

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Kapsalis*, 2021 NSSC 180

Date: 20210527

Docket: *Halifax*, No. 501884 & 506123

Registry: Halifax

Between:

Her Majesty the Queen

v.

Leonidas George Kapsalis

Restriction on Publication: 539(1) cc
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TRIAL DECISION

Judge: The Honourable Justice Joshua Arnold

**Final Written
Submissions:** May 17, 2021

Counsel: Tim McLaughlin, for the Federal Crown
Alexander MacKillop, for Leonidas Kapsalis

Overview

[1] The Crown and the Defence jointly recommend that Leonidas George Kapsalis be sentenced to five (5) years in prison for a variety of drug and gun related charges. They also jointly recommend the ancillary orders of a Secondary DNA Order, a s. 109 Prohibition Order for life, and a s. 491 Forfeiture Order be imposed.

Facts

[2] On January 12, 2021, Mr. Kapsalis entered guilty pleas to the following offences:

1. Unlawfully have in his possession for the purpose of trafficking, Cocaine, a substance included in Schedule 1 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and did thereby commit an offence contrary to Section 5(2) of said *Act*;

8. AND FURTHER that he at the same time and place aforesaid, did possess a prohibited or restricted firearm, to wit., a shotgun, together with readily accessible ammunition capable of being discharged in said firearm, without being the holder of an authorization or license under which he may possess the firearm in that place, and the registration certificate for the firearm, contrary to Section 95(1) of the *Criminal Code*;

9. AND FURTHER that he at the same time and place aforesaid, did have in his possession a firearm, to wit., a shotgun, while he was prohibited from doing so, by an Order of Probation pursuant to section 731 of the *Criminal Code*, dated at Halifax, Nova Scotia, on the 9th day of October, 2018, contrary to Section 117.01(1) of the *Criminal Code*;

12. AND FURTHER that he at the same time and place aforesaid, while bound by a Probation Order issued on the 9th day of October, 2018, did wilfully fail without reasonable excuse to comply with such order, to wit., “NOT TO HAVE IN YOUR POSSESSION ANY FIREARM, CROSS-BOW, PROHIBITED WEAPON, RESTRICTED WEAPON, PROHIBITED DEVICE, AMMUNITION OR EXPLOSIVE SUBSTANCE”, contrary to Section 733.1(1)(a) of the *Criminal Code*.

[3] A pre-sentence report was ordered and the sentencing was adjourned to May 27, 2021, when Mr. Kapsalis entered guilty pleas to the following additional offences:

1. That he between the 21st day of December, 2020 and the 28th day of January, 2021, at or near Dartmouth, in the Province of Nova Scotia, did attempt to import

into Canada, a restricted firearm, to wit: a Glock 19 handgun, knowing that he was not authorized to do so, contrary to Section 103(1)(a) of the *Criminal Code*;

4. FURTHERMORE that he at the same time and place aforesaid, did possess a firearm, to wit: a Glock 19 handgun, knowing that he was not the holder of a license under which he may possess it, and in the case of a restricted firearm without being the holder of a registration certificate for the firearm, contrary to Section 92(1) of the *Criminal Code*;

5. FURTHERMORE that he at the same time and place aforesaid, did possess a restricted firearm, to wit: a Glock 19 handgun, together with readily accessible ammunition capable of being discharged in said firearm, without being the holder of an authorization of license under which he may possess the firearm in that place, and the registration certificate for the firearm, contrary to Section 95(1) of the *Criminal Code*;

6. FURTHERMORE that he at the same time and place aforesaid, did have in his possession prohibited devices, to wit: 2 – 15 round capacity magazines, without being the holder of a license under which he may possess it, contrary to Section 91(2) of the *Criminal Code*;

9.FURTHERMORE that he at the same time and place aforesaid, did have in his possession a restricted weapon, a Glock 19 handgun, while he was prohibited from doing so by reason of an order made pursuant to Section 515 at Halifax on March 5th, 2020, contrary to Section 117.01(1) of the *Criminal Code*.

