

Citation: *R. v. Sanddar*, 2024 YKTC 43

Date: 20241018
Docket: 22-00260A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REX

v.

DARIN MOHINDER HAMAM SANDDAR

Appearances:
Kathryn Laurie
Kevin Drolet, and
Amy E. Chandler (by videoconference)

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM T.C.J. (Oral): Subsequent to the completion of a *Charter* motion, Mr. Darin Sanddar pleaded guilty to having possessed a loaded prohibited firearm without being the holder of an authorization or licence contrary to s. 95(1)(a) of the *Criminal Code* (“*Code*”) and having possessed cocaine for the purpose of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (“*CDSA*”). In the two-plus years since he has committed these offences, he has made efforts to address factors that led to his crimes, including counselling and treatment.

[2] The Crown and the defence are far apart in what the appropriate sentence should be for these offences. The Crown seeks a penitentiary term of three and one-

half years to four years plus a weapon prohibition, while the defence contends that incarceration for one year minus time served is appropriate.

Circumstances of the Offences

[3] On July 29, 2022, after observing what he believed to be *Motor Vehicles Act*, RSY 2002, c. 153 (“MVA”) contraventions, a police officer, Cst. Cook, stopped a vehicle driven by Mr. Sanddar on the Alaska Highway near the Porter Creek subdivision in Whitehorse. Cst. Cook detained Mr. Sanddar as authorized by the MVA. Cst. Cook intended to ticket Mr. Sanddar for driving while suspended, since he was driving without an authorizing licence. Cst. Cook did not immediately write a ticket as he was awaiting another officer to bring him his ticket book and because he wanted the officer present due to safety concerns with respect to Mr. Sanddar. Cst. Cook requested Mr. Sanddar to exit the vehicle as he had called for a tow truck to come and remove the vehicle from the highway.

[4] During Cst. Cook’s attempt to perform a pat-down safety search of Mr. Sanddar, and while telling him he would be arrested for obstruction of justice for non-compliance, Mr. Sanddar advised the officer that he was carrying a loaded firearm in his jacket pocket. Cst. Cook located a Kahr K9 handgun in that pocket. There was one bullet in the chamber and four in the magazine.

[5] The police also seized cocaine from Mr. Sanddar. Mr. Sanddar possessed a total of over 58 grams of cocaine at the time of his arrest. The cocaine was packaged in a manner consistent with trafficking. He also was in possession of \$1,050 Canadian currency and a cell phone.

Circumstances of Mr. Sanddar

[6] Mr. Sanddar is 43 years old. He has lived in the Yukon since 2007. I am advised that he is a Red Seal oil burner mechanic. He worked with a number of companies between 2007 and 2015. From 2015 to 2018, Mr. Sanddar indicated to the Court that he ran his own business. In 2018, the death of his father seriously impacted him.

[7] Mr. Sanddar has struggled with a drug addiction. In 2023, he commenced efforts to rehabilitate himself. He commenced individual counselling sessions with a clinical counsellor with Aurora Wellness Group. He attended 21 of 24 scheduled counselling sessions. Additionally, Mr. Sanddar attended forensic counselling sessions with a forensic clinical counsellor at Mental Wellness and Substance Use Services commencing May 9, 2023. During 17 sessions, Mr. Sanddar worked on "...addressing his risk factors, substance use, self-esteem, and general self-regulation." He also completed an in-house addiction program at the Whitehorse Correctional Centre in May 2023.

[8] On February 29, 2024, Mr. Sanddar voluntarily entered a live-in treatment program. He successfully completed the program on April 15, 2024.

[9] Mr. Sanddar has a criminal record, including convictions for fraud, assault, and assault causing bodily harm. He has a dated conviction for possession of a controlled substance.

[10] Defence counsel candidly admits that Mr. Sanddar has struggled at times in his efforts to better himself, but says he remains committed to his rehabilitation. When he has been on bail with respect to these charges, I am advised that he has been on strict release conditions. After he commenced programming and counselling in 2023, the record of proceedings show that Mr. Sanddar returned to custody between November 30, 2023 and January 12, 2024. The Court allowed for his further release at that time, and he subsequently attended and completed residential treatment.

