IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *R. v. Leonard*, 2023 NLSC 137
Date: October 19, 2023
Docket: 201801G2086

HIS MAJESTY THE KING

v.

VINCENT ALOYSIUS LEONARD
WAYNE JOHNSON
JAMES CURRAN

Docket: 201801G1200

HIS MAJESTY THE KING

v.

JAMES CURRAN

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Before: Justice Daniel M. Boone
Edited Transcript of Oral Reasons for Judgment

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: September 22, 2023

Date of Oral Judgment: October 19, 2023

Summary:

After trial, three offenders were convicted of drug offences, two of them were convicted of criminal organization offences.

- Two were sentenced to 3.5 years, and the other to 4 years on each of two counts, for mid-level cocaine trafficking.

- One offender was also sentenced to 4 years for conspiracy to traffic, and 2 years for trafficking, in oxycodone and 6 months for trafficking in cannabis resin.

- Another offender was sentenced to 3.5 years for trafficking in fentanyl.

- All three were sentenced to 1 year for possession of the proceeds of crime.

- Two of the offenders were sentenced for criminal organization offences: one to 18 months for s. 467.11 and 9 months for s. 467.12; the other to 12 months for s. 467.11.

After application of the *Hutchings* principles, the total sentences were 5.5 years, 5 years and 3.5 years.

Appearances:

Elaine M. Reid and Trevor N. Bridger	Appearing on behalf of the Crown
Jason A. Edwards	Appearing on behalf of Mr. Leonard
Mark J. Gruchy	Appearing on behalf of Mr. Johnson
Candace G. Summers	Appearing on behalf of Mr. Curran

Authorities Cited:

CASES CONSIDERED: *R. v. Leonard*, 2023 NLSC 70; *R. v. Nasogaluak*, 2010 SCC 6; *R. v. Parranto*, 2021 SCC 46; *R. v. Oates* (1992), 100 Nfld. & P.E.I.R. 289, 318 A.P.R. 289 (Nfld. C.A.); *R. v. Kane*, 2012 NLCA 53; *R. v. Noftall*, 2022 NLCA 23; *R. v. Enns-Horvath*, 2022 ABCA 196; *R. v. Smith*, 2017 BCCA 112; *R. v. Loor*, 2017 ONCA 696; *R. v. Mann*, 2018 BCCA 265; *R. v. Petrowski*, 2020 MBCA 78; *R. v. White*, 2020 NSCA 33; *R. v. Mulrooney*, 2023 NLSC 131; *R. v. Venneri*, 2012 SCC 33; *R. v. Mastop*, 2013 BCCA 494, leave to appeal refused [2014] S.C.C.A. No. 23 or (2014), 374 B.C.A.C. 320 (note) (S.C.C.); *R. v. Blok-Andersen*, 2016 NLCA 9; *R. v. Kienapple*, [1975] 1 S.C.R. 729; *Canada (Attorney General) v. Khouri*, 131 Sask. R. 32, 97 C.C.C. (3d) 223 (C.A.); *R. c. Cazzetta* (2003), 57 W.C.B. (2d) 123, 173 C.C.C. (3d) 144 (C.A. Que.); *R. v. Hutchings*, 2012 NLCA 2; *R. v. Clarke*, 2021 NLCA 8; *R. v. Murphy*, 2021 NLCA 3; *R v. Angelillo*, 2006 SCC 55; *R. v. Robichaud*, 2011 NBCA 112; *R. v. Angelis*, 2016 ONCA 675; *R. v. Hillier*, 2016 NLCA 21; *R. v. Parsons*, 2017 NLCA 6; *R. v. Noseworthy*, 2021 NLCA 2

STATUTES CONSIDERED: *Criminal Code*, R.S.C. 1985, c. C-46; *Controlled Drugs and Substances Act*, S.C. 1996, c. 19

REASONS FOR JUDGMENT

BOONE J:

INTRODUCTION

[1] This Court, in *R. v. Leonard*, 2023 NLSC 70, convicted each of the offenders of charges related to drug trafficking, and Leonard and Johnson of organized crime offences.

[2] The offenders now come before the Court for sentencing. The Court has heard submissions from counsel for the offenders and the Crown and reviewed presentence reports. Each of the offenders spoke directly to the Court, expressing apologies for their conduct in committing the offences.

[3] I have decided that the offender should be sentenced to the following sentences:

- Mr. Leonard, to a total of 5.5 years imprisonment, less credit for time spent in pretrial custody;

- Mr. Johnson, to a total of 5 years imprisonment, less credit for time spent in pretrial custody;

- Mr. Curran, to a total of 3.5 years imprisonment, less credit for time spent in pretrial custody.

[4] I will now explain the reasons for the sentences I have determined for each offence and the total sentences for each offender.

GENERAL SENTENCING PRINCIPLES AND OBJECTIVES

[5] Proportionality is the fundamental principle that guides judges in imposing sentence: *Criminal Code*, R.S.C. 1985, c. C-46, s. 718.1. The principle of proportionality has two aspects: a sentence "must be severe enough to denounce the offence but must not exceed 'what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence'": *R. v. Nasogaluak*, 2010 SCC 6, at para. 42.

[6] The *Code*, in s. 718, mandates that the fundamental purpose of sentencing is to protect society and encourage respect for law through the imposition of just sanctions that have one or more of the following objectives: denunciation, deterrence (of the offender and of others who might consider engaging in similar conduct), separation of offenders from society, rehabilitation, reparation, and promoting both a sense of responsibility on the part of offenders and acknowledgement of the harm suffered by their victims. Generally, neither of these objectives dominate and all must be balanced in determining a fit sentence. However, as will be seen, the

Criminal Code and case law say primary consideration of certain principles is appropriate for some offences, including some that are involved in this case.

[7] Section 718.2 of the *Code* sets out further principles of sentencing including, so far as is relevant to this case, accounting for aggravating and mitigating factors; ensuring parity among sentences for similar offences committed by similar offenders with similar circumstances; and where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

PRINCIPLES OF SENTENCING SPECIFIC TO TRAFFICKING OF HARD DRUGS AND ORGANIZED CRIME OFFENSES

Hard Drug Offenses

[8] The *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, ("*CDSA*") s. 10(1) adds a further consideration in sentencing for offences under that *Act:* the Court should sentence in a way that contributes to respect for the law and the maintenance of a just, peaceful, and safe society while encouraging the rehabilitation of offenders and acknowledging the harm they caused.

[9] Cocaine, fentanyl and oxycodone are all Schedule I drugs under the *CDSA*. The maximum sentence of life imprisonment for illicit trafficking in those drugs imposed by the *CDSA* reflects the seriousness of that activity.

[10] Moreover, appellate courts throughout Canada have informally categorized cocaine, fentanyl and oxycodone as "hard drugs." The function of such a classification is to assist judges in focusing on the fact and circumstances of the offender's conduct and the harm it caused: *R. v. Parranto*, 2021 SCC 46, at para. 53.

[11] The Court of Appeal of this province has directed that principles of deterrence, denunciation and the protection of the public should be the dominant considerations in sentencing for trafficking in hard drugs: *R. v. Oates* (1992), 100 Nfld. & P.E.I.R. 289, 318 A.P.R. 289 (Nfld. C.A.); *R. v. Kane*, 2012 NLCA 53; *R. v. Noftall*, 2022 NLCA 23. This direction is consistent with that given by other provincial appellate courts and by the Supreme Court of Canada.

[12] The emphasis on deterrence, denunciation and the protection of the public stems in part from judicial recognition of the societal and individual harm caused by dealing in hard drugs, and of the moral culpability of those who, for profit, expose others to such risks.

[13] Although those factors are emphasized, I must still consider individual deterrence and rehabilitation. Nevertheless, "[t]he circumstances of rehabilitation would need to be compelling to override the primary considerations of deterrence, public protection, and denunciation, and displace the normal sentencing range": *R. v. Noftall*.

