SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Halsey*, 2017 NSSC 141

Date: 20170331
Docket: CRH No. 448873
Registry: Halifax

Between:

Her Majesty the Queen

v.

Jason Matthew Halsey and Clinton James Christie

Restriction on Publication: s. 486.5(1)

Editorial Notice: The electronic version of this judgment has been modified to remove identifying information

Judge:	The Honourable Justice Patrick Duncan
Heard:	March 17, 30, 31, 2017, in Halifax, Nova Scotia
Written Release:	June 5, 2017 (March 31, 2017, Orally)
Counsel:	Erica Koresawa, for the Crown Patrick MacEwen, for Defence, Mr. Halsey Trevor McGuigan, for Defence, Mr. Christie

486.5 (1) Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

By the Court:

Charges

[1] Jason Halsey and Clinton Christie have entered pleas of guilty to a series of offences:

> Count 1:
> that they did on or about the 8th day of June, 2015, at or near Upper Sackville, in the County of Halifax in the province of Nova Scotia, did unlawfully break and enter a place, to wit., a residence, of D. and K. situate at […], Upper Sackville, Nova Scotia, and did commit therein the indictable offence of robbery contrary to Section 348 (1)(b) of the **Criminal Code**;
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> Count 5:
> at the same time and place aforesaid, did without lawful authority confine D., contrary to Section 279(2) of the **Criminal Code**;
>
> Count 6:
> at the same time and place aforesaid, did without lawful authority confine K., contrary to Section 279(2) of the **Criminal Code**;
>
> Count 7:
> at the same time and place aforesaid, did without lawful authority confine J., contrary to Section 279 (2) of the **Criminal Code**;
>
> Count 16:
> at the same time and place aforesaid, did with intent to commit an indictable offence did have their faces masked, contrary to Section 351(2) of the **Criminal Code**.

[2] Clinton Christie also entered a plea of guilty to the following charge:

> Count 17:
> at the same time and place aforesaid, being at large on his Recognizance entered into before a Justice or Judge on the 15th day of April, 2015, and being bound to comply with a condition of that Recognizance to wit., “DO NOT ASSOCIATE WITH OR BE IN THE COMPANY OF THE FOLLOWING PERSON(S) DEREK MACPHEE.”, without

lawful excuse failed to comply with that condition contrary to Section 145(3) of the **Criminal Code**.

Circumstances of the Offences

[3] There is an Agreed Statement of Facts, which has been read into the record and has been tendered as Exhibit 1. It states:

> On June 5, 2015, Derek McPhee rented a black Chrysler 300 (the "Chrysler") for three days.
>
> In the late hours of June 7, 2015 and early morning hours of June 8, 2015, Clinton Christie discussed with Derek McPhee the idea of breaking into a house and a plan was made to go to K. and D.'s house, located at […], Upper Sackville, Nova Scotia. McPhee agreed to steal a car for Christie, but did not want to participate otherwise. In preparation, McPhee stole a Mazda Miata (the "Mazda"), and Clinton Christie and Jason Halsey located masks, gloves, and knives. McPhee then drove himself and his girlfriend, Erin Harlow, in the Chrysler to point out K. and D.'s residence. Mr. Halsey drove himself and Mr. Christie to the residence in the Mazda.
>
> On June 8th, 2015 at approximately 5:00 a.m., K. and D. were asleep in their bedroom, located on the lower level of their house. K. and D. woke to the accused, Clinton Christie and Jason Halsey, in their bedroom wearing masks and gloves, and carrying knives. The accused demanded D.'s gold chain, which he gave to them.
>
> Then they demanded K.'s diamond bracelets that were hidden in a box under her mattress. One of the accused had a knife to D.'s throat as K. got out of bed to retrieve the diamond bracelets and diamond earrings.
>
> It is believed that the accused entered the home though the rear patio door as it had been left unlocked. At some point, the phone lines in the house were cut.
>
> The accused also demanded D.'s oxycodone pills, but he told them he could not remember where the pills were. One of the accused stuck a knife up to D.'s throat again at which time he told them he thought they were upstairs on the couch.
>
> Mr. Christie left the master bedroom and retrieved K. and D.'s 13-year-old son, J., from his bedroom. He demanded that J. give him his (J.'s) electronics and money before tying J.'s hands and bringing him

downstairs to K. and D.'s bedroom. One of the accused told K. that they wanted jewelry, pills and money. K. told the accused that her money was upstairs in her purse, which contained $1,500.00 cash.

