

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Coaker*, 2022 NSSC 201

**Date:** 20220721

**Docket:** CRH 505889

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Matthew Francis Coaker

**SENTENCE DECISION**

**Judge:** The Honourable Justice Jamie Campbell

**Heard:** June 30, 2022, in Halifax, Nova Scotia

**Counsel:** Rick Woodburn and Scott Morrison, for the Crown  
Jonathan Hughes, for the Defence

**By the Court (Orally):**

[1] Matthew Coaker is being sentenced for his part in the assault of Stephen Anderson at the Central Nova Scotia Correctional Facility in Burnside on December 2, 2019.

[2] After two trials 12 people were found guilty of aggravated assault and one of obstruction. The person found guilty of obstruction has been sentenced, *R. v. Nagendran*, 2022 NSSC 14. Seven of the people found guilty of aggravated assault have been sentenced, *R. v. Ladelpha*, 2021 NSSC 352, *R. v. McIntosh*, 2021 NSSC 351, *R. v. Clarke-McNeil*, 2022 NSSC 63, *R. v. Mitton*, 2022 NSSC 123, *R. v. Hardiman*, 2022 NSSC 198, *R. v. Crawley*, 2022 NSSC 199, and *R. v. Cox*, 2022 NSSC 200. Mr. Ladelpha was sentenced to 6 years, Mr. McIntosh to 5½ years, Mr. Clarke-McNeil to 6 years, Mr. Mitton to 6 years, Mr. Hardiman to 6 years, Mr. Crawley to 5 years, and Mr. Cox to 4½ years.

[3] Mr. Coaker’s sentence should not be set only in reference to those sentences, but the sentencing principle of parity must be considered. Mr. Coaker was involved in the same offence. His personal circumstances may be different, but fairness would require some explanation for why his sentence should be different when the circumstances of the offence was the same.

**Burnside Incident**

[4] Mr. Coaker’s involvement was less direct than that of the others. He can be seen on the surveillance video making his way across the dayroom, where he does something with the videogaming console. He had been in Cell 28 minutes before, when the plan was set out. But when people started moving towards Stephen Anderson’s cell, Matthew Coaker was not an outwardly eager participant. He was not one of the people who entered Mr. Anderson’s cell in which he was assaulted. He remained outside as part of the group blocking access by the correctional officers who came to intervene, but he was even on the periphery of that. He did not assault any of the officers and his actions appear to have been somewhat tentative and largely quiet. His actions are consistent with those of someone who does not know quite what he is supposed to be doing.

[5] Mr. Coaker was part of the group. He is responsible for his actions in taking part in a concerted effort to prevent the correctional officers from intervening to stop the assault of Stephen Anderson. His counsel, Mr. Hughes, aptly described Mr. Coaker’s involvement. “He was simply another brick in the wall.”

## **Personal Circumstances**

[6] Matthew Coaker is 33 years old. He grew up in the area around Hammonds Plains. He maintains a positive relationship with both of his parents and his sister. When interviewed for the pre-sentence report he could not recall any issues of substance abuse or violence in the family home. As he said, both parents were strict and tried to do what was right.

[7] Mr. Coaker said that he was kicked out and expelled from school in Grade 9.

[8] Mr. Coaker started to get in trouble around the time he turned 16 years old. He was kicked out of the home by his parents and went to live at the Phoenix Shelter in Halifax. His behaviour was such that they could not allow him to remain there. He lived on the streets. That led to more trouble. He ended up back with his parents living there on court ordered conditions. He was there until he was convicted on more serious charges in 2012 and was sentenced to a term of federal incarceration.

[9] Around that time his then girlfriend became pregnant. He was not made aware of that until he was in custody. His son is now 8 years old and is being raised by his mother. Mr. Coaker does not have any contact with him though his extended family does.

[10] Mr. Coaker is currently in a relationship that began in 2020.

[11] Mr. Coaker completed his G.E.D. in the community in 2012. He would like to attend university or take some other form of schooling and realizes that he needs further education to be productive. His last places of work have been restaurants. He believes that he may have an employment opportunity with his girlfriend's father when he is released from custody.

## **Criminal Record**

[12] Mr. Coaker has been in trouble with the law since he was a youth. It started when he was 17 years old. He eventually ended up being sent to Waterville to serve a custodial sentence.

[13] From 2005 until 2019 he had 32 criminal convictions. That included 3 firearms offences, 2 drug trafficking offences, an assault, and an assault with a weapon. He has been incarcerated within both the federal and provincial systems. He served 2.5 years for drug trafficking and firearm possession and 6 months for

another firearms offence. It was that 6 months sentence that he was serving on December 2, 2019, when the assault for which he is now being sentenced took place.