[14] In considering the circumstances of particular drug offences, Steele JA in *Oates* at para. 58, noted the following primary factors:

1. The type of drug involved;
2. The quantity;
3. The sophistication of the organization and its potential for profit;
4. The period of time during which the organization existed prior to the arrest; and
5. The "role" or "level" of the offender within the hierarchy of the criminal organization.

[15] Cases since *Oates* in this jurisdiction have continued to emphasize those factors in assessing the circumstances, and the moral culpability of offenders, in drug trafficking cases.

Hard Drug Trafficking Sentencing Precedents and Ranges

Cocaine

[16] The Newfoundland and Labrador Court of Appeal has addressed sentencing for cocaine trafficking on numerous occasions over the last 30 years. I have attached, as Appendix A, a summary of those cases, viewed through the lens provided by the factors mentioned by Steele JA in *Oates.*

[17] It is clear that the Court of Appeal has determined that a sentencing range of 3.5 to 4 years is appropriate for mid-level cocaine traffickers in this province.

[18] This of course begs the question as to what kind of activity constitutes mid-level drug trafficking. Trial judges in this province have considered that question. I have attached, as Appendix B, a summary of some of those cases. In essence, in this jurisdiction, mid-level cocaine trafficking involves moving quantities in the range between several ounces and several kilograms to other dealers who will sell to street-level users.

Oxycodone

[19] The consequences of oxycodone abuse in this community, and particularly on some of its most vulnerable members, have been the subject of extensive reporting in the media and the subject of investigation and commentary by public health officials. Trafficking in oxycodone is conducted by some with their own prescriptions, and by others after the purchase of drugs from those with prescriptions or after importing the drugs. Our Court of Appeal has not yet considered the

appropriate range of sentence for those who traffic in oxycodone. In Appendix C, I summarize cases from this Court (and one from the Court of Appeal) that discuss the importance of denunciation and deterrence in sentencing for this offence.

[20] Review of these cases suggests a range of sentence from one to two years for those who trafficked in oxycodone and found in possession of pills numbering from the tens to several hundred. However, some of those cases date from a period before the recognition of the harm done by oxycodone, a recognition that justifies consideration of higher sentences in some cases.

Fentanyl

[21] Although fentanyl has been present as an illicit drug on Canadian streets for some time, the approach of Canadian courts to fentanyl trafficking is still evolving.

[22] All Courts that have sentenced fentanyl traffickers have recognized the extreme danger posed by the drug. Moldaver J of the Supreme Court of Canada in *Parranto* at para. 101, put it this way:

> 101 Ultimately, largescale trafficking in fentanyl is a crime that preys disproportionally on the misery of others — the marginalized and those whose lives are marked by hopelessness and despair. It is a crime motivated by greed and by a callous disregard for the untold grief and suffering it leaves in its wake. Above all, it is a crime that kills — often and indiscriminately. It follows, in my view, that what matters most is that those individuals who choose to prey on the vulnerable and profit from the misery of the Canadian public for personal gain are sentenced in accordance with the severity of the harms they have caused. Fentanyl trafficking, and largescale trafficking in particular, are a source of unspeakable harm. ...

[23] The Alberta Court of Appeal put the matter more succinctly and more starkly when it recently described fentanyl traffickers as "literally marketing death": *R. v. Enns-Horvath*, 2022 ABCA 196, at para. 14.

[24] Indeed, I take judicial notice that the medical examiner in this province reported this past summer on an alarming number of fentanyl overdoses, several of which resulted in death.

[25] In *Parranto*, the Supreme Court of Canada stated that the range of sentence for wholesale fentanyl traffickers should be 8 to 15 years. Many Canadian Courts have stated that traffickers of even small amounts of fentanyl can expect sentences including significant penitentiary time. In British Columbia, the Court of Appeal has set a range of sentence of 18 to 36 months for first-time, street-level trafficking: *R. v. Smith*, 2017 BCCA 112 at para. 45. Canadian appellate courts have so far declined to establish a sentencing range for cases involving trafficking between street-level and large-scale wholesale operations, because there have not yet been enough cases to draw upon: *R. v. Loor*, 2017 ONCA 696; *R. v. Mann*, 2018 BCCA 265; *R. v. Petrowski*, 2020 MBCA 78; and *R. v. White*, 2020 NSCA 33.

[26] Although those appellate cases have declined to establish sentencing ranges, some guidance can be taken from consideration of the circumstances of two of those cases (*Petrowski* and *White* were cases involving wholesale level dealing) and the sentences imposed:

- *R. v. Loor*: The offender, with no relevant criminal record, trafficked 45 fentanyl patches of the highest strength, worth between $18-20,000 on the street, and planned to use a forged prescription to obtain more. His sentence of 6 years imprisonment was upheld on appeal;

- *R. v. Mann*: The appellants were determined to be more than street-level traffickers, because they compounded the drugs for street-level sale, sometimes using methods so crude that they produced potentially lethal doses, which they sold to undercover officers. Their 4-year sentences were upheld on appeal, with the Court of Appeal noting that their sentences would have been higher if not for their youth and that they came before the courts as first-time offenders.

[27] In a very recent decision of this Court, *R. v. Mulrooney*, 2023 NLSC 131, Chaytor J sentenced an offender, who had pleaded guilty but had a significant criminal record, to a total of ten years for numerous drug-trafficking offences. The offences included trafficking in fentanyl; the amount was not specified in the decision, but described as being less than the wholesale trafficking described in *Parranto*. Chaytor J accepted the joint sentence submission that included five years imprisonment for possessing fentanyl for the purpose of trafficking.

Organized Crime Offenses Sentencing Precedents and the Question of Range

[28] Canadian courts have imposed sentences for organized crime offences that vary significantly. This is not surprising, given there are many different kinds of crimes for which offenders have organized, from terrorism to drug trafficking to credit card fraud. Organization is the thread that connects all of these offences and the particular dangers to society resulting from such organization is a primary factor in sentencing. As the Supreme Court of Canada put it in *R. v. Venneri*, 2012 SCC 33:

> 36 Working collectively rather than alone carries with it advantages to criminals who form or join organized groups of like-minded felons. Organized criminal entities thrive and expand their reach by developing specializations and dividing labour accordingly; fostering trust and loyalty within the organization; sharing customers, financial resources, and insider knowledge; and, in some circumstances, developing a reputation for violence. A group that operates with even a minimal degree of organization over a period of time is bound to capitalize on these advantages and acquire a level of sophistication and expertise that poses an enhanced threat to the surrounding community.

[29] The principle considerations in sentencing for organized crime offences are, therefore, protection of the public through deterrence and denunciation: *R. v. Mastop*, 2013 BCCA 494, leave to appeal refused [2014] S.C.C.A. No. 23 or (2014), 374 B.C.A.C. 320 (note) (S.C.C.). This is emphasized by certain provisions of the *Criminal Code*: under s. 743.6(1.2). There is a presumption that an offender who receives a sentence of greater than two years for committing a criminal-organization offence will be ordered to serve one half of that sentence before being eligible for parole. Section 467.14 mandates that any sentence imposed for a criminal-

organization offence must be ordered served consecutively to other sentences imposed at the same time. Section 718.2(a)(iv) provides that evidence that an offence was committed for a criminal organization is an aggravating factor in sentencing for that offence (although this factor should not be considered in respect of sentencing for a charged predicate offence: *R. v. Blok-Andersen*, 2016 NLCA 9, at para. 46-55).

[30] It is also of note in this case that the *Criminal Code*, s. 725, allows the Court to consider, at sentencing, evidence of other uncharged offences that form part of the circumstances of the offence for which a judge is imposing sentence. If note is expressly taken, then the *Code* requires that the uncharged offences are noted on the indictment, to avoid double jeopardy. As these are considered aggravating factors, the Crown is required to prove the uncharged offences beyond a reasonable doubt.