K. and J. were forced to stay in the bed and cover their heads with the blanket while D. was taken upstairs to find his pills. Once the pills were located, he was taken back downstairs and forced into the bed with K. and J..

One of the accused located a large jewelry box in the bathroom that contained jewelry and passports. These items were also taken. K., D. and J. were all forced into the bedroom closet and told not to leave or call the police. The accused also tied K. and D.'s hands behind their backs and said they would come back and kill them if they called the police. K. asked them not to take her wedding ring and was told to shut up and that she was lucky to be alive.

J. was tied up with a grey electrical cord, D. was tied up with a rope from J.'s cadet uniform, and K. was tied with a small thin wire that she believed to be a phone cord.

Items stolen from the home included three cell phones, a Wii console, Xbox One console, games, controllers, D.'s chain (Cuban link, value $5,000), a smaller Cuban link chain, K.'s jewelry, passports, cash, and pills. The items were taken from the home in multiple reusable shopping bags.

The incident took place over approximately a thirty minute period. K. and D. both believe they were targeted based on the suspects having very specific knowledge of their belongings.

Once the accused left the house, K. and J. got into their own car and followed the Chrysler as it drove away from their house. The vehicle had a gold emblem on the back. K. followed the Chrysler out of her subdivision and inbound towards Lower Sackville until it pulled into the parking lot of Cook's Pizza at 1727 Sackville Drive. K. continued on to find a phone to call police.

Witness C. saw a male running from [the victims' house] at 5:10 a.m. This male had his hood up and was carrying what she believed to be a reusable grocery bag. The male got into a dark, older model Mazda Miata. C. observed the Chrysler leaving the area and saw a male with a baseball hat driving it until it turned into the Cook's parking lot.

Mr. Christie and Mr. Halsey abandoned the Mazda on Sackville Drive and Mr. McPhee picked them up in the Chrysler. Mr. Christie and Mr. Halsey got into the trunk of the Chrysler.

At approximately 5:27 a.m. the RCMP and K9 Officer Cst. Brent Bates observed the Chrysler in the area of […] (near the intersection of Sackville Drive and Fenerty Road), and observed a noticeably large/shiny Chrysler emblem on the trunk and conducted a traffic stop. The driver of the Chrysler was Mr. McPhee and the front passenger was Ms. Harlow. McPhee and Harlow provided inconsistent details about why they were in the area. McPhee stated he was driving around used car lots looking for used cars to steal. McPhee and Harlow were subsequently arrested.

The Chrysler was seized and taken to the RCMP Headquarters, located at 80 Garland Avenue, Dartmouth, Nova Scotia, to be processed.

J. and K.'s stolen cell phones were both "pinged" on two occasions. The first time they were showing to be in the area that the Chrysler was being detained at the initial traffic stop, and the second time they were showing to be in the area of the RCMP HQ once the vehicle had been towed there.

The two accused were still hiding inside the trunk of the Chrysler when it was seized and towed to RCMP HQ. Once secured inside the Identification Unit's garage, the accused exited the Chrysler, and were able to exit the RCMP HQ building undetected. These two accused were captured on video leaving the RCMP HQ and their clothing and description match those provided by the victims of the home invasion.

Officers later cleared the Chrysler and located the Xbox, jewelry, a "scream" mask, a black balaclava, a hat, latex gloves, and two cell phones.

The accused took a taxi from […], Dartmouth to […], Dartmouth and walked to […], the residence of Jason Halsey's then-girlfriend, Crystal Morrison. They arrived at approximately 8:30 a.m.

The stolen Mazda belonged to A. who last saw his vehicle on June 7, 2015 on Willett Street in Halifax, Nova Scotia at 8:30 p.m. A. noted the Mazda was missing at 6:45 a.m. on June 8, 2015. The Mazda was located at […] (near the intersection of Sackville Drive and Fenerty Road) on June 8, 2015 at 11:30 a.m. A. had not given anyone permission to use, damage, or take the Mazda.

> The "scream" mask retrieved from the trunk of the Chrysler was analysed and Mr. Christie's DNA was located on the inside of the "scream" mask.
>
> The hat retrieved from the trunk of the Chrysler was also analysed and Mr. Halsey's DNA was located on the bottom edge of the brim of the hat.
>
> Jason Halsey was arrested on June 10, 2015 at […]. While at this residence, police also retrieved some of K.'s stolen jewelry from Crystal Morrison's person. Jason Halsey has consented to his remand since the date of his arrest.
>
> Clinton Christie was arrested on July 3, 2015 and has consented to his remand since that date.
>
> At all material times, Clinton Christie was bound by a recognizance which included a condition that he not associate with or be in the company of Derek McPhee.
>
> …

[4] There are significant aggravating factors present in what occurred. The offences were pre-meditated crimes of violence against a family that was sleeping in their home.

