

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R v. M.I.*, 2018 NSPC 56

Date: 20181212

Docket: 8210624 and 8210625

Registry: Sydney, Nova Scotia

Between:

HER MAJESTY THE QUEEN

v.

M I

LIBRARY HEADING

Restriction on Publication: PUBLISHER OF THIS CASE PLEASE TAKE NOTE that Section 30 of the **Youth Justice Act** applies and may require editing of this Judgment or its heading before publication. Section 30 provides:

30(1) No person shall publish by any means a report of

- (a) An offence committed or alleged to have been committed by a young person; or
- (b) A hearing, adjudication, sentence or appeal concerning a young person who committed or who is alleged to have committed an offence, in which the name of the young person, a person under eighteen years of age aggrieved by or the victim of the offence, or a person who appeared as a witness in connection with the offence, or in which any information serving to identify such a person, is disclosed.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on summary conviction and liable to a fine of not more than one thousand dollars and, in default of payment, to imprisonment of a term of three months.

Judge: The Honourable Judge Ann Marie MacInnes
Heard: September 19, 2018 in Sydney, Nova Scotia
Oral Decision: December 12, 2018
Subject: **Youth Criminal Justice Act**
Summary: Section 36 findings made for counts 249.1(3) and 333.1 of the *Criminal Code of Canada*.
Issue: What is the appropriate punishment for the young person found guilty of 249.1(3) and 333.1 of the *Criminal Code of Canada*
Result: Indigenous youth participated in a sentencing circle, and was later sentenced to 12 months probation.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***

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DECISION

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Counsel: Steve Drake, Counsel for the Crown
Sean MacDonald, Counsel for the Accused

By the Court (Orally):

[1] M I, aged 13, has pled guilty to two offenses. That he did on or about the 26th day of March 2018, at or near Sydney, while operating a motor vehicle on a street at 2:50 am and being pursued by a peace officer operating a motor vehicle, he did in order to evade the peace officer failed without reasonable excuse to stop the motor vehicle as soon as was reasonable in the circumstances and did operate the said motor vehicle in a manner that was dangerous to the public and thereby caused bodily harm to Constable Dawn Morrison, contrary to section 249.1(3) of the *Criminal Code of Canada*, and as well that he did steal a motor vehicle, a 2009 Ford F150, property of Murdock Scott MacDonald, and did thereby commit theft, contrary to section 333(1) of the *Criminal Code of Canada*.

[2] My understanding is that there have been no victim impact statements filed and as well no claims for restitution with respect to any damage that may have occurred either to the truck that was stolen or to the police car that was struck by Mr. I and the other two young persons.

[3] We're here today for sentencing. I have considered the principles as set out in sections 3 and 38 of the *Youth Criminal Justice Act* and they provide statutory guidance for sentencing judges. I've also considered the **Gladue** and **Ipeelee** cases from the Supreme Court of Canada, which aid me and other sentencing judges in crafting just, fair and appropriate sentences for indigenous persons.

[4] As well, I have considered the **Nasogalauk** and **M. (C.A.)** decision, also from the Supreme Court of Canada, which remind me that sentencing is an individualized process which must be respectful and knowledgeable of the circumstances of the person before the court to be sentenced. There is no mathematical or scientific formula to arrive at a just sentence. It is to be a delicate art of balancing the protection of the public, with the specific needs of the offender. If the proper balance can be reached, the public is protected by the rehabilitation of the offender. That is the aim of the sentencing process, and that is my aim today.

[5] A sentencing circle was held in M I's home community of W. His parents, community members, supporters, police and an elder were present. The circle permitted the community to speak, providing encouragement and guidance to M. Recommendations were made for proceeding forward, suggestions for M's well

being. How he could make amends for his actions, and how to make sure he didn't repeat them. The circle served as a powerful reminder that there is a necessary place for community and family in the criminal justice system, especially in the youth criminal justice system.

[6] Your actions, M, were very serious. The theft of the motor vehicle, the dangerous driving of it, and the striking of the police car, resulting in Constable Morrison being injured are very concerning. But as a result of the circle I understand more about your circumstances which led to your actions that night. You had been given into the care of Mi'kmaq Family and Children's Services and removed from your home and community. You were placed in group homes in the Halifax Regional Municipality and in Sydney, surrounded by other children who were dealing with being displaced away from home and families, and likely struggling with their own challenges.

[7] It was within this context that you, at age 12, at the behest of two older youth became involved in this caper that went badly wrong. This could, of course, have been a much more tragic situation. Any one of you involved in this could have been injured or killed. Fortunately, you and your friends emerged unscathed, at least physically, but there were losses suffered here. The stolen vehicle was damaged, the police cruiser was damaged, and the police officer was injured. I recognize that you feel remorse for your actions and if you would like to apologize, you may do so.

