CITATION:	*Kolaka v The Queen* [2019] NTCCA 16
PARTIES:	KOLAKA, Paul James v THE QUEEN
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	CRIMINAL APPEAL from the SUPREME COURT exercising Territory jurisdiction
FILE NO:	CA 5 of 2019 (21727905, 21812311)
DELIVERED:	15 July 2019
HEARING DATE:	15 July 2019
JUDGMENT OF:	Grant CJ, Southwood and Barr JJ

CATCHWORDS:

CRIMINAL LAW – SENTENCING APPEAL – DRUG OFFENCES – MINIMUM NON-PAROLE PERIOD 50 PER CENT – MANIFEST EXCESS

Sentence of four years and 10 months for possess $121,755 knowing that it was obtained directly or indirectly from the supply of cannabis contrary to s 8(1) of the *Misuse of Dangerous Drugs Act 1990* not manifestly excessive – Sentence of two years and 10 months for possess cannabis contrary to s 7(1) of the *Misuse of Dangerous Drugs Act 1990* manifestly excessive – Resentence of 18 months' imprisonment for possess cannabis – Sentences to be served concurrently – Minimum non-parole period of 50 per cent – Only one offence a specified offence under s 55 of the *Sentencing Act* – Appeal allowed

Misuse of Drugs Act 1990 (NT) s 7(1), s 8(1)
Sentencing Act 1995 (NT) s 55

Bugmy v The Queen (2013) 249 CLR 571, *Cranssen v The King* (1936) *55 CLR 509, Forrest v The Queen* [2017] NTCCA 5, *House v The King* (1936) 55 CLR 499, *R v Morton* (2010) 27 NTLR 114, *R v Verdins* (2007) 16 VR 269, *R v Tsiaras* (1996) 1 VR 398, *Smiler v The Queen* [2018] NTCCA 2, *The Queen v Cumberland* [2019] NTCCA 13, *The Queen v Cumberland* [2019] NTCCA 14, *Waye v The Queen* [2000] NTCCA 5, applied.

D Mildren, *The Appellate Jurisdiction of the Australian Courts* (Federation Press, 2015)

REPRESENTATION:

Counsel:

Appellant:	L Nguyen
Respondent:	D Morters SC

Solicitors:

Appellant:	Robert Welfare & Associates
Respondent:	Director of Public Prosecutions

Judgment category classification:	B
Number of pages:	21

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Kolaka v The Queen [2019] NTCCA 16
No. CA 5 of 2019 (21727905, 21812311)

BETWEEN:

PAUL JAMES KOLAKA
Appellant

AND:

THE QUEEN
Respondent

CORAM: GRANT CJ, SOUTHWOOD AND BARR JJ

REASONS FOR JUDGMENT

(Delivered 15 July 2019)

THE COURT:

Introduction

[1] On 21 August 2018, the appellant was sentenced to two years and 10 months' imprisonment for one count of possessing a commercial quantity of cannabis plant material contrary to s 7(1) of the *Misuse of Drugs Act 1990* (NT), and four years and ten months' imprisonment for one count of possess $121,755 cash knowing that it was obtained directly or indirectly from the supply of dangerous drugs contrary to s 8(1) of the Act. One year and eight months of the sentences of imprisonment were ordered to be served concurrently. This gave a total sentence of six years' imprisonment. A non-

parole period of 70 per cent of the total sentence, being four years and three months, was fixed.

[2] On the same day the appellant pleaded guilty to possessing less than a traffickable quantity of testosterone enanthate, intentionally possessing less than a traffickable quantity of methamphetamine, intentionally possessing less than a traffickable quantity of testosterone, and possessing trenbolone, clomifefne and stanozolo when not authorised to do so. The sentencing Judge found each of these charges proven but took no further action.

[3] The sentencing Judge also ordered that the sums of $33,000 and $121,755 which were seized from the appellant by the police were forfeited to the Northern Territory. The appellant did not contest these orders.

[4] On 21 March 2019 the appellant was granted an extension of time and leave to appeal on the ground that his sentence was manifestly excessive.