[5] Because this took place in the early morning hours and because of the questions asked of the victims during the robbery, I infer that the offenders were expecting the family to be home. They wanted the victims' cooperation in finding the drugs and jewelry that they appear to have already known to be present in the home.

[6] The offenders were masked, brandished weapons and used threats of violence to intimidate and coerce their victims into cooperation.

[7] This was not a so-called "smash and grab", but instead the offences lasted for a period, I am told, of about 30 minutes which is a long period of time for the victims to be in a state of fear, as they obviously would have been.

[8] The only mitigating circumstance in the commission of these offences themselves is that they did not do actual physical harm to any of the three victims, although a lack of physical harm does not mean that they did not do "injury" to the family.

Circumstances of the Offenders

[9] Clinton Christie is 35 years old. He was raised by a single mother. When he was between the ages of 9 and 13 he and his mother lived in Ontario. She became involved in a relationship that was abusive both to her and to Mr. Christie. The mother and son had a strained relationship as a result and, eventually mother and son returned to Nova Scotia.

[10] Throughout his teenage years Mr. Christie lived in group homes. He lacked structure in his life and he socialized with a negative peer group. Eventually, he developed an addiction to drugs, mainly opioids.

[11] Mr. Christie sees his drug use as a major contributing factor to his prior criminal offences and to the incident for which he is currently being sentenced.

[12] With respect to the current offence, Mr. Christie indicates that he was under the influence of drugs at the time and that his actions were motivated by drug seeking, that is, the desire to locate drugs and items that could be sold for the purchase of drugs. This is supported by the facts, which include a demand for, and the taking of, D.'s oxycodone pills. We know well the addictive nature of oxycodone and the lengths that addicts will go to obtain it. It is a serious societal problem.

[13] He takes full responsibility for his actions and does not offer his motivations as an excuse for the commission of these offences. I have heard his address to the Court, in which he expressed his remorse and an understanding of the severity of the harm that his actions have caused to the victims. It is also the first time that I can recall hearing an offender stating in open court that he is more responsible than his co-accused and apologizes, not only to Mr. Halsey for, as he characterized it, manipulating him into participating in the offence, but also to Mr. Halsey's family.

[14] Mr. Christie has a criminal record that includes 45 prior convictions since 1997. His most recent entry was in October 2015, which postdates the current offence date. His record includes a robbery in 1999. I think, if I am correct in my understanding, that his record includes seventeen property related offences, seven break and enters and two offences for possession of instruments suitable for the commission of a break and enter. He has a history of breaching court orders and has served lengthy periods of incarceration.

[15] Jason Halsey is 31 years of age and spent most of his childhood in the city of Dartmouth. He grew up with both of his parents with whom he maintains a close relationship. Mr. Halsey has the support of both parents who, I am told, have been

in attendance at each and every one of his court dates, and who are here again today. He is fortunate to continue to have their support as he goes through this part of his life.

[16] Mr. Halsey has, since a young age acted out in antisocial ways. He dropped out of school, I am told, in approximately grade 7. Counsel advises that Mr. Halsey experimented with, and later developed a dependency on various forms of controlled substances and, in particular, prescription opioids.

[17] Mr. Halsey has had periods that would suggest that he is capable of more than being a drug addicted criminal. Certainly, his family support is a positive factor and I am told that he has maintained, in the past, a long-term romantic relationship. He has a six-year-old son. He has expressed, through counsel, that he is "ashamed and embarrassed that he has not been there" for his son as a result of his criminal activity.

[18] Since going into custody, Mr. Halsey has upgraded his education and participated in self-help programs through the institution to the extent that they are available to him. He has expressed the goal of upgrading his education as part of his overall rehabilitation.

[19] He has addressed the Court and expressed his remorse and apologies for his conduct.

[20] In relation to his involvement in this offence, I am told that he was in the throes of addiction. He had been partying with Mr. Christie, Mr. McPhee and others. I am informed that he was not in attendance and did not participate in the planning aspect of these offences. At the Preliminary Inquiry, the evidence indicated that he had originally and persistently refused to cooperate with any discussion of a robbery. Mr. McPhee testified at the Preliminary Inquiry that Mr. Halsey was "a mess" and on the brink of unconsciousness prior to departing to commit the robbery. For some reason, the decision was made that Mr. Halsey would be the person driving to the scene of the crime but in his intoxicated frame of mind he was only driving 40 km/h on the highway.

