

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Martin*, 2024 NSSC 68

Date: 20240307

Docket: 521225

Registry: Pictou

Between:

His Majesty the King

v.

David Clifford Martin

SENTENCING DECISION

Judge: The Honourable Justice Frank P. Hoskins

Heard: February 26, 2024, in Pictou, Nova Scotia

Written Decision: March 7, 2024

Counsel: J. Patrick Young, for the Crown
Robert Jeffcock, for the Defence

By the Court (Orally):

Introduction

[1] This is the sentencing decision in the matter of *The King v. David Clifford Martin*, who pleaded guilty to the offences of aggravated assault, contrary to s. 268 of the *Criminal Code*, and possession of a weapon for a dangerous purpose, contrary to s. 88 of the *Criminal Code*.

[2] The Crown and Defence have proffered a joint recommendation for 24-months less a day of imprisonment to be served in the community under strict conditions, followed by 12-months probation.

[3] These offences arose from circumstances where Mr. Martin, while in an intoxicated state, became obnoxiously aggressive and foolish, while in public in the downtown of New Glasgow near liquor establishments.

[4] Mr. Martin in a drunken state of bravado and swagger approached Mr. Cooke, the victim. While facing each other, Mr. Martin mumbled aggressive overtures to Mr. Cooke as he was holding a beer in his hand. Immediately after Mr. Martin placed his beer on the ground, Mr. Cooke struck Mr. Martin, and then they fought. During the fight Mr. Martin stabbed Mr. Cooke with a knife. The fight ended when Mr. Cooke threw Mr. Martin to the pavement and kicked him in the head. As Mr. Cook walked away from Mr. Martin, he realized from the presence of blood that he had been stabbed by Mr. Martin. He became faint and collapsed to the ground. Paramedics arrived on scene, and Mr. Cooke was transported to the hospital. Emergency room physicians at the Aberdeen hospital observed that Mr. Cooke had been stabbed in the right, lower quadrant of his abdomen. He underwent surgery to repair his punctured bladder.

[5] What should have been remembered as an evening enjoyment, turned out to be a tragic memory for the victim, whose life has been permanently scarred from the senseless act of violence. The injuries sustained by the victim, Mr. Cooke, were serious, and left an indelible mark on him as described in his victim impact statement.

[6] Though Mr. Martin was in a highly intoxicated state, his actions were clearly excessive, and senseless. For that reason, Mr. Martin will be sentenced to a term of imprisonment in the community followed by a period of probation.

[7] Aggravated assault is a very serious offence as reflected by Parliament's imposition of a maximum period of 14 years imprisonment.

[8] In addressing the issue of what is the appropriate and just disposition for this offence and offender, Mr. Martin, I have carefully considered and reflected on the following:

- (i) The circumstances surrounding the commission of the Offence and the Offender, Mr. Martin
- (ii) The relevant Criminal Code provisions, including ss. 718, 718.1, and 718.2, and 742.1 of the *Criminal Code*;
- (iii) The Victim Impact Statement.
- (iv) The submissions of Counsel; and
- (v) The Pre-Sentence Report dated September 18th, 2023, and character reference letters.

Circumstances Surrounding the Offences

[9] The circumstances surrounding the commission of this offences are not in dispute, nor are the tragic consequences of it. Indeed, the Crown and Defence submitted an agreed statement of facts and tendered it as Exhibit 1, which, in part, states:

1. On Sunday, March 13, 2022, the New Glasgow Regional Police Service ("N.G.R.P.S.") received a call at 12:07 a.m. of a male walking around 84 Provost Street, New Glasgow, Nova Scotia holding a knife in his hand. The male was described as dressed in dark clothing, in his 50s, and visibly agitated. The police received several complaints that night of a man in possession of or waving a knife in the downtown of New Glasgow.
2. At 12:17 a.m., the N.G.R.P.S. received a call from Glen MacIntosh. His father owns Century Saw and Marine, which is a hardware and small

engine repair shop located at 271 Glasgow Street, New Glasgow. He reported that there were two males behind his building.

