SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Rouse*, 2018 NSSC 240

Date: 2018-09-27
Docket: CRK No. 462970
Registry: Kentville

Between:

Her Majesty the Queen

v.

Darrin Phillip Rouse

Judge:	The Honourable Justice Gregory M. Warner
Oral Submissions:	September 27, 2018 at Kentville, Nova Scotia
Oral Decision:	September 27, 2018, at Kentville, Nova Scotia
Counsel:	Michael MacKenzie, Crown attorney Jonathan Hughes, counsel for accused.

Publication bans:
Pursuant to s. 486.4 of the *Criminal Code*, there is a prohibition on releasing any information that may lead to the identity of the complainant.

By the Court:

[1] On September 27, 2017, this court convicted Mr. Rouse of trafficking hydromorphone, contrary to s. 5(1) of the *Controlled Drugs and Substances Act* ("*CDSA*") and obtaining sexual services for consideration contrary to ss. 286.1(1) of the *Criminal Code* ("*CC*"). The decision was released as 2017 NSSC 292. In a sentence, in August and September 2015, Mr. Rouse traded with KB, a young desperate drug addict, dilaudid for her property and sex.

Background to proceeding

[2] Mr. Rouse was first charged on an Information filed January 20, 2016. It was replaced with a 10-count Information on May 20, 2016. At his first appearance on May 24, 2016, and on five subsequent appearances, he deferred his election and plea. On October 25, 2016, he elected trial in Provincial Court and plead not guilty. The trial was scheduled for April 26, 2017. On or before April 26, 2017, the accused re-elected to the Supreme Court. The April 26, 2017, trial was converted to a preliminary. He was committed to stand trial on nine counts.

[3] On May 23, 2017, Mr. Rouse was arraigned in the Supreme Court, plead not guilty and a pretrial conference was scheduled for June 2nd. At the pretrial conference, motions were dealt with, the accused re-elected to judge alone, and the trial was scheduled for September 11 to 13, 2017. The trial was held on September 11 to 14, 2017, and the court's oral decision convicting on two counts was give on September 27, 2017.

[4] Counsel requested a pre-sentence report ("PSR") and sentencing was scheduled for December 4, 2017.

[5] On November 28th, defence counsel requested an adjournment of sentencing to obtain a Forensic Sexual Behaviour Presentence Assessment ("Assessment"). The crown consented. The court ordered the matter adjourned for a status report on January 11, 2018, with a tentative sentencing date of March 1, 2018.

[6] On January 11, 2018, Mr. Rouse's counsel confirmed that Mr. Rouse did not cooperate with the assessor, so no report was available. Counsel asked for a second chance to cooperate with the assessor; crown consented. Sentencing was rescheduled for May 18, 2018.

[7] On April 6, 2018, the accused requested an adjournment of sentencing. The crown did not consent. The court dismissed the request.

[8] On May 18, 2018, the accused fired his lawyer. The lawyer's motion to be removed as counsel was granted. Sentencing was rescheduled for August 31, 2018. A status appearance was scheduled for July 17th, to determine whether Mr. Rouse's appeal to legal aid for a sentencing lawyer was successful.

[9] On July 17th, the accused reported that he had obtained a legal aid certificate for sentencing but could not find a lawyer. The court reiterated that the sentencing would proceed on August 31st.

[10] On July 25th, the accused filed a mistrial motion. It was scheduled for August 31, 2018. On August 13th, the accused filed a Rowbotham motion to stay the proceeding until the state provided him with counsel. The motion to stay was scheduled for August 16th. On August 16th, the court dismissed Mr. Rouse's Rowbotham motion.

[11] On August 31st, the court dismissed the accused's mistrial motion. The accused advised that he had contact with a lawyer who was prepared to act on the legal aid certificate, but the lawyer was not available for August 31st. The court adjourned the sentencing to September 25, 2018. On September 12th, Mr. Rouse appeared on another matter and the sentencing was adjourned to September 27, 2018 to accommodate defence counsel's availability.