[21] The advanced state of his intoxication, while not a mitigating factor, is relevant to understanding Mr. Halsey's state of mind at the time of deciding to participate, and in the actual commission of the offence. His involvement in the offence appears to have come against, even in that state, better judgment up to a point but that judgment was so impaired by drugs that he eventually yielded to what Mr. Christie described as his and Mr. McPhee's manipulations. The significance of this, of course, is that it distinguishes between the role that the two individuals

played; and it has been acknowledged by the Crown as being a relevant factor in the decision as to how sentence should be imposed in this case.

[22] I am also told that Mr. Halsey attempted to arrive at an early resolution of this matter, at least since the conclusion of the preliminary inquiry. He has also expressed remorse for his actions and of course he too has entered a guilty plea.

[23] Mr. Halsey has a criminal record that has been persistent since 1999 until the period of his most recent incarceration. It includes four previous charges of break and entry, a number of property related matters, a robbery that is very dated, and 4 violence related offences. He has served lengthy periods of incarceration in the past and had been released from his last custodial sentence a short time prior to the commission of the offences for which he is to be sentenced today.

Impact on the Victim/Community

[24] I spoke earlier of the injury caused to the victims. First, there was psychological injury. I have reviewed the Victim Impact Statements provided by K. on behalf of herself and her son, J. They speak to the extraordinary damage that was done to the victims, particularly to her son, J. In essence, they speak to the extraordinary damage that is done to anyone who is a victim of this type of a crime. Our homes are where we retreat to find a feeling of security and relaxation, a place to enjoy family, and where, as parents, we can feel that our children are protected. It is the place where we keep things that are meaningful to us, some that have monetary value, and sometimes those that have only sentimental value.

[25] K. described the extreme psychological and psychiatric damage that J. has suffered and continues to suffer. At 13, to be awoken in his own bed, attacked and forcibly confined in his home by armed and masked, threatening men, and then having to watch his parents subjected to the same behaviors was traumatizing. He has required hospitalization and intensive professional help for aggressive tendencies, and a life-threatening eating disorder. He lost part of a school year and overall he is not the same boy that he was before this occurred.

[26] There was emotional damage. The offenders stole things that had sentimental value. There is also the pain that, as parents, they are suffering in dealing with the challenges that J. now presents - the inability as a parent to provide what they would want to give to their child.

[27] Finally, there was financial damage. The parents are self-employed, so besides what was taken in the robbery, it also influenced their ability to go out and earn a living.

[28] So, harm can be serious even when it is not physical injury.

[29] The maximum sentence for an offence of break and enter into a dwelling house is life in prison.

[30] The maximum sentence for the offences of unlawful confinement and of having one's face masked with intent to commit an indictable offence is a period of 10 years' imprisonment.

[31] The maximum sentence for the offence of breach of recognizance, applicable to Mr. Christie only, is a period of two years' imprisonment.

[32] None of these offences carries a minimum punishment, however, as will be discussed during my review of the case law, and the statutorily prescribed principles of sentencing, the sentence that must be imposed will involve a period of imprisonment in a federal institution. The sentencing submissions of counsel for each of the two offenders acknowledge this to be the case.

Position of the Crown

[33] The Crown has referred me to those facts and law which it says supports the following recommendations for sentencing.

Jason Halsey

[34] The Crown submits that Mr. Halsey should be sentenced to a period of 8 years' imprisonment in relation to Count 1, that is the break and enter and robbery. The Crown submits that a period of 5 years' imprisonment on each of counts 5, 6, 7 and 16, each to be served concurrently to each other and concurrent to Count 1 is an appropriate disposition.

[35] The Crown also submits that Mr. Halsey should be given credit for time served in custody that is attributable solely to the current matter. By its calculation, Mr. Halsey has been in custody since June 10, 2015 in relation to this matter. However, he was also in custody in an unrelated matter for the period June 10, 2015 until March 7, 2016 at which time he received a one day sentence considered to be served by his time spent in custody. That was calculated to be 135 days. Therefore, the Crown submits the total time to be credited to Mr. Halsey in relation to this matter

is 661 days less 135 days for a total of 526 days. The Crown agrees that he should be provided the benefit of pre-sentence time in custody at a 1.5 to 1 basis. This equals 788 days.

[36] The Crown seeks a series of Ancillary Orders which the offenders do not contest and so I will refer to them only in the disposition.