3. Cpl. Jason Lloyd made a patrol of the area and observed two males at the New Glasgow Farmer's Market building—one of whom was lying on the ground. One of the men identified himself as Jesse Vachon. Mr. Vachon advised him that the male lying on the ground was Kyle Cooke, and that he had been stabbed.
4. Cst. Kelsey Grant arrived at the scene. She spoke with Mr. Derrick Pierre. He is the manager of The Commune bar, which is at 84 Provost Street in New Glasgow. Mr. Pierre told the constable that he called 911, because he observed a man walking around outside apparently talking on a cell phone, while holding a knife. Mr. Pierre believed that the man was under the influence of alcohol.
5. Cst. Grant finished speaking with Mr. Pierre, and then proceeded to speak with Georgie Dudka. He told how he observed a man leaning on the street sign next to the doorway of the Commune, while he was holding a knife. Mr. Dudka said that the man then walked down to "The Spot," which is another bar in downtown New Glasgow. He returned to the same location while holding onto a knife.
6. Rebecca McKay is another witness. She told police that she was at The Spot. She was having "a few drinks." She was confronted by a male holding a knife as she was leaving. He was hollering to himself as he walked around.
7. The police collected security video recordings from the Town of New Glasgow, and other businesses in downtown New Glasgow.
8. The victim and his younger brother had visited some of New Glasgow's drinking establishments with Jesse Vachon and Rebecca McKay. At approximately 11:52 p.m., after becoming separated from Ms. McKay and Mr. Vachon, they were outside on Provost Street. The victim was having a cigarette. They observed the Accused "hooting and hollering" to himself as he stumbled towards them. They watched him carefully.
9. The Accused stopped in front of them, and said he was a "Trenton original," he had been away for the past 64 years, "he was back now, and nobody was going to fuck with me." He was holding a Keith's beer can in each hand.
10. The victim said he was also a Trenton original, which appeared to trigger the Accused. He stepped towards the victim and got in his face. The Accused was irritated, and mumbling. He was holding a beer. He placed

it on the ground, and the victim appears to take a swing at him. He produced a knife. Rebecca McKay (who did not witness the assault but saw the Accused holding it later that evening) described it as a “switchblade.” It was in fact a foldable knife that the Accused purchased at Canadian Tire. The victim described it as 7 cm long, and 1.5 cm wide.

11. The victim pushed the Accused, which is what precipitated the altercation. The victim punched the Accused several times, and they held onto each other as they struggled for supremacy. The Accused stabbed the victim during the course of this altercation, which did not become apparent to the victim until later. The victim threw the Accused on the pavement. The victim kicked the Accused in the head before he and his brother immediately quit the scene.
12. As the brothers walked, the victim began to feel weak. He fell to the ground near the Farmer’s Market in New Glasgow (behind the Century Saw and Marine). It was then that he saw that he was drenched in blood, and that he had been stabbed. After collapsing the victim was examined by paramedics. They transported him to hospital.
13. Emergency room physicians at the Aberdeen hospital observed that the victim had been stabbed in the right, lower quadrant of his abdomen. He suffered injuries to his subcutaneous tissues, rectus abdominal muscle, and his bladder. He underwent surgery to repair his punctured bladder. Those injuries were caused by the Accused’s stabbing the victim.
14. Cpl. Kyle Watters of the N.G.R.P.S. arrested the Accused at 12:14 a.m. outside the Acropole Pizza at 80 Provost Street, New Glasgow. He observed the Accused to be highly intoxicated by alcohol. The Accused complained of an injury to his head.
15. The Accused told police in a voluntary, *Charter*-compliant statement that he used to be a “scrapper,” that evening was the first time he drank in two months, and when he has too much to drink, he sometimes “forgets how old he is.” He told D./Sgt. MacKinnon on several occasions that he does not remember what he did. At one point the detective left the room, and the Accused said to himself: “I’m not going to jail; I stabbed a guy. Fuck, what the fuck happened?”

The Personal Circumstances Surrounding Mr. Martin

[10] The Court has the benefit of a Pre-sentence Report (the “PSR”) prepared by Angela Coady, a Probation Officer on September 18th, 2023.

[11] Mr. Martin's PSR outlines his personal circumstances. He was born on December 26, 1957. He grew up in New Glasgow, Nova Scotia.

[12] Mr. Martin informed the author of the PSR that while growing up his parents had a volatile relationship, as his father was very abusive to his mother. He disclosed that his parents owned their home, noting they always had food and a roof over their heads. Mr. Martin recalled his father was a hard worker and provided for his family; however, he was an alcoholic, which fueled his violence towards his wife and children.

[13] Mr. Martin advised the author of the PSR that during his formative years he was a quiet child. He and his siblings had to "tip toe" around, due to the abuse at the hands of their father. He stated that his home was "always in chaos." He reported having stomach pain every day until his father moved away from the family home.

[14] The PSR discloses that Mr. Martin's father was an abusive alcoholic who assaulted him as a form of punishment and discipline. Mr. Martin reported that at age 13, he was the victim of sexual violence. In addition of being a victim of physical and sexual violence, Mr. Martin has suffered significant losses in his life. In 2005 his closest brother was tragically killed in a workplace accident and in 2000 his youngest brother died by suicide. Mr. Martin also tragically lost a son in infancy. Mr. Martin has only very recently been able to discuss these events through therapeutic intervention.

[15] Mr. Martin reported to the author that he has a grade 8 education. He described himself as a good student, was very quiet, and avoided the other students. He reported being bullied, as well as beaten up, while attending school.

[16] Mr. Martin informed the author that he has a certificate for "Substance Use Counselling" and tried to work in that field; however, there were not a lot of opportunities for him.

[17] Mr. Martin reported that he started working at the age of 16 for the "Trenton Union Building" as a cleaner. Following that, he moved to Alberta at the age of 19, where he did various jobs to get by. Mr. Martin advised he worked in Albert for 8 years and then moved to Westminster, British Columbia, where he worked for 24.5 years at Box Maker.

