In the Court of Appeal for the Northwest Territories

**Citation: *R v Nerysoo*, 2020 NWTCA 8**

**Date:** 2020 08 26

**Docket:** A-1-AP-2019-000007

**Registry:** Yellowknife, N.W.T.

**Between:**

**Her Majesty the Queen**

Appellant

- and -

**Darcy Brian Nerysoo**

Respondent

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**The Court:**

**The Honourable Mr. Justice Jack Watson**

**The Honourable Mr. Justice Frans Slatter**

**The Honourable Madam Justice Jo’Anne Strekaf**

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**Memorandum of Judgment**

Appeal from the Sentence by

The Honourable Mr. Justice A.M. Mahar

Dated the 19th day of June, 2019

Filed on the 2nd day of December, 2019

(2019 NWTSC 51, Docket: S-1-CR-2019-000008)

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**Memorandum of Judgment**

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**The Court:**

# Introduction

1. The Crown appeals the sentence decision arising from the respondent’s guilty plea to manslaughter. The guilty plea related to the death of the respondent’s cousin, Davey Stewart, on June 29, 2018. In addition to ancillary orders which are not under appeal, the respondent was sentenced to imprisonment for 3 years to be followed by probation for 3 years.

# Circumstances

1. Section 718.1 of the *Criminal Code* specifies that the fundamental sentencing principle is proportionality, which is in turn ascertained by reference to “the gravity of the offence and the degree of responsibility of the offender”. This principle and its terminology guides what follows.

## The Offence

1. The respondent and the deceased Stewart were cousins. On the date in question, they had joined up in what appears to have been (until the last moments) an amiable process of drinking together. Although there is no direct evidence concerning the respondent’s blood alcohol concentration [AB 125/16-32], it would seem reasonable to infer that he was grossly intoxicated throughout the relevant time. There was evidence that his cousin, Davey Stewart, had reached an astonishing blood alcohol concentration of 6 times the driving prohibition level of .08 under the Criminal Code [AB 103/39-41]. For his part, the respondent was said to have been on a binge for almost a week [AB 125/40-47].
2. It is significant that no one suggested any sort of pre-existing *animus* existedbetween the respondent and Mr. Stewart before a pointless fight broke out between them at the sad conclusion of the events. Rather, the background suggests that the cousins were friends.
3. The respondent had earlier that evening been drinking with others at a playground. They eventually went to Mr. Koe’s house. The respondent and Stewart went across the street to the residence of Calvin Francis. When he admitted them to the residence, Mr. Francis noted how drunk they were:

Mr. Francis noted that both individuals were intoxicated by alcohol and that neither individual was walking very well. [AB 102/10-12].

1. While at Mr. Francis’ residence, Francis said the cousins abruptly got into an argument. Mr. Francis said they were “not making any sense” [AB 102/18-20]. This escalated into a pushing and shoving scuffle and then wrestling with each other in a porch area with the deceased initially holding his own [AB102/26-33]. They continued to fight despite an intervention by Mr. Francis to encourage them to stop.
2. The agreed facts – seemingly based largely on what the respondent told the police which was itself not indicative of an effort on the part of the respondent to whitewash what he had done – then continued as follows:

10 In his confession to the police, Mr. Nerysoo admitted to fighting with Mr. Stewart, acknowledged that he was very intoxicated and “lost it” when he thought that Mr. Stewart had sucker punched him. Mr. Nerysoo recalled that he “took it out” on Mr. Stewart, and at one point was standing over Mr. Stewart who was on the ground. Mr. Nerysoo said that he punched Mr. Stewart more than five times in the head and then, “stomped on his stomach a couple of times” while Mr. Stewart was on the ground. Mr. Nerysoon (sic) stopped hitting Mr. Stewart when he felt it was “good enough”. According to Mr. Francis, the whole altercation was not even 5 minutes long.

11 Mr. Nerysoo left the residence (and returned to Carl Koe’s house) while Mr. Francis helped Mr. Stewart to his feet. Mr. Stewart then sat on the couch with his head in his hands and kept repeating “ow, fuck”. He then laid down and passed out and appeared to be sleeping according to Mr. Francis.

12 Mr. Francis then started to clean up the mud and blood from the floor in the living room and porch area. Mr. Francis then later noticed that Mr. Stewart appeared to not be breathing. Mr. Francis went outside to get help as he did not have a telephone. Mr. Francis was able to phone the police using the telephone of a passing motorist. Mr. Francis then returned to his house to start CPR on Mr. Stewart. Rudolph Francis who arrived and began to help Mr. Francis, also phoned the police. The RCMP arrived soon thereafter.” [AB 102/35 -103/21; AB 200-201].