Circumstances of the offence

[12] The full circumstances of the offence can be found in a written decision, 2017 NSSC 292.

[13] The first serious offence is trafficking in dilaudid, contrary to s. 5(1) of the *CDSA*. Mr. Rouse traded dilaudid pills in August and September 2015 for both personal property of, and sex with, KB. KB was a desperate drug addict, whom Mr. Rouse preyed upon. She was a vulnerable person.

[14] The second offence, s. 286.1(1) of the *CC*, as noted in my decision of September 27, 2017, is a new offence that apparently arose in response to the Supreme Court of Canada decision in *R v Bedford*, 2013 SCC 72. It seeks to prohibit

the purchase of sexual services, an activity that has been described as creating harm to vulnerable persons.

[15] The circumstances of the two offences in this case overlap. Some of the pills acquired by KB were acquired in exchange for her goods and property with some acquired in exchange for sexual services. As noted in my conviction decision, despite some of the videos introduced at trial from Mr. Rouse's PVR system, which show two apparent drug deals with other people, the court had a reasonable doubt. They play no part in this sentencing. The court is sentencing Mr. Rouse for trafficking to KB.

[16] The court has had the benefit of Justice Smith's oral sentencing decision of Mr. Rouse two days ago in relation to the single offence of obtaining sexual services for a single dilaudid pill on two occasions, contrary to s. 286.1(1) of the *Criminal Code*. In that case Mr. Rouse was not charged with trafficking of dilaudid, and Justice Smith therefore held that the case law relating to sentencing for trafficking was not relevant to her analysis.

[17] The circumstances of this case differ from those in Justice Smith's case, as she noted in her oral decision. She agreed with defence counsel that there was insufficient evidence to show that the complainant in that matter was addicted to dilaudid at the time she exchanged sexual services for it and she described Mr. Rouse as her friend. She sentenced Mr. Rouse for only two transactions involving two pills.

[18] The circumstances in this case are more serious, both in respect of the quantum of transactions, some involving money-worth and some involving sex, and, more importantly, the fact that Mr. Rouse was preying upon a young vulnerable drug addict. He was convicted of two offences, not only s. 286.1(1) CC.

Circumstances of Mr. Rouse

[19] I have had the benefit of the PSR I ordered on September 27, 2017, the Forensic Sexual Behavior Assessment requested by defence in November 2017 and the comments of Justice Smith.

[20] I found Justice Smith's comments to be helpful in preparing a summary of Mr. Rouse's personal circumstances:

a) Mr. Rouse is presently 52 years old. He was 49 years old at the time of these offences.

b) He was raised by his grandparents after his parents separated when he was 18 months old.

c) He struggled in school.

d) He left home at age 19 to live with an uncle. He worked over the next several years in grocery stores.

e) He reported that he was sexually assaulted as a child when he was between 8 and 10 years old. He described some exposure to domestic violence.

f) He married when he was 26 years old. The relationship lasted two to three years. They have a son together; the son resides in England.

g) He later remarried; they had two children together, now teenagers. The relationship ended when he was sentenced to a three-year jail term. He was incarcerated for two years at Dorchester Penitentiary.

h) After his release, Mr. Rouse lived with his mother, then met a woman from California. That relationship has since ended.

i) He started a relationship with CV. They broke up during the time of these offences. He has since re-established a relationship with CV and they live together.

j) Mr. Rouse said he taught himself carpentry, electrical, mechanical and plumbing.

k) He has worked in the construction industry. He reported being on a workers' compensation disability pension after a fall from scaffolding.

l) He suffered a broken ankle and foot as a result of his fall. He has arthritis in his foot, hip and back. In the past, he obtained pain medication 'off the street'. He suffers from many other medical ailments. He has had depressive episodes.

m) Mr. Rouse was having financial difficulties at the time the presentence report was prepared and was considering bankruptcy.

n) He says he is not an abuser of alcohol but has had an addiction to opioids in the past.

o) Mr. Rouse has two prior convictions for sexual assault. The first occurred in 1996; in 1999, Mr. Rouse was sentenced to 15 months' incarceration and one-year probation. The second occurred in December 2002. In June 2004, he was sentenced to three-year's incarceration at a federal institution.