[31] Finally, I note that the indictable offence of participating in the activities of a criminal organization carries a maximum sentence of five years, and the offence of committing an offence for a criminal organization carries a maximum sentence of fourteen years; there is no minimum punishment.

[32] In *Blok-Andersen*, our Court of Appeal considered sentence appeals from two offenders convicted of criminal-organization offences related to drug trafficking. The Court upheld an 18-month sentence against Blok-Andersen, who was found to have a supervisory role in the organization that used threats of violence to achieve its objectives. The Court also approved of the trial judge's reasoning that Blok-Andersen should receive a sentence less than other offenders in the same scheme who had been convicted of multiple predicate offences and more than one criminal-organization offence. The Court noted that the 18-month sentence was still at the high end of the range. Finally, the Court upheld the same sentence for the offender Strongitharm; he did not have a supervisory role, but he had a longer involvement in the organization.

Proceeds of Crime Sentencing Precedents

[33] The criminalization of possession of the proceeds of crime and the underlying offences that produced the proceeds protect different societal interests, and Parliament intended to create distinct offences. Therefore, in most circumstances, an offender can be convicted of both crimes and neither will be stayed by application of the *Kienapple* principle (*R. v. Kienapple*, [1975] 1 S.C.R. 729): *Canada (Attorney General) v. Khouri*, 131 Sask. R. 32, 97 C.C.C. (3d) 223 (C.A.).

[34] Sometimes, there is no clear connection between the proceeds and the underlying offence. However, where there is such a direct factual link, and the offender is convicted of both, then it is sound in principle to order that the sentences be served concurrently: *R. c. Cazzetta* (2003), 57 W.C.B. (2d) 123, 173 C.C.C. (3d) 144 (C.A. Que.), at para. 128. Indeed, the Saskatchewan Court of Appeal in *Khouri* noted this is a common outcome.

SENTENCING FOR MULTIPLE OFFENCES

[35] Section 718.3(4) of the *Code*, directs that the Court must consider ordering that sentences imposed for multiple convictions be served consecutively. The Court should order consecutive sentences if there is no relationship among the offences.

[36] The Court of Appeal in *R. v. Hutchings*, 2012 NLCA 2, at para. 84, set out a process for sentencing for multiple convictions. This process is rooted in the *Code*, s. 718.2(c), which directs that where a court decides that consecutive sentences would be otherwise appropriate, the combined sentence should not be unduly long or harsh.

[37] The *Hutchings* process was later described by the Court of Appeal as involving three steps (see for example, *R. v. Clarke*, 2021 NLCA 8, at para. 50):

- first, determine the appropriate sentence for each individual offence by applying the proper sentencing principles;

- second, consider whether any of the individual sentences should be made concurrent on the ground that they constitute a single criminal venture; and

- third, if there are consecutive sentences, consider application of the totality principle. This third step is "one last look" to assess whether the aggregate sentence is just, appropriate, not excessive, and reflects the overall culpability of the offender.

[38] In *Hutchings*, at para. 84, the Court of Appeal described the following factors as relevant in balancing whether a combined sentence is unduly long or harsh:

a) the length of the combined sentence in relation to the normal level of sentence for the most serious of the individual offences involved;

b) the number and gravity of the offences involved;

c) the offender's criminal record;

d) the impact of the combined sentence on the offender's prospects for rehabilitation, in the sense that it may be harsh or crushing; and

e) such other factors as may be appropriate to consider to ensure that the combined sentence is proportionate to the gravity of the offences and the offender's degree of responsibility.

[39] If the total sentence would be too long or harsh, then it should be reduced: first by ordering some or all of the sentences to be served concurrently to each other, and second by considering reducing the length of one or more of the individual sentences.

VINCENT LEONARD, SR.

Positions of the Parties

[40] Mr. Leonard is to be sentenced for conspiracy to traffic in oxycodone, trafficking in oxycodone, trafficking in cocaine and trafficking in cannabis resin; for possession of the proceeds of crime; for participating in the activities of a criminal organization; and committing an indictable offence in association with a criminal organization.

[41] The Crown seeks a total sentence of 7.5 years for Mr. Leonard, based on:

- 3 years for cocaine trafficking;
- 2 concurrent sentences of 16 months for conspiracy to traffic and trafficking in oxycodone;
- 2 months for trafficking in cannabis resin;
- 1 year for possession of the proceeds of crime;
- 2 years for committing an indictable offence on the part of a criminal organization; and
- 1 year for participating in the activities of a criminal organization.

[42] The Crown says that its position on each of these individual sentences has already factored in principles of totality. Its position therefore includes that the drug-trafficking offences be served concurrently, that the proceeds of crime sentence be served consecutively to the other sentences, and that the criminal organization sentences be served concurrently to each other but consecutive to all other sentences.

[43] Mr. Leonard does not disagree with the sentences proposed by the Crown for any of the offences, but argues that the principle of totality should be applied differently, resulting in a total sentence of 52 to 60 months.

Circumstances of the Offender

[44] Mr. Leonard is 65 years old. He has been married for 45 years and has three children and several grandchildren. He completed Grade 8 education and spent most of his adult life working in construction until a workplace back injury; since then he has received Workers' Compensation benefits, and now OAS. He has no addiction or substance abuse issues. He has coronary artery disease and hypertension, for which he is medically monitored but not under active treatment.

[45] Mr. Leonard does have unrelated, but not recent criminal convictions, including for break and enter and being unlawfully in a dwelling, assault and assault with a weapon, uttering threats, mischief, obstruction of a police officer, theft and possession of proceeds obtained by crime. He was incarcerated for some of those offences. The Crown does not rely on his criminal record as an aggravating factor.

[46] Mr. Leonard did express remorse for his actions at the conclusion of the trial. Other than that, there are no mitigating circumstances.

Circumstances of the Offenses

Count 5
Trafficking in Oxycodone
June 10 to June 12, 2015

- and -

Count 4
Conspiracy to Traffic in Oxycodone
May 13 to August 19, 2015

[47] I convicted Mr. Leonard of the offence of conspiracy to traffic in oxycodone. The Crown did not prove the amount of drugs or money involved. I stayed a charge of trafficking in oxycodone based on the same facts pursuant to the *Kienapple* principle.

[48] Mr. Leonard conspired with a large group of people to traffic in oxycodone. He actively participated in the conspiracy by organizing people to obtain Percocet through prescription, and by selling, or directing others to sell, some of those drugs. These sales were part of an enterprise that existed before police intervention and likely would have continued if he had not been caught.

[49] I find that a fit sentence for Mr. Leonard for this offence would be 4 years imprisonment. This is a higher sentence than has been imposed in other local cases, and higher than that sought by the Crown. However, the only source of oxycodone in this province other than importing is through prescription. The ongoing organization of a group of people to obtain such prescriptions through false pretenses also impacts the integrity of the health care system and takes away from the care available to those who truly need it. This activity must be severely denounced and deterred.

Counts 6 and 7
Trafficking in Oxycodone &
Possession of Oxycodone for the Purpose of Trafficking
January 20 to 29, 2016

[50] In two transactions, Mr. Leonard sold Oxycodone, totaling 360 pills, to UC#1 for $2500.

[51] Mr. Leonard was convicted of trafficking in oxycodone; the charge of possession of oxycodone for the purpose of trafficking was stayed pursuant to the *Kienapple* principle.

[52] During the intercepted conversations, Mr. Leonard discussed the possibility of UC#1 purchasing Percocet, Ritalin and Demerol from Mr. Leonard. It was clear that the sales of oxycodone on which the charges were based were not one-offs but were part of an ongoing enterprise on the part of Mr. Leonard.

[53] I find that a fit sentence for Mr. Leonard for trafficking in oxycodone at this level would be 2 years.