[5] On 2 July 2019 Senior Counsel for the Crown, Mr Morters, properly conceded that her Honour the sentencing Judge erred in fixing a minimum non-parole period of 70 per cent of the total sentence. This was contrary to the recent decision of this Court in *The Queen v Cumberland*.[1] As the only offence specified under s 55 of the *Sentencing Act 1995* (NT) was the offence contrary to s 7(1) of the *Misuse of Drugs Act 1990*, the minimum non-parole period of 70 per cent applied only to that part of the sentence imposed in respect of that offence.

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1 [2019] NTCCA 13.

[6] The sentencing error conceded by the Crown means this Court must set aside the non-parole period fixed by the sentencing Judge and resentence the appellant or remit the matter back to the sentencing Judge. However, the appellant also presses the ground of appeal that the sentence was manifestly excessive.

[7] The appellant pleads the following particulars of the ground of appeal that the sentence was manifestly excessive:

(a) The sentencing Judge failed to give sufficient weight to the appellant's prospects of rehabilitation from drugs and drug-fuelled offending;

(b) The sentence was crushing at a time during the appellant's life at which he was capable of rehabilitation and should have been given such an opportunity;

(c) The sentencing Judge unreasonably rejected the appellant's letter of remorse.

[8] The appellant also contended that the sentences of imprisonment imposed for the offences contrary to s 7(1) and s 8(1) of the *Misuse of Drugs Act* should be served wholly concurrently, and that the sentence imposed for the offence contrary to s 8(1) of the Act should not exceed the sentence of imprisonment imposed for the offence contrary to s 7(1) of the Act.

Facts of the offending

[9] Approximately four months prior to his arrest on 9 June 2017 the appellant purchased 454 grams, or one pound, of cannabis over the internet for $3,000 using Bitcoin. The appellant arranged for the package of cannabis to be delivered to his post office box, which he collected and then kept at his house in Coolalinga. Approximately six weeks prior to his arrest on 9 June 2017 the appellant purchased a further 454 grams of cannabis over the internet for $3,000 using Bitcoin. He also arranged for this second package of cannabis to be delivered to his post office box, and he again collected the package and kept it at his house.

[10] On 9 June 2017 detectives from the Organised Crime Division executed a search warrant on the appellant's premises and located and seized a total of 439.75 grams of cannabis, and $33,510 of cash in a safe.

[11] Between 1 March and 10 June 2017 there was 900 grams of cannabis plant material, or approximately two pounds, in the appellant's possession, which is a commercial quantity of the dangerous drug for the purposes of s 7(1) of the *Misuse of Drugs Act.* At the time of the offences cannabis plant material was a 'dangerous drug' listed in Schedule 2 of the *Misuse of Drugs Act.*

[12] In his record of interview with police on 9 June 2017 the appellant made admissions to purchasing a pound of cannabis over the internet approximately six weeks prior to his arrest, purchasing a pound of cannabis over the internet approximately four months prior to his arrest, and giving

cannabis to his friends when they went to his house. At this time the appellant stated that the $33,510 in cash found in the safe was from the sale of a block of land.

[13] On 15 March 2018, while the appellant was on bail, he drove to an address in Virginia while police were executing a search warrant at that property. Upon searching the appellant's car police found a clip seal bag containing a small amount of methamphetamine in his wallet. Police also searched his car and found $45,700 in cash behind the driver's seat.

[14] Another search warrant was executed at the appellant's residence. Police found $35,910 cash in a cardboard box in the appellant's lounge room, $43,810 cash in a container in the kitchen and $33,835 cash in a bedside table.

[15] The total amount of cash police found in the offender's vehicle and the residence was $159,255, and of that amount $121,755 was money obtained directly from the supply of dangerous drugs.

Objective seriousness of the appellant's offending

[16] The appellant's possession of the two pounds of cannabis is offending towards the lower end of the range of seriousness of such offending. The amount of the dangerous drug involved was not large. However, it is apparent that the dangerous drug was possessed for commercial gain and supply as part of a continuing course of dealing by the appellant in the dangerous drug for profit.