[11] More recently, Mr. Sanddar came back into custody on August 31, 2024, and his bail was revoked on September 1, 2024.

Positions of the Parties

[12] The Crown contends an appropriate global sentence is three and one-half to four years' imprisonment, plus a weapon's prohibition and forfeiture of various items seized. The Crown submits that a sentence of this nature would properly emphasize the principles of denunciation and deterrence, considering the toxic combination of possession of a loaded handgun while simultaneously possessing hard drugs for the purpose of trafficking.

[13] The defence maintains that a concurrent one-year jail sentence for the gun and drug offences would adequately address the purpose and principles of sentencing in this matter. The defence points to the rehabilitative efforts that Mr. Sanddar has undertaken over the past 18 months, and the fact that he has been subject to strict conditions during the times that he has been on release.

Principles of Sentencing

[14] Sections 718 to 718.21 of the *Code* and s. 10 of the *CDSA* set out the general purpose, objectives, and principles of sentencing.

[15] The fundamental purpose of sentencing under the *Code* is to protect the public and to contribute to respect for the law and the maintenance of a safe society. This applies equally in the drug context under the *CDSA*.

[16] The goal in sentencing Mr. Sanddar is to determine “a fair, fit and principled sanction” (*R. v. Parranto*, 2021 SCC 46, at para. 10).

Proportionality

[17] A sentence must be “...proportionate to the gravity of the offence and the degree of responsibility of the offender. ...” (*R. v. Friesen*, 2020 SCC 9, at para. 30). As the Court in *Parranto*, at para. 12, explained:

As to the relationship of individualization to proportionality and parity, this Court in *Lacasse* aptly observed:

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. [para. 53]

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” (para. 58). 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 (para. 58).

Gravity of the Offences

[18] The offences committed by Mr. Sanddar are objectively serious. The maximum sentence for the drug offence is life imprisonment; and for the firearm offence, 10 years in custody.

[19] The devastating effect of hard drugs on vulnerable northern communities is well-known and well-documented in the case law (*R. v. Curtis* (1982), 2 Y.R. 177 (YK Terr Ct) , at paras. 12 to 15; *R. v. Holway*, 2003 YKTC 75, at para. 7; *R. v. Naiker*, 2007 YKTC 58, at para. 7; *R. v. Profeit*, 2009 YKTC 39, at para. 39; and, more recently, in *Parranto*, at para. 71).

[20] Courts have consistently held that in sentencing those who are in the business of trafficking, denunciation and deterrence must be a primary consideration. In many instances, the sale of hard drugs exploits those who are already at risk. In *R. v. Aguilera Jimenez*, 2020 YKCA 5, at para. 49, the Court stated that:

Cocaine is a highly addictive drug that inflicts untold misery on users, those in their orbit and society generally. It destroys lives, tears families apart and damages communities. For all of these reasons, trafficking in cocaine is considered a serious offence which should attract significant consequences. ...

[21] Similarly, courts view firearm crimes very seriously, especially when the matter is a s. 95 offence involving “truly criminal” conduct (*R. v. Kachuol*, 2017 BCCA 292, at para. 27). In *Kachuol*, the Court stated at para. 25:

In recent years, Canadian courts have become increasingly concerned by the proliferation of handguns, gun violence and the dire consequences for our society. Guns are inherently, often lethally, dangerous, all the more so when they are possessed for an illicit purpose. As a result, their possession and use is highly regulated and, if unlawful, criminalized to ensure public safety, express society's condemnation and punish offenders. To the extent possible, courts strive to achieve these goals when imposing sentences for firearms-related offences by prioritizing deterrence and denunciation, following customary sentencing ranges in all but exceptional cases and fully accounting for aggravating factors where they exist.

[22] The Supreme Court of Canada in *R. v. Nur*, 2015 SCC 15, at para. 136, stated that “[s]ection 95 targets the simple possession of guns that are frequently used in gang-related or other criminal activity...” The Court also pointed out that “[...]outside of law enforcement, these guns are primarily found in the hands of criminals who use them to intimidate, wound, maim, and kill.”

