

Case Name:

**R. v. A.E.**

**Between**

**Her Majesty the Queen, and  
A.E., Defendant**

**[2018] O.J. No. 416**

**2018 ONSC 471**

Court File No.: 16-01471

Ontario Superior Court of Justice

**R.C. Boswell J.**

Heard: December 28, 2017.

Judgment: January 24, 2018.

(112 paras.)

*Criminal Law -- Sentencing -- Criminal Code offences -- Weapons offences -- Careless storage of firearms -- Possession of prohibited or restricted weapon or ammunition -- Offences against person and reputation -- Harassment and threatening -- Criminal harassment -- Assaults -- Assault -- Non-Criminal Code and regulatory offences -- Possession for the purpose of trafficking -- Marijuana -- Other substances -- Particular sanctions -- Imprisonment -- Concurrent sentences -- Consecutive sentences -- Prohibition orders -- Firearms -- Non-contact orders -- DNA sample -- Sentencing considerations -- Aggravating factors -- Mitigating factors -- Time already served -- Submissions -- Submissions by Crown -- Submissions by accused and counsel for accused -- Totality principle -- Previous record -- Effect on victim -- Family background -- Deportation -- Accused sentenced to six years imprisonment after deduction of four years for time spent in pre-sentence custody for human trafficking, assault, criminal harassment, breach of non-communication order, possession of cocaine and marijuana for the purposes of trafficking, and weapons offences -- Accused operated as pimp and exploited two women -- Accused assaulted both women and latter criminally harassed one of them -- Accused was also charged with various trafficking and weapons offences -- Global sentence was reduced to 10 years -- Accused was credited with four years for pre-sentence custody and conditions in remand -- Criminal Code, ss.*

718, 718.1, 718.2(a), 718.,2(b), 719(3.1).

*Immigration Law -- Offences and enforcement -- Offences and penalties -- Human smuggling and trafficking -- Accused sentenced to six years imprisonment for human trafficking and other offences -- Accused operated as pimp and exploited two young women -- Accused used various methods to control women, including violence.*

Sentencing of the accused following conviction for human trafficking, assault, criminal harassment, breach of non-communication order, possession of cocaine and marijuana for the purposes of trafficking, and weapons offences. Between 2011 and 2015, the accused engaged in a lifestyle that involved significant criminality. He operated as a pimp and exploited two young women. He assaulted both women and criminally harassed one of the. The accused trafficked in cocaine and marijuana, and possessed a loaded, prohibited firearm without a license. The accused was 30 years old. He came to Canada in 1999 from Jamaica with his mother and siblings. The accused was sentenced as a young person for second degree murder and spent three years in closed custody. He completed his high school education during that time and was enrolled in university at the time of his arrest. The accused never become a Canadian citizen and would be subject to potential deportation as a result of his conviction and sentence. The Crown sought a global sentence of 16 years, less a credit for pre-sentence custody. The defence submitted that a more appropriate global sentence was six to seven years.

HELD: Accused sentenced to six years' imprisonment. There were two victims, both of whom were young and vulnerable. One was exploited for a lengthy period of time. Various methods were used to control the victims, including violence. The accused continued to have significant support in the community. He did not coerce the victims into prostitution. They each sought out his assistance with their sex trade work. The accused had been in custody since his arrest and was entitled to pre-sentence custody of three years and nine months. A further three-month reduction was imposed because of the harsh conditions the accused faced during his remand period. The accused was sentenced to seven years imprisonment on one count of human trafficking and five years concurrent on the second count. The accused was sentence to four months concurrent on one count of assault and one month concurrent on the second count. The accused was sentenced to one year consecutive for criminal harassment and one month concurrent for breach of the non-communication order. A sentence of two years imprisonment was imposed for possession of cocaine for the purpose of trafficking, to be served consecutive to other sentences. A six-month concurrent sentence was imposed for possession of marijuana for the purpose of trafficking. The accused was sentenced to four years consecutive for the possession of a loaded prohibited weapon, four months concurrent for knowingly possessing a firearm with an altered serial number, and one month concurrent for unsafe storage of a firearm. The global sentence was reduced to 10 years, with a net sentence of six years after deduction of credit for pre-sentence custody. The accused was placed on the sex offender registry for life. Sentence: Seven years for human trafficking; five years concurrent for human trafficking; four months concurrent for assault; one month concurrent for assault; one year

consecutive for criminal harassment; one month concurrent for breach of non-communication order; two years consecutive for possession of cocaine for the purpose of trafficking; six months concurrent for possession of marijuana for the purpose of trafficking; four years consecutive for possession of a loaded prohibited weapon; four months concurrent for knowingly possession a firearm with an altered serial number; one month concurrent for unsafe storage of a firearm; lifetime weapons prohibition; non-contact order; DNA order.

**Statutes, Regulations and Rules Cited:**

Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 5(3) (a), s. 5(3)(a.1)

Criminal Code, R.S.C. 1985, c. C-46, s. 86(3), s. 95(2)(a), s. 108(2)(a), s. 109, s. 145(3)(a), s. 264(3)(a), s. 266(a), s. 279.01(1)(b), s. 515(12), s. 718, s. 718.1, s. 718.2(a), s. 718.2(b), s. 719(3.1)

**Counsel:**

Veronica Puls, for the Crown.

David Parry, for the Defendant.

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**REASONS FOR SENTENCE**

**1** R.C. BOSWELL J.:-- Following a trial in June 2017, I found that the defendant, AE, was, between 2011 and 2015, engaged in a lifestyle that involved significant criminality. He operated as a pimp and exploited two young women; he assaulted both; he criminally harassed one; he trafficked in cocaine and marijuana; and he possessed a loaded, prohibited firearm without a license.

**2** The sentencing of the defendant has been delayed somewhat for a number of reasons. First, the Crown brought an application seeking a pre-sentence report, which was denied. Second, the Crown required time to bring an application before a youth court justice regarding the release of the defendant's youth court record. Their application was granted. Third, the defendant applied for an order in the nature of *certiorari* to quash the decision of the youth court justice. That application was denied. Finally, and following the *certiorari* application, defence counsel became engaged in a lengthy trial that ran longer than expected, necessitating the adjournment of this sentencing.