### **Sentencing Principles**

[14] Setting a sentence is a notoriously difficult thing to do. It is supposed to be difficult. That is because it involves the application of several principles that act in tension with each other. A simplified system by which everyone who commits the same crime receives the same sentence may be efficient and in one respect fair. And some crimes, like murder, are sentenced that way. But for most offences sentencing judges are required to consider the nature of the offence, the context in which it was committed and the circumstances of the person who committed it, while having regard to several principles of sentencing to achieve a fair and just sentence. Some of those principles may justify or even demand a more restrictive sentence. Others may call for a more lenient one. That can make any sentence appear to be arbitrary.

[15] A serious crime requires a serious sentence. But a serious crime can be committed in different ways. And each person who commits that crime has their own background that has to be taken into account. Matthew Coaker's case is a good example of how those principles pull in different directions.

[16] Courts must consider the potential for rehabilitation. That may suggest a shorter sentence of incarceration. But the crime may be one that requires denunciation and deterrence, which cries out for a substantial punitive jail sentence. Similarly situated offenders should be treated similarly. But no two offenders commit the exact same offence, in the exact same way, with exactly the same personal circumstances. A person may have a long criminal record, but it may be, in part, a function of the condition of that person's mental health. A person may be a member of a racialized group and the history of racism and marginalization of those groups as well as their overrepresentation in jails is a factor. Another person may not be a member of a racialized group but may come from an economically deprived family. Parity in sentencing exists in tension with those considerations.

[17] A person should be sentenced in a way that is proportional to their degree of moral blameworthiness. When denunciation and deterrence become dominant factors in sentencing, augmented by the aspect of the parity principle that people who commit the same crime should generally be sentenced similarly, there is a risk

that a person may receive a sentence that is not proportional to their moral blameworthiness. That should never happen. A fundamental principal is that people should be treated as people and not as objects. No one, no person, should serve as tool to send a message to anyone else if that means that they will receive a sentence beyond what they deserve. Deterrence may be a factor in crafting an appropriate sentence, but it should never descend to the point of making an example of a person.

[18] Courts must keep all those tensions in mind. A list of sentencing factors may make it easier to explain what is being considered but it loses some of the nuance. Each factor exists in tension with all or some of the others and it is not possible to assign a percentage weight to each of them.

[19] This was an organized assault committed within a jail. Courts maintain a responsibility for the wellbeing of those who are incarcerated by virtue of their orders. Stephen Anderson, who had been placed in the facility by a court order was attacked. He was not placed in Burnside, either on remand or as part of a sentence, so that he would be subjected to organized violence. If a society, such as ours, maintains the belief that jails are a necessary part of the justice system, those facilities must be held to standards that reflect society's values.

[20] For assaults within a correctional facility, deterrence and denunciation must be the primary purposes of the sentence. While that may be true of violent crimes in general, the need for deterrence and denunciation is even more clear in the context of an assault within a jail. And it is even more pronounced in the case of an organized assault. And even more obvious in the case of an organized assault in which inmates took control of a part of the facility in open defiance of correctional staff.

[21] There have been other cases that have addressed sentencing in individual assaults within a prison. In *R. v. McNeil*, 2020 ONCA 595, the offender pleaded guilty to assaults committed while in custody. In one assault, the victim was very severely injured. The accused had a prior criminal record. After considering the content of a *Gladue* Report, the Ontario Court of Appeal upheld a sentence of 10 years.

[22] In *R. v. Laverdiere*, 2020 ABCA 290, the inmate had been convicted of taking part in a brutal assault by a group of inmates at a remand centre. The offender was aboriginal and had suffered multiple layers of disadvantage. He also had a long criminal record. A sentence of 5 years was upheld.

[23] In *R. v. Slade*, 2007 NBQB 415, two offenders had been found guilty of aggravated assault. They stabbed the victim while incarcerated at the Atlantic Institution in Renous. There were cuts but no life-threatening injuries. Justice Baird acknowledged the importance of deterrence and denunciation and both offenders were sentenced to terms of 5 years.

[24] In another case from Renous, *R. v. Thompson*, 2017 NBQB 81, the offender had been convicted of shanking another inmate. The victim suffered two small puncture wounds to the back and a cut to his face. The wounds were not severe. Again, Justice Walsh stressed denunciation and deterrence. The offender in that case had a serious criminal record and was sentenced to 3.5 years.

[25] Setting a sentence for an offence of this kind does not involve simply finding cases that are the same in some respects and different in others. The offence of aggravated assault is a broad spectrum one. It covers a broad range of offences, from a relatively minor stab wound, to a case in which the victim is very close to death. It can happen in a broad range of circumstances, from bar fights to premeditated gang beatings. The common thread is denunciation and deterrence.