[23] In *R. v. Zhu*, 2013 BCCA 416, Mr. Justice Harris stated, at para. 21:

Firearms are a scourge in our society. The possession and use of firearms poses unacceptable risks to the public and the police. There is no doubt that both must be protected from the illegal possession and risk of use of unlawful firearms. ...

[24] The combination of hard drugs and guns is especially dangerous.

Degree of Responsibility

[25] The offence of possession for the purpose of trafficking involved cocaine, a very addictive and dangerous drug. The amount of cocaine possessed by Mr. Sanddar for the purpose of trafficking was relatively significant. Additionally, his criminal activity was

sufficiently organized that he was carrying a loaded, concealed, and easily accessible handgun while transporting his cocaine. I do, however, take into account that Mr. Sanddar's sale of drugs was intertwined with his use of cocaine.

[26] Turning to the firearm offence, I will consider the circumstances surrounding Mr. Sanddar's possession of the firearm. As outlined in *Nur*, at para. 82, a s. 95(1) offence may cover a wide range of situations. On the high end of the range is an "outlaw" carrying a prohibited or restricted weapon for the purposes of his illicit endeavours. Such an individual is engaged in truly criminal behaviour which poses a real danger to the public. On the other end of the range is the licensed responsible gun owner who mistakenly chooses the location to store his unloaded firearm with ammunition nearby.

[27] The conduct of Mr. Sanddar is at the higher end of the range. His possession of a loaded and concealed handgun while transporting cocaine in his vehicle amounts to truly criminal behaviour that poses a real danger to the public.

[28] In the result, I find that his culpability or degree of responsibility for these offences is high.

Sentencing Objectives

[29] The paramount sentencing objectives in this matter are general and specific deterrence, and denunciation, and public safety. That being said, rehabilitation remains a relevant sentencing objective despite the seriousness of these offences.

[30] I turn now to the aggravating and mitigating factors. Although Mr. Sanddar's prior criminal record is not lengthy, it is still an aggravating factor. The combination of a possession for the purpose of trafficking charge and a loaded firearm charge is aggravating. It is also aggravating that he had the handgun on his person while transporting his drugs. The fact that the firearm was a "tool" of his criminal activity is aggravating.

[31] In terms of mitigation, Mr. Sanddar pleaded guilty to these charges. Although it was not an early guilty plea, coming approximately two months after the *Charter voir dire* decision was rendered, he is nonetheless entitled to credit. After resisting police efforts to perform a pat-down safety search, Mr. Sanddar was cooperative with the police. He has also made efforts to rehabilitate himself since his arrest. I am also of the view that he is remorseful for these offences.

[32] As outlined in *R. v. Nasogaluak*, 2010 SCC 6, a *Charter* breach can be considered a mitigating factor relevant to sentence.

[33] In the case at bar, the police breached Mr. Sanddar's s. 10(b) *Charter* rights by providing him with inaccurate information that police could not facilitate a private call to counsel at roadside. The police did facilitate a call to duty counsel for Mr. Sanddar upon his arrival at their Arrest Processing Unit. The delay was not significant. However, the arresting officer did ask Mr. Sanddar an investigational question at roadside. I excluded that question and answer at the completion of the *Charter voir dire*.

[34] The police also breached Mr. Sanddar's s. 10(a) and s. 10(b) *Charter* rights by failing to re-Charter him with respect to the new charges, including possession of illicit drugs for the purpose of trafficking. Although the police did not promptly advise him of his change in jeopardy, they ultimately re-Chartered him a number of hours after they should have. As it turned out, the s. 10(a) and 10(b) breaches were technical in nature. Although the risk of self-incrimination existed, the police did not question him, and he did not inadvertently incriminate himself.

[35] The *Charter* breaches were not at the more serious end of the spectrum. Nonetheless, these breaches of Mr. Sanddar's rights should be considered as a mitigating factor.

Sentencing Case Law

[36] I have considered the case law filed by counsel, while additionally consulting other sentencing decisions in regard to the two charges before the Court. Below, I set out summaries of cases that, in my view, demonstrate the sentencing range for each of these offences.

