault causing bodily harm and states:

272 (1) Every person commits an offence who, in committing a sexual assault,

...

(c) causes bodily harm to the complainant...

Punishment

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable

...

(b) in any other case, to imprisonment for a term not exceeding fourteen years.

Subsequent offences

(3) In determining, for the purpose of paragraph (2)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(a) an offence under this section;

(b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or

(c) an offence under section 220, 236, 239 or 273, subsection 279(1) or section 279.1, 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

Sequence of convictions only

(4) For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

[26] Section 718 describes the fundamental purpose and objectives of sentencing:

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.

[27] Section 718.2 deals with aggravating and mitigating circumstances, as well as additional sentencing principles:

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 intimate partner or a member of the victim or the offender's family,
 - ...
 - (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...

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.

Positions of the Parties

[28] The Crown seeks a sentence of seven years in prison, less credit for time on remand.

[29] Mr. Percy originally suggested a sentence in the range of three to 4.5 years, less credit for time on remand. Following the testimony of Dr. Connors, wherein she said that the only treatment for Mr. Percy's issues is found in a penitentiary, he changed his recommendation and now says he should receive a sentence of four and half years in custody, less credit for time on remand.

[30] Both Crown and defence agree that Mr. Percy should receive 907 days credit for time on remand (at 1.5:1). This is equivalent to two years and five months of custody.

[31] Therefore, the Crown says Mr. Percy should receive a sentence going forward of 4.5 years in custody.

[32] Mr. Percy says he should receive a sentence of two years in custody going forward.

Aggravating Factors

[33] B.W. was leaving a bar after celebrating her nineteenth birthday, was highly and obviously intoxicated, and was alone when she crossed paths with Mr. Percy.

She was vulnerable. Mr. Percy lied to B.W. about his age (saying he was 24 when he was really 31), lent her his sweater, paid for a taxi to her dormitory and eventually ended up alone with her in her room, putting B.W. in an even more vulnerable situation. This calculated targeting of B.W. (referred to as grooming by Dr. Connors) was predatory behaviour, and is aggravating.

[34] B.W. has explained the protracted nature of the impact on her. This is an aggravating factor.

Mitigating Factors

[35] Mr. Percy had no prior criminal record at the time of this offence. He was gainfully and steadily employed up to the time of his arrest and incarceration. He has been a model prisoner since he was remanded on these charges. Mr. Percy has excellent social skills and self-control in most areas of his life.

Analysis

[36] In *R. v. Goldfinch*, 2019 SCC 38, the majority concisely summarized the myriad ongoing issues regarding the crime of sexual assault and the long-lasting effects on victims, and stated:

[37] The mischief Parliament sought to address in enacting s. 276 remains with us today. Sexual assault is *still* among the most highly gendered and underreported crimes ... Even hard-fought battles to stop sexual assault in the workplace remain ongoing ... **As time passes, our understanding of the profound impact sexual violence can have on a victim's physical and mental health only deepens.** Parliament enacted s. 276 to address concrete social prejudices that affect trial fairness as well as **the concrete harms caused to the victims of sexual assault.** Throughout their lives, **survivors may experience a constellation of physical and psychological symptoms including: high rates of depression; anxiety, sleep, panic and eating disorders; substance dependence; self-harm and suicidal behaviour.** A recent Department of Justice study estimated the costs of sexual assault at approximately \$4.8 billion in 2009, an astonishing \$4.6 billion of which related to survivors' medical costs, lost productivity (due in large part to mental health disability), and costs from pain and suffering. **The harm caused by sexual assault, and society's biased reactions to that harm, are not relics of a bygone Victorian era.**

[Emphasis added]

[37] In *R. v. Friesen*, 2020 SCC 9, the court dictated significant changes in sentencing adults for sexual crimes against children. In *Friesen*, a 29-year-old

accused, with no prior record, who was deemed to be a high risk to reoffend, was convicted of sexually interfering with a four-year-old. The offender had met the complainant's mother on an online dating site. They met at a bar, then returned to the mother's home, where her four-year-old daughter (the complainant), and her one-year-old son were being babysat by the mother's friend. After they had consensual intercourse in the mother's bedroom, Friesen told the mother to bring her daughter into the room, where Friesen, with the mother's assistance, sexually attacked the child. Friesen fled after a confrontation with the friend (paras. 6-12).

[38] The majority of the Supreme Court of Canada upheld a six-year sentence for this first time offender. In doing so, they carefully explained how to determine an appropriate sentence when sentencing an adult who commits sex crimes on a child. B.W. was 19 years old when Mr. Percy sexually assaulted her and was therefore not a child under the age of 16, as was the situation in *Friesen*, so much of the focus in that case differs. Nonetheless, the framework for analysis and many of the primary principles detailed in that case are of some guidance in determining the appropriate disposition for Mr. Percy.