[17] The offence of possessing $121,755 cash knowing that it was obtained directly or indirectly from the supply of dangerous drugs contrary to s 8(1) of the *Misuse of Drugs Act* is a serious offence. Parliament has fixed a maximum penalty of imprisonment for 25 years for an offence contrary to s 8(1) of the Act. As the admitted street value of the two pounds of cannabis possessed by the appellant was $11,200, it may be inferred that the appellant would have acquired and sold approximately 21 pounds of cannabis in order to come into possession of the $121,755. This is a substantial amount of money. It represents the product of a significant course dealing in the dangerous drug. It is apparent that the appellant had engaged in a commercial enterprise of dealing in dangerous drugs.

The appellant's personal circumstances

[18] The appellant was 27 years old at the time of offending, and was 28 years old at the time of sentencing. He is now 29 years old. The appellant was born and raised on the Gold Coast, and moved to Darwin in 2016. He does not present with clinical features of affective or psychotic illness and is of normal intelligence.

[19] The appellant says that his mother was a heroin addict and his father also misused drugs. His parents separated when he was one or two years old and he was raised by his mother. Because of his mother's heroin addiction, the appellant witnessed 'things a kid shouldn't see', including his mother 'shooting up' and having 'criminals' regularly at home. From time to time,

the family home was broken into by addicts, and violence ensued. The appellant reported having to attack one person with a bat during a home invasion when he was a child.

[20] The appellant maintained a close relationship with his grandparents. His father died when he was eight years old. His mother died of a drug overdose in 2012 when he was 23 years old. His grandfather died in 2016, and his grandmother and uncle are his only remaining family.

[21] The appellant left school part-way through Year 12 and did an apprenticeship. He started a mechanical apprenticeship with Toyota but switched to training as a diesel mechanic. He completed his apprenticeship and worked for Hasting Deering Caterpillar for an extended period as a diesel mechanic. In 2014 he started a career as a personal trainer. He has obtained various qualifications including a Diploma of Business Management, Certificates III and IV in Fitness Training, Certificates I and II in Strength and Conditioning and a Blue Card which enabled him to work with children. Her Honour the sentencing Judge found that 'the offender has the potential to be a useful and productive citizen'.

[22] The appellant suffers from back pain, depression and anxiety. He takes pain killers for his back pain and has sought psychological counselling for his anxiety.

[23] The appellant started using cannabis when he was 21 years of age, and shortly after started using "party drugs" including cocaine, speed and

ecstasy. He used these drugs socially and initially they did not cause any problems for him. After his mother died in 2012 his drug use increased dramatically. This led to him committing various relatively minor offences in Queensland. He was placed on parole in Queensland in 2014 and was subjected to regular drug testing. He remained drug free during this period. However, after his grandfather died in 2016 and his second serious relationship broke down, the appellant started using drugs again. He used cocaine and when he was unable to access cocaine he started using methamphetamine.

[24] While living in the Northern Territory, the appellant supported himself by buying, repairing and selling cars and providing fitness training to private clients. In 2017 the appellant injured his back at work, which he says led to him selling cannabis.

[25] The appellant has a criminal history in Queensland which extends for two pages. He has been found guilty of receiving stolen property, breaching community service orders, committing a public nuisance, common assault, wilful damage to property, breach of a probation order and stealing. He has been sentenced to short terms of imprisonment but released on parole. He has a lengthy history of committing traffic offences.

[26] While on remand awaiting sentence for the offences he committed in the Northern Territory, the appellant engaged in the Safe Sober Strong program and the Alcohol and Other Drugs program through the Top End Health

Service's prison in-reach program. The exit report for the latter program states that:

> [The appellant's] participation in counselling showed that he has significant insight regarding his situation and is able to identify significant motivating factors associated for making a change in relation to remaining abstinent from substance use.
>
> [The appellant] is able to identify key strategies in order to make and sustain positive change. I am able to confirm that his participation has been enthusiastic, engaging and insightful. In my work with him, I have witnessed a desire in [the appellant] to improve himself and the community.

[27] A psychological assessment by a forensic psychologist, Ms Kerry Williams, dated 13 June 2018, was tendered in the Court below. Ms Williams was of the following opinion.