Possession for the Purpose of Trafficking

[37] In ***Aguilera Jimenez***, the Yukon Court of Appeal upheld the imposition of a suspended sentence for an 18-year-old offender who pleaded guilty to possession of cocaine for the purpose of trafficking. The offender was involved in a dial-a-dope operation and when arrested was in possession of nine small bags of crack cocaine and one small bag of powdered cocaine. His adult passenger had five bags of cocaine and a

53.43 gram rock of cocaine. More than \$3,500 cash was located on the passengers. The offender had done well on release, including re-enrolling in school and obtaining his high school diploma, while also distancing himself from negative influences. The offender had entered a guilty plea and had no prior criminal history.

[38] In *R. v. Maynard*, 2016 YKTC 51, a 19-year-old offender with no criminal history pleaded guilty to trafficking in cocaine. He sold a street-level amount of cocaine to an undercover police officer and subsequently set up the purchase of a larger quantity of cocaine between an undercover officer and another individual. He had disengaged from the drug trade prior to his arrest. He had also obtained gainful employment. The Court, noting exceptional circumstances, suspended the passing of sentence and placed the offender on probation for 20 months.

[39] The case of *R. v. Keobke*, 2019 YKSC 63, resulted in guilty pleas on the first day of trial to possession of cocaine and fentanyl for the purpose of trafficking, possession of crack cocaine for the purpose of trafficking, two firearm offences, and two breaches of a recognizance. Some of the offences occurred while Mr. Keobke was bound by a recognizance. Mr. Keobke suffered from an addiction to drugs. Crown and the defence made a joint recommendation for a penitentiary term of three years and five months, minus time served. The Court accepted the joint recommendation, finding that it met the objectives of denunciation and deterrence, and the offender's rehabilitation. The Court apportioned three years' incarceration to the drug charge involving cocaine and fentanyl to run concurrent to the three years' incarceration for possessing a loaded restricted firearm. The second possession of cocaine for the purpose of trafficking charge resulted in a five-month consecutive sentence.

[40] In *R. v. Cletheroe*, 2022 YKTC 10, the offender pleaded guilty to possessing cocaine for the purpose of trafficking. During the execution of a search warrant, police seized a total of 21.87 grams of cocaine and 1.07 grams of crack cocaine, along with paraphernalia consistent with drug trafficking, and a functioning extendable baton. One of the men arrested during the search advised police that when he accompanied Mr. Cletheroe when the latter sold drugs, Mr. Cletheroe generally carried a “billy club”. Mr. Cletheroe had a lengthy and related record, including drug trafficking and break and enter convictions. By the time the Court sentenced Mr. Cletheroe, approximately three years after the trafficking offence, he had completely turned his life around.

[41] The Court had the benefit of a *Gladue* report as well as a pre-sentence report. Mr. Cletheroe had taken counselling sessions with a Mental Wellness and Substance Use counsellor, attended inpatient chemical dependency treatment in Alberta, and commenced family treatment which was unfortunately cut short due to the COVID-19 pandemic. Additionally, he had met virtually with a registered psychologist and had worked steadily for his First Nation as he pursued his goal of becoming a Red Seal certified carpenter. He was in a relationship with a supportive spouse with whom he had a young daughter. Mr. Cletheroe provided the Court with letters of support which made it clear that a lengthy term of imprisonment would have negative consequences for his children, his spouse, and his ex-spouse who received child support from him. The Court sentenced him to a 90-day custodial sentence served intermittently, followed by a three-year probationary period.

[42] The offender in *R. v. Le Diuzet*, 2022 YKTC 24, pleaded guilty to fraud, possession of cocaine for the purpose of trafficking, possession of proceeds of crime, and possession of a firearm without a licence.

[43] After police observed the offender making three short duration “meets” with individuals in Whitehorse and arrested one of the individuals for possession of a controlled substance, police officers arrested Mr. Le Diuzet. He was in possession of multiple plastic twists of cocaine, two phones, and \$690. He also admitted, as part of an Admission of Facts, that he constructively possessed 1.25 kilograms of cocaine which had been seized from a youth associate, and that Mr. Le Diuzet had the intention to traffic that cocaine as part of a joint venture with other individuals. Police located more cocaine when arresting Mr. Le Diuzet’s co-accused.