[18] Mr. Martin informed the author that he had been married for 11.5 years while living in Alberta. He advised he has one biological daughter from that relationship.

He does not have any contact with his daughter. Mr. Martin reported that he was most recently married to Duc Martin, noting this relationship lasted for 18.5 years. He recalled meeting his wife through her cousin, as she had been living in Vietnam at the time. Mr. Martin advised he and Duc kept in contact through letter writing and, after a year, he went to Vietnam to meet her and her family. They became engaged on this trip and, within 6 months, Duc and her two small daughters, ages 7 and 9, moved to British Columbia to live with him. Mr. Martin described their relationship as “wonderful”. The relationship ended about 2.5 years ago because he lost his job and started drinking daily. He commented that he and Duc continue to have a good relationship.

[19] The author of the report contacted Mr. Martin’s sister, Patsy Martel, for the purpose of preparing the PSR. She stated she is aware of her brother's charges and feels that her brother was doing well and had "one bad night". She informed the author of the report that she took on the motherly role of her siblings when her parents passed, and she helps David with his day-to-day activities. Ms. Martell reported that she feels alcohol is an issue for her brother and she has tried to get him help. Ms. Martell informed the author that she keeps David's bank card and credit card on her, to help him with his finances and to keep him from drinking. Ms. Martell noted that David has a wonderful relationship with his neighbours and has a supportive family, particularly with his two daughters.

[20] He is currently in receipt of the Old Age Security (OAS) and the Canada Pension (CPP). He informed the author of the report that would like to work, however, has too many health issues to be able to do so. He also stated that he owns his home. He purchased it when he moved to Nova Scotia.

[21] Mr. Martin described his overall health as "failing". He says that he has been diagnosed with arthritis throughout his body, carpal tunnel syndrome and tendonitis in his wrists. He informed the author of the report that he has a prior spinal cord injury that did not heal properly which causes him pain and has a heart condition which requires him to take aspirin daily. Mr. Martin also reported that he has struggled with his mental health issues for a long time. He stated that he has been diagnosed with obsessive compulsive disorder (OCD), which causes him to become frustrated quickly and has been treated with anxiety medications in the past. He advised he has a mood disorder which causes him to go from laughing and in a great mood to crying within minutes.

[22] The author of the report noted that Mr. Martin was interviewed at the office of New Glasgow Correctional Services on August 29, 2023, for the purposes of

preparing the report. At the time of the interview, he was polite, cooperative, and appeared to answer the questions in a truthful manner. The author commented that Mr. Martin struggled to talk about some of his childhood and informed the author that the interview was triggering some very emotional memories for him.

[23] In her concluding comments, the author of the report noted that Mr. Martin realizes that he is struggling with alcohol abuse and has completed a detox program in Springhill, Nova Scotia. She noted that Mr. Martin maintains he has been sober since being placed on an undertaking and has attended AA meetings as well as addictions counselling in Springhill, Nova Scotia.

[24] In the Defence's sentencing brief, Mr. Jeffcock emphasized the following:

- Mr. Martin reports that for the last 13 years he has struggled with alcohol. At the peak of his abusing alcohol, he was consuming approximately 15 beers and a "quart of whiskey" every day. In December 2020, Mr. Martin self-referred and completed the "detox" program in Springhill, Nova Scotia.
- In October 2021, Mr. Martin attended the Westville Police Station to report that there were unknown and unwanted individuals in his house. Upon investigation and medical intervention, it was determined that this report was made on beliefs caused by the onset of alcohol induced hallucinations. Following this episode Mr. Martin began counselling through the Nova Scotia Health Authority's Mental Health and Addiction program.
- On October 4th, 2021, the day after experiencing these hallucinations Mr. Martin began counselling with Meghan Breen, MSW, RSW, "Crisis Response Clinician".
- He attended sessions with Ms. Breen on October 13, 2021; October 21st, 2021; December 1, 2021; December 10, 2021; December 15, 2021; January 5, 2022; January 12, 2022. These sessions were stopped at the request of Mr. Martin.
- After ending his sessions with Ms. Breen, Mr. Martin remained sober for approximately 2.5 months, until March 12th, 2022, the night in question.
- As noted in the agreed statement of facts, Mr. Martin was described by eyewitnesses as being heavily intoxicated. In his statement to police, he indicated that he had no memory of the incident and was shocked and confused to learn that he had "stabbed" someone. When asked about the

incident in his pre-sentence report he stated that "he had no idea what he had done until he read the police report".