Counts 11 and 12
Trafficking in Cocaine &
Possession of Cocaine for the Purpose of Trafficking
April 8 to April 24, 2015

[54] Mr. Leonard sold to the Agent 18 ounces of cocaine in two transactions, for a total price of $27,500.

[55] Mr. Leonard was convicted of trafficking in cocaine; the charge of possession of cocaine for the purpose of trafficking was stayed pursuant to the *Kienapple* principle.

[56] The evidence offered in support of this charge demonstrated a significant degree of planning on Mr. Leonard's part, including planning measures to avoid detection before, during and after the transaction, and a focus on Mr. Leonard's part on the profit that he projected that he and the Agent would each earn.

[57] This trafficking activity is consistent with mid-level trafficking in cocaine. A fit sentence is 3.5 years imprisonment.

Counts 13 and 14
Trafficking in Cannabis Resin &
Possession of Cannabis Resin for the Purpose of Trafficking
September 20 to September 22, 2016

[58] On September 22, 2016, Mr. Leonard sold 501 grams of hashish to UC#s 6 and 7 for $3500. I convicted him of trafficking in cannabis resin; the charge of possession of cannabis resin for the purpose of trafficking was stayed pursuant to the *Kienapple* principle.

[59] The Crown seeks only a 2-month sentence for this offence. This position was really based on the Crown's position regarding the net sentence but it would be outside the ordinary range of sentence for this offence. A sentence of 6 months imprisonment would be consistent with the sentencing principles discussed in *R. v. Murphy*, 2021 NLCA 3, and particularly with the evolving societal attitude toward cannabis reflected in the adoption of the *Cannabis Act*.

Count 10
Possession of the Proceeds of Crime
August 22, 2014 to September 28, 2016

[60] The evidence showed that Mr. Leonard obtained a total of $33,500 from the various drug transactions subject of separate charges. I convicted Mr. Leonard of an offence under s. 355(a) of the *Code*, possession of money of value greater than $5000 knowingly derived from the commission of an indictable offence. The Crown

and Defence agree that a sentence of one year would be a fit sentence for this offence, and I so find.

Criminal Organization Charges

[61] The Vikings Motorcycle Club was a criminal organization, within the meaning of s. 467.1 of the *Code*, involved in the commission of one or more serious crimes, including drug offences and witness intimidation.

The s. 467.11 conviction against Mr. Leonard (Count 1)

[62] I found Mr. Leonard guilty of the offence under s. 467.11 (Participating in or contributing to the activities of a criminal organization for the purposes of enhancing the ability of that organization to facilitate or commit an indictable offence or offences under the *CDSA*).

[63] Before discussing the circumstances related to this offence, I note that there is a distinction between considering, at sentencing, other uncharged offences forming part of the circumstances of the offence and other extraneous offences that are not part of the offence charged.

[64] Evidence of extraneous offences for which there has not been a conviction (i.e., untried offences) are admissible only if they meet the prerequisites set out at ss. 725(1)(b) or (b.1), which require the consent of the Crown and the offender: *R v. Angelillo*, 2006 SCC 55. However, if the evidence concerns the facts of other offences for which the offender has "never been charged," it may be admissible quite apart from s. 725 if it is relevant to the objectives and principles of sentencing. Such evidence must not be used to obtain a disproportionate sentence or to indirectly punish the offender for other offences.

[65] In this case, I find beyond a reasonable doubt that Mr. Leonard participated in offences for which he was not charged but that could have based separate charges.

These acts were directly part of the factual matrix of the offence of his knowing participation in the Vikings' organized criminal activity: the intimidation of witnesses at the Potter assault trial and the beating of the man at the request of Mr. Tucker.

[66] The uncharged offences of assault and obstruction of justice that I took into account ought to be noted on the indictment.

[67] Mr. Leonard also was one of the informal leaders of the Vikings and formally acted as President. The Vikings used residences that he owned at Cabot Street and in Goulds as clubhouses, and he was the prime mover of the opening of the Sports Bar that was also used as a clubhouse. These clubhouses were the locations where most of the evidence of the Vikings' activities and planning was intercepted by wiretap. He was a leader of the Vikings' efforts to join the Hells Angels.

[68] Because he participated in or led most of the relevant activities, the evidence outlined concerning the Vikings as an organization also led to the inference that Mr. Leonard participated in the Vikings' activities for the purpose of enhancing the ability of the Vikings to commit, or facilitate the commission of, criminal offenses. Mr. Leonard's personal involvement in the drug trade, including with the Vikings as a group, led me to infer that his specific criminal purpose in the Vikings organization was to facilitate the commission of offences under the *CDSA*.

[69] Mr. Leonard led an effort to bring into our community a known criminal organization with a history of violent activity. In furtherance of that goal, he encouraged the obstruction of justice, he threatened neighbours of the Sports Club who opposed the Vikings' activities there, and he personally committed an act of violence.

[70] A fit sentence for this offence, consistent with that imposed on the offenders in *Blok-Andersen*, would be 18 months.

The s. 467.12 conviction against Mr. Leonard

467.12 Committing an indictable offence under the CDSA for the benefit of, at the direction of, or in association with a criminal organization

[71] The Crown did demonstrate that the s. 467.12 (committing an indictable offence under the *CDSA* for the benefit of, at the direction of, or in association with a criminal organization) charges against Mr. Leonard were made out because some, but not all, of the predicate offences were committed in association with the Vikings.

[72] I found that the offence of trafficking in oxycodone committed by Mr. Leonard during the spring and summer of 2015 was very connected to the Vikings. Vikings members accompanied Mr. Leonard to the doctors' office for prescriptions and to the pharmacies to fill them; Vikings members acted in a manner consistent with providing security for sale of Percocets; and Vikings members were directly involved in the sales.

[73] Therefore, I found Mr. Leonard guilty of the charge under s. 467.12, and a conviction was entered.

[74] A fit sentence for this offence would be 9 months imprisonment, taking into account that Mr. Leonard is also being sentenced for the predicate offence of conspiracy to traffic in oxycodone.

Summary of Sentences Imposed

[75] I therefore find the fit sentence for Mr. Leonard in respect of each of the offences as follows:

- For conspiracy to traffic in oxycodone: 4 years;

- For trafficking in oxycodone: 2 years;
- For trafficking in cocaine: 3.5 years;
- For trafficking in cannabis resin: 6 months;
- For possession of the proceeds of crime: 1 year;
- For participation in the activities of a criminal organization: 18 months;
- For committing an indictable offence in association with a criminal organization: 9 months.

[76] Mr. Leonard's activity in oxycodone trafficking was a single enterprise, from acquisition to sale. Therefore, the sentences for conspiracy to traffic and for trafficking in oxycodone ought to be served concurrently. The other drug trafficking activities appeared to be separate, and therefore the sentences for trafficking in cocaine and cannabis resin should, in principle, be served consecutively. The proceeds of crime that he possessed were generated directly from these drug-trafficking offences, and should be served concurrently with those sentences. The *Code* mandates that the criminal-organization offences must be served consecutively with the others; in this case those criminal-organization sentences should be served concurrently to each other.

Totality

[77] The appropriate sentences therefore total 9 years and 6 months. I find that this sentence would be unduly long and harsh, especially considering the longest individual sentence I have imposed is 4 years and that the Crown conceded that Mr. Leonard's criminal record is dated and not relevant. A fit net sentence, considering the criminal-organization elements, would be 5.5 years. I therefore order that the trafficking and proceeds of crime offences be served concurrently to

each other; and that the criminal-organization offences be served concurrently to each other but consecutive to the drug-trafficking offences.

[78] Mr. Leonard should be given credit for 23 days spent in pre-trial custody at a rate of 1.5:1.