**3** Counsel ultimately made fulsome sentencing submissions before me on December 28, 2017 and the following are my reasons for sentence.

**THE CONVICTIONS**

4 AE was convicted of the following specific offences:

- (a) Two counts of human trafficking -- one in relation to each of two complainants, KJ and AB;
- (b) Two counts of assault -- again, one in relation to each of the two complainants;
- (c) Criminal harassment in relation to KJ;
- (d) Breach of a non-communication order in relation to AB;
- (e) Possession of cocaine for the purpose of trafficking;
- (f) Possession of marijuana for the purpose of trafficking;
- (g) Careless storage of a firearm;
- (h) Possession of a prohibited weapon without a license;
- (i) Knowingly possessing a prohibited firearm without a license;
- (j) Possession of a loaded, prohibited firearm without a license; and,
- (k) Knowingly possessing a firearm with an altered serial number.

5 He was acquitted of two counts of procuring, one in relation to each of the complainants.

6 The Crown agrees that the convictions for possession of a prohibited weapon without a license and knowingly possessing a prohibited firearm without a license should be stayed according to the principles of *R. v. Kienapple*<sup>1</sup>. Accordingly those convictions, arising from counts 8 and 9 on the indictment, are conditionally stayed.

#### **THE CIRCUMSTANCES OF THE OFFENCES**

7 The full circumstances of the offences are set out in my Judgment dated June 30, 2017 and released as 2017 ONSC 4028. I will outline the offences only briefly here.

### **The Human Trafficking Offences**

8 AE was convicted of two counts of human trafficking. Human trafficking is an offence that can be committed in a number of different ways. In this instance AE played the role of what people commonly refer to as a "pimp" in relation to two young females. The offences took place between roughly sometime in 2011 and August 2015. The first female exploited by AE, KJ, was not very precise with her dates and times and so I cannot be precise about when he first began to act as her pimp.

9 A somewhat unusual feature of this case is that both complainants, KJ and AB, approached AE to help them get established in the sex trades. This fact explains why AE was acquitted of two counts of procuring.

10 KJ had previously been working as a prostitute but found herself in a "tough spot" and turned to AE for help. She was 18 or 19 at the time. They worked out a partnership whereby she performed sexual services for money, which she turned over to him. She understood that they were going to be "building an empire". In reality, she was acting as an escort and he was exploiting her.

11 KJ worked initially out of hotels for two to three years, providing various sexual services. AE established her hours of work, the rules and the rates. He took photos of KJ and set up an online advertisement for her escort services. He collected all her earnings. She would have to ask for money for food, clothing and other necessities.

12 KJ eventually began to work in massage parlours, then in strip clubs. In 2014 she moved into a condominium with AE. At the time, she felt like his girlfriend, but in a business sense.

13 In 2015 AE was approached by AB. She had been living on her own since the age of 16. She was 19, working as a house cleaner and longing for a better life. She decided she would work in the sex trades. She reached out to AE because she understood he was a pimp and she thought she needed one.

14 AB proposed that she work out of hotels providing escort services. AE persuaded her to go into stripping instead. Stripping involved not only the traditional dancing, but also the provision of sexual services for paying clientele. She kept her earnings from her first night of work. Thereafter she turned them all over to AE. She too thought they were building an empire. She understood AE was investing her money in drugs and turning them into even higher earnings. In reality, she was providing sexual services for money and AE was keeping the money. He was exploiting her.

15 For a time AB and KJ both lived in the same condominium with AE. It appears to me that KJ grew jealous of AE's relationship with AB and she left in late May 2015. AE pursued her and

harassed her. She contacted the police. AE was arrested on August 2, 2015.

**16** I found as a fact that AE directed and/or controlled the movements of each of KJ and AB. Amongst other things he directed the locations where they would work; he dictated working hours to some extent; he typically drove them to work and picked them up; he kept tabs on them; and he kept their earnings, leaving them dependent upon him.

**17** It is not easy to understand why each of KJ and AB so readily agreed to turn all of their income over to AE. At least not initially. Over time, AE used intimidation to keep both JK and AB working and turning their earnings over to him.

**18** KJ testified, and I accept, that she continued to work for AE because he said that if she left he would find her and put her "six feet under". This made her very scared. She believed he had shot someone when younger, which is not true. While she had never seen him with a gun, she had seen bullets in the safe in his closet. He also made threats against her like, "I'll come kill you" and "I have a gun - I'll use it against you."

**19** AB was not able to articulate specifically why she was afraid of AE. She said there was an intimidating "vibe" in their relationship.

### **The Assaults**

**20** AE's intimidation included assaults on both KJ and AB. He struck KJ on a number of occasions, the most significant of which apparently involved retribution for an unauthorized trip KJ made to Niagara Falls. Upon her return AE choked her and struck her in the face.

**21** The assault on AB also involved a trip to Niagara Falls. At least a proposed trip. AB wanted to go to the Falls instead of going to work one day. AE wanted her to go to work. They argued. AE pulled her hair during the course of the argument.

### **The Criminal Harassment**

**22** I noted a moment ago that KJ left AE in late May 2015. AE attempted to locate her and he harassed her. Posing as a prospective client, he managed to trace her to a hotel in York Region. He repeatedly texted and called her. Between July 26 and 31, 2015 he called or texted her some 137 times. In a 32 minute period on July 31, 2015 he called her some 37 times. He also posted a fake ad about her on a website that had a section dedicated to escort services. He posted her real picture and phone number and included a fake warning that she had herpes.

### **The Non-Communication Breach**

**23** As I noted, AE was arrested in early August 2015. He was ordered detained at a show cause hearing. At that time the presiding justice of the peace made an order under s. 515(12) of the *Criminal Code* that he not have contact, direct or indirect, with KJ or AB. In breach of that order,

AE had a message sent through a friend to AB. The message was to convey happy birthday greetings.

### **The Drug Trafficking**

**24** A search warrant was executed at AE's condominium shortly after his arrest. He was found to be in possession of 24 grams of cocaine powder, 91 grams of crack cocaine, 35 grams of finely chopped marijuana, 108 grams of large marijuana buds and 17 grams of small buds. It was agreed between Crown and defence that these amounts were sufficient to make out possession for the purpose of trafficking.