- Mr. Martin was arrested in the early hours on March 13th, 2022. He was released from custody on a release order with financial obligation and a surety on March 16th, 2022. On May 4th, 2022, Mr. Martin sought out the services of Ms. Breen once again. These sessions resumed on May 11, 2022, and Mr. Martin has attended sessions with Ms. Breen on: May 25, 2022; June 24, 2022; July 13, 2022; July 20, 2022; July 28, 2022; August 4, 2022; August 11, 2022; August 25, 2022; September 2, 2022; September 8, 2022; September 22, 2022; October 14, 2022; October 18, 2022, October 20, 2022; November 3, 2022; November 9, 2022; November 23, 2022.
- In an email to counsel dated November 22, 2022, Ms. Breen wrote:

"I would be happy to provide a report on David's progress, I have nothing but positive things to say about him as a client and he has been very engaged, never misses appts, etc. so I feel this could be helpful to him. I can certainly do this before I go off on leave".
- Ms. Breen went off on maternity leave in early December 2022, before being able to provide a detailed report of Mr. Martin's progress. Due to Ms. Breen's maternity leave, there was a gap in Mr. Martin's counselling. During this time Mr. Martin attended Alcoholic Anonymous. In 2023 he was assigned a new counsellor, Tammy Stone, through mental health and addictions who he has been seeing approximately once a month since becoming her client.
- Mr. Martin has been able to maintain his sobriety since the night in question.
- Mr. Martin does have a criminal record having committed the offence of "production of a controlled substance" contrary to section 7(1) of the *Controlled Drug and Substances Act* on June 16, 2005, for which he received a conditional sentence order. This would be Mr. Martin's only conviction and he has never been discharged for an offence and of importance has no incidents involving violence.
- The totality of the evidence and the circumstances of the offence would suggest that this was an isolated incident inconsistent with the character of Mr. Martin.
- At the time of the offence, Mr. Martin was grossly intoxicated under the influence of alcohol, an issue that Mr. Martin has struggled with for more than a decade. Mr. Martin has pled guilty at an early opportunity and

waived his right to a preliminary inquiry. By doing so he has saved judicial resources, prevented the victim and other eyewitnesses from having to testify in court, and by pleading guilty has accepted responsibilities for his actions.

- Mr. Martin is remorseful for his actions and has, on his own, sought treatment to address his abusing of alcohol, and to address the underlying trauma that has contributed to a reliance on alcohol.

[25] Section 718. 2(a) of the *Criminal Code* requires the Court to consider the Aggravating and Mitigating Factors Surrounding the Circumstances of the Offence and Mr. Martin.

The Aggravating Circumstances Surrounding the Offences

[26] There are several aggravating factors surrounding the commission of these offences, including the following:

- Mr. Martin committed a violent offence, which caused serious physical and psychological harm to the victim;
- The use of the knife is an extremely aggravating factor;
- Mr. Martin's instinct to use the knife is also an aggravating factor;
- Mr. Martin was in possession of a knife for a dangerous purpose, which is an inherently dangerous weapon;
- Mr. Martin the use of a weapon, a knife, indicates a disregard for the safety of the public; and
- The serious nature of the injuries sustained by Mr. Cooke, as described in the Victim Impact Statement is also extremely aggravating.

The Mitigating Factors Surrounding the Offences and Offender

[27] There are several mitigating factors surrounding the offences and offender, Mr. Martin, which include the following:

- Mr. Martin has pleaded guilty to the offences, which prevented the expenditure of considerable court cost and the necessity of witnesses testifying, including the victim;

- He has accepted responsibility for the offence, and expressed remorse;
- His pre-sentence report was positive, coupled with supporting character letters, that suggest that this offence was out of character for Mr. Martin; and
- Mr. Martin was subject to bail conditions, for an extended period of time;

[28] Further, in my view, a *spontaneous* violent assault must be distinguished from a planned violent act, as the latter would be an extremely aggravating factor.

[29] In the present case, the assault was a momentary act of violence, which was not planned, but still egregious because it involved the use of a weapon and was an act of violence against an unsuspecting person in public who has a right to feel safe while in public place.

Positions of the Parties

[30] As stated, the Crown and Defence have proffered a joint recommendation for a 24-month Conditional Sentence, less one day, followed by a 12-month period of probation with stringent conditions.

Purpose and Principles of Sentencing

[31] The Supreme Court of Canada has enunciated the correct approach to sentencing in *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, and Parliament has enacted legislation which specifically sets out the purpose and principles of sentencing. Thus, it is to these sources, and the common law jurisprudence that courts must turn in determining the proper sentence to impose. Generally, it is recognized that a fit sentence is the product of the combined effects of the circumstances of the specific offence with the unique attributes of the specific offender. As stated in *R. v. Nasogaluak*, [2010] 1 S.C.R. 206:

43 The language in ss. 718 to 718.2 of the *Code* is sufficiently general to ensure that sentencing judges enjoy a broad discretion to craft a sentence that is tailored to the nature of the offence and the circumstances of the offender. The determination of a "fit" sentence is, subject to some specific statutory rules, an individualized process that requires the judge to weigh the objectives of sentencing in a manner that best reflects the circumstances of the case (*R. v. Lyons*, [1987] 2 S.C.R. 309; *M. (C.A.)*; *R. v. Hamilton* (2004), 72 O.R. (3d) 1 (C.A.)). No one sentencing objective trumps the others and it falls to the sentencing judge to determine which objective or objectives merit the greatest weight, given the

particulars of the case. The relative importance [page233] of any mitigating or aggravating factors will then push the sentence up or down the scale of appropriate sentences for similar offences. The judge's discretion to decide on the particular blend of sentencing goals and the relevant aggravating or mitigating factors ensures that each case is decided on its facts, subject to the overarching guidelines and principles in the *Code* and in the case law.