Ancillary Orders

[79] The Crown seeks an order for a DNA sample, and a 10-year firearms prohibition. A DNA order is mandatory on conviction for organized crime offences; a firearms prohibition is mandatory on conviction for a *CDSA* trafficking offence related to Schedule I drugs. Both orders will issue.

WAYNE JOHNSON

[80] Mr. Johnson is to be sentenced for trafficking in cocaine, for possession of the proceeds of crime, and for participating in the activities of a criminal organization.

Positions of the Parties

[81] The Crown seeks a total sentence of 6.5 years, calculated as follows:

- 2 concurrent sentences of 3.5 years for cocaine trafficking;
- 1.5 years for possession of the proceeds of crime; and
- 1.5 years for participating in the activities of a criminal organization.

[82] Mr. Johnson does not disagree with the individual sentences suggested by the Crown, but argues that the total sentence is too long and that 5 years is an appropriate net sentence.

Circumstances of the Offender

[83] Mr. Johnson is 63 years old. He had a difficult childhood and adolescence, including foster care and time in Mount Cashel. He left Mount Cashel at 15 years old and lived on his own after that. He has been in two long-term relationships. He has two adult sons from his first relationship. His later relationship ended in 2021, and he and his partner have a 12-year-old son with whom Mr. Johnson maintains regular and frequent parental contact.

[84] Mr. Johnson has previously struggled with alcohol abuse but has been abstinent from alcohol since 2005. He does not use illegal drugs. He suffers from ischemic heart disease, for which he is medically monitored and for which he takes medications, and he had heart surgery in 2017.

[85] Mr. Johnson left school in Grade 11 but obtained his GED in his 20's, has worked in construction since 1992, and has been a self-employed home renovation contractor since 2002.

[86] Mr. Johnson has an unrelated criminal history dating to 1978 and including convictions for carrying a concealed weapon, possession of property obtained by crime, uttering threats, breach of trust and forgery. He was incarcerated for some of these crimes. The Crown does not rely on his criminal record as an aggravating factor.

[87] Mr. Johnson did express remorse at the sentencing hearing. There are no mitigating factors in Mr. Johnson's background. He certainly had a traumatic early life, and he says that brought him into association with a criminal element. However, he later completed his education and worked in his own business.

Circumstances of the Offenses

Count 15
Trafficking in Cocaine
October 21, 2015 to January 29, 2016

[88] On January 19, 2016, Mr. Johnson sold UC#1 an ounce of cocaine, measured at 68% purity for $2800. On January 29, Mr. Johnson, through the Agent as intermediary, sold 449 grams of white powder containing 71% to 72% cocaine for $43,000 to UC#1.

Counts 16 and 17
Trafficking in Cocaine &
Possession of Cocaine for the Purpose of Trafficking
September 19, 2016

[89] On September 19, 2016, Mr. Johnson sold 503 grams of substance containing 89 to 91% cocaine to UC#s 6 and 7 for $47,000.

[90] I therefore convicted Mr. Johnson of trafficking in cocaine, and I stayed the charge of possession of cocaine for the purpose of trafficking pursuant to the *Kienapple* principle.

[91] I previously discussed specifics of Mr. Johnson's involvement in these cocaine transactions in my decision on his entrapment application, at paras. 28–38. During the transaction with UC#s 6 and 7, Mr. Johnson raised the possibility of future transactions and suggested such deals could occur at his house. During discussions with UC#1 prior to his sales of cocaine to him, Mr. Johnson, in response to UC#1 saying that he was interested in a "steady flow," said that "was not a problem," and that he had a regular supply of cocaine of various purities that he sold at corresponding different prices. Mr. Johnson also said that he and his associates were moving away from selling marijuana and into cocaine because it's lesser bulk and smell made it easier to transport. Later, Mr. Johnson described to UC#1 his

usual pricing for cocaine, said that he did not cut or "touch" it before reselling, but noted that cocaine at the purity sold in these transactions was not suitable for direct sale to users as it would be harmful without being cut.

[92] Mr. Johnson therefore described himself on tape as an active, mid-level dealer of cocaine. His activity and his willingness to engage in further transactions, and the fact that he was involved in two recorded cocaine transactions justifies a higher sentence than that imposed on Mr. Leonard for the same offence, although one still within the usual range.

[93] A fit sentence for each of the cocaine trafficking convictions would be 4 years.

Count 10
Possession of the Proceeds of Crime
August 22, 2014 to September 28, 2016

[94] As a result of $49,800 (the aggregate amount of $92,800, less the $43,000 paid to the Agent by UC#1, which was not shown to have been delivered to Mr. Johnson) paid in respect of these drug transactions, I found Mr. Johnson guilty of the offence of possession of the proceeds of crime contrary to s. 355(a) of the *Code*. The Crown and Defence agree that a sentence of 1 year is appropriate for this offence and I find this a fit sentence.

The s. 467.11 conviction against Mr. Johnson (Count 1)

[95] Mr. Johnson actively participated in the planning and conduct of Vikings' activities knowing that the Vikings was a criminal organization, for the purpose of committing or facilitating the commission of serious criminal offences including the intimidation of witnesses and the sale of illegal drugs.

[96] He also was an active participant in the Vikings' effort to join the Hells Angels, although he did not play the same leadership role as Mr. Leonard.

[97] Mr. Johnson participated in trying to bring the Hells Angels here, and he furthered the criminal objective of the Vikings by facilitating their involvement in the drug trade and actively intimidating witnesses at a criminal trial. A fit sentence for his participation in that activity would be one year. The uncharged offence of obstruction of justice should be noted on the indictment.

Summary of Sentences Imposed

[98] I therefore find the fit sentence for Mr. Johnson in respect of each of the offences as follows:

- For each count of trafficking in cocaine: 4 years;
- For possession of the proceeds of crime: 1 year;
- For participation in the activities of a criminal organization: 1 year.

[99] Mr. Johnson's activity in cocaine trafficking was a single enterprise and, therefore, the sentences for trafficking in cocaine should be served concurrently. The proceeds of crime conviction is directly related to the money made from cocaine trafficking and the sentence for this offence should be served concurrently with the drug trafficking sentences. The *Code* mandates that the sentence for the criminal-organization offence must be served consecutively with the others.

Totality

[100] The appropriate sentences therefore total 5 years. I find that this total sentence would not be unduly long or harsh, especially considering that the criminal

organization sentence is required to be served consecutively. Therefore, this sentence of 5 years is a fit net sentence, and no adjustment is required.

[101] Mr. Johnson should be given credit for 15 days spent in pre-trial custody at a rate of 1.5:1.

Ancillary Orders

[102] The Crown seeks an order for a DNA sample, and a 10-year firearms prohibition. A DNA order is mandatory on conviction for organized crime offences; a firearms prohibition is mandatory on conviction for a CDSA trafficking offence related to Schedule I drugs. Both orders will issued.

JAMES CURRAN

[103] Mr. Curran is to be sentenced for trafficking in fentanyl; for trafficking in cocaine; and for possession of the proceeds of crime.

Positions of the Parties

[104] The Crown seeks a total sentence of 6 years, composed of the following:

- 5 years for trafficking fentanyl;
- 3.5 years concurrent for trafficking cocaine; and
- 1 year for possession of the proceeds of crime.

[105] Mr. Curran says that a fit total sentence would be two years less a day, served in the community.

Circumstances of the Offender

[106] Mr. Curran is 59 years old. He has a Grade 9 education. He has a close relationship with his family, especially his mother. He was in a relationship for 20 years. His partner developed MS, and he cared for her at home for five years before she entered a care home; she unfortunately passed away about 4 years ago. He has no children.

[107] Mr. Curran was a unionized construction labourer for most of his working life, until about five years ago when he left the work force due to a back condition. He receives Workers' Compensation benefits, CPP and a union pension. Mr. Curran has numerous medical conditions other than his back condition, including heart disease, stomach issues, and anxiety, and he suffered several traumatic injuries due to motor vehicle accidents. His treatment includes several medications, including narcotics. He previously had trouble with alcohol but has been abstinent for 15 years. He does not use illegal drugs.