[37] Finally, the Crown argues that Mr. Halsey should be required to serve one half of his sentence before he may be released on full parole. In making this recommendation, the Crown relies on Section 743.6(1) of the **Criminal Code** and says that the prerequisites required for the order are present in the current case. In support of this submission the Crown refers to the principles of denunciation and deterrence as being paramount and that the delayed parole eligibility is a fit and appropriate result in the circumstances of this case, and in particular, these offenders having regard to their past criminality and the record arising from that.

Clinton Christie

[38] The Crown submits that Mr. Christie should be sentenced to a period of 9 years' imprisonment in relation to Count 1. The Crown submits that a period of 5 years' imprisonment on each of counts 5, 6, 7 and 16, each to be served concurrently to each other and to Count 1 would be an appropriate disposition. Finally, in relation to the offence of breaching the court ordered Recognizance (Count 17) the Crown seeks an 18 month sentence also to be served concurrently to other sentences imposed at this time.

[39] The Crown submits that Mr. Christie should be given credit for time served in custody that is attributable solely to the current matter. By its calculation, Mr. Christie has been in custody since July 3, 2015 in relation to this matter for a period of 638 less 3 days that he served as a sentence in an unrelated matter. The remaining time is 635 days. The Crown agrees to the application of a 1.5 to 1 credit. This equals which 953 days.

[40] The Crown seeks a series of Ancillary Orders which the offenders do not contest and so I will refer to them in the disposition.

[41] Finally, the Crown argues that Mr. Christie should be required to serve one half of his sentence before he may be released on full parole. In making this recommendation, the Crown relies on Section 743.6 (1) of the **Criminal Code** and says that the prerequisites required for the order are present in the current case. In support of this submission, the Crown refers to the principles of denunciation and

deterrence as being paramount and that the delayed parole eligibility is a fit and appropriate result in the circumstances of this case.

Positions of the Defence

[42] Counsel for Mr. Christie submits that an appropriate disposition in this case is to impose a period of 6 ½ years' imprisonment for Count 1, less remand credit.

[43] Counsel agrees with recommendation for a five-year concurrent penalty in relation to Counts 5, 6, 7 and 16, as well as the 18-month concurrent sentence recommended for Count 17.

[44] Further, the offender, Clinton Christie, by his counsel, does not oppose the granting of the requested Ancillary Orders, however Mr. Christie through his counsel, does contest the Crown's request for a delayed eligibility for parole pursuant to Section 743.6 (1) of the **Criminal Code**.

[45] Counsel for Mr. Halsey submits that an appropriate disposition in this case is a period of 6 years' imprisonment in relation to Count 1, less remand credit.

[46] Counsel agrees with the recommendation for a 5 year concurrent penalty in relation to Counts 5, 6, 7 and 16, as well as the 18-month concurrent sentence recommended for Count 17.

[47] Further, the offender, Jason Halsey, by his counsel, does not oppose the granting of the requested Ancillary Orders; however, he does contest the Crown's request for a delayed eligibility for parole pursuant to Section 743.6(1) of the **Criminal Code**.

Analysis

[48] In this case the mitigating factors are relatively few. The accused did enter pleas of guilty just before trial. This does represent acceptance of responsibility which is one of many steps essential to a person's rehabilitation. It also saves the public the costs associated with a trial, in this case one that was scheduled to take two weeks. But there is no question in my mind that the most significant fact is that J. was traumatized by the very notion that he had to come and testify in the trial and that he only found out the business day before that he was not going to be put in that position. Having said that, he was not put in the position of having to testify, which, no doubt, would have been even worse for him.

[49] And I also note, and I say this with credit to counsel, and to their clients for presumably taking the advice of their counsel, the fact that the victims did not have to testify at the preliminary inquiry is significant as well. That does not happen often and so I do reflect on that. There are few mercies in this case that I can point to but at least the victims did not have to go through that.

[50] Are there aggravating factors? Yes. I have previously outlined my view of the aggravating facts surrounding the circumstances of the offence itself but there are statutorily designated aggravating factors that are applicable in this case as well.

[51] Section 348.1 deems that it is an aggravating fact where:

> 348.1 If a person is convicted of an offence under section 98 or 98.1, subsection 279(2) or section 343, 346 or 348 in relation to a dwelling-house, the court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence,
>
> > (a) knew that or was reckless as to whether the dwelling-house was occupied; and
> >
> > (b) used violence or threats of violence to a person or property.

[52] Section 718.2 also imposes certain deemed aggravating circumstances. Whether or not Section 718.2(ii.1) intends to cover this situation, it is an aggravating circumstance with or without the statutory provision, that this involved a thirteen (13) year old boy and so I regard that as part of my overall consideration.