[21] As indicated earlier, there was an Assessment completed in March 2018, and supplemented in May, which assessment contains much of the same information set out in the PSR in terms of Mr. Rouse's family circumstances, work history and education. Additional to the personal circumstances of Mr. Rouse, it includes the following:

a) The author of the Assessment assessed him as being at Risk Level IV (above average risk) for being charged or convicted of another sexual offence on two different scales. The author stated individuals: "… at these levels are expected to have twice the rate of recidivism as the average individual convicted of a sexually motivated offence."

b) Mr. Rouse has no prior criminal convictions for non-sexual violent or non-violent criminal offences.

c) Mr. Rouse has participated in specialized treatment twice with no success.

d) The authors conclude that Mr. Rouse would be better suited to the treatment available in a federal penitentiary since there is, according to the authors, no such treatment available within the provincial jail system.

[22] The PSR and Assessment referred to matters that were outstanding at the time of the reports. Since the reports were completed, Mr. Rouse has been acquitted of some of these outstanding charges, has been convicted of others and has not had his day in court on at least one.

[23] Justice Mona Lynch convicted Mr. Rouse in April 2018 of sexual interference of a person under the age of 16 years, contrary to s. 151 of the *Criminal Code*. On September 12, 2018, Justice Lynch sentenced Mr. Rouse to five-years' incarceration.

[24] Justice Ann Smith convicted Mr. Rouse on January 4, 2018 with obtaining sexual services for consideration contrary to ss. 286.1(1) of the *Criminal Code*

("*CC*") in or about November 2016. As noted, she sentenced him on September 25, 2017, to two-months' incarceration, consecutive to any other sentencings that Mr. Rouse may have.

Sentencing Principles

[25] In sentencing Mr. Rouse, I must apply the sentencing provisions in ss. 718, 718.1 and 718.2 of the *Criminal Code* and s. 10 of the *Controlled Drugs and Substances Act*.

[26] The objectives of sentencing are to protect the public and to contribute to respect for the law and the maintenance of a safe society. Section 718 instructs that this is to be done by imposing just sanctions that have, as their goal, one or more of the following: denunciation; general and specific deterrence; separation from society where necessary; rehabilitation of the offender; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community.

[27] Section 718.1 says that the fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[28] Section 718.2 requires that I consider the aggravating and mitigating factors relating to the offence and the offender, the principles of parity and proportionality, that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances, and that all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders.

[29] Section 10 of the *CDSA* incorporates these principles and specifically requires that a sentence encourage treatment of offenders in appropriate circumstances.

[30] The over-arching goal of long-term protection of the public informs how I balance the principles and purposes of sentencing and apply them to the facts to arrive at a fit sentence. The caselaw provides me with guidance as to how I should interpret and balance these principles and how they should be applied to different categories of offence. However, the best means of addressing the principles and attaining the ultimate objective will always depend on the unique circumstances of the case. Because of that, it has been consistently recognized that sentencing is an

individualized process (*R v LaCasse,* 2015 SCC 64 at para. 1, and *R v M(CA),* [1996] 1 S.C.R. 500 at paras. 91-92).

Denunciation and Deterrence

[31] Our Court of Appeal has repeatedly stated that denunciation and general deterrence must be the primary considerations when sentencing those who traffic in Schedule I drugs. (*R v Steeves*, 2007 NSCA 130 (“*Steeves”)*; *R v Butt*, 2010 NSCA 56 (“*Butt*”); *R v Scott*, 2013 NSCA 28 (“*Scott*”); *R v Oickle*, 2015 NSCA 87 (“*Oickle*”) Emphasizing these objectives reflects society’s condemnation for these offences and acknowledges the tremendous harm they do to communities.