[4] The parties have provided the court with an Agreed Statement of Facts, which states:

1. On July 25, 2019, at 12:08 am the Halifax Regional Police searched 10 Glenora Avenue, Halifax, Nova Scotia. Police entered, located the occupant, Leonidas Kapsalis, gave Mr. Kapsalis the warrant and arrested him in the living room;

2. The search took place, and the following items were found by the police during the search:

- a. A loaded black short barreled shotgun in the living room;
- b. Shot gun shells and rifle rounds in the bedroom;
- c. A black iPhone on the accused and a Samsung cell phone in the bedroom;
- d. A Triton 3 digital scale in the kitchen and a Triton 3 digital scale in the bedroom;
- e. A dime bag of cocaine in the bedroom and a bulk supply of cocaine weighing 48.7 grams in the kitchen;
- f. Dime bag packaging in the kitchen;

g. Two bags weighing 766.9 grams containing an unknown white powder, suspected cutting agent for the cocaine.

3. On December 22, 2020 Homeland Security Investigations (“HSI”) began an undercover operation on an unknown individual looking to purchase a firearm from the Dark Web. An undercover HIS investigator began contact with this individual, who claimed they were from Halifax, Nova Scotia area, and were looking to import and purchase a handgun. HIS contacted the RCMP and continued their communications with this individual who agreed to purchase a Glock 19, magazines and 50 rounds of ammunition for \$2150.00. The funds were sent by way of Bitcoin on December 24, 2020 to the undercover operator for the gun and accessories.

4. With continued assistance from HSI, the RCMP were able to obtain information for the unknown individual using “kilo902kilo902” as a username. On January 22, 2021, the RCMP obtained authorizations for both transmission data and cellular location and were able to identify “kilo902kilo902” as Leonidas Kapsalis, residing at 1307 Purcell’s Cove Road in Halifax, Nova Scotia.

5. On January 27, 2021 at approximately 4:20pm, Mr. Kapsalis met with an undercover operator at an arranged location and introduced himself as Leo. Mr. Kapsalis was shown the Glock 19, magazines, and ammunition. Mr. Kapsalis took possession of the package and exited the vehicle and was immediately arrested by members of the RCMP, and subsequently charged.

6. Mr. Kapsalis will be entering guilty pleas to the following offences in relation to the December 21, 2020 - January 28, 2021 incident:

- a. Count #1 Section 103(1)(a) of the *Criminal Code*;
- b. Count #4 Section 92(1) of the *Criminal Code*;
- c. Count #5 Section 95(1) of the *Criminal Code*;
- d. Count #6 Section 91(2) of the *Criminal Code*;
- e. Count #9 Section 117.01 of the *Criminal Code*;

7. The evidence supports the guilty pleas, and the trafficking offence was not an incidental event...

[Errors in original document]

Pre-Sentence Report

[5] A pre-sentence report was provided to the court dated May 7, 2021, which states variously:

FAMILY BACKGROUND

The offender reported he is the older of two children born to Suzanne Kapsalis (age 60) and George Kapsalis (age 62). Mr. Kapsalis described a good relationship and daily contact with his mother, noting she is a real estate agent and resides in Purcells Cove, NS. The offender further reported daily phone contact with his father, who resides in Halifax, NS, and is the owner of several rental properties. The offender described a close relationship with his younger sister, Eleni Kapsalis (age 29) of Halifax, NS, noting “she’s my best friend.”

In discussing his formative years, the offender advised his parents mutually separated when he was 12 years, citing they did not get along. The offender did not recall any physical violence between his parents, however, reported a lot of arguing. Following the separation, Mr. Kapsalis advised he was primarily raised by his mother and described the discipline as normal. The offender denied any history of substance abuse within the family or conflict with the Criminal Justice System. Mr. Kapsalis did recall one incident in which there was an outside agency involved with the family.

According to the offender, he left the family home at the age of 18 years and relocated to Calgary, AB, and returned home the following year. Mr. Kapsalis advised he has been involved in a relationship with Samantha MacDonald (age 27) for the past two years. The offender described the relationship as “perfect” and noted, she is very supportive. According to the offender, Ms. MacDonald is employed as a Paralegal and does not possess a criminal record.