1. Paragraphs 10 to 12 of the Agreed Statement of Facts and how the sentencing judge interpreted them are at the centre of the appeal.
2. During his submissions to the sentencing judge, Crown counsel effectively conceded that the criminal culpability of the respondent for manslaughter was attributable to the application of physical assaultive force by the respondent *after* he had gotten the advantage over Stewart and the latter was down as indicated in this paragraph [AB 129/1-30].
3. In his submissions, defence counsel suggested that the case was not in a high category for manslaughter cases in light of “the spontaneity, the consensual nature, the brevity, and the intoxication, you can’t infer subjective intent” [AB 158/33-36]. Defence counsel added:

… this is kind of in the middle but probably closer to the near accident because of the lack of subjective foresight, and I go into that, kind of the weeds of that legalese simply because the authorities are frankly replete with it … [AB 159/1-7].

1. Mr. Stewart was found to have suffered blunt force injuries. He died of a traumatic brain injury [AB 103/39-40]. The sentencing judge and this Court were provided with color photos of Mr. Stewart depicting his appearance when taken in. Para 15 of the Agreed Statement of Facts, arguably, conceded issues of law as well as fact. It was as follows:

15 Mr. Nerysoo admits that the unlawful assault he committed against Mr. Stewart, and the resulting injuries, is both a factual and legal cause of Mr. Stewart’s death. Mr. Nerysoo further accepts that this fight became non-consensual when he inflicted serious bodily harm to Mr. Stewart. Finally, Mr. Nerysoo accepts that his assault on Mr. Stewart involved an unreasonable and excessive use of force.

1. This paragraph largely confirms that the respondent was prepared to take full responsibility for the death of Mr. Stewart. It also reveals the absence of any specific Crown allegation that the respondent appreciated or knew the amount of harm he was doing to his cousin when he was punching him.
2. The Agreement Statement of Facts also indicated that the respondent through his mother arranged to turn himself in to the police. His clothing was seized and his hands were swabbed for trace analysis. The respondent remained in custody from that point on and was released from custody having completed two thirds of the prison sentence imposed in late June of 2020. We were told that he returned to Fort McPherson and then later he went on to Tuktoyaktuk to work. His custody therefore ran 24 months. The community is no doubt aware that he is out of prison now.

## The Offender

1. Aspects of the background of the respondent are set out in a pre-sentence report dated June 7, 2019, the sources of which include the respondent and his parents, as well as a family friend.
2. The report pointed out that the Hamlet of Fort McPherson was in the Inuvik Region of the Northwest Territories and had a population of approximately 850 people. The respondent was of Gwich’in heritage but spoke only English. He had fond memories of going out on the land from age 6 with his father and their dog team. The respondent became a skilled hunter and enjoyed the traditional lifestyle. As he got older he made sure everyone got some of the traditional foods that he could acquire. He also maintained contact with Elders and assisted them [AB 221].
3. The respondent’s adoptive parents were supportive and caring. His mother indicated that the respondent had been having some mental health issues the week before the incident. The deceased was her nephew and she said that the cousins “were close”. [AB 215]. The respondent was also close to his half-brother and another cousin. His adoptive parents had adopted him in his infancy. They raised him in a loving environment. His biological parents also live in Fort McPherson and he has contact with them also albeit as more like ‘extended family’.
4. As the sentencing judge noted, the pre-sentence report makes it clear that the respondent comes from a good family and has important supports in the community. While he has had a difficult life marked by alcohol abuse, the report makes it clear that there is hope that the respondent will find his way and move forward in a positive direction. The sentencing judge was also alive to the ***Gladue*** factors referred to in the report.
5. The pre-sentence report also confirms the respondent’s genuine remorse for his actions. His counsel confirmed that throughout the proceedings, the respondent intended to enter a guilty plea and take responsibility for what he had done. His counsel also told the court that an employment opportunity awaited him on his return [AB 145/38-39]. His counsel suggested that probation would “foster the restorative objectives” [AB 146/25]. The respondent would be in the midst of his community on his return and thus accountable in that sense.
6. The respondent addressed the court himself:

THE ACCUSED: I just want to say to the Stewart family, I’m so deeply sorry for what happened. That night was not supposed to happen. If I could switch Davey’s life for mine, I would. And I’m sorry for what I put the nurses through and what I put the cops through and the elders in our community. And I want to give back to the community and to the elders and most of all the Stewart family and my family. And I’m sorry for what I put my mom and dad through and my brothers and sisters, and I’m taking responsibility for what happened, and I plan on turning my life around and go to treatment whenever I could.” [AB 165/43-166/9].