[32] There is little guidance for sentencing those who obtain sex for consideration. This relatively new offence appears to be aimed at “johns”. The maximum sentence is five years; the minimum is a fine. The factual matrix of the offence can vary greatly. Where the matrix is greater than the normal single event “john” situation, as in this case, denunciation and specific and general deterrence become more relevant.

[33] For these offences, protection of the public mandates that deterrence and denunciation are important considerations.

Rehabilitation

[34] Rehabilitation continues to be a relevant objective, even in cases requiring that denunciation and deterrence be emphasized. This was confirmed by the Supreme Court of Canada in *R v LaCasse* 2015 SCC 64 (“*LaCasse*”), where, in the context of a sentence appeal for the offence of dangerous driving causing death, Wagner, J., writing for a majority, said at para. 4:

> One of the main objectives of Canadian criminal law is the rehabilitation of offenders. Rehabilitation is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world, and it helps the courts impose sentences that are just and appropriate.

[35] The rehabilitative objective of a sentence is a significant consideration when dealing with youthful offenders. It becomes less so with older offenders, and those who have had the benefit of rehabilitative sentences that were unsuccessful.

[36] Mr. Rouse is 52 and has had the benefit of rehabilitative programs respecting his history of sexual offences. He is in denial with respect to his actions and considers himself the victim. I regret that rehabilitation does not appear to be a realistic prospect in this case, unless possibly as a result of intensive rehabilitation, which the PSR and Forensic Assessment suggest is only available in a federal institution.

Proportionality

[37] The principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender requires that I first consider the gravity of the offence.

[38] Trafficking hydromorphone, a Schedule I substance, is a very serious offence. This is reflected by the fact that Parliament has set the maximum sentence at life imprisonment and removed the offences from consideration for a conditional sentence order.

[39] The tremendous harm that comes from trafficking Schedule 1 drugs has been repeatedly commented on by our Court of Appeal. In *R v Oldham*, 2012 NSSC 326 ("*Oldham*"), at para 13, Justice Wood wrote that courts should not subcategorize Schedule 1 drugs and treat them differently for sentencing purposes. Other courts have said the same. The Court of Appeal has recognized the "creeping evil" and danger of cocaine and referred to cocaine as a deadly and devastating drug that ravages lives. People who traffic in Schedule 1 drugs take advantage of the vulnerabilities of others. Some do it for profit and some do it because they are themselves addicts with the same vulnerabilities as those they sell to.

[40] In *Oickle,* Scanlan, J.A. questions whether addiction is properly considered a mitigating factor on sentencing for drug trafficking offences. He comments that the consequences of drug trafficking to individuals and communities is the same whether the trafficker is motivated by profit or addiction.

[41] An addiction certainly does not excuse criminal behavior, but it has been recognized by some courts as a factor which, when proven, can have a mitigating effect on sentence. Justice Hill of the Ontario Superior Court of Justice in *R v. Andrews,* [2005] OJ No. 5708 ("*Andrews*"), provides a summary of the philosophy behind this approach:

36 As a general rule, heroin and cocaine trafficking are properly seen as grave offences with a high degree of moral blameworthiness. Most often, these are planned crimes carried out for profit by individuals apparently philosophically opposed to holding gainful and lawful employment as opposed to simply conducting illicit drug sales. Not surprisingly then, the overarching principles of sentencing in these cases have been denunciation and general deterrence.

37 That said, the law has tended to treat the addict who trafficks to support her habit somewhat differently - the profiteering for greed element is absent, a serious health issue emerges as context, and many question the efficacy of general deterrence in controlling the actions of one who is ill.