### **The Firearm Offences**

**25** AE was also found to be in possession of a loaded prohibited firearm. It was a sawed-off .22 calibre rifle with the stock removed and with a magazine inserted in it. The serial number had been filed off. It was located in a drawer in the bedroom he shared with AB.

### **THE CIRCUMSTANCES OF THE OFFENDER**

**26** AE is 30 years old. He was 27 at the time of his arrest for these offences. He was born in Jamaica and had a difficult childhood. He was a witness to domestic assault in his parents' marriage. His mother fled the violence and moved to Canada when AE was a young child. He moved to the U.S. with his father at the age of 6.

**27** In August 1999 AE moved to Canada to live with his mother and three siblings. He did well in school but was bullied because of his Jamaican accent. His family was active in a local church. His mother obviously did well to raise four children as a single parent. But AE lacked a male role model in his life. He began to get into trouble at school by grade 9.

**28** In 2004 AE was convicted of second degree murder as a young offender. He was sentenced as a youth and served three years in closed custody. He completed his high school diploma while in custody. Upon his release he entered a paralegal program at Sheridan College, after which he took a position at a law firm.

**29** Eventually, AE returned to school. He enrolled in a sociology program at York University with a view to eventually getting into law school. At the time of his arrest he was apparently one credit short of his bachelor's degree.

**30** While in school, AE maintained employment. He worked for some time at a restaurant called Turtle Jack's. He later got a job at Luxy Nightclub.

**31** AE has been detained since his arrest. He has apparently been a model inmate.

**32** Defence counsel filed a brief containing ten letters of support for AE. They came from,

amongst others, his mother, two sisters, friends and work associates. He is portrayed in these letters as a kind, considerate, respectful and caring person. Someone who is bright, positive and career-oriented. They portray a person entirely at odds with the type of person one might ordinarily associate with drug dealing pimps.

**33** AE has never become a Canadian citizen and will be subject to potential deportation as a result of his conviction and sentence.

### **THE IMPACT OF THE OFFENCES**

**34** KJ elected not to file a Victim Impact Statement. AB did provide one and it expressed the views that one might readily expect from a victim of exploitation. She is hurt, embarrassed, fearful and suspicious of other's motives.

**35** KJ was clearly exploited and essentially had three or four years of earnings taken from her. Without her Victim Impact Statement I am only able to speculate about the psychological impact on her. As at the time of trial, she was continuing to work in the sex trades.

### **THE LEGAL PARAMETERS**

**36** The following sentences are provided for in the *Criminal Code* and the *Controlled Drugs and Substances Act* ("*CDSA*"), in relation to the offences AE has been convicted of:

- (a) For human trafficking in relation to KJ, a maximum of 14 years in prison, with no minimum sentence provided (former s. 279.01(1)(b) in force from 2005-11-25 to 2014-12-05);
- (b) For human trafficking in relation to AB, a maximum of 14 years in prison and a minimum sentence of 4 years (s. 279.01(1)(b));
- (c) For assault, a maximum of 5 years in prison (s. 266(a));
- (d) For criminal harassment, a maximum of 10 years in prison (s. 264(3)(a));
- (e) For breaching a non-communication order, a maximum of 2 years in prison (s. 145(3)(a));
- (f) For possession of cocaine for the purpose of trafficking, a maximum of life in prison (*CDSA*, s. 5(3)(a));

- (g) For possession of marijuana for the purpose of trafficking, a maximum of 5 years less a day in prison (*CDSA*, s. 5(3)(a.1));
- (h) For careless storage of a firearm, a maximum of 2 years in prison (s. 86(3));
- (i) For possession of a loaded, prohibited firearm without a license, a maximum of 10 years in prison (s. 95(2)(a)); and,
- (j) For knowingly possessing a firearm with an altered serial number, a maximum of 5 years in prison (s. 108(2)(a)).

## **THE PRINCIPLES AND PURPOSES OF SENTENCING**

**37** Section 718 of the *Criminal Code* codifies the purposes of sentencing, long recognized by the common law: the denunciation of unlawful conduct; general and specific deterrence; the separation of the offender from society where necessary; rehabilitation; reparation for harm done to the victims and the community; and the promotion of a sense of responsibility in offenders and acknowledgment of the harm done.

**38** The fundamental *principle* of sentencing is set out in s. 718.1 of the *Code*: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

**39** Sections 718.2(a) and (b) provide guidance in terms of some of the factors the court should consider in crafting a sentence in harmony with the fundamental principle I just expressed. In particular, sentences should be increased or decreased to account for any aggravating and mitigating circumstances present in the context of the offence. Moreover, any sentence imposed should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

**40** No one sentencing principle or purpose trumps the others. In each case, the weight to be put on the individual objectives varies depending on the facts and circumstances of the offence and of the offender. In this instance, there is no dispute that deterrence and denunciation are of particular importance in relation to each of the offences AE has been convicted of. The protection of the community is also of significant concern given the nature of the offences involved. Having said all of that, given AE's age and his community support, rehabilitation remains a legitimate objective, despite the seriousness and depth of his criminality.

**41** The multitude of offences AE has been convicted of raises the issue of how the sentences for those offences should be structured. More specifically, whether the sentences should be imposed concurrently, consecutively or a combination both concurrent and consecutive sentences.

**42** Whether sentences are imposed concurrently or consecutively is a matter of judicial discretion.<sup>2</sup> As Durno J. observed in *R. v. McFarlane*<sup>3</sup>, concurrent sentences have been imposed in cases where the offences are "closely linked together", "part of the same transaction or endeavour" or "part of the same course of conduct". The Court of Appeal has held, however, that "the rule that sentences for offences arising out of the same transaction or incident should normally be concurrent", does not necessarily apply "where the offences constitute invasions of different legally protected interests".<sup>4</sup>

**43** It stands to reason, then, that consecutive sentences are more generally appropriate in cases where the offences are not part of the same transaction or closely linked together, or where they impact on different legally protected interests.