...

As a child, Ms. Kapsalis advised the offender was diagnosed with Attention Deficit Disorder. The source reported the offender suffered a serious workplace accident on November 5, 2020, which lead to abuse of prescription “pain killer” medication.

...

George Kapsalis, the father of the offender, was interviewed for the purpose of the Pre-sentence Report. Mr. Kapsalis Sr. reported daily phone contact with his son since being remanded at the Correctional Facility. The source reported “we have had falling outs during the course of our relationship” as he does not condone criminal behavior. Mr. Kapsalis advised drugs, poor lifestyle choices and negative associates have been problematic for the offender in the past. The source advised his son appears to be remorseful for his actions and stated as long as the offender chooses to make positive changes in his life, he will be supportive. Mr. Kapsalis Sr. advised he will provide accommodations as well as employment to the offender upon release from custody.

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EDUCATION/TRAINING

The offender advised he completed his Grade 11 level of education at Citadel High School in Halifax, NS. Mr. Kapsalis reported he did not enroll for his Grade 12 school year as he relocated to Calgary, AB for work purposes. As a child, the offender advised he was diagnosed with Attention Deficit Disorder and noted he experienced difficulty focusing in school. He reported a positive attendance record and below-average grades during his school career.

At the age of 21 years, Mr. Kapsalis advised he enrolled at Nova Scotia Community College in the Welding Program, graduating with his certificate of completion the following year. In discussing future educational goals, the offender expressed a desire to complete his GED, grade 12 equivalency. Mr. Kapsalis advised he has been unable to participate in educational upgrading while in custody at Central Nova Scotia Correctional Facility due to Covid restrictions.

...

[6] According to Mr. MacKillop, Mr. Kapsalis was diagnosed with ADD as a youngster. He took daily medication and progressed through his education as expected until Grade 11. At that time he stopped taking his ADD medication and did not finish high school. He began using other drugs to “self-medicate” and never reached his academic potential. The pre-sentence report continues:

EMPLOYMENT

Mr. Kapsalis advised he was most recently employed as a marine construction skilled laborer with Kerr Ltd., a position he held for five months before a workplace accident in November 2020. The offender advised he suffered a serious head injury and as a result, he began experiencing seizures. Mr. Kapsalis informed he was prescribed medication for the treatment of the seizures, which caused extreme hallucinations. According to the offender, he was unable to work following the accident and was placed on worker's compensation.

Mr. Kapsalis advised he entered the workforce as a teenager, working at his father's convenience store. Following high school, the offender advised he was employed with Dexter's Construction for seven years before resigning after a conflict with his supervisor. Mr. Kapsalis further reported he worked for Waterworks Construction Ltd. for 18 months, before accepting a position with Kerr Ltd.

In preparation for the Pre-sentence Report, contact was established with Gordie Kerr, foreman and friend of the offender. Mr. Kerr advised he has known the offender since they were five years of age and offered the offender employment with Gregory Kerr Ltd. He described the offender as a hard-working and reliable employee, who displayed a great work ethic. In discussing the offences, which place the offender before the Court for sentencing, Mr. Kerr advised he was disappointed. The source stated a criminal record would not be detrimental to

future employment and stated there is potential for him to return to work upon release from custody.

...

FINANCIAL SITUATION

The offender described his financial situation as unstable and stated he will be filing for bankruptcy upon release from custody. A check with the Justice Enterprise Information Network revealed the offender possesses \$4,495.00 in outstanding fines.

...

HEALTH AND LIFESTYLE

The offender advised he suffered a head injury as a result of a workplace accident in November 2020, which caused him to experience seizures. The offender stated he was under the care of Dr. Omoke, where he was prescribed seizure medication that caused him to have extreme hallucinations. This writer was unable to establish contact with the physician for the purpose of the Pre-sentence Report.

Mr. Kapsalis reported he was diagnosed with Attention Deficit Disorder while in elementary school. The offender further informed although he feels he suffers from both Depression and Anxiety, he has not been officially diagnosed and is not prescribed medication for the same.