[108] Mr. Curran has a limited criminal record, including an old (1997) conviction for impaired driving and a more recent conviction for breach of condition. I accept Mr. Curran's position that he ought to be sentenced as if he were a first-time offender.

[109] Mr. Curran expressed remorse at the sentencing hearing. There are no other mitigating circumstances in his background. The evidence demonstrates that his health may make it hard on him to serve time in prison, but I do not accept Mr. Curran's submission that the collateral consequences of imprisonment on his health have been demonstrated to justify a reduced sentence served in the community.

Circumstances of the Offenses

Counts 1 and 2 of Curran Indictment
Trafficking in Cocaine &
Possession of Cocaine for the Purpose of Trafficking
September 20 to October 17, 2015

[110] Mr. Curran sold about three ounces of powder to UC#1 for $7400. He later sold him a 504 gram "brick" of white substance for $43,000. The substances consisted of over 80% cocaine.

[111] I therefore convicted Mr. Curran of trafficking in cocaine; the charge of possession of cocaine for the purpose of trafficking was stayed pursuant to the *Kienapple* principle.

[112] The amount of cocaine sold by Mr. Curran to a person he understood would later distribute it to users, demonstrates that he was a mid-level cocaine trafficker. A fit sentence for this offence would be 3.5 years.

Counts 3, 4 and 5 of Curran Indictment
Trafficking in Heroin
March 16 to 21, 2016

- and-

Trafficking in Fentanyl &
Possession of Fentanyl for the Purpose of Trafficking
March 16 to 21, 2016

[113] Mr. Curran initiated a sale to the Agent of an ounce of heroin. The two later negotiated a price of $3500 for an ounce. The transaction was a three-way transaction, with Mr. Curran purchasing the substance from another person, out of sight of the Agent or surveillance, and then passing the substance (after retaining a small amount for personal use) to the Agent in return for $3500. This substance was later weighed at 29 grams but demonstrated to contain no heroin. Rather, the substance included fentanyl, at 3.6%.

[114] The evidence made out all three charges in the indictment. The parties agreed that Mr. Curran should be convicted of trafficking in fentanyl, and the other related charges stayed in accordance with the *Kienapple* principle.

[115] The evidence as to the extent of Mr. Curran's involvement in this transaction is not entirely clear. The wiretap evidence showed that he appeared to initiate it and that he was acting on his own. However, the intercepts of the actual transaction are consistent with Mr. Curran merely facilitating a transaction between the Agent and an unknown person, and that Mr. Curran did not himself profit from this transaction and only earned a small sample of the drugs for his efforts. His level of moral culpability is consistent with that of street-level traffickers.

[116] On the other hand, Mr. Curran's involvement would, if not for police intervention, have led to a dangerous and perhaps fatal drug being made available to 28 people (if sold in one-gram amount).

[117] A fit sentence for this offence would be 3.5 years.

Count 10
Possession of the Proceeds of Crime
August 22, 2014 to September 28, 2016

[118] Mr. Curran trafficked cocaine to UC#1 on three occasions: September 23 for $2800, September 25 for $5600, and October 17, 2015 for $43,000, and fentanyl to the Agent on March 21, 2016, for $3500.

[119] I therefore convicted Mr. Curran of an offence of possession of the proceeds of crime, contrary to s. 355(a) of the *Code*. The Crown and Defence agree that a fit sentence for this offence would be one year imprisonment and I so find.

Summary of Sentences Imposed

[120] An appropriate sentence for Mr. Curran in respect of each of the offences would be as follows:

- For trafficking in Fentanyl: 3.5 years;
- For trafficking in cocaine: 3.5 years;
- For possession of the proceeds of crime: 1 year.

[121] Mr. Curran's activity in trafficking cocaine was unrelated to his involvement in trafficking in Fentanyl. The circumstances of each offence were distinct. Therefore, the sentences for each of these offences should in principle be ordered to be consecutive. The proceeds of crime that he possessed were generated directly from these drug-trafficking offences, and ought to be served concurrently with those sentences.

Totality

[122] The appropriate sentences therefore total 7 years. I find that this length of imprisonment would be unduly long and harsh, especially considering the longest individual sentence I have imposed is 3.5 years, that Mr. Curran had a limited involvement in, and did not make any money from, the traffic of fentanyl, and that he is to be sentenced as if he were a first-time offender. A fit net sentence would be 3.5 years. I therefore order that the sentences all be served concurrently to each other for a total net sentence of 3.5 years.

[123] Mr. Curran should be given credit for 13 days spent in pre-trial custody at the rate of 1.5:1.

Ancillary Orders

[124] The Crown seeks an order for a DNA sample, and a 10-year firearms prohibition. A firearms prohibition is mandatory on conviction for a *CDSA* trafficking offence related to Schedule I drugs and that order will issue. A DNA order is not mandatory and I see no reason to order this.

Forfeiture and Fine In Lieu

[125] The *Criminal Code* includes provisions related to forfeiture of the proceeds of crime. The purpose of these provisions has been described by the Supreme Court of Canada as "to ensure that crime does not pay": *R. v. Lavigne*, 2006 SCC 10, at para. 10.

[126] The principles applicable to application of these provisions were set out in *Lavigne* (see also *R. v. Robichaud*, 2011 NBCA 112; and *R. v. Angelis*, 2016 ONCA 675):

- When a court convicts a person for possessing the proceeds of crime, a mandatory order for forfeiture of that property follows;

- Where forfeiture is not practicable because the property may have been used, transferred or transformed, or impossible to find, then a fine should be ordered;

- The amount of the fine should be equal to the proceeds of crime to the extent that can be determined;

- The offender's current or future ability to pay is not to be taken into account in deciding to impose a fine in lieu of forfeiture;

- The fine or imprisonment imposed as the primary sentence punishes the commission of the designated offence, while forfeiture or a fine instead of forfeiture deprives the offender of the proceeds of his or her crime and deters potential offenders and accomplices. Forfeiture or fine in lieu and incarceration for not paying are therefore not part of the punishment for the offence and not subject to the totality analysis;

- Imprisonment for failure to pay a fine imposed in lieu of forfeiture is a mechanism to enforce payment by those in position to pay. The Court has no discretion other than the terms of imprisonment in relation to the amount of the fine and the time allowed to pay the fine.

- The *Code* provides for a range of imprisonment for default in payment, rising incrementally with the amount of the fine (which, pursuant to s. 462.37(4)(b) must be ordered served consecutively to any other term of imprisonment imposed).

[127] The Crown established that each of the Offenders had possession of the proceeds of crime. The Crown did not seize money from either of the Offenders. I therefore order these amounts forfeited and if not immediately paid then I impose fines in lieu of forfeiture in the following amounts, to be paid within five years of their completion of the sentences of imprisonment that I have imposed, and that each should be subject to the following terms of imprisonment in default:

- Mr. Leonard pay a fine in lieu of forfeiture in the amount of $33,500, and in default of payment shall be imprisoned for 1 year;

- Mr. Johnson pay a fine in lieu of forfeiture in the amount of $49,800 and in default of payment shall be imprisoned for 1 year;

- As Mr. Curran was only briefly in possession of the $3500 in relation to the heroin sale, and including this would place the term of imprisonment for default at just above the next level. I order that he pay a fine in lieu of forfeiture in the amount of $48,100, and 1 year imprisonment in default.

SUMMARY AND DISPOSITION

[128] Mr. Leonard, please stand. You are hereby sentenced to 5.5 years in prison, less 1.5:1 credit for pretrial custody totalling 35 days; you will provide a DNA sample; and you are prohibited from possessing firearms for a period of ten years. You will also forfeit the amount of $33,500, and if you do not pay it immediately then you shall pay it within 5 years of the completion of your sentence or serve a further one year in prison.