**44** In my view, the human trafficking offences, assaults, harassment and breach offences are closely linked together. But they are separate from the drug offences and the firearm offences, which in turn are separate from each other. Moreover, each of these three groupings of offences constitute invasions of different legally protected interests. In the result, I intend to impose a mix of concurrent and consecutive sentences.

**45** Where consecutive sentences are imposed, the totality principle must be honoured. The totality principle requires that a court imposing consecutive sentences ensure that the cumulative sentence does not become disproportional to the overall culpability of the offender.<sup>5</sup>

## **THE PARTIES' POSITIONS**

**46** The Crown seeks a global sentence of sixteen years, less a credit for pre-sentence custody. A number of ancillary orders are sought as well: An order that AE comply with the *Sex Offender Information Registration Act* for life; an order that he provide a sample of his DNA; a weapons prohibition for life; and an order that he not communicate directly or indirectly with KJ and AB.

**47** The Crown submits that there are a range of seriously aggravating features present which put this case at the upper range of seriousness. For instance, AE preyed on young, vulnerable women. He exploited KJ for a lengthy period of time -- upwards of four years. He psychologically controlled both women and manipulated and used them for his own economic gain. At the same time he was trafficking in both marijuana and cocaine and had possession of a loaded, prohibited weapon. The mix of drugs and weapons is a toxic one and a significant aggravating factor.

**48** Defence counsel submits that the Crown's position is well outside of the usual range for offences of this nature and wholly unsupportable. He says a more appropriate global sentence would be six to seven years.

**49** Defence counsel further contends that on a sliding scale of seriousness, this case falls closer to the consensual end than to egregious coercion. In fact, this is not so much a case of AE coercing the complainants to work in the sex trades. It is about AE taking their earnings and thereby exploiting them. There was minimal violence and no sexual violence. There is no connection between the firearms offences and the human trafficking offences. Intimidation and/or control was achieved in this instance through much more subtle means.

## **DISCUSSION**

**50** Sentencing courts frequently begin with a search for an appropriate range of sentence relevant to the offences involved. They then proceed to assess where the subject case falls within the identified range, based on a consideration of the presenting aggravating and mitigating circumstances.

**51** This case is somewhat difficult to assess in terms of the usual range because there are different types of offences layered on top of one another: offences of an exploitative and abusive nature, drug trafficking and firearms offences. Counsel were helpful in providing the court with a number of reported decisions in an effort to establish appropriate ranges for the different types of offences. Counsel referred me to some three dozen cases. I do not intend to refer to them all, but I will focus and comment upon the ones that I consider as most helpful in the circumstances.

### **Ranges**

**52** Before exploring the usual ranges of sentences for the various offences involved in this case, I wish to make a general observation about sentencing ranges. Appellate courts have repeatedly stressed that ranges are guidelines; they are not static, nor are they hard and fast rules.<sup>6</sup> Sentencing judges have a wide discretion when fixing sentences. There is no one-size-fits all sentence for any offence. Sentencing is a very individualized process and must be conducted on a case-by-case basis.<sup>7</sup> Sentencing ranges help achieve the objective of parity: ensuring that like cases are treated alike. But there will always be outlying cases at either end of any usual range.

#### *Human Trafficking*

**53** Identifying a sentencing range for human trafficking offences is not easy. The offence may be committed in a wide variety of circumstances. Sentences naturally tend to reflect the individualized, context-driven nature of the exercise.

**54** The Alberta Court of Appeal decision in *R. v. Tang*<sup>8</sup> is often cited by sentencing judges in cases relating to pimping and/or exploitation. It was a 1997 case involving the offence of living off the avails of prostitution. It was obviously decided before the human trafficking provisions were added to the *Criminal Code* in 2005<sup>9</sup>. It nevertheless continues to provide some measure of guidance in terms of factors one might consider when assessing where, on the spectrum of seriousness, any particular case lies.

**55** The court in *Tang* approved of a categorization of cases reflected in English courts<sup>10</sup> that would sort cases into three tiers. The first tier -- the most serious -- involves cases where the offender has coerced the complainant into becoming a prostitute and has exercised a significant degree of control over her activities. The second tier lacks the element of coercion but involves the offender relying on the complainant's earnings as his principal source of income. The third tier involves cases where the offender receives money from the complainant, but their relationship lacks an exploitative character.

**56** The Alberta Court of Appeal, to be clear, did not wholly adopt a three-tiered system. They merely noted its helpfulness as a starting point. They expressly observed that when assessing the criminal culpability of a pimp living off the avails of prostitution, a "panoply" of factors should be considered, including:

1. The degree of coercion or control imposed by the pimp on the prostitute's activities;
2. The amount of money received by the pimp and the extent to which the pimp allowed the prostitutes to retain their earnings;
3. The age of the prostitutes and their numbers;
4. Any special vulnerability on the part of the prostitutes;
5. The working conditions in which the prostitutes were expected or encouraged to operate, including their physical surroundings in terms of soliciting customers and servicing customers, and safety concerns, in addition to whether appropriate health safeguards were taken;
6. The degree of planning and sophistication, including whether the pimp was working in concert with others;
7. The size of the pimp's operations, including the numbers of customers the prostitutes were expected to service;
8. The duration of the pimp's exploitative conduct;

9. The degree of violence, if any, apart from that inherent in the pimp's parasitic activities;
10. The extent to which inducements such as drugs or alcohol were employed by the pimp;
11. The effect on the prostitutes of the pimp's exploitation; and,
12. The extent to which the pimp demanded or compelled sexual favours for himself from the ... prostitutes.

**57** In *R. v. Miller*<sup>11</sup> Justice Hill, of this court, adopted the *Tang* list and added several more factors of his own, including:

13. The age of the customers attracted to the bawdy-house operation;
14. Steps taken by the accused to evade detection by authorities; and,
15. Attempts by the accused to prevent a prostitute from leaving his employ.

**58** Cases subsequent to *Tang* and *Miller* -- both before and after the human trafficking provisions were added to the *Criminal Code* -- have referred to and made use of the foregoing factors when assessing the moral blameworthiness of individual offenders.