[39] In *R. v. Katsnelson*, 2010 ONSC 2246, the offender, who was 25 years old and had no criminal record, pleaded guilty to sexual assault causing bodily harm and sexual assault. Along with a friend, he had entered a university residence and tried the doors of the residence rooms, eventually entering the room of a 17-year-old student, CC. Katsnelson had vaginal intercourse with her from behind and his friend, Justin Connort, digitally penetrated her while Katsnelson took pictures of the assault on his cell phone. They then went to another room, where Katsnelson had forcible intercourse with an 18-year-old student, BM. For about a week after the attack CC experienced vaginal bleeding. MacDonnell J. said:

[52] First of all, Mr. Katsnelson did not violate the sexual integrity of just one young woman that morning. After forcing sexual intercourse on C.C. as she lay crying in her bed, Mr. Katsnelson continued to roam the corridors of the Vanier residence looking for more victims and eventually raping a second one. The various rooms that Katsnelson and Connort broke into that morning were the homes of these young women while they were at university. The victims were asleep in what they had every right to expect was the safety and security of their bedrooms. The violation of their privacy was heightened by the fact that both were raped by one complete stranger while a second one watched. Insofar as C.C. was concerned, it was also heightened by the fact that Katsnelson took cell phone pictures of Connort abusing her. The fact that Katsnelson was a stranger to both C.C. and B.M. is particularly aggravating because it left the victims utterly in the dark as to the sexual history of their assailant. As Mr. Katsnelson did not use a

condom, they had the perfectly reasonable fear not only of pregnancy but also of contracting a potentially deadly sexually transmitted disease. Both were forced to immediately seek medical intervention to reduce the risks that had been thrust upon them. Further, C.C. suffered a bodily injury that bled for a week.

[53] In addition to the physical consequences of the offences for both victims, the emotional and psychological impact has been profound. It is not possible, at this point, to know whether the harm that Mr. Katsnelson caused in this respect is irreparable, but it is clear that as of today, more than 2½ years after the offences, it has not been repaired.

[54] **The age of the victims is also an aggravating factor. While neither C.C. nor B.M. were children, neither were they fully adult. As they entered their first week of university studies in September 2007, away from the protection of their families, they were standing on the threshold of the rest of their lives. Tragically, what they encountered was a pair of predators who, I have no doubt, recognized the vulnerability of young women in that situation and made a conscious decision to work in concert to exploit it.**

[55] It is significant that the offences were not crimes of opportunity but rather the product of a premeditated trespass into a university dormitory. Katsnelson and Connort regarded the teenagers living there as sexual prey. **The vulnerability of the young women whose bedrooms Mr. Katsnelson invaded was not unique to them. It is shared by thousands of 17 and 18 year olds who leave home every year to attend colleges and universities across the country. For many, attending those institutions is a rite of passage along the road from adolescence to adulthood, and it can be an exciting time. But it can also be a dangerous time. It is very much in the public interest that college and university campuses be places of safety and that they be perceived to be places of safety... Where a court is confronted with serious offences committed within a university residence by trespassers like Mr. Katsnelson, a clear and unequivocal response is called for.** [Emphasis added]

[40] Katsnelson was sentenced to five years' imprisonment for sexual assault causing bodily harm, and three years consecutive for sexual assault.

Proportionality and Parity

[41] In *Friesen*, the court explained how the concepts of proportionality and parity work together:

[33] In practice, parity gives meaning to proportionality. A proportionate sentence for a given offender and offence cannot be deduced from first principles; instead, judges calibrate the demands of proportionality by reference to the sentences imposed in other cases. Sentencing precedents reflect the range of factual situations in the world and the plurality of judicial perspectives.

Precedents embody the collective experience and wisdom of the judiciary. They are the practical expression of both parity and proportionality.

[42] In the instant case, from the cases provided, the Crown says the range of sentence is between two and seven years and submits that Mr. Percy falls on the very high end of that range. Mr. Percy argues that the range of sentence in this case is three to 4.5 years in custody. In *Friesen*, the court said that due to the need for individualized sentencing, ranges are guidelines only:

[37] This Court has repeatedly held that sentencing ranges and starting points are guidelines, not hard and fast rules... Appellate courts cannot treat the departure from or failure to refer to a range of sentence or starting point as an error in principle. Nor can they intervene simply because the sentence is different from the sentence that would have been reached had the range of sentence or starting point been applied... Ranges of sentence and starting points cannot be binding in either theory or practice, and appellate courts cannot interpret or apply the standard of review to enforce them, contrary to *R. v. Arcand*, 2010 ABCA 363, 40 Alta. L.R. (5th) 199, at paras. 116-18 and 273. As this Court held in *Lacasse*, to do so would be to usurp the role of Parliament in creating categories of offences...

[38] The deferential appellate standard of review is designed to ensure that sentencing judges can individualize sentencing both in method and outcome. Sentencing judges have considerable scope to apply the principles of sentencing in any manner that suits the features of a particular case. Different methods may even be required to account properly for relevant systemic and background factors... Similarly, a particular combination of aggravating and mitigating factors may call for a sentence that lies far from any starting point and outside any range...

[43] Therefore, while the range of sentence provided by counsel is of some assistance to me in determining the appropriate disposition for Mr. Percy, any proposed range is merely a guideline. The sentence I impose will be individualized. There are a myriad of sexual assault sentencing cases that provide guidance, and I will refer briefly to some recent cases with similar facts provided by counsel that are of some assistance.

[44] In *R. v. Kotio*, 2020 NSSC 68, Coughlan J. agreed with the joint recommendation and sentenced the accused to three years in prison for “a violent sexual assault involving anal and vaginal intercourse” (para. 22). In addressing the relevant factors, he said:

[21] Aggravating factors present in this matter are as follows:

The sexual assault arose out of what was initially consensual sexual activity involving oral and vaginal sex. However, that changed when Mr. Kotio inserted his penis in HDG's anus without her consent. This was not a momentary act. Mr. Kotio continued penetrating HDG's anus despite her telling him to stop while she was crying in pain. HDG also told Mr. Kotio, "No". She tried to move away, and Mr. Kotio laughed saying she should not be crying, he had done it with other people. When HDG went into the bathroom, Mr. Kotio followed her saying he had not finished yet. He had HDG lean over the bed and inserted his penis in her vagina. The sexual assault continued until Mr. Kotio satisfied himself by ejaculating.