[8] I have read your Gladue Report and I trust that you have done so also. That Report was prepared so that I would know more about you, your family and your community of W.

[9] You know, the name of that Report, Gladue, comes from a Supreme Court of Canada case. It is from 1999, before you were born, and it instructed judges like me, who are passing sentence on indigenous persons like you to do better, to try harder. The case reminded us that indigenous people are over represented in the criminal justice system, and this is in large part a result of the historic mistreatment of them through colonialism and government policies which were racist and harmful to your people. Centralization, which moved indigenous people, from their traditional lands, which were well suited for hunting and gathering, resulted in poverty, isolation, lack of opportunity and homelessness. Government promises of houses, facilities and jobs were broken. Your community, W, was one such community. As well, the residential school strategy designed to strip indigenous

persons of their cultural, linguistic, and spiritual identities impacted on your First Nation.

[10] Mi'kmaq children were rounded up and taken from their safe, loving homes and placed in Shubenacadie in an institution where unimaginable abuse was heaped upon them, unable to speak Mi'kmaq, unable to practice ceremony, separated from their siblings and falling victim to abusers who had virtually free access to these children. The cultural, physical, emotional, spiritual and sexual abuses that were suffered by the students has left trauma that has continued for generations. These government actions have resulted in serious harm to the indigenous people. The harm has led to over representation of indigenous people in the criminal justice system. It has also resulted in increased levels of violence, poverty, homelessness, family breakdown, child welfare involvement, lower employment levels, lower education levels, and higher levels of addictions. You, yourself, even at age 13, have experienced a number of these challenges, poverty, housing instability, child welfare involvement, lack of success in school, addictions in your family, family breakdown and violence. So even though those things happened long before you were born, they are still present in your community, in your family and in your life.

[11] All of these so called Gladue factors are present right here in 2018. Though many are rooted in historic wrongs, their existence in present day requires a nuanced and more creative and targeted approach, hence the importance of Gladue Reports and sentencing circles. These resources provide the time, attention and detail required for the imposition of a fair and meaningful sentence.

[12] In addition to the circumstances I have just reviewed, I must also consider other factors known as aggravating or mitigating factors. In this case the injury to the police officer is a significant aggravating factor. However, in mitigation I note that you were 12 years old at the time of this offense and without any prior involvement in the criminal justice system. You have acknowledged your responsibility for these offenses and have entered guilty pleas. You have expressed remorse for your action. You have courageously opened yourself up to participation in the Gladue Report and a sentencing circle. It may well have been far easier for you to have gone the more typical route of appearing in court and letting your lawyer do all the talking. The process you chose was far more personal and challenging for you. In the end it has likely been far more valuable for me, for the lawyers, but most particularly for you and your family.

[13] The process will hopefully provide a road map for you and your parents to follow as you move forward on your path towards healing. You cannot change the past, but you can surely change the future.

[14] Both counsel have urged that I give you a community-based sentence, a period of probation. I am satisfied, given all the circumstances, that that is the appropriate route to take. The only real disagreement between the crown and the defense is the period of the probation.

[15] The defense is asking me to give you a shorter period of probation, nine months, and that is, I take it, in recognition of the fact that you've been on release conditions for quite some time and by all accounts have done well, and that is true, and I want to commend you for that, but I want to remind you and others that it is the expectation of the court that when you are on release conditions you will do well. That is what is required of you and that is my expectation and you have certainly not let me down.

[16] The crown has asked for a longer sentence, one of 18 months. The crown asks me to take into account the fact that you were driving the motor vehicle when the accident occurred and as well that other sentences have been imposed on the two other youths who were involved in this crime with you, and that one of them, with no prior record, received a 15 month probation order, and the other, who had other matters included with it, received an 18 month probation order. Each of the positions put forward by counsel is a reasonable one.

[17] I take into account the fact that those other persons who were involved with you were also persons in care, and they too must have had some challenges in their lives. However, your case is substantially different, not only because of your age, you were 12 years old at the time, the very youngest age that one can be to attract criminal liability, but also I must consider and give true consideration to your circumstances as a Mi'kmaq young person. And when I consider all of the circumstances, including that you come before the court as a youthful first offender with no prior record, you cooperated with the police, you entered your guilty pleas and expressed remorse, and the extra participation you did with respect to the preparation of the Gladue Report and the sentencing circle, I am satisfied that the sentence that is appropriate for you is one that is less than 18 months.

[18] However, I'm not satisfied it should be so low as nine months. I believe in this particular circumstance, considering all of the circumstances, and the law, that the appropriate sentence is a period of probation for 12 months.