**59** In seeking a global sentence of sixteen years, the Crown placed heavy reliance on *R. v. A.S.*<sup>12</sup>, a recent decision of Justice Quigley of this court. The facts are egregious. The complainant was a vulnerable, young, indigenous woman with a troubled background. The offender procured her into prostitution and kept all of her earnings over a two year period. He hit and berated her if she failed to earn up to his expectations. They went their separate ways eventually, but circumstances brought them together again, with predictable results. The offender began to once again exploit the complainant. He continued to beat and abuse her for another two years.

**60** The relationship between the offender and the complainant ended after an altercation during which the offender used a broken piece of glass to slash the complainant's leg. He severed her Achilles tendon, causing her permanent injury. He carried her out to the back of the building where they lived and dumped her by a garbage bin. He fled to Vancouver where he was ultimately arrested.

**61** The offender, who had an extensive criminal record, was charged with a number of offences

including human trafficking, procuring prostitution, choking and aggravated assault.

**62** Quigley J. reviewed many of the *Tang* factors, as well as some of the case law that has developed under the human trafficking provisions. He held that the human trafficking offences, including the element of procurement, warranted a sentence of eight years. Considering the serious, aggravated assault, he increased the sentence to twelve years, then added a year for the offence of choking, for a global sentence of thirteen years.

**63** The Crown cited several additional cases, which include:

- (a) *R. v. Mfizi*<sup>13</sup>, where the offender procured a seventeen year old female to become an escort. He exploited her over a period of about three months. He exercised a high degree of control over her and assaulted her on multiple occasions. Thorburn J. imposed a global sentence of eight years;
- (b) *R. v. M.C.D.*<sup>14</sup>, where the offender procured a drug addicted female into prostitution. He exploited her for five days, keeping all of her earnings. She managed to escape, but the offender tracked her down to a motel where she was staying with a friend. The offender and another male beat the friend and kidnapped the complainant, with a view to forcing her back into prostitution. The friend who was beaten called 911 and the police were able to locate the complainant and arrest the offender. Kelly, J. imposed an eight year global sentence on a guilty plea to several offences including human trafficking, kidnapping, assault causing bodily harm and using an imitation firearm during the commission of an indictable offence;
- (c) *R. v. Byron*<sup>15</sup>, where the offender lured a seventeen year old female from Windsor to Montreal under the pretext of wanting to establish a romantic relationship with her. Instead he forced her into prostitution and exploited her for two months, keeping all of her earnings. He used force to ensure compliance. Warkentin J. imposed a global sentence of six years; and,
- (d) *R. v. McFarlane*<sup>16</sup>, where the offender confined two complainants for hours and terrorized them with a firearm. He threatened one with death if she refused to work as a prostitute for him. Durno J. sentenced the offender to eight years for the kidnapping/human trafficking offences and added another nine months on a conviction for dangerous driving.

**64** Defence counsel responded with his own cases, demonstrating instances where sentences well below that sought by the Crown were meted out. They include:

- (a) *R. v. D.A.*<sup>17</sup>, where the complainant entered into an agreement with the offender whereby he would be her "protector" while she engaged in prostitution. They were to split her earnings 50/50. The offender introduced another male to the arrangement, however, and together the males kept all of her money. They assaulted her on at least two occasions and exploited her over a 90 day period. Andre J. held that the appropriate range of sentence was three to four years. He split the difference and imposed a sentence of three and one half years;
  
- (b) *R. v. A.A.*<sup>18</sup>, where the complainant, an exotic dancer, was exploited by the offender who controlled her movements, compelled her to dance and do extras at a strip club and took all of her earnings. The exploitation took place over about a week long period, during which the offender slapped the complainant and threw a hairdryer at her. Wein J. imposed a sentence of three years; and,
  
- (c) *R. v. Campbell*<sup>19</sup>, where the offender exploited a minor female over two and a half days. The complainant was engaged in prostitution in Barrie. The offender invited her to come work for him in Toronto where she could make more money. He and another male controlled her movements for over two days and kept all her money. She was threatened with being sold to another criminal or thrown off a balcony. The complainant eventually implored a client to call the police on her behalf, which ended her exploitation. The offender was found to have an unloaded semi-automatic machine pistol in a storage locker. McWatt J. imposed a sentence of 21 months for human trafficking and two years, consecutive, for possession of the firearm, for a global sentence of forty-five months.

**65** Having canvassed the authorities provided to me by counsel, I conclude that it is, as I noted, extremely difficult to define a usual range for the offence of human trafficking. Again, this is largely due to the variety of circumstances in which the offence may be committed. The yardsticks are far from settled, particularly in view of the imposition in 2014 of mandatory minimum sentences. It would appear that prior to 2014, the range was probably two or three years at the bottom end to six or seven years at the top end, depending of course on the aggravating and mitigating circumstances of the case. Since 2014, the floor has been elevated and I would say, provisionally, that the usual range appears now to be roughly four to eight years, again depending on the aggravating and mitigating circumstances present.

### *Drug Trafficking*

**66** Recall that AE was found in possession of 115 grams of cocaine and 160 grams of marijuana. The marijuana is a relatively small amount, though sufficient to support a finding that AE was in the business of selling it. The amount of cocaine was neither a small nor substantial amount. It remains, in my view, an amount consistent with street-level trafficking.

**67** The Court of Appeal held in *R. v. Woolcock*<sup>20</sup> that the appropriate range of sentence for modest amounts of cocaine, for the purpose of trafficking, is six months to two years less a day. Unsurprisingly, as the quantity of drugs involved increases, so does the length of sentence. In *R. v. Bajada*<sup>21</sup>, the Court of Appeal observed that sentences of five to five and a half years are not uncommon for possession of a substantial amount of cocaine for the purposes of trafficking.

#### *Possession of a Loaded Firearm*

**68** Counsel for both Crown and defence provided me with a number of cases involving the sentencing of offenders for firearm related offences, a number of which involved both firearm and drug offences.

**69** The Crown led with *R. v. Barton*<sup>22</sup>, a 2017 decision of Justice Akhtar of this court. Mr. Barton was convicted of possession of a loaded, prohibited firearm; possession of a prohibited device; and careless storage offences. The weapon in question was a TEC-DC9 semi-automatic handgun, equipped with a laser sight, and loaded with 37 rounds of ammunition. Mr. Barton had a lengthy criminal record including three prior convictions for firearms offences. Citing the insidious threat that guns present on the streets of Toronto, Akhtar J. imposed a global sentence of ten years, which included nine years for possession of the firearm and one year consecutive for possession of a firearm while subject to a weapons prohibition order. I note that Mr. Barton used his gun in connection with a drug trafficking business he carried on.