In discussing substance use/abuse, the offender advised he was introduced to marijuana during his grade six school year. Mr. Kapsalis reported he was using marijuana daily before being remanded. The offender admitted to abusing cocaine, off and on, during his twenties, however, he denied any recent use. In relation to alcohol use, Mr. Kapsalis advised "I don't drink alcohol" and "I don't like it."

...

OFFENDER PROFILE

Interviewed via telephone conference at Central Nova Scotia Correctional Facility, the offender was polite and cooperative in answering all questions. In discussing the offenses, which place the offender before the Court for sentencing, Mr. Kapsalis accepted partial responsibility for his actions and expressed remorse. During the Presentence Report interview, the offender admitted to being under the influence of drugs at the time of the offences. Since being remanded, the offender has expressed interest in substance abuse treatment, however, due to Covid 19 restrictions, programming is unavailable.

[7] The parties agree that contrary to the comments in the pre-sentence report, Mr. Kapsalis actually accepts full, not partial, responsibility for his actions, as evidenced by his guilty pleas and the Agreed Statement of Facts. The pre-sentence report also states:

CORRECTIONS HISTORY

...

For the purpose of the Pre-sentence Report, contact was established with Hannah Cavicchi-Burrows, Social Worker with Central Nova Scotia Correctional Facility. Ms. Cavicchi-Burrows provided the following comments:

"When Mr. Kapsalis was admitted to the facility there was a concern for his mental status as he was presenting with paranoia and delusions. He was connected with health care services and has since improved. Throughout his custody term, Leo has interacted with social work when completing check-ins and supporting Mr. Kapsalis with various requests. He has been respectful and engaged with services while in custody. When Mr. Kapsalis' mental status had improved he was placed in the transitional day room, TDR, and remains on the unit."

In preparation of the Pre-sentence Report, the following comments were provided by Case Management Officer with Central Nova Scotia Correctional Facility, Carrie Beazley:

"Leo Kapsalis was admitted to the Central Nova Scotia Correctional Facility on 28 January 2021. Mr. Kapsalis is currently housed in the Transition Dayroom (TDR) at CNSCF, where he is doing well. The Transition Dayroom is a dayroom designed to address the risks and needs of inmates who require more intensive supervision, mental health services, and who may exhibit a pattern of behavior that is unacceptable and potentially harmful to themselves or others. Focus is placed on stabilizing inmate behavior and developing life skills and coping skills necessary for successful community integration. Mr. Kapsalis is not currently participating in programs at CNSCF. Mr. Kapsalis has not had any disciplinary levels thus far this custody term and has been polite and respectful during my interactions with him, as his Case Manager."

On October 9, 2018, the offender appeared in Dartmouth Provincial Court for a charge contrary to Section 91(1) CCC. Mr. Kapsalis received a two-year Probation Order with conditions to report as directed and abstain from weapons, which expired on October 8, 2020. The offender reported as directed for his Probation appointments and successfully maintained employment throughout his Order. The Justice Enterprise Information Network revealed pending matters before the Court upon closure of the file.

Section 718-718.2 of the *Criminal Code*

[8] Sections 718-718.2 of the *Criminal Code* state:

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance

of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community;
and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
 - (ii) evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family,
 - (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
 - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
 - (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
 - (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
 - (v) evidence that the offence was a terrorism offence, or
 - (vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act*

shall be deemed to be aggravating circumstances;

Section 10 of the *Controlled Drugs and Substance Act*

[9] Section 10 of the *CDSA* states:

Purpose of sentencing

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

Factors to take into consideration

(2) If a person is convicted of a designated substance offence for which the court is not required to impose a minimum punishment, the court imposing sentence on the person shall consider any relevant aggravating factors including that the person

(a) in relation to the commission of the offence,

(i) carried, used or threatened to use a weapon,

(ii) used or threatened to use violence,

(iii) trafficked in a substance included in Schedule I, II, III, IV or V, or possessed such a substance for the purpose of trafficking, in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years, or

(iv) trafficked in a substance included in Schedule I, II, III, IV or V, or possessed such a substance for the purpose of trafficking, to a person under the age of 18 years;

(b) was previously convicted of a designated substance offence, as defined in subsection 2(1) of this Act, or a designated offence, as defined in subsection 2(1) of the Cannabis Act;

(c) used the services of a person under the age of eighteen years to commit, or involved such a person in the commission of, the offence.