...

[23] The anal intercourse caused HDG pain for many days. She experienced pain when urinating or defecating for approximately a week and a half. The evidence showed the assault had a profound emotional effect on her. After the assault, she was hysterical, distraught and vomiting.

[24] The mitigating factors present here are that Mr. Kotio has no prior criminal record and was relatively young at the time of the offence, being 24 years old.

[45] In *R. v. DeYoung*, 2020 NSSC 242, Campbell J. accepted a joint recommendation following conviction. Concluding that the circumstances were neither at the highest nor the lowest end of the range, he sentenced the accused to two years in prison, followed by two years' probation. In surveying the relevant sentencing considerations, he said:

[13] When considering a range that would generally apply in sexual assault cases, the fact that other provinces may have a starting point for sentencing has to be considered. The case law does suggest that the range runs from between 14 and 23 months at the lower end to more than three years at the higher end of the range. The factors that determine whether a case fits into the lower or higher end of the sentencing range are as numerous as the cases that have been decided.

[14] There are a number of factors that would apply to almost all offences. An expression of genuine remorse or a timely guilty plea can result in a lower sentence being ordered. The failure to express remorse is of course not an aggravating factor. The character of the offender is relevant. A person who has committed previous offences will obviously be treated more harshly than a first-time offender. Mr. DeYoung is a first-time offender and has no criminal record.

[15] The nature of the relationship between the parties may be a relevant factor. That may involve the respective ages and circumstances of the offender and the victim. Mr. DeYoung and the victim in this case were contemporaries and acquaintances.

[16] If the offender took some action to incapacitate the victim by administering drugs or alcohol that would be an aggravating factor. That is not present here. Both the victim and Mr. DeYoung had been drinking but there was no suggestion that he did anything to cause her to fall asleep.

[17] The nature of the assault is relevant. Sexual touching and digital penetration are serious but intercourse, whether vaginal or anal is more serious. The assault here involved anal penetration with the penis.

[18] It would be an aggravating factor if the sexual contact resulted in physical injury beyond the obvious psychological trauma. There is no evidence in this case of physical injury.

[19] It would be an aggravating factor if, when the victim awoke or regained consciousness and made some expression to indicate the absence of consent beyond the absence of consent that would result from being unconscious in the first place, the offender continued with the assault. That is not present here. When told to stop, Mr. DeYoung stopped and left promptly.

[20] It is significant in these cases that there has been a betrayal of some trust. The complainant or victim allowed the offender to be present in a situation in which she was vulnerable. In this case, the victim allowed Mr. DeYoung to remain in her apartment, alone with her overnight. He had a form of access to her by which she implicitly indicated her trust that he would respect her boundaries. He betrayed that trust by coming into her bed and sexually assaulting her.

[46] In *R. v. Blake*, 2020 ONSC 5658, Spies J. sentenced the accused to six years in prison. In reviewing the relevant factors, she said:

[35] As this will be the first time Mr. Blake is sentenced to a custodial sentence, I must also consider *R. v. Priest*, [1996] O.J. No. 3369 from the Court of Appeal where at para. 23 the court held that even where a custodial sentence is appropriate, a first sentence of imprisonment should be as short as possible and tailored to the individual circumstances of the defendant rather than solely for the purpose of general deterrence. However, in *R. v. Thurairajah [T.(K.)]*, 2008 ONCA 91, 229 C.C.C. (3d) 331 at para. 41, Doherty J.A. observed that for serious crimes of personal violence, particularly sexual assaults, while rehabilitation and other sentencing objectives remain important, denunciation and general deterrence "gain prominence" even in cases involving first offenders. Mr. Rudnicki also referred to *R. v. Finney*, 2014 ONCA 866 where the court stated at para. 10:

This was a very serious crime worthy of a lengthy penitentiary term. At the same time, the appellant is a virtual first offender with positive rehabilitative prospects. The trial judge was faced with a very difficult sentencing problem.

...

[64] On balance although I agree with Justice Dambrot that it is difficult to reconcile all of the cases that counsel have referred to. In this case I am considering a global sentence that is not only what is appropriate for a penetrative sexual assault *simpliciter*, but one that caused bodily harm as well as the choking, threatening to cause death and forcible confinement, all committed by Mr. Blake in order to succeed in the forced vaginal sexual assault of the complainant. Given all of these aggravating factors/additional offences, in my view the appropriate range of sentence is as suggested by the Crown of between five to eight years.

...