[32] Although the sentencing process is highly contextual and necessarily an individualized process, the judge must also consider the nature of the offence. As noted in *M. (C.A.)*, sentencing requires an individualized focus, not only of the offender, but also of the victim and community as well.

[33] As stated, sentencing is governed by the specific purpose and general principles of sentencing provided for in the *Criminal Code* under s. 718. In addition to complying with these principles of sentencing, dispositions or sentences must promote one or more of the six objectives identified in s. 718, (a) to (f), inclusive.

[34] The purpose of sentencing is achieved by blending the various objectives identified in s. 718(a) to (f). The proper blending of those objectives depends upon the nature of the offence and the circumstances of the offender. Thus, the judge is often faced with the difficult challenge of determining which objective, or combined deserves priority. Indeed, s. 718.1 directs that the sentence imposed must fit the offence and offender. Section 718.1 is the codification of the fundamental principle of sentencing which is the principle of proportionality. This principle is deeply rooted in notions of fairness and justice.

[35] In considering whether the proposed joint recommendation is appropriate, I have considered the fundamental purpose of sentencing as clearly and succinctly expressed in s. 718 of the *Criminal Code*, which stipulates that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or offender. I am also mindful of the principle of restraint which underlies the provisions of s. 718 of the *Criminal Code*.

[36] It is trite law that the purpose of sentencing is to impose “just sanctions”. A “just sanction” is one that is deserved. A fit sentence in that context is one that is commensurate with the gravity of the offence and the moral blameworthiness of the offender. Proportionality requires an examination of the specific circumstances of both the offender and the offence so that the punishment fits the crime. Disparity in sentencing for similar offences is a natural consequence of that fact. (*R. v. Proulx*, [2000] 1 S.C.R. 61, at para. 82).

[37] In *R. v. Priest*, (1996), 110 C.C.C. (3d) 289, at p. 298, the Ontario Court of Appeal expressed the view that proportionality ensures that an individual is not sacrificed “for sake of the common good”.

[38] What is an appropriate or reasonable disposition will depend on circumstances of the case in the context of all relevant considerations, which includes not only the personal circumstances of the offender and the degree of responsibility of the offender for the offence, but also the gravity of the offence itself.

[39] As succinctly expressed in *R. v. Parranto*, 2021 SCC 46, at para. 10, the goal in every case is to impose a fair, fit and principled sanction. Proportionality is the organizing principle in reaching this goal. Unlike other principles of sentencing set out in the *Criminal Code*, proportionality stands alone following the heading “Fundamental principle ” (s. 718.1).

[40] In *R. v. Friesen*, [2020] 1. S.C.R. 424, the Supreme Court of Canada stated, at para. 30:

[a]ll sentencing starts with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[41] The principles of parity and individualization, while important, are secondary principles.

[42] Section 718.2(d) provides that an offender should not be deprived of liberty if a less restrictive sanction may be appropriate. It requires a sentencing judge to consider all available sanctions other than imprisonment that are reasonable in the circumstances. These provisions exist to discourage imprisonment when another less onerous sanction will also satisfy the relevant sentencing principles. Restraint means that prison is the sanction of last resort. Restraint also means that sentencing courts should seek the least intrusive sentence and the least quantum that will achieve the overall purpose of being an appropriate and just disposition.

[43] As explained in *Friesen* despite what would appear to be an inherent tension among these sentencing principles, *parity* and *proportionality* are not at odds with each other. To impose the same sentence on unlike cases furthers neither principle, while consistent application of proportionality will result in parity. This is because parity, as an expression of proportionality, will assist courts in fixing on a

proportionate sentence. Courts cannot arrive at a proportionate sentence based solely on first principles but rather must “calibrate the demands of proportionality by reference to the sentences imposed in other cases”.

[44] As to the relationship of individualization to proportionality and parity, the Supreme Court in *R. v. Lacasse*, [2015] 3 S.C.R. 1089 aptly observed:

53 Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances.

[45] The Supreme Court stressed that individualization is central to the proportionality assessment. Whereas the gravity of a particular offence may be relatively constant, each offence is "committed in unique circumstances by an offender with a unique profile" This is why proportionality sometimes demands a sentence that has never been imposed in the past for a similar offence. The question is always whether the sentence reflects the gravity of the offence, the offender's degree of responsibility, and the unique circumstances of each case.