38 In *R v Smith*, (1987) 34 C.C.C. (3d) 97 (S.C.C.), Justice Lamer, speaking in the context of a drug importing case, stated, at page 124:

> The direct cause of the hardship cast upon their victims and their families, these importers must also be made to bear their fair share of the guilt for the innumerable serious crimes of all sorts committed by addicts in order to feed their demand for drugs. Such persons with few exceptions (as an example, the guilt of addicts who import not only to meet but also to finance their needs is not necessarily the same in degree as that of cold-blooded non-users), should, upon conviction, in my respectful view, be sentenced to and actually serve long periods of penal servitude.

39 In a possession of heroin for the purpose of trafficking case, *R v Pimentel*, [2004] O.J. No. 5780 (S.C.J.), at paragraph 20, I stated;

> The gravity of the circumstances of an offender's involvement in marketing heroin may be mitigated in some measure by the existence of any of the following factors:
>
> 1) The offender is addicted to heroin. The onus is upon the offender to establish not only the addiction but also "a causal connection" between his or her addiction and the unlawful activity involving the drug in the sense that the addiction was at least a materially contributing cause for the criminality: *R v Holt* (1983), 4 C.C.C. (3d) 32 (Ont. C.A.) at 51. Where the evidence is "sketchy", the onus is not discharged: *R v Bahari*, [1994] O.J. No. 2625 (C.A.) at para. 4. Where the matters are proven: 'The courts have always distinguished between a drug addict who is trafficking for the purpose of supplying his habit and the non-addict who is trafficking

> purely out of motives of greed.' (*R v Mete*, [1980] O.J. No. 1438 (C.A.) at para. 12). See also: *R v Wright*, [1976] O.J. No. 1096 (C.A.) at para. 2; *R v McCarthy*, [1990] O.J. No. 2163 (C.A.) at paras. 2 and 3; *R v Bell*, [1976] O.J. No. 585 (C.A.) at para. 2; *R v Richards*, (1979) 49 C.C.C. (2d) 517 (Ont. C.A.) at 524-5; *R v Nguyen*, [1996] O.J. No. 2593 (C.A.) at para. 5; *R v Wood*, [1979] O.J. No. 855 (C.A.) at para. 5; *R v Zamini*, [1999] O.J. No. 3780 (C.A.) at para. 2.

40 In *R v Reid*, [2003] P.E.I.J. No. 118 (C.A.), at paragraph 19, the Court stated:

> While the addiction is not an excuse, it becomes relevant when a sentencing decision is made because of the potential for protecting the public in the long term by ordering the addictions issues to be treated as part of the sentence.

[42] One of the most troublesome aspects of this case is that the motive for trafficking to a young desperate drug addict was to take advantage of her particular vulnerability to get sexual gratification without committing a sexual assault. This motive for trafficking makes Mr. Rouse's serious criminal record for sexual offences a relevant aggravating factor for the trafficking offence.

[43] Respecting the obtaining sex for consideration offence, the gravity and degree of responsibility relates to the number of interactions, and the extent of the accused's control of the victim through the supply of dilaudid.

[44] There is no evidence that anyone else was involved in the offence. Mr. Rouse is solely responsible. Sometimes courts have held that moral blameworthiness is reduced when the offender is young or an addict (selling to support his addiction). At the time of these offences, Mr. Rouse did not need to sell pills to feed his addiction; he had a prescription for all his needs, and obviously more than his needs. I conclude that he did not traffick because of his addiction, but rather for sexual gratification.

[45] The other aspect of proportionality is the degree of responsibility of the offender. Respecting trafficking, using the descriptions in *R v Fifield*, [1978] NSJ No. 42 ("*Fifield")*, the culpability ranges from someone who shares with or accommodates a friend (para. 6), to a petty retailer (para. 7), to a full-time or large scale commercial operator. Mr. Rouse fits into the *Fifield* category of a petty retailer.

Aggravating and Mitigating Factors

[46] Section 718.2 requires that I consider the aggravating and mitigating factors relating to the offence and the offender.