[47] Justice Spies went on to review the aggravating and mitigating factors:

[83] I find that the following facts are aggravating:

- a) This was a brutal unprovoked attack on a sex trade worker at night in an isolated area;
- b) Mr. Blake confined J.M. by locking the car doors to prevent her escape and closing all the windows so that she could not be heard if she cried for help;
- c) In order to gain control over J.M., Mr. Blake used a knife and threatened to push it into her stomach;
- d) He choked her to facilitate the sexual assault and that was a particularly dangerous and terrifying action;
- e) The sexual assault involved full vaginal penetration, at times without a condom;
- f) The level of physical violence inflicted by Mr. Blake upon J.M. was well beyond the violence inherent in any sexual assault and resulted in serious injuries including a bite to her finger so hard that it fractured and deep bite marks, the scars of which can still be seen today;
- g) The level of psychological violence inflicted was significant, with lasting effects, with Mr. Blake not only threatening J.M. during the course of the assault, but also at the end, when he told her he could come find her again at any time. Mr. Blake demonstrated a complete disregard for J.M.'s humanity during this attack, which terrorized her then and still does today;
- h) J.M. suffered deep and lasting effects of trauma, including a loss to her economic, sexual and mental health, and drove her into further criminal behaviours, as described by her during trial and in the PSR;
- i) As a sex trade worker, J.M. was one of a particularly vulnerable population. Attacks upon them in the course of their work, in situations of vulnerability, are an aggravating factor.

[84] I find that the following facts are mitigating:

- (a) Mr. Blake does not have a criminal record;
- (b) Mr. Blake is fortunate to have the support of a close-knit family. In addition to his spouse, his father, and his stepmother, he has eight half-siblings with whom he maintains close relationships. They supported him throughout the court process and view the offences he has committed to be completely out of character. As Ms. Matthews points out, however, because his family members do not believe that Mr. Blake committed the offences, their ability to assist him in his rehabilitation is limited;
- (c) With respect to his character, in the PSR Mr. Blake's family members describe him as intelligent, hard-working, kind, and generous. They know him to be peaceful and slow to anger. Ms. Matthews, however, submitted that their view that it must have been 'a mistake or misunderstanding', that Mr. Blake would be the 'last person that would ever be in trouble with the law' and that this offence was '100% completely out of character' are not credible given that in June, 2017, Mr. Blake was charged with similar offences against another woman in the context of the sex trade. Those charges ultimately resulted in Mr. Blake entering into a three-year Common Law Peace Bond ("Peace Bond") on November 13, 2019. I will say more about this below;
- (d) Mr. Blake has a steady relationship with Ms. Gough and their children and his children from previous relationships. By all accounts, he is a good father and positive role model to his children;
- (e) He is an entrepreneur who has built a successful business over seven years and has employed dozens of employees. Before that he was steadily employed.

[48] In weighing the considerations, Spies J. determined that a six-year sentence was appropriate, and said:

[93] However, given the cases I have been referred to, I have concluded that the Crown's request for a sentence of eight years is too high given this is a first offence. On the other hand, in my view, although there are cases that support a sentence in the range of four to five years, I do not find them reliable or they are distinguishable for the reasons already stated. In my view, although Mr. Blake did not choke the complainant to the point of unconsciousness, his attack was violent and brutal. He confined her in his SUV, threatened to kill her with a knife, he bit her all over her body to the point of breaking one of her fingers, and he degraded her and mocked her when he made a show of putting the condom away and finally he threatened to come back in a different car and hurt her. There is no doubt that this is a very serious case and that the circumstances of the offence call for a sentence at the high end of the range for sexual assault and with the forcible confinement,

choking, and threatening to kill with a knife, those are further significant aggravating factors. In my view, the appropriate sentence in all the circumstances is in the range of six to seven years.

[94] Given Mr. Blake is a first-time offender with a number of positive factors in favour of his rehabilitation, at least in terms of his family support and past employment and business experience, I conclude that in all of the circumstances a fit sentence in this case is six years. From that his pre-sentence credit of 10 months will be deducted, leaving a sentence of five years and two months to serve.

[49] In *R. v. J.J.W.*, 2012 NSCA 96, the court held that the original sentence of sixteen months, eleven of which could be served in the community, was demonstrably unfit. The court found that the proper sentence would have been two and one-half years in prison for one sexual assault and two assaults. Justice Oland, speaking for the court, noted that the trial judge had described the sexual assault as “extremely...serious conduct.” (Para. 16). She commented that “[f]orced intercourse is a major sexual assault,” and later said:

[21] Nova Scotia has not adopted a starting point approach. Rather, this Court has chosen to remain focussed on the principles of sentencing as set out in the *Criminal Code* and the Supreme Court of Canada’s affirmations that the approach on review on sentencing appeals is one of deference to the decisions of the sentencing judge.

[22] Since sentencing is such an individualized process and done in the context of the particular circumstances of each case, it is notoriously difficult to find cases that are factually similar.

...

[70] In the first assault, in order to engage another person, the respondent shoved the victim aside and onto the ground. This sudden and public assault demonstrates his callous disregard for her personal safety. The respondent committed a reprehensible sexual assault by forcing anal intercourse on his victim. He responded to her saying “no”, which she was entitled to do, by domineering and humiliating her. He damaged her psychological health. The respondent then committed a further assault by kicking his victim following the sexual assault.