[53] I also accept that in relation to Section 718.2(iii.1) there is evidence that the offence had significant impact on, at least, J. in particular having regard to his age and personal circumstances, and his health.

[54] The other principles of sentencing are well understood. The fundamental purpose of sentencing of course is to protect society. I have reviewed the provisions of 718. I am well familiar with them. This is a case where, having regard to those principles, denunciation, deterrence of these two individuals from the commission of similar crimes in the future, deterrence of other people who might be inclined to commit the same crime, must be reflected in the penalty. There is a need to separate the offenders from society.

[55] I also consider the potential for rehabilitation, the sentences as a measure for reparation for the harm done to the victim and finally to promote a sense of responsibility in these two offenders.

[56] I am also familiar with the proportionality principle set out in 718.1 and the provisions of 718.2(b), (c), (d), and (e), all which speak to the factors I must consider, including the relative similarity of the offence and the punishment for the offence as to others in similar circumstances.

Case Law

[57] When we speak of an acceptable range of sentence, we are trying to determine where, between the extremes that may be permitted in imposing a sentence, the circumstances of the offender and of the offence fall relative to other cases of a similar nature. For example, the most serious offence in this case carries a maximum punishment of life imprisonment but no minimum punishment is mandated. The issues are: "Where should the offenders' punishment fall within that range so as to be consistent with the general approach that courts take to sentencing for these offences? And how does that sentence reflect consistency with what has taken place in other cases with other persons who have committed the same offence in a similar way and with similar backgrounds?"

[58] To assist in assessing the fit and proper range of sentences we look to the sentences that have been given out and the principles that have been applied by other courts in other cases. In particular we look to the decisions of Courts of Appeal and more specifically again to the Court of Appeal in this province for the authorities that we have to, as trial judges, rely on in deciding what is an appropriate sentence that would fall within a range considered to be fit and proper.

[59] In theory, any period of incarceration should have a deterrent effect, both to the offender and to other persons who might be of like mind and in similar circumstances. The longer the term of imprisonment, presumably, the greater the deterrent effect. Clearly, if incarceration is to operate as a deterrent then the recommendations of both the Crown and of the defence would fulfil that criteria. That is, a period of six (6) years, six and a half (6.5) years, eight (8) years, or nine (9) years, being the respective recommendations of counsel in this case, all constitute significant periods of incarceration.

[60] The factors that distinguish one case from another include the seriousness of the circumstances of the offence and an assessment of the roles played by the offenders in the commission of the offence as well as their personal circumstances, especially as it may relate to past criminality for related offences, and the potential for rehabilitation.

[61] Counsel for Mr. Halsey, for example, distinguishes Mr. Halsey on the basis of his secondary role to that of Mr. Christie and Mr. McPhee in the planning of this robbery and in the role of bringing J. out of his room into where his parents were. Mr. Halsey, as pointed out, has family support, educational goals, and a demonstrated history during his most recent term of incarceration, of trying to take steps that we generally associate with rehabilitation. Crown counsel acknowledges these factors by recommending a lesser penalty for Mr. Halsey than that for Mr. Christie.

[62] Counsel for Mr. Christie points out that while he has a criminal record, it contains only one very dated violence related offence.

[63] Both Mr. Halsey and Mr. Christie have expressed their acceptance of responsibility and remorse. These are factors that speak to rehabilitation.

[64] The length of incarceration whether it be six (6) years or nine (9) years or somewhere in-between makes it very difficult for the court to consider what the future path of these individuals will be as it relates to their own rehabilitation and for their prospects of ultimately becoming productive and law-abiding members of the community. Whether they can turn the page on their past criminality is up to them, and the availability and success of programming offered through the correctional services also. Both of these individuals could be said to have a significant impediment to their rehabilitation until such time as they are able to overcome their addiction to opioids - which they both say fueled their participation in these offences and in their past criminality.

[65] In this case, as in all cases, the court is left with a range of sentences and the parties disagree as to where within those ranges the sentences should fall. The Crown, for example has pointed to sentencing ranges, and benchmark sentence principles set out in Alberta, Manitoba, Saskatchewan, and Newfoundland where each jurisdiction favours sentences that would be roughly in the range of seven (7) to ten (10) years. Ontario takes a more nuanced approach and seems to suggest the range might be as low as four (4) but as high as thirteen (13) years.