Aggravating Factors

[47] Mr. Rouse has a record for sexual offences. His trafficking was motivated by the same actions for which he has a criminal record. He fits the common dictionary definition of a sexual predator.

[48] He took advantage of a vulnerable desperate young drug addict.

[49] The Assessment shows that his risk for sexual recidivism is twice that of the average person "adjudicated for crossing legal sexual boundaries".

Mitigating Factors

[50] Mr. Rouse had a disadvantaged childhood.

[51] I have considered whether the house arrest conditions constitute a mitigating factor in this case. I apply the helpful analysis of Justice Duncan in *R v Gibbons*, 2018 NSSC 202 ("*Gibbons*"). The house arrest conditions in that case were more severe than those in this case. In this case Mr. Rouse was not prevented from what work he professed that he had, or from visiting his children in HRM. More important, most of the delay in this case was caused solely by Mr. Rouse. But for his late requests and manipulations, this matter would have ended much earlier. He has not shown how the release conditions unreasonably interfered with his life.

Parity and Range of Sentences

[52] Section 718.2 requires consideration of the principle of parity. This necessitates an examination of the range of sentences imposed for trafficking schedule I substances, and for obtaining sexual services for consideration.

[53] A long line of cases from our Court of Appeal have established that schedule 1 drug traffickers should generally expect to be sentenced to imprisonment in a federal penitentiary (*Steeves*; *Butt; Oickle; R v Knickle*, 2009 NSCA 59; and *R v Jamieson*, 2011 NSCA 122).

[54] Our Court of Appeal has not established that a federal penitentiary term is mandatory and has recognized that in some circumstances the principles of sentencing can be otherwise satisfied. In those cases, shorter periods of custody served in a provincial institution have been accepted. (For example, *Scott* and *R v Howell*, 2013 NSCA 67 ("*Howell*"))

[55] In *Scott*, Beveridge, J.A., writing for the majority, concluded that it was not necessary for a sentencing judge to find "exceptional" circumstances to justify a sentence lower than two years for trafficking cocaine (para. 53). The task of a sentencing judge in imposing a sentence for cocaine trafficking is the same as any other offence – "considering all of the relevant objectives and principles of sentence as set out in the *Criminal Code*, balancing those and arriving at what that judge concludes is a proper sentence" (para. 26).

[56] Where the proper application of sentencing principles justifies a sentence of less than two years, a sentencing judge is not required to make any specific conclusion that the circumstances are exceptional.

[57] In *R v Rushton*, 2017 NSPC 2 ("*Ruston*"), Judge Buckle suggests that the lower end of the range has generally been invoked in cases involving one or more of the following: addictions; youth; limited or no prior record; relatively small amount of the drug; some hope of rehabilitation; and absence of aggravating factors.

[58] None of the *Rushton* factors exist in this case. One might argue that Mr. Rouse's addiction was a factor, but I conclude that Mr. Rouse's addiction was not the motive for trafficking to KB; it was sexual gratification. It is correct that he had no record for drug trafficking, but I have determined that the motive for trafficking in this case was clearly related to his past criminal record

Reasonable alternatives to Custody

[59] Section 718.2 requires me to consider that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances and

that all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders.

[60] Based on the evidence in this case, I am satisfied that there is a need for specific deterrence of Mr. Rouse. His failure to accept responsibility for his behaviour, to blame others, and to view himself as the victim, is not aggravating but does make specific deterrence a relevant consideration.

[61] Mr. Rouse's personal circumstances, including his age, and the circumstances of the offence, contain nothing that would suggest that he is a good candidate for rehabilitation.

[62] In cases where denunciation and general deterrence must be emphasized, imprisonment will often be the only option for meeting those objectives (*LaCasse,* at para. 6). For schedule 1 drugs trafficking offences, our Court of Appeal has often said that in most cases, denunciation and deterrence will require federal time.