Reasons

(3) If, under subsection (1), the court is satisfied of the existence of one or more of the aggravating factors enumerated in paragraphs (2)(a) to (c), but decides not to sentence the person to imprisonment, the court shall give reasons for that decision.

Drug treatment court program

(4) A court sentencing a person who is convicted of an offence under this Part may delay sentencing to enable the offender

(a) to participate in a drug treatment court program approved by the Attorney General; or

(b) to attend a treatment program under subsection 720(2) of the Criminal Code.

Minimum punishment

(5) If the offender successfully completes a program under subsection (4), the court is not required to impose the minimum punishment for the offence for which the person was convicted.

Analysis

[10] Appellate courts have consistently directed trial judges to follow joint recommendations unless they are contrary to the principles of justice. In this case, the parties have presented a joint recommendation following negotiated guilty pleas. The parties have considered the usual sentences for the crimes to which Mr. Kapsalis has pleaded guilty, Mr. Kapsalis's personal circumstances, and the principles of sentencing, including general and specific deterrence, restraint and totality. The parties have also considered the worldwide pandemic and the impact COVID has had on custodial sentences.

[11] Mr. Kapsalis has a supportive family. He stopped taking his ADD medication in high school, began "self-medicating" and things have spiraled downhill for him in many ways since then. He is now a cocaine trafficker who was also caught purchasing an illegal handgun off the Dark Web. It is unclear why he chose to stop taking prescribed ADD medication and instead chose to self-medicate. Clearly, that did not work out. I would urge Mr. Kapsalis to seek mental health assessment and counseling, and follow the direction of the mental health professionals who will seek to assist him, both in prison and upon his release.

[12] Convictions for trafficking in cocaine generally result in custodial sentences. Convictions for illegal possession of firearms and related charges, especially handguns, often result in custodial sentences. Committing those two types of crimes together can have lethal consequences, and generally results in a significant custodial sentence. Nonetheless, sentencing must be individualized. The courts

are required to avoid a cookie-cutter approach in crafting an appropriate disposition. This case is no different.

[13] I agree with the joint recommendation that five (5) years in custody, along with the jointly recommended ancillary orders, is an appropriate disposition for these crimes, considering the true negotiated plea agreement.

Conclusion

[14] Leonidas George Kapsalis will be sentenced to five (5) years in a federal penitentiary going forward, broken down as follows:

Offence Date(s)	Count	Charge	Description	Sentence
July 25, 2019	8	CC 95(1)	Possession of prohibited or restricted firearm with ammunition.	3 years
	9	CC 117.01(1)	Possess firearm while prohibited.	18 months' concurrent
	12	CC 733.1(1)(a)	Breach of Probation	6 months' concurrent
	1	CDSA 5(2)	Possession for purpose of trafficking.	3 years' concurrent
December 21, 2020 – January 28, 2021	1	CC 103(1)(a)	Attempt to import into Canada a restricted firearm.	3 years' concurrent to federal charges
	4	CC 92(1)	Possession of firearm knowing possessing is unauthorized.	1 year consecutive to federal charges
	5	CC 95(1)	Possession of prohibited or restricted firearm with ammunition.	3 years' concurrent to federal charges
	6	CC 91(2)	Possession of prohibited weapon, restricted weapon, a prohibited device.	182 days – deemed time served
	9	CC 117.01(1)	Possess firearm while prohibited.	1 year consecutive to federal charges

[15] Mr. Kapsalis will also be subject to the following ancillary orders: a Secondary DNA Order, a s. 109 *Criminal Code* Firearms Prohibition Order for life, a s. 16 *CDSA* Forfeiture Order, and a s. 491 *Criminal Code* Forfeiture Order.

Arnold, J.