> The configuration of [the appellant's] scores [on the various psychological tests he undertook] suggests possible diagnostic considerations of Substance Dependence, Intermittent Explosive Disorder, and Narcissistic Personality Disorder.
>
> I am of the opinion that [the appellant] does experience symptoms of Post-Traumatic Stress Disorder ('PTSD') and has over time self-medicated with substances in an effort to manage these symptoms. His early childhood experiences may have gone same [sic] way in developing a possible personality disorder, however *I am not of the opinion that there is a direct correlation between his offending behaviour and PTSD*. I am more of the opinion that his drug use is the primary issue that needs to be addressed.
>
> In regard to treatment for [the appellant's] substance use he appears motivated to participate in a treatment program. His responses suggest an acknowledgement of important problems and the perception of a need for help in dealing with these problems. He reports a positive attitude towards the possibility of personal change, the value of therapy and the importance of personal responsibility.

[28] However, Ms Williams also stated the following in her report.

> [The appellant] describes a personality style that is consistent with a number of antisocial character features. He is likely to be egocentric, with little regard for others or the opinions of the society around them. In his desire to satisfy his own impulses, he may take advantage of others and has little sense of loyalty, even to those who are close to him. Relationships with others predictably fail due to his exploitative and manipulative behaviour. *While he may describe feelings of guilt over past transgressions, he likely feels little remorse of any lasting nature. He would be expected to place little importance in his social role responsibilities.* His behaviour is also likely to be reckless; he can be expected to entertain risks that are potentially dangerous to himself and to those around him.
>
> […]
>
> […] Others may view him as self-centred and narcissistic.

Manifestly excessive

[29] The principles applying to the manifestly excessive ground of appeal have been well settled since the High Court's decision in *House v The King.*[2] The principles were referred by this Court in *Smiler v The Queen,*[3] and restated by this Court in *Forrest v The Queen.*[4] They are (footnotes omitted):

> [63] The exercise of the sentencing discretion is not to be disturbed on appeal unless error is shown. The presumption is that there is no error. Appellate intervention is not justified simply because the result arrived at below is markedly different from other sentences that have been imposed in other cases. Intervention is warranted only where the difference is such that in all the circumstances the appellate court concludes there must have been some misapplication of principle, even though where and how is not apparent from the statement of reasons.
>
> [64] Manifest excess is a conclusion which does not depend upon attribution of specific error in the reasoning of the sentencing judge. The relevant test is whether the sentence is unreasonable or plainly unjust. It must be shown that the sentence was clearly and

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2 [1936] HCA 40; 55 CLR 499 at 504-505. See also *Cranssen v The King* [1936] HCA 42; 55 CLR 509.

3 [2018] NTCCA 2.

4 [2017] NTCCA 5.

> not just arguably excessive. In approaching the task of determining whether a sentence is unreasonable or plainly unjust, the appeal court does so within the context that there is no one single correct sentence. The process of sentencing comprehends that there may have been compliance with the appropriate sentencing principles at first instance notwithstanding that there may also be differences of judicial opinion concerning the result.

[30] As Hayne J stated in *AB v R:*[5]

> The difference between cases of specific error and manifest excess is not merely a matter of convenient classification. It reflects a fundamental difference in what the appellate court does. In the former case, once an appellate court identifies an error, the sentence imposed below must be set aside and the appellate court is then required to exercise the sentencing discretion afresh. The offender must be re-sentenced unless, of course, in the separate and independent exercise of its discretion the appellate court concludes that no different sentence should be passed. By contrast, in the case of manifest excess, the error in reasoning of the sentencing judge is not discernible; all that can be seen is that the sentence imposed is too heavy and thus lies outside the permissible range of dispositions. Only then may the appellate court intervene and, in the exercise of its discretion, consider what sentence is to be imposed.

[31] In order to determine whether a sentence is manifestly excessive regard must be had to all of the relevant circumstances, including the objective seriousness of the offence and where it sits in the range of seriousness, the offender and the offending, whether there are any aggravating factors, and whether there were any mitigating features.[6]

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5 [1999] HCA 46; 198 CLR 11 at [130].

6 D Mildren, *The Appellate Jurisdiction of the Australian Courts* (Federation Press, 2015) at 10.16.

Remarks of the sentencing Judge

[32] So far as is relevant to this appeal, the sentencing Judge made the following remarks.