[50] In *R. c. St-Hilaire*, 2015 QCCQ 2512, the accused had been convicted of sexual assault and kidnapping. According to Marleau J.C.Q., “the accused was frustrated by a combination of his life going nowhere and his lack of intimacy with

a woman for more than two years. In that context, the accused met randomly the victim on a sidewalk ..., took her behind the building in front of which they were and had forced vaginal intercourse with her” (para. 2). The accused had no prior record. There was evidence that he had suffered from “unspecified psychotic trouble” and “probable start of a paranoid schizophrenia or major depression with presence of psychotic symptoms” (para. 21), and a more recent assessment suggested that “paranoid schizophrenia is most probable. He should be stabilized, and once done a psychosexual assessment would be relevant to properly identify his condition” (para. 29). The risk of re-offending was moderate-high (para. 30). The only mitigating factor was the lack of prior convictions, while the aggravating factors included the facts that the offences were “serious, go directly against the integrity of a person and are punishable by 10 years (sexual assault) and imprisonment for life (kidnapping)” (paras. 33 and 43). Additionally, the court took into account the accused’s apparent mental illness, though the evidence did not allow a precise diagnosis (para. 60). In the result, the sentence was 60 months concurrent, plus three years’ probation (paras. 65-69).

[51] In *R. v. Rand*, 2012 ONCA 731, in upholding a four-year sentence, Rosenberg J.A., stated:

[19] ...I would not interfere with the sentence. The appellant took advantage of a vulnerable intoxicated young woman. He committed acts of unprotected anal and vaginal sex. He has a prior criminal record dating back to 2004 that includes offences of dishonesty and also convictions for crimes of violence, including assault, assault with a weapon, and assault with intent to resist arrest. Two of the assault convictions, in 2004 and 2007, involved incidents of domestic violence. The sentence imposed by the trial judge in this case was well within the appropriate range. The trial judge’s reasons disclose no errors in principle.

[52] In *R. v. Alas*, 2019 NSSC 68, Gabriel J. accepted a joint recommendation of seven years in prison for a charge of sexual assault causing bodily harm. The offender and the complainant met and went to the complainant’s residence, where the offender assaulted her:

[5] While the two sat on her couch, Mr. Alas began punching her in the face. Then she was choked, first with one hand, then two, blocking her airway. Then he wrapped her long hair around his hand. The accused removed her pants, punching her face and continuing to pull her hair in the process. As she begged him to stop, he told her she was going to die. The accused forced her to perform fellatio. She begged him to wear a condom, which he did but told the victim that if she bit him, he would kill her. When the accused ejaculated he went

to the bathroom warning the victim that if she tried to fight back or leave he would kill her.

[6] At one point, the victim recalls the accused telling her that he could not do this anymore, and that he was a psychopath. She was scared. The accused repeatedly told her that he was raping her during the forced vaginal and anal intercourse. There is more, but it is not necessary that I continue beyond this. At one point, she was able to dial 911, and although she did not speak into her cell phone, the police were able to trace the call. When they knocked at her door, she told the accused it was her boyfriend. When the door was opened, the victim ran out, naked from the waist down, screaming. Her face was swollen and bruised. She was taken to the hospital and later released.

...

[15] We heard from S.M., the victim who read her Victim Impact Statement for the court. She has described in detail the feeling that she has sustained of a loss of self-worth. She also is left with intimacy issues, daily pain, flashbacks, nightmares, and feelings of being “emotionally, spiritually and mentally broken”. She struggles with insomnia, isolation, and embarrassment. She lives in fear. When this ordeal was inflicted upon her, in her own home, she literally feared for her life and that of her child. She attends therapy and is determined to overcome the injuries that she has sustained. She has shown commendable courage in coming forward to read her Victim Impact Statement today.

[53] Justice Gabriel endorsed the joint recommendation, and explained:

[23] I have considered all of the above including the case authorities. While no two cases are alike, I begin with the observation that the range of sentences for these offences with similar circumstances, broadly speaking as identified in the authorities, globally falls on a continuum of between five to nine years of imprisonment. Despite the mitigating factors which are present, I would not have considered a sentence at the low end of the range to be appropriate given the significance of the aggravating factors that I have noted herein. Moreover, I consider that, in dealing with offences of this type and nature, the principles of denunciation and deterrence (both individual and societal) must be stressed. While society does not seek vengeance through the sentencing process, it must exact what it considers to be just retribution.

[54] The caselaw clearly establishes that a significant period of federal incarceration is mandated for a sexual assault causing bodily harm like the one perpetrated by Mr. Percy on B.W.

Personal Autonomy, Bodily Integrity, Sexual Integrity and Equality

[55] In *R. v. McCraw*, [1991] 3 S.C.R. 72, Cory J. discussed the devastating effect a sexual assault can have on a victim's personal autonomy, bodily integrity and sexual integrity, and stated at pp. 84-85:

It is difficult if not impossible to distinguish the sexual component of the act of rape from the context of violence in which it occurs. Rape throughout the ages has been synonymous with an act of forcibly imposing the will of the more powerful assailant upon the weaker victim. Necessarily implied in the act of rape is the imposition of the assailant's will on the victim through the use of force. Whether the victim is so overcome by fear that she submits or whether she struggles violently is of no consequence in determining whether the rape has actually been committed. In both situations the victim has been forced to undergo the ultimate violation of personal privacy by unwanted sexual intercourse. The assailant has imposed his will on the victim by means of actual violence or the threat of violence.