[46] Accordingly, in accordance with s. 726.2 of the *Code*, what follows are my reasons for accepting the joint recommendation proffered by counsel for this offender and for these offences. In doing so, I am mindful of the decision in *R. v. Marsman*, 2007 NSCA 65, wherein MacDonald C.J.N.S., in delivering the judgement of the Nova Scotia Court of Appeal:

17 In Canada, assault charges are organized along a continuum depending upon the severity of the attack. They range from the least serious *common* assault to the ultimate “assault” - murder. Short of culpable homicide, aggravated assault represents the most serious indictment. It involves either wounding, maiming, disfiguring or the endangerment of life and carries a potential punishment of fourteen years...

[47] Chief Justice MacDonald quoted with approval the comments of Cameron, J.A., in *R. v. D.S.K.*, [2005] S.J. No. 97, writing for the Saskatchewan Court of Appeal, who placed the seriousness of aggravated assault into context, in these terms:

¶ 22 Judges are required, of course, to sentence offenders in accordance with the purpose, objectives and principles of sentencing found in ss.718, 718.1 and 718.2 of the *Criminal Code*. This includes the fundamental principle that “a sentence

must be proportionate to the gravity of the offence and the degree of responsibility of the offender”.

¶ 23 The gravity of an offence lies in the nature and comparative seriousness of the offence, in the circumstances of its commission, and in the harm caused.

¶ 24 Aggravated assault consists of wounding, maiming, disfiguring, or endangering the life of another person, according to s. 268(1) of the *Code*, and constitutes an indictable offence. That is the nature of the offence. Some indication of the comparative seriousness of the offence is apparent on the face of the provisions of the *Criminal Code* regarding various forms of assault. In the scheme of these provisions, assault is an offence against the person, and it ranges through common assault, assault causing bodily harm, sexual assault, aggravated assault, sexual assault with a weapon, and so on.

¶ 25 The first, second, and third of these are either indictable or summary conviction offences, which are potentially punishable in their indictable version by imprisonment of up to five years in the case of the first, and up to ten years in the case of the second and third. The fourth, aggravated assault, is an indictable offence, potentially punishable by imprisonment of up to fourteen years. So is sexual assault with a weapon other than a firearm. In this lies Parliament’s general view of the comparative seriousness of aggravated assault.

[48] In Nova Scotia, as in other jurisdictions, the range of sentences imposed for the offence of aggravated assault varies considerably. It extends from the suspension of the passing of a sentence to several years of incarceration (See: *R. v. Melvin* 2015 NSSC 165).

[49] It should also be noted that ranges, however, are not set with firmness nor is the analysis of previous cases and a comparison with those cases the sole measure of the appropriate range. It is possible that the ranges should change to wider or narrower, and in accordance with social circumstances. So, one cannot, in my view, be certain about the range merely from an examination of prior cases.

[50] As stated by the Nova Scotia Court of Appeal, in *R. v. A.N.*, [2011] N.S.J. No. 87:

34 Unless expressed in the Code, there is no universal range with fixed boundaries for all instances of an offence: *R. v. M.(C.A.)*, para. 92; *R. v. McDonnell*, para. 16; *R. v. L.M.*, para. 36. The range moves sympathetically with the circumstances and is proportionate to the *Code's* sentencing principles that include fundamentally the offence's gravity and the offender's culpability.... Once the sentence occupies the range, is fit and is not clearly unreasonable, ...

[51] In *Nasogaluak*, the Supreme Court of Canada held:

44 The wide discretion granted to sentencing judges has limits. It is fettered in part by the case law that has set down, in some circumstances, general ranges of sentences for particular offences, to encourage greater consistency between sentencing decisions in accordance with the principle of parity enshrined in the *Code*. But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.

[52] It is worthy of note that in considering the parity principle, s. 718.2(b) of the *Criminal Code*, I am mindful of what the Supreme Court of Canada stated in *M. (C.A.)*, at para. 92:

It has been repeatedly stated that there is no such thing as a uniform sentence for a particular crime. ... Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic exercise.

[53] In light of these comments, I have reviewed the cases submitted by Counsel, which included the following cases: *R. v. Proulx*, 2000 SCC 5; *R. v. Fice*, [2005] 1 S.C.R. 742; *R. v. Marsman*, 2007 NSCA 65; *R. v. Wournell*, 2023 NSCA 53; *R. v. Melvin*, 2015 NSSC 165; *R. v. Ashley*, [2008] N.S.J. No. 82; *R. v. Kagan*, [2008] N.S.J. No. 26; *R. v. Tourville*, 2011 ONSC 1677; *R. v. Gajraj*, 2013 ONSC 1401; *R. v. Charles*, 2011 ONSC 3034.

Joint Recommendations

[54] While the sentencing process is governed by the clearly defined objectives and principles in Part 23 of the *Criminal Code*, it remains a discretionary exercise for sentencing courts in balancing all relevant factors to meet the basic objectives of sentencing, including consideration whether a “joint recommendation” would be contrary to the public interest or bring the administration of justice into disrepute. The proffering of a “joint recommendation” by the Parties does not invoke a perfunctory task for the judge, but rather it requires the proper exercise of judicial discretion. In other words, it is not a “rubber stamping exercise”.