> On 9 June 2017, after the offender had taken legal advice, the offender agreed to participate in an interview with police and in that interview, he made certain admissions to some of the facts that have been set out in the Crown facts, but the offender lied about the money. He has now admitted that the money was from the proceeds of sale of drugs.
>
> […]
>
> […] The offender has the potential to be a useful and productive citizen.
>
> […]
>
> I have read the psychological report which I do not, frankly, find very useful. It says that he experiences symptoms of Post-Traumatic Stress Disorder, but it does not identify the stressor. The offender's counsel suggested it might have been an incident in his childhood when he had to protect his mother from assault. But, in any case, there is no suggestion that this contributed to his offending in any way and his offending seems to have been purely financially motivated.
>
> Now, these are serious offences. Courts have said many times that general deterrence is the most important thing to consider in these sorts of drug offences. I have to impose a sentence that will discourage other people from doing what the offender has done because there is a huge temptation to deal in drugs because it is so profitable.
>
> I also have to impose a sentence that will discourage the offender from doing something like this again. The offender was on bail for the first lot of offending when police arrested him for receiving that $121,000 odd and they found the money in his car, but his lawyer has explained that this money was from the sale of drugs before his arrest on the first charge and that has not been disputed by the Crown. The Crown also does not dispute that the other substances seized were for his personal use.
>
> The offender has pleaded guilty and he is entitled to a reduction in his sentence for his willingness to facilitate the course of justice. I intend reducing he sentence by about 20 per cent for those matters. I do not see anything to indicate that the offender is remorseful for his part in bringing commercial quantities of cannabis into our community for commercial sale.

> The offender did write a letter in which he claimed to be remorseful, saying that he now realises how much damage drugs do in the community, but that he was, and I quote, "Totally ignorant of this before." Well, I just do not accept that.
>
> Firstly, the offender knows what damage drugs can do to people and he was profiting from it. And if he really did have a change of heart and appreciated that and he was remorseful, he would have demonstrated that in a practical way by assisting police to apprehend his suppliers and associates and he has not done so.
>
> Now, I infer from the fact that the offender was found in possession of $121,000; and earlier, another $33,000, he has played a significant role in a fairly large scale drug dealing business. I have not been provided with any details as to exactly what his role was. So, that is the only information I have to go on.

[33] It is apparent from the sentencing Judge's remarks that her Honour took into account the appellant's prospects of rehabilitation and whether he had shown remorse. Her Honour correctly stated that the primary sentencing objective for offending such as this is general deterrence and that she also had to impose a sentence that would discourage the appellant from committing similar offences in the future.

Consideration of the submissions made on behalf of the appellant

[34] As to the appellant's prospects of rehabilitation, counsel for the appellant made the following submissions.

[35] It was contended that the sentencing Judge did not consider the appellant's efforts towards rehabilitation to be relevant. In doing so, her Honour failed to give sufficient weight to the appellant's prospects of rehabilitation from drugs and drug-fuelled offending. Her Honour's disregard of the Exit Report of the Alcohol and Other Drugs program and of the report of Ms Williams

demonstrates a disregard of the steps taken by the appellant towards rehabilitation and a disregard or non-acceptance of Ms Williams's opinion that the appellant's drug use is the primary issue that needs to be addressed. Her Honour's approach had a bearing on the overall assessment of a just and appropriate sentence in all the circumstances of this case, and led to error in the ultimate sentence imposed.

[36] Counsel for the appellant also submitted that the sentencing Judge largely disregarded the fact that the appellant had been diagnosed with Post Traumatic Stress Disorder and had sought assistance from a psychologist to deal with this issue.

[37] The appellant's submissions in relation to the manner in which the sentencing Judge dealt with the appellant's prospects for rehabilitation cannot be sustained. The two rehabilitation programs undertaken by the appellant on remand are very elementary behavioural change programs. The appellant's completion of these programs by no means represents a sustained attempt by the appellant to change his ways. There was no evidence to suggest that the appellant was affected by drugs when he committed these offences, and the fact that the appellant was able to accumulate more than $150,000 from the proceeds of drug dealing indicates that his primary motivation was financial gain. The appellant as a mature and intelligent adult deliberately chose to engage in the business of drug dealing. Further, as to the diagnosis that the appellant was suffering from Post-Traumatic Stress Disorder, the sentencing Judge correctly stated that there is no

suggestion that this contributed to his offending in any way and his offending seems to have been purely financially motivated. In the circumstances, while some weight is to be given to rehabilitation, the sentencing Judge correctly determined that the main sentencing objectives were specific and general deterrence.