[44] Approximately six weeks later, police again stopped a vehicle the offender was driving. They located a shotgun in a rifle scabbard in the backseat of the car. No ammunition was located. Mr. Le Diuzet did not have a licence to possess the shotgun. He was 33 years old with no prior criminal record.

[45] Prior to sentencing, Mr. Le Diuzet had performed very well on strict bail conditions, including initially house arrest, for approximately 10 months. The Court took into account the positive pre-sentence report and positive letters of support which included one from his employer. The Court sentenced him on the possession of cocaine for the purpose of trafficking to 198 days of jail, time served, plus a probationary period of two years.

[46] In the matter of **R. v. Nipp**, 2011 YKTC 6, the Court sentenced the offender for having possessed for the purpose of trafficking 76 grams of a substance containing 18 percent heroine and 18 percent cocaine. Mr. Nipp was also in possession of \$1,490 Canadian currency and \$142 U.S. currency. Mr. Nipp was a heavy user of hard drugs. He came before the Court with no prior criminal convictions. The Court found that 76 grams of hard drugs was a “considerable” amount. Liles J. accepted the joint recommendation of counsel and sentenced Mr. Nipp to an 18-month period of incarceration.

[47] In **R. v. Crompton**, 2009 YKSC 16, after the police observed the offender involved in a hand-to-hand transaction in an alley, a search of his residence revealed 2.4 grams of crack cocaine and trafficking paraphernalia. Six months after his release on bail, Mr. Crompton trafficked approximately 1 gram of cocaine to a police agent. He was 26 years of age and had no prior criminal history. The sentencing judge found it highly aggravating that after pleading guilty to the first offence and while bound by a recognizance, he continued to traffic drugs. Veale C.J. imposed a global sentence of 18 months’ imprisonment.

[48] In **R. v. Campbell**, 2009 YKTC 87, the Court sentenced, after trial, the 40-year-old offender for trafficking in cocaine. Additionally, the offender pleaded guilty to having committed a second trafficking offence. In total, during these two transactions, he sold four rocks of crack cocaine to an undercover officer. The offender had 16 prior criminal convictions, including one prior drug possession offence. He was a profit-driven trafficker with a drug addiction problem. He was operating at a level above a street-level cocaine trafficker providing direction and supervision to others. The Court

sentenced the offender to 10 months' time served for the first transaction and an additional eight months to be served conditionally for the second offence.

[49] In *R. v. Bourne*, 2007 YKTC 81, Mr. Bourne pleaded guilty to possession for the purpose of trafficking and possession of prohibited firearms. He was 35 years of age and had a criminal record, including two prior drug possession offences. He had been in possession of what was described as a significant amount of cocaine, most of it in crack form. The total amount of cocaine seized was 40 grams. In addition to drug paraphernalia, the police seized over \$20,000 in cash and firearms. Faulkner J. accepted a joint recommendation and sentenced him to 18 months' imprisonment for the drug offence and 15 months consecutive for having possessed two prohibited weapons.

[50] In *R. v. Silver*, 2006 YKTC 32, the Court, after trial, sentenced the 30-year-old offender for possession of cocaine for the purpose of trafficking, firearm offences, and a charge of breach of a recognizance. Mr. Silver possessed what the Court described as a substantial amount of powder and crack cocaine. It should be noted that, on an unsuccessful conviction appeal, to the Court of Appeal specified that the amount of cocaine in question was 59.3 grams (*R. v. Silver*, 2007 YKCA 4, at paras. 6 and 16). Mr. Silver did not have a criminal record. He was a user of cocaine at the time of his arrest but since then he had ceased consuming drugs.

[51] Mr. Silver and his common-law spouse had an infant child and he had two other children from a previous relationship. He had been attending Yukon College while on remand.

[52] Taking into account three months of pre-sentence custody and the totality principle, the Court sentenced the offender to a global sentence of 27 months' imprisonment, including 15 months' incarceration for the possession of cocaine for the purpose trafficking charge. Absent the totality principle, the Court stated that between 18 months and two years' imprisonment would have been an appropriate sentence for the possession for the purpose of trafficking offence.