[129] Mr. Johnson, please stand. You are hereby sentenced to 5 years in prison, less 1.5:1 credit for pretrial custody totalling 23 days; you will provide a DNA sample; and you are prohibited from possessing firearms for a period of ten years. You will

also forfeit the amount of $49,800, and if you do not pay it immediately then you shall pay it within 5 years of the completion of your sentence or serve a further one year in prison.

[130] Mr. Curran, please stand. You are hereby sentenced to 3.5 years in prison, less 1.5:1 credit for pretrial custody totalling 20 days, and you are prohibited from possessing firearms for a period of ten years. You will also forfeit the amount of $48,100, and if you do not pay it immediately then you shall pay it within 5 years of the completion of your sentence or serve a further one year in prison.

DANIEL M. BOONE
Justice

Appendix A

NLCA COCAINE TRAFFICKING CASES

R. v. Oates (1992), 100 Nfld. & P.E.I.R. 289, 318 A.P.R. 289 (Nfld. C.A.)

The Offender was part of a business or commercial enterprise that brought cocaine into this province and then quickly distributed it to dealers. The Court found that "the enterprise did not begin with police intervention and perhaps would not have ended but for the police intervention". The Offender picked up 5 packages of high purity cocaine, totaling 412 grams (almost one pound) with a street value of up to $61,000.

The trial judge imposed a sentence of two years less a day. The Court of Appeal found that sentence was unfit, and that a fit sentence for this level of cocaine trafficking would be 3 $^{1}/_{2}$ to 4 years. The trial sentence was allowed to stand because offender had already been released, and it would not serve the interests of justice to re-incarcerate him.

R. v. Kane, 2012 NLCA 53

This case arose out of a very sophisticated operation in which people in Quebec, over some time, sent "commercial quantities" of cocaine to this province, where the drugs were warehoused in stash houses and later distributed to a network of traffickers. The Offender was at the penultimate level of the operation in this province. He was responsible for setting up and maintaining a stash house, for helping to set up a second stash house, for delivering large amounts of drugs to traffickers, and for instructing them how the drugs to mix the cocaine with cutting agents to obtain a specified number of portions to be sold to other traffickers or to purchasers. He had responsibility for and was trusted with significant sums of money. The Court of Appeal noted at paragraph 12 that his "role was integral to the operation of the conspiracy and must be distinguished from, for example, the role of traffickers who, while taking advantage of the availability of the drugs provided by the conspirators, were not part of the organized importation and distribution scheme."

The Court of Appeal decided that the Trial judge's sentence of two years less a day was unfit and that a fit sentence was four years. However, as in *Oates*, the Offender had been released so the sentence was not disturbed**.**

R. v. Blok-Andersen, 2016 NLCA 9

Multiple offenders were convicted of drug trafficking and criminal organization charges arising out of a sophisticated scheme for importing large quantities of cocaine (in multiples of kilograms) to this province from British Columbia, and distributing it through stash houses and delivery to traffickers. At least $500,000 was transferred to British Columbia in payment for the drugs. The organization engaged in threats of violence against others. In this case, the Court of Appeal considered an appeal from Blok-Andersen, determined to be the leader of the organization, and, more pertinently, Strongitharm, a 24-year-old first-time Offender with good rehabilitation prospects. Strongitharm was, over a period of months, observed coming and going from stash houses and meeting with individuals known to be involved in the drug trade. On one occasion, he acted as a courier to transport drugs from British Columbia to this province.

The trial judge regarded Strongitharm's culpability as similar to the Offender in *Kane*, and sentenced him to 4 years for three counts related to cocaine trafficking to be served concurrently but consecutively to 1.5 years for criminal-organization offences. The Court of Appeal dismissed a Crown appeal from sentence.

R. v. Hillier, 2016 NLCA 21

The Offender was described as a mid level trafficker of cocaine, meaning that he was buying pounds, or parts of pounds, and selling whole ounces, or parts of ounces, at a time. He pleaded guilty to trafficking, but only trace amounts of cocaine were found along with an ounce of marihuana ready for distribution in 28 baggies. His readiness to use violence in support of his drug trade was evidenced by his possession of illegal weapons, for which he was also convicted. There was some evidence that the trafficking operation has started before the period included in the indictment.

The Court of Appeal dismissed the Offender's appeal of his sentence (24 months imprisonment for trafficking in cocaine, 3 months concurrent for trafficking in marihuana, one month consecutive for possession of brass knuckles, one month concurrent for possession of a throwing star, and one month consecutive for breach of an undertaking, for a total of 780 days imprisonment or 26 months.

R. v. Parsons, 2017 NLCA 6

The police intercepted a package mailed to the Offender that contained 305.4 grams of 73 percent cocaine, with a street value of $30,000. The offender had weigh scales at his residence. The trial judge found that Offender had good antecedents, accepted that the offence was an outlier and that "there was no evidence of any degree of sophistication or high level organization in the activity; there was no evidence that either Offender was a significant player within a hierarchy of co-conspirators".

The Trial judge sentenced him to 25 months. The Court of Appeal varied to 2 years less a day to be served in community on conditions.

R. v. Noseworthy, 2021 NLCA 2

This case arose out of a scheme to import Cocaine and marihuana, hidden in vehicle parts, from Quebec to this province, where it was offloaded at a garage in St. John's owned by Noftall. The Offender acquired drugs from Noftall and trafficked the drugs, returning proceeds to members of the conspiracy in Quebec. He communicated with Noftall and Quebec by text, telephone and in person, and he was aware of how the drugs had been brought into St. John's. The trial judge found there was a large-scale, commercial conspiracy to traffic drugs into and in this province, and that the conspiracy was at the higher end of the spectrum although the exact amount of drugs unclear. The Offender acted as a middleman between the importers and traffickers, and even recruited one of the traffickers, and he sent the proceeds directly to the leaders of the scheme in Quebec.
The Trial judge imposed a net sentence of 20 months in prison (30 months reduced this by one-third because Offender had been subject to court-imposed conditions for an extended period while on judicial interim release).

The Court of Appeal decided that the trial judge had erred in overemphasizing the Offender's prospects for rehabilitation and parity with other conspiracy members' sentences. The Court of Appeal also decided that the trial judge erred by characterizing Offender's role as minor, finding on latter point that Offender "was fully knowledgeable and was a key player in a commercial, inter-provincial conspiracy to bring cocaine into this province and sell it in the local market." The Court of Appeal noted, at paragraph 44, that "a 3.5 to 4 year sentencing range has been established for mid-level cocaine trafficking in this province" and, at paragraph 107, imposed a sentence of 42 months, "informed by the principle of parity, as it accords with the established sentencing range for this offence, as indicated in *Oates*, *Kane*, and other authorities discussed above, and reflects the fact that there are no particular circumstances warranting a deviation from the established range in this instance".

R. v. Noftall, 2022 NLCA 23

The Offender was the garage owner/importer referred to in *Noftall*. Offender then extracted and packaged the drugs from vehicles shipped from Quebec and distributed them to local mid-level dealers, remitting the proceeds to Quebec.

The Trial judge sentenced Offender to three years imprisonment for conspiracy to traffic in cocaine and two years imprisonment, to be served concurrently, for conspiracy to traffic in marihuana. The Crown appealed. The Court of Appeal decided the sentence was unfit and substituted a sentence of 4.5 years as proportionate to the gravity of the offence and the degree of Offender's responsibility as a lead player and his particular circumstances.

APPENDIX B

NLSC CASES ON MID-LEVEL COCAINE TRAFFICKING

R. v. Cuff, 2019 NLSC 112

The police observed this Offender from central Newfoundland meeting with a known drug dealer. The police stopped and searched his car, and they found 775 grams of Cocaine in brick form, and 208 oxycodone pills. The Offender admitted to police that he intended to traffic the drugs, and that the street value of the Cocaine was $100 per gram, or $77,500. There was no evidence of any distribution network.