[66] In Nova Scotia, from which I draw my guidance in particular, the case, of *R. v. Fraser*, 1997 158 NSR (2d) 163 had been argued to stand for the proposition that the range begins at six (6) years and ends at ten (10) years for home invasion. That was explicitly rejected by the Nova Scotia Court of Appeal in *R. v. P.J.H.* 2000 NSCA 7, specifically at paragraphs 56 and 62.

[67] In that case of a home invasion, the trial judge imposed a sentence of 15 years, which I think, without having looked, was probably the most significant sentence of that nature at the time - but the facts were disturbing, as you can appreciate. There was an elderly couple in Halifax - the wife was pushed and broke her hip. The husband was disarmed, he was struck in the head causing bleeding. Further assaults led to some loss of consciousness, a fractured left cheek, hearing loss, bruising to his brain and chest injuries. He was left with neurological problems, and became unable to live independently after the assault. The court referred to the fact that the accused persons left the victims in their home seriously injured, indifferent to their suffering. Even though this was a young person who had entered a guilty plea and had been cooperative with police the trial judge, overall, was not prepared to put any weight on expressions of remorse. That case is at the higher end of the range.

[68] The Court of Appeal, in *PJH* cites with approval the decision of the Alberta Court of Appeal in *R. v. Matwiy and Langston* (1996) 178 A.R. 356 which set a benchmark of eight (8) years and included an upper range of fifteen (15) years. See at paras. 70 et seq.

[69] At para. 81 of *P.J.H.*, Glube, Chief Justice of Nova Scotia as she then was, said:

> [81] These types of offences (home invasion) require denunciation by society, deterrence of the accused and others from committing this type of offence, and protection of the public as the primary considerations of sentencing those who choose to invade the sanctity of the home of another and do violence through intimidation, terrorism or actual assault.

[70] I have been referred to two Nova Scotia cases that postdate the decision in *PJH*. The first was *R. v. Doyle* 2008 NSSC 380, a decision of Justice Robertson, in which she sentenced Mr. Doyle to a period of six years following a jury trial. At paragraphs 6 and 7, Justice Robertson concluded that the jury had not found, beyond a reasonable doubt, that Mr. Doyle was one of the intruders into the victim's home. Instead, Justice Robertson concluded that the jury had accepted evidence that he had been an active participant in the break enter and theft. In short, she characterized him as an "active participant aiding and abetting, counselling and helping Mr. MacIsaac plan this home invasion."

[71] In *R. v. Shea* 2011 NSCA 107, the accused were sentenced to 6 ½ years in custody for two counts of extortion, one count of forcible confinement and a breach of recognizance. The Court of Appeal described the offence as a premeditated home invasion wherein the accused were armed. Both had lengthy, violent criminal

records and were subject to weapons prohibitions at the time. I agree that this decision supports the proposition that a sentence of six years and six months is within a range of available dispositions for the offences involving a violent home invasion. There is no qualitative difference in the level of violence or the violation of the security of a home in this case scenario.

[72] In my review of the cases presented to me, it seems to me that the position advanced by the defence would place these offences at the lowest end of the range of sentences typically meted out in this province. Having regard to the circumstances of the offences, I take the view that the Crown has not sought the highest end of the range of sentences that would be possible in this case. The Crown has been candid in acknowledging that the guilty pleas were a significant factor in its decision to make a recommendation for a penalty that was somewhat less than what might otherwise have been justified from a Crown perspective.

Parole Eligibility Date Delay

[73] The Crown has also argued for a delay in eligibility for parole. The relevant statutory provision for this is found in Section 743.6(1) – Delayed Parole:

> 743.6 (1) Notwithstanding subsection 120(1) of the *Corrections and Conditional Release Act*, where an offender receives, on or after November 1, 1992, a sentence of imprisonment of two years or more, including a sentence of imprisonment for life imposed otherwise than as a minimum punishment, on conviction for an offence set out in Schedule I or II to that Act that was prosecuted by way of indictment, the court may, if satisfied, having regard to the circumstances of the commission of the offence and the character and circumstances of the offender, that the expression of society's denunciation of the offence or the objective of specific or general deterrence so requires, order that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or ten years, whichever is less.

[74] Such an order is discretionary. It requires that certain conditions be satisfied and certainly there is basis for the request: a designated offence, a sentence of more than two (2) years, serious offences for which the courts have flagged denunciation and deterrence as priorities in arriving at a sentence.