**70** In my view, *Barton* is at the high end of the range or perhaps even a little above the high end of the usual range of sentence imposed for possession of a loaded, prohibited firearm. It is perhaps explained by the specifics of the weapon in question, as well as the criminal antecedents of the offender.

**71** The Crown also cited the case of *R. v. Crevier*<sup>23</sup>, a 2013 decision of Pattillo J. of this court. Ms. Crevier was convicted of possession of a loaded, restricted firearm and possession of cocaine for the purposes of trafficking, amongst other offences. The gun was a .40 calibre Smith & Wesson handgun with a fifteen round magazine. A total of about 170g of powder cocaine and about 8.5g of crack cocaine were seized from her apartment. Ms. Crevier had a lengthy criminal record, both as a youth and as an adult. She was sentenced, on this occasion, to a global term of six years which included four years for possession of the loaded firearm and two years consecutive for possession of cocaine.

**72** Justice Pattillo summarized a number of cases where sentences were imposed for possession of a loaded, prohibited or restricted firearm, prior to the introduction in 2008 of a mandatory three

year minimum sentence for such offences. It is widely known that the three year minimum was subsequently struck down as unconstitutional.<sup>24</sup> The purpose of reviewing cases decided only prior to 2008 was to avoid the effect of the artificial floor on sentences that the mandatory minimum created. In any event, the six cases referred to by Justice Pattillo reflect a range of sentences between three and a half to six years. The cases at the higher end involved offenders with prior firearms convictions and concurrent convictions for drug offences.

**73** Defence counsel referred the court to a number of firearms cases as well, in an effort to demonstrate that the circumstances of this case fall within a range of sentences much lower than that imposed in *Barton*.

**74** In *R. v. Prosser*<sup>25</sup>, an 18 year old offender was convicted of possession of a loaded .25 calibre semi-automatic pistol and possession of 81g of cocaine for the purpose of trafficking. He was sentenced to two years for the weapons offence and six months consecutive for the drug offence.

**75** In *R. v. Delchev*<sup>26</sup>, a 36 year old offender was convicted of possessing a virtual arsenal of weapons, together with 10.5g of cocaine. He had never before been sentenced to imprisonment. A 42 month global sentence was imposed.

**76** In *R. v. Phan*,<sup>27</sup> Kelly J. took a guilty plea from an offender on a number of offences, including possession of a Bryco .380 calibre semi-automatic handgun and trafficking 1 kg of cocaine. She imposed a global sentence of six years, which included 2 years less a day for possession of the firearm and four years consecutive for the trafficking conviction.

**77** My review of the case law, including but not limited to the cases I have expressly referred to, leads me to the conclusion that presently, a rough range of sentence for possession of a loaded restricted or prohibited firearm is three to six years, depending on the aggravating and mitigating circumstances of the case. There are, of course, always going to be cases that fall above or below that range, depending on the circumstances of the offence and of the offender.

**78** With my review of general ranges in place, I will turn to a consideration of the aggravating and mitigating circumstances present in this case. I will begin with the aggravating circumstances.

### **Aggravating Circumstances**

**79** Circumstances that tend to have an aggravating impact are the following:

- (a) There were two victims here, both of whom were young and financially vulnerable. I do not want to overstate their vulnerabilities because they were not suffering from mental health or substance abuse issues. But they were young, not well-educated, and both found themselves in rather desperate financial circumstances;

- (b) One of the victims, KJ, was exploited for a lengthy period of time. I am unable to pin it down precisely but it was in the three to four year range. AB was exploited for roughly three months;
- (c) Various methods were used to control the complainants, including violence;
- (d) AE exercised significant control over the activities of the complainants. He determined their places of work and, as much as possible, their hours of work. He provided each of them with a list of rules in terms of servicing clients. To some extent he fixed the price list;
- (e) AE kept all, or almost all of the earnings of KJ and AB;
- (f) AE threatened KJ with pursuit and violence if she attempted to leave him. He made good on those threats after she did leave, by pursuing and harassing her; and,
- (g) The combination of guns and drugs has been explicitly held in other cases to be a toxic mix and an aggravating circumstance.<sup>28</sup> They are made even more toxic by the presence of human trafficking as well.

**80** There is some controversy between the parties as to the aggravating effect of AE's youth record. It contains two entries. One in May 2006 for possession of property obtained by crime and one in 2007 for second degree murder. AE was sentenced as a youth in relation to both offences. He served three years in closed custody for the murder conviction.

**81** The Ontario Court of Appeal addressed the proper use of a prior criminal record on sentencing in *R. v. Taylor*<sup>29</sup>, where Blair J.A. said as follows:

...[I]t is a misconception to say -- as the respondent submits -- that a criminal record may not be an aggravating factor in sentencing. Certainly, it would be wrong to punish a person for his or her past crimes by using a criminal history in effect to impose a "double punishment" on that person, i.e., to impose a sentence for the offence in question and then to add something more for the criminal record. Thus, it is not proper to treat the record of the accused as an aggravating factor in the sense that the trial judge is entitled to raise the sentence beyond what would otherwise be a fit sentence. However, a criminal record, depending on its

nature, may be an "aggravating" factor in the sentencing context in the sense that it renders a stiffer sentence "fit" in the circumstances because it rebuts good character and because of what it tells the trial judge and society about the need for specific deterrence, the chances of successful rehabilitation, and the likelihood of recidivism.

**82** Though the youth conviction for murder obviously involved a very serious offence, it must be recognized that AE was a youthful offender at the time. He is deemed to have had a markedly reduced moral blameworthiness for the offence. In the circumstances it is difficult to define what the youth record says about AE's character, or about his chances for rehabilitation. It certainly doesn't say anything positive, but while I would say it is an aggravating factor, it is significantly less aggravating than a prior adult conviction for murder would be.