Violence and the threat of serious bodily harm are indeed the hallmarks of rape. **While the bruises and physical results of the violent act will often disappear over time, the devastating psychological effects may last a lifetime. It seems to me that grave psychological harm could certainly result from an act of rape.**

The psychological trauma suffered by rape victims has been well documented. It involves symptoms of depression, sleeplessness, a sense of defilement, the loss of sexual desire, fear and distrust of others, strong feelings of guilt, shame and loss of self-esteem. It is a crime committed against women which has a dramatic, traumatic impact...To ignore the fact that rape frequently results in serious psychological harm to the victim would be a retrograde step, contrary to any concept of sensitivity in the application of the law. [Emphasis added]

[56] The need to consider the emotional and psychological harm caused by a sexual assault due to the impact on a victim's personal autonomy was also discussed more recently in *Friesen*, where the court stated:

[55] These developments are connected to a larger shift, as society has come to understand that the focus of the sexual offences scheme is not on sexual propriety but rather on wrongful interference with sexual integrity. As Professor Elaine Craig notes, "This shift from focusing on sexual propriety to sexual integrity enables greater emphasis on **violations of trust, humiliation, objectification, exploitation, shame, and loss of self-esteem** rather than simply, or only, on deprivations of honour, chastity, or bodily integrity (as was more the

case when the law's concern had a greater focus on sexual propriety)" (*Troubling Sex: Towards a Legal Theory of Sexual Integrity* (2012), at p. 68).

[Emphasis added]

Sentencing Must Reflect the Contemporary Understanding of Sexual Violence

[57] In *R. v. Ewanchuk*, [1999] 1 S.C.R. 330, Major J. explained how a sexual assault harms the very core of human dignity, autonomy and physical integrity:

28 The rationale underlying the criminalization of assault explains this. Society is committed to protecting the personal integrity, both physical and psychological, of every individual. Having control over who touches one's body, and how, lies at the core of human dignity and autonomy. The inclusion of assault and sexual assault in the *Code* expresses society's determination to protect the security of the person from any non-consensual contact or threats of force. The common law has recognized for centuries that the individual's right to physical integrity is a fundamental principle, "every man's person being sacred, and no other having a right to meddle with it, in any the slightest manner": see Blackstone's *Commentaries on the Laws of England* (4th ed. 1770), Book III, at p. 120. It follows that any intentional but unwanted touching is criminal.

[58] B.W. was not only physically injured by Mr. Percy, but her dignity, autonomy, and integrity have been irrevocably damaged.

Harm to Families, Communities and Society

[59] Although B.W. was an adult when she was sexually assaulted by Mr. Percy, she was a trusting nineteen-year-old, living what should have been the structured and sheltered life of an undergraduate student residing in a university residence. The transition between adolescence and adulthood occurs for many people during the undergraduate experience. Students should be able to experience this transition free from the threat of predators and violence.

[60] B.W.'s innocence was robbed and the relationship with her parents adversely impacted by the actions of Mr. Percy. Some of the comments made by the Court in *Friesen* about child victims under the age of 16 are also of general applicability to B.W. in these specific circumstances. The court in *Friesen* stated:

[63] The ripple effects of sexual violence against children can make the child's parents, caregivers, and family members secondary victims who also suffer profound harm as a result of the offence. Sexual violence can destroy parents and caregivers' trust in friends, family, and social institutions and leave

them feeling powerless and guilty...The harm to parents' relationship with their children can also be profound. For instance, children can react to the sexual violence by shutting their parents out of their lives...Parents and caregivers may also bear the financial, personal, and emotional costs of helping their children recover and cope with emotional and behavioural challenges...In the words of one mother of a child victim, the sexual violence "has taken many years from my son's life and I know this will hurt me for the rest of my life" (*D. (D.)*, at para. 11).

[64] Beyond the harm to families and caregivers, there is broader harm to the communities in which children live and to society as a whole. Some of these costs can be quantified, such as the social problems that sexual violence against children causes, the costs of state intervention, and the economic impact of medical costs, lost productivity, and treatment for pain and suffering...In particular, children who are victims of sexual violence may be more likely to engage in sexual violence against children themselves when they reach adulthood...Sexual violence against children can thus fuel a cycle of sexual violence that results in the proliferation and normalization of the violence in a given community...In short, the costs that cannot be quantified are also profound. Children are the future of our country and our communities. They deserve to have a childhood free of sexual violence...When children become victims of sexual violence, "[s]ociety as a whole is diminished and degraded" (*Hajar*, at para. 67).

Actual Harm to B.W.

[61] Corrine Thompson, one of the SANE nurses who examined B.W., testified at trial about the physical harm Mr. Percy inflicted on B.W. during the course of the sexual assault. She was slapped, visibly bitten on her neck and back, and had her hair pulled. There was erythema to her anus and vagina. She could not sit down or have a bowel movement for several days after the assault. B.W.'s injuries constituted bodily harm.

[62] As noted earlier, in her Victim Impact Statement, B.W. describes her ongoing fear, interpersonal problems, and the immense toll on her psychological well-being that are a direct result of the sexual assault, some five years after the crime.

Moral Culpability of Matthew Percy

[63] Sexual violence is morally blameworthy because it involves the exploitation of the victim by the offender. As the court explained in *Friesen*:

[89] All forms of sexual violence, including sexual violence against adults, are morally blameworthy precisely because they involve the wrongful exploitation of the victim by the offender — the offender is treating the victim as an object and disregarding the victim’s human dignity...As L’Heureux-Dubé J. reasoned in *L. (D.O.)*, “the occurrence of child sexual abuse is one intertwined with the sexual abuse of all women” precisely because both forms of sexual offences involve the sexual objectification of the victim (p. 441). Courts must give proper weight in sentencing to the offender’s underlying attitudes because they are highly relevant to assessing the offender’s moral blameworthiness and to the sentencing objective of denunciation...