[55] In the present case, a *joint recommendation* is being proffered by Counsel, each representing their respective interests, the Crown, the public interest, and defence counsel, the accused's interest. They submit that their joint recommendation arose after extensive negotiations.

[56] In the present case, a conditional sentence is an option that is not precluded by any of relevant statutory provisions.

[57] Section 742.1 of the *Criminal Code* lists four criteria that a court must consider before deciding to impose a conditional sentence:

- (1) the offender must be convicted of an offence that is not punishable by a minimum term of imprisonment;
- (2) the court must impose a term of imprisonment of less than two years;
- (3) the safety of the community would not be endangered by the offender serving the sentence in the community; and
- (4) a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[58] The requirement in s. 742.1(b) that the judge be satisfied that the safety of the community would not be endangered by the offender serving his or her sentence in the community is a condition precedent to the imposition of a conditional sentence, and *not* the primary consideration in determining whether a conditional sentence is appropriate.

[59] In making this determination, I must consider the risk posed by Mr. Martin, not the broader risk of whether the imposition of a conditional sentence would endanger the safety of the community by providing insufficient general deterrence or undermining general respect for the law.

[60] Two factors should be considered:

- (1) the risk of the Mr. Martin re-offending; and
- (2) the gravity of the damage that could ensue in the event of re-offence.

[61] A consideration of the risk posed by Mr. Martin should include the risk of any criminal activity, and not be limited solely to the risk of physical or psychological harm to individuals.

[62] Once the prerequisites of s. 742.1 are satisfied, I must give serious consideration to the possibility of a conditional sentence in all cases by examining whether a conditional sentence is consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[63] In *Proulx*, [2001] 1 S.C.R. 61, the Supreme Court of Canada recognized that a conditional sentence can provide significant denunciation and deterrence.

[64] As a general matter, the more serious the offence, the longer and more onerous the conditional sentence should be.

[65] In this case, counsel for Mr. Martin addressed the appropriateness of a conditional sentence in their written submissions:

It is submitted that a 24-month less a day term of imprisonment followed by 12- months probation is well within the acceptable range of sentences for such an offence. It is further submitted that serving this sentence in the community would not endanger the safety of the community. In *Wournel*, [Tab 3], our Court of Appeal noted that the "endangerment of the community" factor must be assessed according to: (1) the risk of re-offence; and (2) the gravity of the danger should re-offending re-occur.

Mr. Martin presents as having little-to-no risk of reoffending. As mentioned above, he is currently 66 years of age and has not previously been charged with a violent offence. The incident that he is being sentence for is inconsistent with his character, and is connected heavily, if not entirely to him relapsing with alcohol. Since the offence, Mr. Martin has taken steps to re-connect with addiction services, and has been maintaining counselling to minimize the likelihood of a relapse. Allowing Mr. Martin to serve his sentence in the community would allow him to continue his counselling with Ms. Stone, an individual with whom he has now built a rapport. Requiring Mr. Martin to serve his sentence in a Correctional Facility would disrupt his progress to date and would result in Mr. Martin receiving less programming than he otherwise would within the community.

[66] The Supreme Court of Canada in *R. v. Anthony-Cook*, [2016] S.C.J. No. 43, at para. 5, emphasized that while the obligation of arriving at the appropriate sentence is the Court's, which has a right to reject a joint recommendation by

counsel, a joint recommendation should *not* be rejected *unless* it would be contrary to the public interest or bring the administration of justice into disrepute. However, the interest of justice is well served by the acceptance of a joint submission on sentence accompanied by a negotiated plea of guilty – provided of course, that the sentence is within the acceptable range and the plea is warranted by the facts admitted.

[67] Having considered all of the circumstances surrounding the offences and offender, Mr. Martin, and weighing and balancing the purpose and principles of sentencing, I am satisfied that the joint recommendation being proffered in this case is within the acceptable range, and that and the pleas are warranted by the facts admitted.

Disposition

[68] I endorse the joint recommendation. Accordingly, the court sentences Mr. Martin to a term of imprisonment of 24-months, less one day, of imprisonment to be served in the community under strict conditions, followed by 12-months probation. In endorsing this joint recommendation, I am satisfied that Mr. Martin serving the sentence in the community will not endanger its safety and is consistent with the fundamental purpose and principles of sentencing.