### **Mitigating Circumstances**

**83** I will turn now to the circumstances that tend to have a mitigating effect on sentence. They include:

- (a) AE continues to have significant support in the community;
- (b) AE unquestionably had a difficult childhood;
- (c) While violence, or the threat of violence was present with both KJ and AB, it was at the lower end of the scale. There was no sexual violence; and,
- (d) AE did not procure or coerce either KJ or AB into prostitution. They both sought out his assistance with their sex trade work.

### **Pre-Sentence Custody**

**84** AE has a significant amount of pre-sentence custody that must be taken into account as well. He was arrested on August 2, 2015 and has been in custody since that time, a total of 907 days. Counsel agree that he is entitled to be credited at the rate of 1.5 days for each day of pre-sentence custody in accordance with the Supreme Court's decision in *R. v. Summers*.<sup>30</sup> I will accordingly credit AE with 1361 days, which is the rough equivalent of 3 years and nine months.

**85** While section 719(3.1) of the *Criminal Code* provides for a cap on any credit to be given to an offender for pre-trial custody of 1.5 days per day served, the Court of Appeal held, in *R. v. Duncan*<sup>31</sup>, that in appropriate circumstances, particularly harsh pre-trial custody conditions can

provide mitigation apart from and beyond that 1.5 credit. AE seeks a credit of ten months as a result of extensive lockdowns he experienced while in custody.

**86** AE has been remanded to the Central East Correctional Centre while he has awaited his trial and sentencing. He resides in a 15' x 7' cell. It has a small window that doesn't open, a bunk bed, a sink, a toilet, a small table and some shelves. He has shared the cell with another person throughout his remand period, other than for seven days during which he has been triple bunked in the cell.

**87** AE deposed that his unit has been locked down on 224 days for six hours or less and 81 days for six hours or more. During the month of July 2016 alone, there were 23 lockdown days. While on lockdown, inmates are unable to shower, shave, use the phone, receive visitors or get fresh air. Their time in the common room where there is a television is either significantly reduced or eliminated.

**88** The vast majority of lockdown events were the result of staff shortages. Lockdowns have been used for years now at the Central East facility as a means of managing staff shortages. It is becoming more common to see cases where offenders convicted of serious criminal offences are having their sentences reduced due to the conditions of their remand custody.

**89** AE has experienced lockdowns on roughly one-third of the days he has been in custody awaiting his trial and sentencing. To be fair, a significant number of those lockdowns have been partial, usually about three hours. But there have been many days where lockdowns are significantly longer.

**90** The nature of incarceration is such that lockdowns are going to happen in the normal course for security or other reasons. They are to be expected. But when they become a routine measure to address staffing shortages, there is a real problem. Lockdowns are not neutral events. They have consequences, including notably negative impacts on the physical and psychological health and well-being of inmates. They contribute to increased tension and frustration within the units affected. These heightened emotions in turn contribute to an environment more likely to give rise to violent outbursts.

**91** I find that AE experienced particularly harsh conditions during his remand period and that those conditions have affected him negatively in terms of his mental and physical health. He is entitled to some mitigation of his sentence to reflect those particularly harsh conditions. In the circumstances, and given that the majority of lockdowns were only for partial days, I am prepared to apply a three month reduction in his sentence to account for his remand conditions.

### **Sentences Imposed**

#### *Human Trafficking -- Counts 2 and 12*

**92** The circumstances in this case, in my view, tend to straddle the first and second tiers described

in the *Tang* decision. In other words, AE did not procure or coerce either of KJ or AB to become prostitutes. They did that of their own choosing. But he did use coercive tactics to keep them working and he did take all, or virtually all of their earnings. He exploited each of them. He treated them in a degrading and inhuman fashion, as though they were income producing property. He assaulted them both. His treatment of these two young women was despicable, even if they were the ones to approach him first.

**93** The exploitation of KJ went on for years. The exploitation of AB went on for months.

**94** The human trafficking charges in relation to KJ (count two) relate to a time prior to the introduction of mandatory minimum sentences. In my view, AE's conduct towards KJ, and particularly the length of time the exploitation went on, warrants a sentence at the higher end of the range. Subject to what I say momentarily about the totality principle, an appropriate sentence on count two is seven years imprisonment.

**95** The exploitation of AB was not nearly as long and not characterized by the same kind of threatening behaviour KJ testified about. Still, AE took all of her earnings and treated her as a commodity. The mandatory minimum applies in relation to the charges involving AB. In my view, an appropriate sentence for the human trafficking of AB (count twelve) is five years, which will run concurrent to the sentence for human trafficking in relation to KJ.

#### *Assaults -- Counts 3 and 14*

**96** To some extent, the assaults are accounted for as an aggravating circumstance in the human trafficking offences. They are also stand-alone offences and so I will particularize the sentences I impose for them. With respect to the assault on KJ (Count 3), I sentence AE to four months imprisonment. For the assault on AB (Count 14) I sentence AE to one month. Both of these sentences will run concurrent to the sentences imposed on counts 2 and 12.

#### *Criminal Harassment -- Count 4*

**97** The criminal harassment charge was also closely tied into the human trafficking offence in relation to KJ. It too is a stand-alone offence and, in my view, a reasonably serious one. I impose a sentence of one year imprisonment, to be served concurrently to the sentences imposed on counts 2, 3, 12 and 14.

#### *Breach of a Non-Communication Order -- Count 15*

**98** The breach of the non-communication order was, on one level, relatively minor. On another level, it would have impressed upon AB that AE was capable of reaching out to her even though he was in custody. It warrants a one month sentence, to be served concurrently with the sentences on counts 2, 3, 4, 12 and 14.

### *The Drug Possession Offences*

**99** Of the two convictions for possession of controlled substances for the purpose of trafficking, the one in relation to cocaine (count 5) is the more serious. Cocaine is an insidious drug. It is highly addictive and has ruined many lives. This is particularly so of crack cocaine, which formed the larger part of AE's cocaine inventory.

**100** The amount of drugs and money seized suggest to me that AE was a street-level trafficker. Still, he had a significant amount of cocaine in his possession. The presence of a firearm, along with the drugs, is a significant aggravating factor.