Possession of a loaded prohibited fire weapon

[53] In the Yukon, there is a paucity of case law regarding sentencing for possession of a loaded prohibited weapon pursuant to s. 95(1)(a) of the *Code*.

[54] In ***Keobke***, the Yukon Supreme Court sentenced the offender to a total of three years' incarceration for the charges of possession of a loaded restricted firearm without being a holder of a registration certificate and possession of a loaded prohibited firearm (a short-barreled shotgun) without having an authorization to possess it. However, due to the fact that the Court was accepting a joint recommendation from counsel, the Court understandably did not enter into a detailed analysis when apportioning periods of incarceration to each charge. As a result, however, the precedential value of the sentences imposed is lessened. As Newbury J.A. commented in ***R. v. Holt***, 2015 BCCA 302, at para. 16 "... I must say that sentences based on joint submissions are not as helpful as others."

[55] The decision in ***R. v. Bailey***, 2023 YKTC 18, was also a joint recommendation by counsel with respect to a number of charges, including an offence of possession of an unlawfully held restricted weapon contrary to s. 95 of the *Code*. The offender

committed this offence while prohibited from possessing weapons. The Court endorsed the overall joint submission, including a two-year period of incarceration for the firearm offence.

[56] In the 2006 *Silver* decision, in addition to the possession of cocaine for the purpose of trafficking offence, the Court sentenced Mr. Silver for two firearm offences, including the charge of possessing a loaded restricted weapon. For that offence, the Court imposed the mandatory minimum sentence which was in force at the time of one year imprisonment. However, it should be noted that although the Crown and defence differed on the overall sentence for the charges before the Court, each suggested that the Court impose the one-year mandatory minimum sentence for the charge of possessing a loaded and restricted weapon. The Court agreed to impose the one-year sentence but, as in *Keobke* and *Bailey*, the Court, quite properly, did not find it necessary to undertake an analysis of the case law for that offence.

[57] The Crown has filed a number of decisions from across the country regarding sentences for accused convicted of possessing loaded prohibited firearms. The defence responds that the fact situations and personal circumstances of those offenders are quite different than those of Mr. Sanddar.

[58] In *Nur*, the Supreme Court of Canada held that the mandatory minimum sentences imposed by s. 95(2)(a)(i) and (ii) (three years for a first offence and five years for a second or subsequent offence) were unconstitutional and declared them of no force or effect. However, the Court explained that “[t]his does not prevent judges from imposing exemplary sentences that emphasize deterrence and denunciation in

appropriate circumstances. ...” (para. 5). Despite finding s. 95(2)(a) unconstitutional, the Court declined to interfere with the sentences imposed by the trial judges in the 2009 case of Mr. Nur and in the 2008 case of Mr. Charles. The trial Court in **Nur**¹ had imposed a 40-month penitentiary term. The Court in **Charles**² had imposed a seven-year sentence of imprisonment for the subsequent firearm offence.

[59] In my view, it is beneficial to consider the facts in **Nur** that resulted in this lengthy sentence. One evening in a high-crime neighbourhood of Toronto, where gun violence was a serious issue, a young man entered a community centre and advised staff that he was afraid someone outside was waiting to get him. When police attended, they observed four men, including Mr. Nur, standing at an entrance to the community centre. The men scattered as police approached. Mr. Nur threw away a handgun as he ran from the police. This handgun, a prohibited weapon, was a loaded .22 calibre semi-automatic with an oversized ammunition clip. It could fire 24 rounds in 3.5 seconds. The Court did not find Mr. Nur to have been involved in the threatening behaviour and it was unclear when, for how long, or how he ended up possessing the handgun.

[60] Ultimately, Mr. Nur pleaded guilty to the charge, but did not admit anything more than the facts essential to the plea. He was 19 years old and had no prior criminal record. He had a supportive and law-abiding family. At the time of the offence, he was attending high school and planned on going to university. His teachers and past employers praised his past performance and spoke of his considerable potential.