[38] Counsel for the appellant also submitted that the sentencing Judge had failed to give 'full weight' to the appellant's deprived background in the manner described by the High Court in *Bugmy v The Queen*.[7] The principle expressed by the High Court in that case was that the experience of growing up in an environment surrounded by alcohol abuse and violence may compromise a person's capacity to mature and to learn from experience. For that reason, exposures to those influences in childhood may explain an offender's recourse to violence and the offender's moral culpability for the inability to control that impulse may be substantially reduced.

[39] However, in the application of that principle the defence must establish the relevant nexus between childhood deprivation or trauma and the offending in question. There is nothing in the evidence which was before the sentencing Judge which established any such nexus. The psychological report stated that "I am not of the opinion that there is a direct correlation between his offending behaviour and PTSD". This is not a case where as a result of the appellant's deprived circumstances, and the impact that it has

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7 *Bugmy v The Queen* (2013) 249 CLR 571.

had on his mental state, he did not fully appreciate that what he was doing was wrong or was unable to control his impulses. To the contrary, this is a case where a mature adult of normal intelligence, and who had started to make something of his life, deliberately chose to engage in a criminal enterprise for financial gain over an extended period.

[40] We are also unable to accept the appellant's submission that the learned sentencing Judge unreasonably rejected the appellant's letter of remorse. Her Honour was entitled to reject the letter. We also do not accept the following statements in the appellant's letter.

> I now [since being in gaol] see how much drugs does to the community. I made the choice to sell and take drugs as I was totally ignorant to how much damage it does at the time.

[41] Given the appellant's background, he must have been thoroughly aware of the harm that the supply and use of dangerous drugs causes in the community. In addition, the media regularly publishes information about the harm caused by the supply and use of dangerous drugs. It is also apparent that the appellant's primary motivation in engaging in a drug dealing enterprise was financial gain; it was not to support his own drug use. The appellant's statement that, "I believe I can achieve greatness", is also quite unrealistic and somewhat grandiose. The statements referred to above cause us to doubt the veracity of the other content of the appellant's letter. Her Honour the sentencing Judge correctly gave the appellant's letter very little weight and it was reasonable to do so.

[42] Generally speaking, very little assistance is gained by offenders providing such letters to the Court. Greater assistance is provided by offenders fully cooperating with police, and if they wish to give evidence about their feelings of remorse, getting into the witness box and giving oral evidence on oath about that matter. Letters such as the appellant's are too easily contrived or concocted and it is difficult to give them a great deal of weight without offenders submitting themselves to cross-examination in open court.

[43] The extent of the appellant's remorse needs to be assessed in the context of the whole of the evidence. On the negative side, weight is to be given to the following factors. First, Ms Williams's assessment that "while the appellant may describe feelings of guilt over past transgressions, he is likely to feel little remorse of any lasting nature." Second, Ms Williams's finding that the appellant has a number of antisocial character features. Third, the untruths that the appellant told the police during his record of interview about the provenance of the money found in his possession. Fourth, the limits of the assistance that the appellant gave to the police which were identified by her Honour the sentencing Judge. Fifth, the late date on which the appellant wrote the letter to the Court. On the positive side: the appellant's plea is an early plea; he did not oppose the orders that the money in his possession be forfeited to the Northern Territory; and he has undertaken some rehabilitation courses while in prison. In all of the circumstances, the appellant still has some distance to go before he becomes wholly resipiscent.

Consideration of the sentence of four years and 10 months' imprisonment for an offence contrary to s 8(1) of the *Misuse of Drugs Act 1990*

[44] In our opinion, the sentence of four years and 10 months imprisonment that was imposed on the appellant for the offence contrary to s 8(1) of the *Misuse of Drugs Act 1990* is not manifestly unjust and no error has been demonstrated in the sentencing process in this regard. As we have already stated, the offence was an objectively serious offence and the main sentencing objectives are deterrence and denunciation.