[26] The conditions in which a person has been held on remand may act as a mitigating factor in sentencing. Particularly harsh conditions may reduce the sentence. That operates like other factors. It does not act as an automatic reduction of sentence and cannot be used to take a sentence below the range of fit and proper sentences.

[27] Courts must keep all those tensions in mind. A list of sentencing factors may make it easier to explain what is being considered but it loses some of the nuance. Each factor exists in tension with all or some of the others and it is not possible to assign a percentage weight to each of them.

## **The Sentence**

[28] In Mr. Coaker's case, as with the others, several principles are held in tension. He was involved in an organized assault within a jail. Deterrence and denunciation are principles that apply. But those principles cannot be allowed to run away with themselves. The sentence must reflect his culpability and what he did. Mathew Coaker's involvement in the aggravated assault on Stephen Anderson is at the low end of those convicted of aggravated assault in this incident.

[29] Mr. Coaker did not rush to the scene or march toward the area where correctional officers were being blocked. He wandered about. He did not seem to know quite what he was supposed to be doing. He eventually got involved but when he did, he was not one of those who were directly confronting the correctional staff.

[30] Mr. Coaker, like many people, presents himself in different ways to different people in different circumstances. While his criminal record does not lead in a straight line to a lengthier sentence of incarceration it is evidence to indicate that he has behavioural issues. He has been involved with serious crimes. He is not a youthful first time offender.

[31] Mr. Coaker is not however a person who has spent time in jail and burned his bridges. He has family and friends who love him. They have remained with him through thick and thin and in many respects are his best hope for recovery and rehabilitation. Upon his release into the community, he will have a chance to restart his life and he appears willing and ready to do that.

[32] Reading the letters of support that were provided for Mathew Coaker one could be left to wonder how it was possible that he came to be here. People know him to be kind and gentle and decent. But within the institution, where kindness, gentleness and decency may not always be seen as valuable, useful, or even acceptable traits, he has acted in another way. He has 47 disciplinary reports and those include assaults and possession of contraband weapons. He has recently pleaded guilty to assault causing bodily harm in relation to another incident within the institution on October 2, 2020. There is another side to Mr. Coaker that his family and friends may not see.

[33] Mr. Hughes argued on behalf of Mr. Coaker that the conditions of his remand justify a reduction in his sentence. Covid-19 resulted in limitations and restrictions being imposed that were not the norm before the pandemic. There have been lockdowns that were caused by staffing shortages relating to the pandemic and Mr. Coaker had few opportunities to access services like the gym and library. He was not able to get the kinds of books he needed, or books at all when he wanted them. He could not get massage therapy when he believed he needed it. There can be little doubt that life on remand is generally difficult and life on remand during Covid was even worse.

[34] Mr. Coaker does not blame the institution. They were facing a pandemic and as Superintendent Adam Smith testified, they followed public health

recommendations. The changed remand conditions were in response to concerns for safety of the public and safety of those within the facilities. The conditions as described were not so egregious as to justify an actual reduction in the sentence that would otherwise be imposed.

[35] Mr. Coaker said that he was unable to get mental health help when he needed it. Dr. Risk Kronfli testified. Those within the correctional system are able to access mental health treatment and support far faster than those in the community. Mr. Coaker was not denied treatment. He may not have been given what he wanted. But he was not denied treatment that was needed.

[36] After the sentencing hearing Mr. Coaker filed a substantial package of documents. They did not come through his lawyer. Mr. Coaker is seeking “enhanced credit” for remand conditions during Covid-19. Those issues were canvassed by his lawyer Mr. Hughes during the sentence hearing.

[37] Others involved in this same incident have been sentenced to periods of incarceration ranging from 4.5 years to 6 years. The principle of parity requires the consideration of the sentences of similarly situated people convicted of similar crimes. That principle is brought into stark focus into this case. Several people did essentially the same thing at the same time. What Mr. Coaker did was different.

[38] Mr. Coaker’s level of moral culpability requires a sentence of 4 years. He has been on remand since he completed the sentence that he was serving when this offence was committed. That was February 11, 2020. He was remanded with respect to this charge since that date until today, the date of sentencing.

[39] Matthew Coaker is sentenced to 4 years. That would be 1,460 days without regard to leap years. He has been in custody on this charge from February 11, 2020 to July 21, 2022, which is a total of 891 days. Credit for remand should be given at one and a half days for each day served, which is a total of 1,336 days. To complete a 4 year term of imprisonment the calculation would be 1,460 days, less remand credit of 1,336, so the go forward sentence is 124 days.

[40] The s. 109 firearms prohibition and DNA order will be signed.