¹ **R. v. Nur**, 2011 ONSC 4874

² **R. v. Charles**, 2010 ONSC 5437

[61] In *R. v. Paradis*, 2019 NWTSC 27, police pulled over the vehicle the offender was driving as part of a drug investigation in the small community of Fort Providence. The police located a small amount of cocaine individually wrapped in the glove box along with money. In the trunk of the vehicle, a locked safe containing over \$4,000 and over 131 grams of cocaine was located. In the back seat, police seized from a suitcase a hunting knife, a loaded semi-automatic rifle with a 40-round magazine without a trigger lock, and additional ammunition. The rifle was inoperable but could be rendered operable by removing an extra spring. It was unclear if the offender had the knowledge to make the firearm operable. At the time of his arrest, Mr. Paradis was subject to a weapons prohibition. He had a limited criminal record.

[62] The trial judge sentenced Mr. Paradis to a global five-year term of imprisonment. She had determined that a three-year sentence for each of the two primary offences (possession of cocaine for the purpose of trafficking and possession of a loaded restricted firearm) was appropriate. The commercial trafficking in cocaine charge fell within the three-year starting point in that jurisdiction. The trial judge also took into account other firearm charges and a possession of money obtained by crime charge for which the offender had been convicted, the offender's criminal record, and *Charter* breaches. The trial judge concluded that an appropriate sentence was one of five years' imprisonment. The Court of Appeal³ upheld the global sentence of five years of custody.

³ *R. v. Paradis*, 2020 NWTCA 2

[63] The British Columbia Court of Appeal in **Holt** discussed the range of sentence in British Columbia for a first conviction of possession of a loaded prohibited or restricted firearm pursuant to s. 95 of the *Code*. The Burnaby RCMP stopped Mr. Holt for a driving infraction. He and his passenger had been drinking alcohol and smoking crack cocaine. Upon arrest for possession of drugs, the police located, in a backpack, a loaded .22 calibre revolver and a box of 43 cartridges for that firearm.

[64] When sentenced, Mr. Holt was 66 years of age and unemployed. At the time of the offence, he was a drug addict. Although he believed he had overcome his drug addiction, the pre-sentence report revealed that he still used illegal drugs occasionally. Mr. Holt had limited, if any, insight into the need to address his drug addiction. Of note, the sentencing judge stated there was no suggestion that Mr. Holt was involved in criminal activity aside from his drug use. He had no criminal record. The Court of Appeal increased the 18-month custodial sentence imposed by the sentencing judge to one of 30 months' imprisonment. The Court stated, at para. 18, that:

... the possession of a loaded firearm does pose a serious threat, and a growing one, to communities across Canada. There is no reason why British Columbia courts should take this threat less seriously than other Canadian courts now do. ...

[65] In **Kachuol**, the police conducted an impaired driving investigation of Mr. Kachuol in downtown Vancouver. While impounding his vehicle, they found a loaded prohibited firearm in the console between the driver and passenger seats. The handgun had never been registered and Mr. Kachuol never held a licence to possess it. In fact, he was prohibited from possessing weapons due to a previous conviction of

possessing marijuana for the purpose of trafficking. He was 23 years of age at the time of the offence. He had community support from family and friends, and his rehabilitative prospects were good. He was also suffering some residual effects of a traumatic brain injury at the time of sentencing.

[66] The sentencing judge imposed a conditional sentence of just under two years. On appeal, the Court held that the crime committed by Mr. Kachuol was at the “ ‘true crime’ end of the spectrum of s. 95(1) offences”.

[67] The Court stated, at para. 25:

In recent years, Canadian courts have become increasingly concerned by the proliferation of handguns, gun violence and the dire consequences for our society. Guns are inherently, often lethally, dangerous, all the more so when they are possessed for an illicit purpose. ...

[68] The Court of Appeal also found that “Mr. Kachuol’s possession of the loaded prohibited handgun in a moving car, strategically placed for ready access and entirely outside of the regulatory framework, posed a real and immediate danger to those in his orbit” (para. 29). The Court of Appeal increased the sentence to three years’ imprisonment describing it as “a fit sentence at the bottom of the range”.

[69] In *R. v. Smickle*, 2014 ONCA 49, the offender was present in his cousin’s apartment when police executed a search warrant. The trial judge found that Mr. Smickle had in his hand a Colt 25 calibre semi-automatic handgun, a prohibited weapon, fully loaded with the hammer cocked to fire when the police entered the residence by way of a “dynamic” entry. He was 27 years of age with no criminal record.