[64] Mr. Percy’s moral culpability arises from his actions before and during the assault. Mr. Percy met B.W., a young intoxicated person outside of a bar in the early morning hours. As he told the police, he was looking to blow off some steam as he was stressed. B.W. told him that she was celebrating her nineteenth birthday. She was obviously intoxicated. She was alone. Mr. Percy then targeted B.W. He lied about his age. He offered B.W. his sweatshirt. He paid for a taxi to her residence. He helped her remove her shoes. He was acting in a predatory manner. He intentionally created a situation where he could sexually assault a vulnerable victim.

[65] B.W. said that she and Mr. Percy may have initially had consensual oral and vaginal sex in her bedroom. They eventually ended up in her bathroom, although she cannot recall how they ended up there. She recalls facing the sink, with Mr. Percy behind her, holding her by the hair. At trial, on direct examination, she said,

He had struck me, I don’t know how many times, but I know that he had struck me and there was biting. He had bit me on my neck and I don’t remember if he had bit me on my back, but there was a bite mark on my back as well.

[66] However, B.W. also testified that she could not recall being struck or bitten. The SANE examination confirmed visible bite marks and bruising.

[67] Mr. Percy did not ask B.W.’s consent before attempting anal intercourse. B.W. did not consent to anal intercourse, and said “no” repeatedly, loud enough for him to hear her, while crying. Mr. Percy ignored her obvious protests.

[68] In his police statement, Mr. Percy described his need to control, dominate and humiliate B.W. for his own sexual gratification. By his own admission he grabbed her by the head during oral sex, forced her face down onto his penis until she gagged, and when she tried to push away, said “no hands”. He said he could

not achieve an erection until he controlled and humiliated B.W., and that he could not ejaculate through either oral sex or vaginal intercourse.

[69] Once in the bathroom, he turned B.W. around, grabbed her hair, bent her over, “put her down on the sink”, and had forced anal intercourse with her until he ejaculated. Again, B.W. was saying “no” repeatedly and crying while he was doing it.

[70] After the anal intercourse, Mr. Percy directed B.W. into the shower and had forced vaginal sex with her. B.W. said that she was traumatized after the forced anal intercourse and did not consent to any of the activity that followed. B.W. said that she may not have outwardly shown her lack of consent because vaginal intercourse in the shower was preferable to the forced anal intercourse she had just endured. After Mr. Percy was finished with B.W. he said “How does it feel to have been fucked by a 31-year old?”

[71] Mr. Percy’s moral blameworthiness is high in this case.

Likelihood to reoffend

[72] As noted above, according to Dr. Connors, Mr. Percy’s likelihood to reoffend is moderate to moderately high. By her assessment Mr. Percy is twice as likely as the average sex offender to reoffend.

Subsequent convictions

[73] Mr. Percy sexually assaulted B.W. in 2014. She went to the police within a day or so of the crime, gave a statement and underwent an invasive SANE examination. However, for reasons not explained during the trial, Mr. Percy was not charged with this offence until several years later. His trial took place over about eight days between February 18 and 28, 2020, and his conviction was entered on July 24, 2020.

[74] The Crown advises that Mr. Percy was convicted of a sexual assault committed against another young woman in 2017. The Crown agrees with Mr. Percy that I cannot consider the sexual assault from 2017 as a prior conviction, since the offence involving B.W. took place three years earlier. However, the Crown and defence agree that I can take the subsequent conviction into account in considering Dr. Connors’ opinion that Mr. Percy is a moderate to moderately high risk to reoffend, since she refers to the 2017 sexual assault in support of this

position. Mr. Percy agrees with the Crown's submission on this point, as noted in its brief:

[31] This creates a legal anomaly that dictates this court treat Mr. Percy as a first-time offender. That does not mean it cannot be considered in sentencing, however it cannot be taken to be an aggravating circumstance. It can go to the accused character and future chances for rehabilitation.

[32] In *R. v. Pete*, 2019 BCCA 244, a young Indigenous man, was convicted of sexually assaulting his cousin. He appealed his sentence of three years. At the time of the offence he did not have a criminal record. However, Subsequent [sic] to the offence, but prior to sentencing, he was convicted of a sexual assault committed when he was a youth and of an assault and breaches. The BC Court of Appeal stated the judge erred by imposing a harsher sentence because of the subsequent convictions and thus failed to sentence the appellant as a first-time offender. At paragraph 39 The BC Court of Appeal, recites and applies the Coke Principle in circumstances where the accused has been convicted and sentenced to matters that occurred after the matter they are being sentenced.

[39] The recent edition of Ruby's *Sentencing*, (9th ed., 2017) at 440 now recognizes that subsequent convictions may be taken into account for some purposes:

It would seem, therefore, that serious subsequent convictions – especially if for similar offences – can be looked to for the purpose of ascertaining the offender's character and the prospects for rehabilitation, but not for the purpose of imposing a heavier sentence than the offence would otherwise warrant. However, it might be better to leave subsequent convictions out of consideration completely, as this fine distinction may well escape those serving the sentence.

[40] In summary, the Coke principle describes the proper approach to treatment of first-time offenders in circumstances where they have been convicted of other subsequent offences by the time they are sentenced. It has been accepted and applied in this province as having general application and also permits consideration of subsequent convictions in appropriate cases for the purpose of ascertaining an offender's moral culpability and prospects for rehabilitation. Further, this approach to sentencing is consistent with general sentencing principles. A sentencing judge should not treat post-offence convictions as prior convictions or as an aggravating circumstance calling for a harsher sentence. The danger in doing so is that the offender may be treated more harshly than his or her record warrants. The degree of culpability of a first-time offender is not as high as someone who has been convicted and sentenced of other offences at the time of commission of the subject offence.