[69] Mr. Martin shall serve this sentence in the community under the following conditions:

- (a) Keep the peace and be of good behaviour;
- (b) Appear before the Court when required to do so by the Court;
- (c) Report to a supervisor at 161 Terra Cotta Drive on or before February 28th, 2024, and as required an in the manner directed by the supervisor or someone acting in his/her stead;
- (d) Remain within the Province of Nova Scotia unless written permission to go outside the province is obtained from the Court or the supervisor;
- (e) Notify promptly the Court or the supervisor in advance of any change of name or address, and promptly notify the Court or the supervisor of any change of employment or occupation;
- (f) Reside at 2113 Spring Garden Road, Westville, Nova Scotia;

- (g) Not possess, take or consume alcohol or other intoxicating substances;
- (h) Not to possess, take or consume a controlled substance as defined in the *Controlled Drugs and Substances Act* except in accordance with a physician's prescription for you or a legal authorization;
- (i) Not to possess any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance;
- (j) Attend for mental health assessment and counselling as directed by your supervisor;
- (k) Attend for substance abuse assessment and counselling as directed by your supervisor;
- (l) Attend for assessment and counselling in anger management as directed by your supervisor;
- (m) Attend for assessment and counselling or a program as directed by your supervisor;
- (n) Participate in and co-operate with any assessment, counselling or program directed by your supervisor;
- (o) Have no direct or indirect contact or communication with Patrick Kyle Cook, except:
 - a. Through a lawyer
- (p) Do not be on or within 100 metres of the premises known as Patrick Kyle Cook;
- (q) To remain in your residence at all times beginning at 6:00 p.m. on February 26, 2024, and ending at 11:59 p.m. on February 23, 2025 (except as indicated below)
 - a. When dealing with a medical emergency or a medical appointment involving you or a member of your household and travelling to and from it by a direct route;
 - b. When attending a scheduled appointment with your lawyer, your supervisor or a probation officer, and travelling to and from the appointment by a direct route;

- c. When attending court at a scheduled appearance or under subpoena, and travelling to and from court by a direct route;
 - d. When attending a counselling appointment, a treatment program or a meeting of Alcoholics Anonymous or Narcotics Anonymous, at the direction of or with the permission of your supervisor, and travelling to and from that appointment, program or meeting, by a direct route;
 - e. When in a residential treatment program if your supervisor is told, in advance, where you will be and you agree that the facility can tell your supervisor if you are there, should your supervisor inquire;
 - f. For not more than four (4) hours per week, approved in advance by your sentence supervisor, for the purpose of attending to personal needs;
 - g. Any other reason approved of, in writing, in advance by your sentence supervisor;
 - h. When dealing with a medical emergency or medical appointment for Patsy Martell, and travelling to and from the appointment by a direct route;
- (r) Remain in your residence from 10:00 p.m. until 6:00 a.m. the following day, seven days a week beginning on February 24, 2025, and ending at 6:00 a.m. on February 23, 2026 (except as indicated below).
- a. When dealing with a medical emergency or a medical appointment involving you or a member of your household and travelling to and from it by a direct route;
 - b. When attending a scheduled appointment with your lawyer, your supervisor or a probation officer, and travelling to and from the appointment by a direct route;
 - c. When attending court at a scheduled appearance or under subpoena, and travelling to and from court by a direct route;
 - d. When attending a counselling appointment, a treatment program or a meeting of Alcoholics Anonymous or Narcotics Anonymous, at the direction of or with the permission of your supervisor, and travelling to and from that appointment, program or meeting, by a direct route;
 - e. When in a residential treatment program if your supervisor is told, in advance, where you will be and you agree that the facility can tell your supervisor if you are there, should your supervisor inquire;
 - f. For not more than four (4) hours per week, approved in advance by your sentence supervisor, for the purpose of attending to personal needs;

- g. Any other reason approved of, in writing, in advance by your sentence supervisor;
 - h. When dealing with a medical emergency or medical appointment for Patsy Martell, and travelling to and from the appointment by a direct route;
- (s) Prove compliance with the curfew/house arrest condition by presenting yourself at the entrance of your residence should your supervisor and/or a peace officer attend there to check compliance.

[70] Mr. Martin's Conditional Sentence Order shall be followed by 12 months probation under the following conditions:

- (a) Keep the peace and be of good behaviour.
- (b) Appear before the Court when required to do so by the Court.
- (c) Notify the Court or the Probation Officer in advance of any changes of name or address, and promptly notify the Court or the Probation Officer of any changes of employment or occupation.
- (d) Report to a Probation Officer at 161 Terra Cotta Drive, New Glasgow, Nova Scotia within two (2) days from the date of the expiration of your sentence of imprisonment and thereafter as directed by your Probation Officer.
- (e) Have no direct or indirect contact or communication, or be in the company of Kyle Cook.
- (f) Do not be within 100 metres of the residence of Kyle Cook.
- (g) Do not possess any weapon as defined by section 2 of the *Criminal Code*.
- (h) Do not possess any firearm or ammunition.
- (i) Do not possess, use or consume any alcoholic beverage.
- (j) Attend for, co-operate with, and participate in any assessment, counselling or program as directed by your Probation Officer, specifically in relation to:
 - (A) Anger Management;
 - (B) Substance Abuse;
 - (C) Mental Health.

Ancillary Orders

[71] Counsel agree that the following ancillary orders are appropriate. Therefore, I impose the following orders:

- (a) A DNA Order;
- (b) A Firearm Prohibition for 10 years; and
- (c) The Victim Fine Surcharge.

Hoskins, J.