[75] The case of *R. v. Zinck*, 2003 SCC 6 is the leading authority in relation to an Order to delay parole. It states that:

- It is an extraordinary disposition;
- It must be applied fairly;

- The Court must first determine what is the appropriate punishment for the crime;
- Then consider the factors relevant to the decision to delay parole;
- Priority is given to general and specific deterrence, as well as denunciation in this secondary balancing of factors;
- The burden is on the Crown to establish that additional punishment is required; and
- Such an order should not be made without a demonstrated necessity.

[76] I have considered all of the factors that have been put before me and I thank counsel for their helpful representations. I am not satisfied that the Crown has established that such an order is necessary in the circumstances of this case.

[77] In my view, notwithstanding the extensive criminal records and the severity of the offences, it is appropriate to permit the Parole Board to carry out its function with respect to determination of an appropriate date on which to permit the grant of parole.

[78] The expressions of remorse and acceptance of responsibility made by the two offenders in court today were, in my view, meant sincerely. In a sense, it is not surprising because, like so many addicts, they would never consider doing the same things when sober and alert to their circumstances as they would consider doing while they are in a drug chasing period.

[79] Both of these individuals strike me as having sufficient intelligence and awareness of their circumstances today to recognize that at some point they are either going to be committed to a life of criminality or control their demons, which lead them to commit these offences. It is very common for the sober alcoholic or the straightened out drug addict to make professions of remorse and promises to change. We hear it all the time and there is no doubt you have heard it yourself during your periods of incarceration from other inmates. Some achieve their goals, as you know, and some do not.

[80] In my view, the sentences that I impose in this matter are significant and will allow sufficient time for correctional authorities to make their determinations as to whether or not either or both of these individuals have a chance to be successful on the street. If they do not, then I expect that their parole would be delayed in any event. The sentences that I impose are a significant jump from their previous periods of incarceration. There is a deterrent and denunciatory value in that. A further delay

in eligibility for parole, in my view, has not been demonstrated as necessary to accomplish the objectives of the Section 743.6(1).

[81] Therefore, the application of the Crown for delayed eligibility for parole is refused.

[82] Having regard to the comments that each of you have made and watching your disposition in court today, gentleman, I hope that both of you are able to deal with your demons and earn parole at an early date and come back into society in a way that makes you productive; in your case Mr. Halsey, a better parent. A parent that you really haven't been so far and that you will justify the work you have done already in terms of trying to bring yourself to the state that you're in today, which is a much better frame of mind obviously than you were in when you went into this family's home back in June of 2015.

Conclusion

[83] Count 1: 348(1)(b) **Criminal Code**:

> that they did on or about the eighth day of June, 2015, at or near Upper Sackville, in the County of Halifax in the province of Nova Scotia, did unlawfully break and enter a place to wit a residence of D. and K situated […], Upper Sackville, Nova Scotia, and did commit therein the indictable offence of robbery contrasts contrary to Section 348(1)(b) of the **Criminal Code**;

[84] The sentence of this Court in relation to Mr. Christie is nine (9) years. In the case of Mr. Halsey it is eight (8) years.

[85] In relation to Counts 5, 6, 7, being the unlawful confinements as well as count 16, being masked with intent to commit an Indictable offence: I accept the recommendation of five (5) years concurrent for each of these offences, concurrent to each other and concurrent to the sentence imposed in relation to Count 1.

[86] With respect to Mr. Christie who also entered a plea guilty to the charge of Section 145, that is the breach of recognizance, I accept the recommendation of 18 months, concurrent to all other sentences imposed. These sentences will be reduced by time served in custody, in the case of Mr. Christie, 953 days, and by Mr. Halsey, 788 days.

Ancillary Orders

[87] With respect to the ancillary Orders there will be an Order with respect to Section 109 of the **Criminal Code** for a mandatory prohibition of firearms, as a result of the conviction in Count 1. The term is for life in both aspects of the order.

[88] There will be a Section 491 of the **Criminal Code**: mandatory forfeiture of firearms and other weapons.

[89] There will be a Section 487.051 of the **Criminal Code**: mandatory DNA Order (487.04 – primary designated offence) in relation to Counts 5-7 and presumptive in relation to Count 1. Therefore, you will submit to the taking of your bodily samples for the purpose of DNA analysis and registration in the National DNA databank.

[90] There will be a Section 743.21(1) of the **Criminal Code** order to have no contact directly or indirectly with K., J., D., Derek McPhee and Erin Harlow, during the period of your incarceration.

[91] There is a requirement for a mandatory Victim Fine Surcharge. Each of you will be required to pay a victim surcharge of $200. You will have until twelve (12) months after your warrant expiry date in which to pay that amount.

Duncan, J.