[75] In *R. v. Keats*, 2018 NSCA 16, Van den Eynden J.A. explained, for the court, how to deal with this type of situation:

[30] Subsequent offences are relevant for the purposes of sentencing. In *R. v. J.(H.J.)*, [1989] B.C.J. No. 1542, the Court of Appeal stated:

[8] The fact that a person convicted of an offence has since the date of that offence committed similar offences cannot be regarded as irrelevant to the sentencing process. Other similar offences, whether committed before or after that for which an accused is being sentenced, may well be of considerable importance in determining the character of the accused, the extent, if any, to which there has been rehabilitation, the likelihood of rehabilitation in the future, the extent to which the accused is likely to be deterred by the fact of conviction, brief incarceration or a term of probation and — to some extent a factor related to all of these — the extent to which imprisonment is appropriate for the protection of the public against the commission of further similar offences by the accused. .

..

[10] But in the light of the evidence which was properly before the court at his trial, and of the unchallenged findings of fact of the trial judge, it would, in my view, be wrong that he be treated in the way a first offender might normally be.

[76] As noted, in the Comprehensive Forensic Sexual Behaviour Presentence Assessment, Dr. Connors refers to the 2017 sexual assault in opining that Mr. Percy is a moderate to moderately high risk to commit future sexual offences. I am satisfied that I can take this into account.

Denunciation and deterrence

[77] Denunciation and deterrence are of paramount import in this case. Reformation and rehabilitation play a lesser role considering Mr. Percy's overall circumstances.

[78] Halifax is home to many university students. A university student, like anyone else, should be able to go out, celebrate milestones and have fun, without having to be concerned that they will be the target of a sexual predator. Sexual predators have to know that there will be severe consequences for their actions.

[79] That is not to say that rehabilitation and reformation do not play some role in determining the proper sentence for Mr. Percy. He has good social skills, has always been employed, has done well since being institutionalized, has family

support, was a productive member of society prior to his arrest, and, according to Dr. Connors' report, has some prospects for rehabilitation if he embraces change.

[80] Dr. Connors was very clear that the type of sex-offender treatment program Mr. Percy needs can only be found in a federal institution. It cannot be found in a provincial institution in Nova Scotia, nor can it be found in the community in this province. She said that Mr. Percy needs comprehensive treatment for his paraphilias, as he otherwise has good social skills and has good self-control.

Protection of the public

[81] Protection of the public is the ultimate goal of the criminal justice system. In *R. v. Scott*, 2013 NSCA 28, in dealing with a trafficking case, Beveridge J.A. explained for the majority that the *Criminal Code* makes it clear that while protection of the public is the ultimate goal in sentencing an offender, deterrence is not the only objective and principle of the sentencing regime that can achieve this result:

[55] ...Deterrence is not the only objective and principle of sentence. The *Criminal Code* makes this clear. This legal reality is well expressed by Bateman J.A. in *R. v. Bratzer*, 2001 NSCA 166 where she wrote:

[14] Protection of the public is the ultimate objective in sentencing the offender. This goal informs the exercise of a judge's discretion in designing a sentence. As this court commented in *R. v. Parker* (1997), 159 N.S.R. (2d) 166; N.S.J. No. 194 (Q.L.) (N.S.C.A.) at p. 179 (N.S.R.):

[45] The challenge for the sentencing judge is, as it always has been, to balance the objectives of sentencing - this is not a new problem. It is worthy of note, however, that the judge is directed, in s. 718, to impose a just sanction that has "one or more" of the enumerated objectives. This, in my view, recognizes the irreconcilability of certain of the objectives and leaves to the court a reasonable latitude in choosing the appropriate emphasis for this offence and this offender. **Protection of the public - "the maintenance of a just, peaceful and safe society" - remains, as always, the overarching goal of sentencing. Rehabilitation of the offender, where achievable, is key to public protection.**

[Emphasis added]

[82] Dr. Connors says that Mr. Percy shows a lack of empathy for his victims, and he requires an excessive level of control during sex. Mr. Percy says that he

wants to take responsibility but does not really do so. He either did not notice B.W.'s lack of consent and her distress at what he was doing to her, or he purposely ignored them. He does not seem to understand that he crossed legal boundaries in order to satisfy his paraphilia. Mr. Percy believes that he has entitlement to sexual access, he sees women as sexual objects, and he is able to discount the nature of the harm caused by his sexual offending. Mr. Percy needs to address his motivators and disinhibitors. According to Dr. Connors, Mr. Percy does not really believe there is any aspect about himself that requires change and while he genuinely appears to want to make use of treatment options, this is not the same as being engaged in the treatment. Yet, she says that there is treatment for offenders who deny culpability. As noted, in Nova Scotia the only place Mr. Percy can be properly treated is a federal penitentiary.

Conclusion

[83] For the reasons above, I sentence Mr. Percy to a period of incarceration of five (5) years. He will be given credit for two years and five months of remand time, leaving a sentence remaining for Mr. Percy of two years and seven months.

[84] He will also have the following ancillary orders imposed: Primary DNA Order, s.109 Firearms Prohibition for life, and a SOIRA Order for life.

Arnold, J.