**101** Again, subject to what I say momentarily about the totality principle, AE's possession of cocaine for the purpose of trafficking (count 5), warrants a sentence of two years' imprisonment, which I would impose consecutive to counts 2, 3, 4, 12 and 14. For possession of marijuana for the purpose of trafficking (count 6), a sentence of six months is appropriate. It will run concurrent to count 5, but consecutive to counts 2, 3, 4, 12 and 14.

### *The Firearm Offences*

**102** Possession of a loaded, prohibited firearm is a very serious offence, particularly when coupled with drug trafficking. Many judges, myself included, have commented on the serious threat that guns pose to the safety and security of our communities. The gun in this instance was clearly a tool of the trade for AE. It enhanced the dangers associated with his already dangerous activities.

**103** Again, subject to what I say momentarily about the totality principle, the possession of the loaded prohibited weapon (count 10), merits four years' imprisonment. The sentence imposed on count 10 will run consecutive to all other sentences.

**104** For the offence of knowingly possessing a firearm with an altered serial number (count 11), I sentence AE to four months' imprisonment, to run concurrent to the sentence imposed on count 10, but consecutive to all other sentences.

**105** For the offence of unsafe storage of a firearm, I impose a sentence of one month, to run concurrent to counts 10 and 11, but consecutive to all other sentences.

### **Application of the Totality Principle**

**106** The gross sentences I have imposed amount to thirteen years globally. In my view, such a sentence is disproportionate to the criminal culpability of AE. There is no doubt that AE was engaged in very serious criminality. He was knee deep in guns, drugs and prostitution. From society's point of view, he is a far cry from the "loving, caring and empathetic person" his mother sees him as.

**107** Having said that, a sentence of thirteen years would be crushing, is not necessary to

underscore the principles of denunciation and deterrence and fails entirely to give any credence to the prospect of rehabilitation. I have serious concerns about AE's future prospects because the conduct giving rise to the convictions now before the court demonstrates a person who was fully engaged in criminality. But AE is a bright person. He is an educated person. He has an ability to rise above his circumstances, if he would only choose to be a better person. The letters of support he has received from the community suggest there is hope for him to do so.

**108** I view AE's conduct as egregious, all things considered, but on the sliding scale of egregiousness, the circumstances here are not as stark as those in *R. v. A.S.*

**109** In the result, I am reducing the global sentence imposed on AE from thirteen to ten years. That ten years needs to be broken down amongst the various sentences imposed. Some will not be affected, but others will have to be reduced, such that they do not exceed ten years when accumulated. The sentences, as adjusted, are reflected in the following chart:

Count	Offence	Gross Sentence	Adjusted Sentence	Comments
2	Human trafficking (KJ)	7 years	6 years	
3	Assault on KJ	4 months	4 months	Concurrent to counts 2, 4, 12 and 14
4	Criminal harassment	1 year	1 year	Concurrent to counts 2, 3, 12 and 14
5	Possess cocaine for the purpose of trafficking	2 years	18 months	Consecutive to counts 2, 3, 4, 12 and 14. Concurrent to Count 6
6	Possess marijuana for the purpose of trafficking	6 months	6 months	Concurrent to count 5, but consecutive to counts 2, 3, 4, 12 and 14
7	Careless storage	1 month	1 month	Concurrent to counts 10 and 11, but consecutive to all other counts
10	Knowingly possess a loaded, prohibited firearm	4 years	30 months	Concurrent to counts 7 and 11, but consecutive to all other counts
11	Knowingly possess a firearm with an altered serial number	4 months	4 months	Concurrent to counts 7 and 10, but consecutive to all other counts
12	Human trafficking (AB)	5 years	5 years	Concurrent to Count 2
14	Assault on AB	1 month	1 month	Concurrent to counts 2, 3 and 12
15	Breach of non-communication order	1 month	1 month	Concurrent to counts 2, 3, 4, 12 and 14

**110** The global sentence of ten years is to be reduced by three years and nine months on account of pre-sentence custody and a further three months as a credit for the particularly harsh conditions of AE's remand custody.

**111** In the result, the net global sentence is six years.

**112** I impose the following additional ancillary orders, which were not opposed:

(a) An order that AE comply with the *Sex Offender Information Registration Act* for life;

(b) An order that AE provide a sample of his DNA;

- (c) A weapons prohibition for life under s. 109 of the *Criminal Code*; and,
- (d) An order that AE not communicate directly or indirectly with KJ and AB and that he remain at least 500m away from any known place where they may be located, including any place of residence, worship, employment, education or recreation.

R.C. BOSWELL J.

1 [1975] 1 S.C.R. 729

2 *R. v. McDonnell*, [1997] 1 S.C.R. 948 at para. 46

3 [2012] O.J. No. 6566 (S.C.J.)

4 *R. v. Gummer*, [1983] O.J. No. 181 (C.A.) at para. 13

5 *R. v. C.A.M.*, [1996] 1 S.C.R. 500 at para. 42

6 *R. v. Nasogaluak*, 2010 SCC 6, at para. 44

7 *R. v. Cheddesingh* (2004), 182 C.C.C. (3d) 37

8 [1997] A.J. No. 460

9 *An Act to Amend the Criminal Code (trafficking in persons)*, S.C. 2005, c. 43

10 See Dr. D.A. Thomas, *Principles of Sentencing*, 2nd ed. (1970) at pp. 130-133

11 [1997] O.J. No. 3911, at para. 38

12 2017 ONSC 802

13 [2008] O.J. No. 2430 (S.C.J.)

14 2017 ONSC 3074

15 2014 ONSC 723

16 As above, at endnote 3

17 2017 ONCA 3722

18 [2012] O.J. No. 6256 (S.C.J.)

19 2017 ONSC 26

20 [2002] O.J. No. 4927 (C.A.), at para. 15

21 [2003] O.J. No. 721 (C.A.), at para. 13

22 2017 ONSC 4039

23 2013 ONSC 2630

24 See *R. v. Nur*, 2015 SCC 15

25 2014 ONSC 6466

26 2014 ONCA 448

27 2017 ONSC 3026

28 See for instance *R. v. Wong*, 2012 ONCA 767 at para. 13

29 [2004] O.J. No. 3439 (C.A.) at para. 39

30 2014 SCC 26

31 2016 ONCA 754 at para. 6

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