[63] There is scant precedent for a s. 286.1 *CC* sentence. The matrix in *R v Mercer*, 2017 NSPC 20 ("*Mercer*"), differs so greatly from this case that it is of little assistance. Justice Smith's sentencing of Mr. Rouse two days ago is relevant. She assessed that a fit and just sentence for the same offender, for trading pills of sex twice to a non-addict merits six months, and reduced it, on the totality principle, to two months because of Justice Lynch's sentence of Mr. Rouse on September 12 to five-year's imprisonment.

Position of the Crown

[64] The crown, in a written submission of August 28, 2018, corrected on September 13, sought two years consecutive on each offence, or four years total.

[65] Counsel directs the court to Mr. Rouse's two prior sentences of 15 months and 3 years for sexual offences. Counsel calls Mr. Rouse a petty retailer who was not acting to support his own habit, but rather to take "extreme advantage of another person's addiction to satisfy his own personal desires involving sexual favors".

[66] Counsel refers to the Assessment and Mr. Rouse's above average risk to reoffend.

[67] In oral submissions the crown acknowledged that the sentences for the two related offences must be concurrent, but consecutive to the two prior sentences for unrelated offences. Crown still seeks a total four-year sentence.

Defence Position

[68] Defence counsel submits that the sentences should be concurrent to each other but consecutive to the two prior sentences.

[69] He acknowledges that the starting point for sentences for trafficking of Schedule 1 drugs is two years, but submits that the totality of circumstances, including the absence of a drug record and the absence of trafficking in the community generally are mitigating, and that a fit sentence for trafficking in this case is 18 months.

[70] He notes the absence of guidance respecting s. 286.1(1) sentences. He submits that the range for circumstances similar to this case is eight to twelve months, with the circumstances in this case justifying a sentence at the top end of that range.

[71] He submitted that Mr. Rouse should get credit for the harsh house arrest conditions, even if not at the *Gibbons* rate of one-half day per day of house arrest.

[72] Applying the principle of totality, he submits that the total sentence should be reduced to twelve months.

Conclusion

[73] In all the circumstances, including the close nexus between the offences, I conclude that the sentences should be concurrent to each other. This is not disputed.

[74] The primary objective of sentencing is protection of the public, achieved by balancing denunciation, deterrence and rehabilitation. In this case the prospects for rehabilitation are not good but are not totally out of the question.

[75] Respecting the trafficking offence, Mr. Rouse acted as a petty retailer in a Schedule 1 drug. His conduct is aggravated by his victimization of a young drug addict in desperate circumstances, and his motivation for trafficking. The

aggravating factors outweigh the mitigating factors. The fit and just sentence is at least two years.

[76] Respecting the obtaining of sex for consideration offence, Mr. Rouse's history of perpetrating sexual offences, the fact that this offence was a continuing offence involving a particularly desperate and vulnerable addict, are very troubling. Absent guidance in the caselaw, I conclude that a fit and proper sentence is at least one year.

[77] There is no nexus between these offences and those for which other judges recently convicted and sentenced Mr. Rouse, other than they were sexual offences. This court's sentence is therefore consecutive to the prior sentences.

[78] Because of the sentencing of Mr. Rouse by Justice Lynch on September 12th to five years in prison, and by Justice Smith on September 25th to an additional (consecutive) two months, and the fact that this court's sentences are consecutive to those, I must consider the principle of totality.

[79] Sentences are not mechanical or simple arithmetic calculations. The totality principle exists to ensure that the cumulative sentence does not exceed the culpability of the offender and is not so lengthy as to have a crushing effect on the offender; said differently, that the total sentence is, in aggregate, just and appropriate.

[80] Applying the totality principles, I reduce the trafficking sentence to twenty-two months, consecutive to the prior sentences.

[81] In addition, I grant the mandatory s. 109 *CC* firearms prohibition order.

Warner J.