The Offender was a 51 years small business owner who had never been in any trouble with the law.

Khaladkar J sentenced the Offender to imprisonment for 36 months.

R. v. Clarke, 2022 NLSC 74

The Offender was a trusted, mid-level participant in an ongoing conspiracy to traffic in cocaine involving hundreds of thousands of dollars. He participated by counting thousands of dollars, acted as a courier to deliver a substantial quantity of money, and also tracked the shipment of 4 kilograms of cocaine (valued at $120,000 to $150,000). The Offender also trafficked cocaine directly to his own street-level (a "half balf" or about 14 grams), but the trial judge accepted other evidence that was consistent with someone trafficking in "kilo" amounts of cocaine.

Chaytor J noted that the range of sentences for mid-level trafficking might not apply to the Offender's street level trafficking, but because he also participated in the larger conspiracy, she sentenced him to 3.5 years imprisonment.

R. v. Snow, 2006 NLTD **3**

This Offender arranged to a delivery of cocaine from Quebec, intending to distribute it in Newfoundland. The package was intercepted. It contained 279.5 grams (just over ½ pound) of high purity cocaine, wrapped in 10 packages ranging from 27 to 28 grams per package. The street value was estimated at $67,000.00 if it was properly cut with additives; if sold as packaged it would yield between $28,000.00 to $32,000.00. The Crown took the position that the Offender was a major player in a larger conspiracy and noted that he had made the delivery arrangements personally. The trial judge found that his level of involvement beyond arranging delivery was not demonstrated.

Dymond J decided to impose a sentence he described as in the lower end of the spectrum for the volume of cocaine involved (finding that 5 years to be at the upper end), because of doubt about the Offender's level of involvement, his antecedents and current family situation. He imposed concurrent sentences of 3.5 years imprisonment for conspiracy to traffic and possession for the purpose of trafficking.

R. v. Pittman, 2018 NLSC 135

Crown and defence counsel made a joint submission on the sentence, suggesting a prison term of two and a half years. An agreed statement of facts demonstrated that the Offender accepted delivery of a brick-shaped package containing 1055 grams of cocaine that he put in the trunk of his car. He was observed travelling from Paradise to Goobies where he met with a third party. The third party got in the car and sat in the passenger seat while Mr. Pittman retrieved the cocaine from the trunk. When the police moved in — moments later — the package was on the front passenger floor between the legs of the third party. Mr. Pittman acknowledged to the arresting officer that he owned the cocaine and that he had purchased the "brick" for $50,000. The cocaine was at 31% purity.

Goodridge J imposed a sentence of 2.5 years imprisonment. He noted that the range of sentences in this province for trafficking cocaine at this volume was from two to five years. The Offender had seven prior convictions for "designated substance offences" under the *CDSA*, an aggravating factor that would usually warrant a sentence near the middle of the range. However, he imposed a sentence near the lower end of the range because of mitigating factors, particularly the guilty plea, part of a plea deal in which the Crown agreed to the joint submission and without which there was no certainty of conviction.

R. v. Roper, 2019 NLSC 163

This Offender was involved in a trafficking conspiracy involving stash houses and a distribution network. Police seized over 10 kilograms of cocaine and several hundred thousands of dollars in cash. The Offender personally was caught with $11,525 in cash three grams of cocaine. Evidence from his cell phone revealed that the Offender was, at the direction and on behalf of another person, selling cocaine in ounce and kilogram quantities. He was paid amounts directly tied to the quantities he distributed. He also controlled a stash of drugs and money in the leader’s absence.

McGrath J (as she then was) found that the acceptable range of sentence in this Province for possession of cocaine for the purpose of trafficking in similar circumstances is generally between three years and 4.5 years. She noted that the offender was not a directing mind of the drug operation, but the amount of cocaine and cash involved was substantial and indicative of some involvement in the larger-scale sale of cocaine for profit. She imposed a sentence of 3.5 years imprisonment.

APPENDIX C

NL CASES ON OXYCODONE TRAFFICKING

R. v. Mitchell, 2017 NLCA 26

The Court of Appeal overturned a sentence for oxycodone trafficking of 15 months imposed by the Provincial Court, and substituted a sentence of 7 months. The Offender was 19 years old, a first-time offender, addicted to oxycodone and trafficked in relatively small amounts of Oxycodone at irregular intervals to support her own habit. She had good prospects for rehabilitation. The Court noted that the importance of deterrence and denunciation in sentencing for trafficking in hard drugs, and adverted to the "broad social costs of trafficking in prescription drugs.

R. v. Patton, 2020 NLSC 117

28 year old first-time offender convicted in trafficking in various drugs including oxycodone. He was found in possession of 30 oxycodone pills. He involvement in a trafficking enterprise and possession of illegal firearms were considered aggravating factors. He had good antecedents and prospects for rehabilitation. He was sentenced to 600 days for possession of oxycodone for the purpose of trafficking, to be served concurrently with other sentences.

R. v. Cuff, 2019 NLSC 112

The Offender pleaded guilty. He had been found in possession of cocaine and oxycodone, both for purpose of trafficking, after meeting with a known drug dealer. He had 208 oxycodone pills. The sentencing judge noted that the offender was in the business of dealing in drugs and this was not an isolated incident. He was sentenced to 36 months incarceration for possession of Oxycodone for the purposes of trafficking, to be served concurrently with his sentence for possession of cocaine for the purpose of trafficking.

R. v. Roper, 2019 NLSC 163

The Offender was involved in a large scale trafficking enterprise including importing and selling cocaine and oxycodone. 417 oxycodone pills were seized. He was sentenced to 24 months incarceration concurrent to his sentence for cocaine trafficking.

R. v. Ivey, 2018 NLSC 58

The Offender was a 43 year old former addict, with no relevant criminal record who was running a small retail business in prescription drugs from his apartment. He was found in possession of 25 oxycodone pills along with other prescription drugs. He was sentenced to 16 months imprisonment concurrent to another sentence.

R. v. Hepditch, 2018 NLSC 55

This 43 year old Offender with an extensive criminal record pleaded guilty to several offences, including trafficking in oxycodone. He was arrested in possession of 42 oxycodone tablets. Chaytor J noted that although the amount of drugs and their street value was small, "it must be borne in mind that the cost to society with respect to the trafficking in such substances is quite high notwithstanding the dollar value of the drugs themselves. Trafficking in substances, such as oxycodone, is the root of many issues in our society today. The effects are both devastating and far-reaching. These offences often involve preying on vulnerable individuals, who often suffer from addictions." He was sentenced to 16 months incarceration.

R. v. Cody, 2018 NLSC 46

This first-time offender was found in possession of 58 oxycodone pills, with a street value of $4,640.00 and 574 hydromorphone pills, with a street value of $20,090.00. He pleaded guilty and had good prospects for rehabilitation. The Court noted that the Crown was unable to find any cases directly on point dealing with hydromorphone or oxycodone in similar circumstances and therefore based the range on sentences for trafficking in other hard drugs. He was sentenced to two years plus one day in jail for each count of possession for the purpose of trafficking, to be served concurrently.

R. v. Payne, 2012 NLTD(G) 106

The two Offenders were a common law couple who were convicted together of operating a drug trafficking enterprise, including the import from Ontario of large volumes of cocaine, ecstasy, marihuana and oxycodone. These drugs were later sold by Payne at the street level. They were found in possession of 289 Percocet tablets along with other drugs. They were each sentenced to one year for possession of oxycodone for the purpose of trafficking, but the sentence for Payne, who played a larger role in the operation, was ordered to be served consecutively to other sentences totaling 4 years 7 months, and Colbourne's concurrent to other sentences totaling 2 years 3 months.