He was employed and working towards his high school diploma. He was in a relationship and had two children.

[70] The trial judge sentenced him to a five-month conditional sentence after giving him seven months total credit for three months of pre-sentence custody and several months on judicial interim release on restrictive terms.

[71] The Court of Appeal held that a proper sentence would be a prison term of two years less a day.

[72] In *R. v. Mansingh*, 2016 ONSC 94, a jury convicted the offender of a number of offences related to the possession of a loaded handgun. Mr. Mansingh was providing his friend with marijuana when he saw the police. Police noticed him as he abruptly started to run through the apartment building that he was visiting. A police officer followed him. After exiting the building, Mr. Mansingh threw away an object that turned out to be a loaded handgun.

[73] Mr. Mansingh did not have a criminal record. He was 27 years of old and described as a “very decent young man” and a promising student. The trial judge accepted that Mr. Mansingh had taken steps to reform himself after his arrest. It was an aggravating factor that he fled from police and threw the handgun away in a public place. It was also aggravating that he was engaged in commercial drug trafficking albeit at a low level. The Court of Appeal⁴ upheld the effective sentence of 43 months’ incarceration on the s. 95(1) charge.

⁴ *R. v. Mansingh*, 2017 ONCA 68

Drugs and Guns

[74] As noted in ***Mansingh***, courts have held in s. 95(1) cases that it is very aggravating when the offender is also involved in the drug trade.

[75] In ***R. v. Wong***, 2012 ONCA 767, at para. 13, the Court of Appeal stated:

The combination of drugs and guns is particularly concerning. This combination is a serious aggravating factor on sentencing. ...

[76] Justice Code in ***R. v. Graham***, 2018 ONSC 6817, at para. 38, pointed out that:

... the Court of Appeal has held that three years to five years is the appropriate range for a first s.95 offence where the use and possession of the gun is associated with criminal activity, such as drug trafficking. ...

[see for example, ***R. v. Marshall***, 2015 ONCA 692]

Appropriate Sentence

[77] As the case law above reveals, most cases of trafficking in hard drugs result in a period of imprisonment. A custodial sentence is necessary, in most cases, to meet the principles of denunciation and deterrence. Similarly, as set out above, courts have held that illegal possession of restricted and prohibited weapons should attract significant penalties.

[78] The defence argues that illicit gun possession in Whitehorse is not comparable to that in Canada's larger cities, and that this fact should be reflected in a lower range of sentence in the Yukon. However, the Yukon is not immune from the scourge of

firearms in our communities (*R. v. McGivern*, 2024 YKTC 12; *R. v. Tuel*, 2023 YKSC 73; *R. v. Wuor*, 2023 YKSC 31; *Bailey*; and *Le Diuzet*).

[79] I have considered what an appropriate sentence should be for Mr. Sanddar. Section 718.2 of the *Code* directs me to consider the principle of restraint and to ensure that the sentence is not more punitive than is required to respond to the principles of sentencing.

[80] In this case, I have concluded that the sentences for the two separate offences should be consecutive. The distinct offences of possession of cocaine for the purpose of trafficking and possession of a loaded handgun engage different legally protected interests (*R. v. Boyd*, 2016 ONCA 380, at para. 3).

[81] I have also considered the principle of totality, which is a reminder that combined sentences should not be unduly long.

[82] In the result, I have concluded that a proportionate global sentence in this case is a period of 40 months' imprisonment.

[83] Mr. Sanddar, I sentence you to a period of 10 months' imprisonment for the s. 5(2) *CDSA* offence. I sentence you to 30 months' imprisonment consecutive for the s. 95(1) *Criminal Code* offence. As Mr. Sanddar has served the equivalent of six months of pre-sentence custody, 34 months remain to be served.

Ancillary Orders

[84] Additionally, I impose the following ancillary order. I order that commencing today and for a period of 10 years following Mr. Sanddar's release from imprisonment for these offences, he is not to have in his possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive device.

[85] The victim surcharge in this matter is waived.

CHISHOLM T.C.J.