[19] And so the sentence of the court will be that you will be placed on an order of probation for 12 months. During the period of your probation you are to keep the peace and be of good behaviour, and you shall appear before the Youth Court when required to do so by the court. You will notify the clerk of the Youth Justice Court or your youth worker assigned to your case of any change in your address or any change in your place of employment, education or training. You shall report to and be supervised by the Provincial Director, or a person designated by the Youth Justice Court within 10 days, and thereafter as directed. I presume the supervision is going to take place out of the P.H. office. You shall remain within the Province of Nova Scotia unless you have permission to leave the Province from the court or from your probation officer. So, if you chose to participate in traditions like blueberry picking in Maine, or you want to go powwows say in Elsipogtog or somewhere outside of Nova Scotia, you seek permission from your probation officer. If your probation officer says no, then you come back to court and I will hear your request for that, nestamin (?). Okay.

[20] You shall reside with either of your parents and abide by the rules of the household. Okay, so if mom or dad give you rules, including curfews, you are to obey those rules. You shall seek, accept and complete any assessments and counseling in any area that may be directed by your probation officer, including in the area of anger management and you shall continue with your counseling with TW and MH. You are not to associate with or be found in the company of any person known by you to have a criminal or youth court record, with the exception of family members or as may be incidental to your attendance at school, in sports, in recreational events, your involvement with SD or any employment that you may have, or as may be incidental with respect to your counseling. You are not to associate with MY or AC, and I doubt that there's any availability of you ever seeing them again. You are to have no contact or communication, direct or indirect, with Murdock Scott MacDonald, with the sole exception that you may provide a written apology to him, and he's the gentleman whose truck you took and smashed, and if you chose to do that, you may do so and give it to your probation officer and if your probation officer feels that it is heartfelt and appropriate, it will be forwarded on to Mr. MacDonald, but otherwise you should not have any contact with him.

[21] As well, you may make a written apology to Constable Dawn Morrison, should you choose to do so and, again, that will go through your probation officer and if the probation officer deems that it is appropriate, heartfelt and sincere then it should be forwarded it along to Constable Morrison. I'm not ordering you to

apologize because I feel that is a very hollow gesture, but in the course of your rehabilitation and your healing if you feel that you can explain to them what was happening and how it came to be that you were involved in those activities and the recognition of the losses they've suffered, then I would encourage you to do so.

[22] You, during the course of your probation, you are not to occupy the driver's seat of any motorized vehicle during the term of your probation, and that will be with the exception of recreational vehicles and then only under the direct supervision of SD. So that means if he has all terrain vehicles or something like that, snowmobiles, and he's with you and he wants you to be able to drive them as part of your traditions going out onto the land, hunting, fishing or if you are with him and he is taking you to see elders and you're doing work for elders in your community, shoveling snow, mowing grass, or helping out with respect to any community events you'll be permitted to do so under his supervision.

[23] As well, I do believe it is important for your community, as well, most importantly for your own healing and rehabilitation that you provide some community service in your community. So, you are going to perform community service work under the supervision of your probation officer, or someone acting in his or her stead, and it will be at the place and times that the probation officer decides and it shall all be completed to the satisfaction of the probation officer. I agree with the crown that the appropriate term for the community service shall be 30 hours and if your probation officer is agreeable, you may complete your community service hours as a mentor to other young persons while you are under the guidance of your mentor, SD. So, Mr. D believes, he said in the circle you can be a real mentor, a real leader in your community, this is your chance to do it.

[24] During the course of your probation, you are not to attend on the property of the Scotsburn Dairy at Upper Prince Street, in Sydney for any reason.

[25] Okay, Mr. Drake, I think I will decline to order the two-year driving prohibition. Given his age, he will not be able to legally drive until he's 16 at the earliest anyway. So, I think I will decline to order that.

[26] Otherwise those are the conditions in your probation order. You should understand that any breach of those conditions could lead to you being charged and brought back before the court and if found guilty of that, the crown may decide that they're looking for a sentence that is more serious and more harsh than this sentence. So please use this as the opportunity for you and your family to move

forward and to heal, and for you to make a positive impact in your beautiful home community of W.

[27] Alright, so that is the sentence of the court. You do not have to stay to sign the order. Whether or not you signed it, it is in effect today. If you will go to the Probation Office in PH, before Friday at 4 that order will be there, it will be reviewed with you and you should sign it then. And whenever your probation officer tells you to report, you make sure you do.

[28] M it has been a true honour for you to have invited us all into your life as you have, and for us to have participated in your sentencing circle. I really do believe that this was a momentary lapse on your part, and I suspect that I will not ever see you again in court unless you've come back here to work in court. So, M I wish you the best of luck. My thanks to you and your family and I thank counsel, again, for the hard work you put into this file. That's everything M, you're free to go.

MacInnes, E. Ann Marie, JPC