Consideration of the sentence of two years and 10 months' imprisonment for an offence contrary to s 7(1) of the *Misuse of Drugs Act 1990*

[45] In our opinion the sentence of two years and 10 months for the offence contrary to s 7(1) of the *Misuse of Drugs Act 1990* was manifestly excessive. As we have said, the offending was towards the lower end of the range of seriousness for such offences. The offence of possessing the two pounds of cannabis represents a small part of the appellant's overall course of criminal conduct and the offending did not involve any particularly aggravating factors. Such a conclusion does not depend upon attribution of specific error in the reasoning of the sentencing Judge. However, the disproportionality of the sentence is demonstrated by the fact that the sentence imposed for possessing the two pounds of cannabis was more than half the sentence imposed for the offence contrary to s 8(1) of the *Misuse of Drugs Act*, which carries a maximum penalty of 25 years and involved an inferred dealing in something in the order of 21 pounds cannabis.

Resentence

[46] As a result of the error in fixing the minimum non-parole period and our finding that the sentence imposed for possessing the two pounds of cannabis was manifestly excessive, it is necessary to resentence the appellant.

[47] We confirm the sentence of four years and 10 months' imprisonment imposed on the appellant for the offence contrary to s 8(1) of the *Misuse of Drugs Act 1990*. We re-sentence the appellant to 18 months' imprisonment for the charge of possess a commercial quantity of cannabis. We have reduced the sentence we would have otherwise imposed on the appellant by 25 per cent for the appellant's early guilty plea. While the appellant has not demonstrated a great deal of remorse as yet, it was an early plea of guilty and considerable utilitarian benefit is obtained by the courts by encouraging drug dealers to facilitate the administration of justice by pleading guilty.

[48] The sentence of 18 months imprisonment is to be served wholly concurrently with the sentence of four years 10 months' imprisonment imposed for the charge of possessing $121,755 knowing that it was obtained directly or indirectly from the supply of dangerous drugs, giving a total sentence of four years and 10 months' imprisonment. We fix a non-parole period of two years and five months.

[49] The reason for the total concurrency is that the appellant was engaged in a single course of criminal conduct and it may be inferred that the proceeds of sale of one of the pounds of cannabis possessed by the appellant is included

in the $121,755 possessed by the appellant contrary to s 8(1) of the *Misuse of Drugs Act 1990*. The totality of the appellant's criminal conduct is duly reflected in the total sentence of four years and 10 months. The sentencing objects of deterrence and denunciation do not require any part of the sentence of 18 months' imprisonment to be served cumulatively on the sentence of four years and 10 months' imprisonment simply because the offender possessed an additional pound of cannabis which did not form part of the amount comprehended by the charge of possessing tainted monies.

[50] During the course of oral argument, counsel for the appellant accepted that the effect of the decision in this Court in *The Queen v Cumberland* was only to the effect that "the sentences imposed in relation to [the tainted money counts] should not exceed and should be made concurrent with those imposed in relation to *the corresponding* supply charges".[8] In that case, all of the tainted money that the offender was found in possession of was the product of the supply counts with which he was charged. That is, the supply of the drugs with which the offender was charged produced all of the tainted money that was possessed by the offender. In the circumstances under consideration in this appeal, the vast amount of the $121,755 possessed by the appellant was the proceeds of the sale of drugs other than the two pounds of cannabis for which the appellant was charged with possession.

[51] Accordingly, we allow the appeal in part and make the following orders:

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8 [2019] NTCCA 14 at [26].

1. The non-parole period fixed is set aside.

2. The sentence imposed for the offence of possessing a commercial quantity of cannabis is set aside.

3. For the offence of possessing a commercial quantity of cannabis, the appellant is sentenced to 18 months' imprisonment.

4. That sentence is to be served wholly concurrently with the sentence of four years and 10 months imposed for the offence of possessing $121,755 obtained from the supply of dangerous drugs.

5. The total effective period of imprisonment is four years and 10 months.

6. A non-parole period of two years and five months is fixed.