## Victim Impact Statements

1. Several heart-felt victim impact statements were given by members of the family and of the community. They amply demonstrate how this incident deeply affected the community and traumatized the family. As the sentencing judge noted, this process deeply affected the respondent as well:

I watched Darcy Nerysoo carefully during the course of yesterday’s hearing, and he is obviously heartbroken about this. He is not somebody who often demonstrates his emotions. He seems to be very contained, but he was crying, he was clearly very upset about what is happening and very sorry, and that has been clear the whole way through this. As soon as he was arrested, within an hour of being arrested, he was confessing to the RCMP about what happened. He told his lawyer that he wanted to plead guilty right from the beginning. [AB 172/33-173/1].

## The Sentence Decision

1. This part of these reasons focuses on the technical aspects of the decision. References to the reasons given appear under Part III, the Discussion, below.
2. The sentence imposed was imprisonment for 3 years or 1095 days. With 357 days in pre-sentence custody, calculated at 1.5 to 1 credit as being 535 days, the amount of the 3-year sentence came down to 560 days left to serve. Because that quantum was less than 2 years under s 731(1)(b) of the *Criminal Code*, the sentencing judge concluded that he had jurisdiction to add 3 years probation to the overall prison term [AB 178/2-16]: compare ***R v Knott***, 2012 SCC 42, [2012] 2 SCR 470; ***R v Mathieu***, 2008 SCC 21 at paras 9-19, [2008] 1 SCR 723. As noted, the sentencing judge also made some ancillary orders which are not under appeal. The probation order included an alcohol abstention condition and a term for counselling and in-house treatment if required. It also required 200 hours of community service work [AB 195].
3. The sentencing judge gave extensive oral reasons while he was in the community, but indicated that written reasons would follow (AB 167/5-178/38). Oral reasons were supplemented by written reasons at 2019 NWTSC 51, [2019] NWTJ No 58 (QL). There are differences between the two versions of reasons, but the substance of the reasons is essentially in harmony. Some parts of the written reasons are precisely what was said orally.
4. To put the sentencing outcome in context, Crown counsel had proposed to the sentencing judge a sentencing range of 5 to 7 years after a guilty plea and 6.5 to 8 years after a trial [AB 129/14-45]. In the course of Crown counsel’s submissions, he placed particular emphasis on the principle of “parity” [AB 135/1] and the principle of proportionality. Crown counsel went through a number of authorities which had some comparable features before the sentencing judge. One case that figured in the submissions and was distinguished by the sentencing judge was ***R v Bourque***, 2015 NWTSC 48, [2015] NWTJ No 62 (QL).
5. On appeal, Crown counsel proposes a sentence of 5 years which was the specific quantum proposed at trial. Cases cited by Crown counsel for comparison purposes in the Crown appeal materials, which are arguably more comparable than some others mentioned below, range from approximately 3 years to something over 5 years.
6. By comparison, although mentioning that, on his analysis of comparator cases, a sentence of 3.5 years might be fit for the respondent [AB 164/43-44], defence counsel invited the sentencing judge to impose a sentence of 2 years less 1 day plus probation [AB 146/13-16; AB 164/43-48; AB 207-208]. Defence counsel’s array of cases also ran in the area of 3 to 5.5 years (overlapping with Crown cases in some regards). On appeal, defence counsel adds a further authority consistent with 2 years less 1 day. Ultimately defence counsel urges that the appeal should be dismissed on the basis the sentencing judge did not reversibly err.

# Discussion

1. This is a very sad case. As with all manslaughter cases, there is nothing that the law can do to reverse what happened. The Court must approach the case objectively, applying the objectives and principles of relevance.
2. As the Crown’s submissions merge into one another, there is no need to precisely disaggregate them in these reasons. The first and third of the three submissions are essentially overlapping, the first being that the sentencing judge materially erred in interpreting the agreed statement of facts and the third being that his sentencing decision does not get deference by reason of that error. The second submission is that the same erroneous reasoning led the sentencing judge towards the lower end of the range of fit sentences for manslaughter when the sentence should have been toward what the Crown submits is the middle of the range.
3. The main theme of the Crown appeal, therefore, is that the sentencing judge misapprehended the agreed statement of facts in a significant way.
4. The alleged error was the sentencing judge’s statement that the respondent had struck Davey Stewart five times in the head while Stewart was standing up, when, says the Crown, the respondent admitted to hitting the deceased when Mr. Stewart was already on the floor and the fight was effectively over. What the sentencing judge specifically said was (from the oral version and then the written version being slightly different):

They started out both fighting with each other. There was some wrestling, some shoving, some swinging at each other, rolling around, and as Mr. Nerysoo said in his statement, he “lost it”; lost his temper with his friend and cousin. *He punched him five times in the head and when his cousin fell to the ground, he stomped on his stomach a couple of times*. [AB 168/10-16; emphasis added to focus on Crown’s objection]

The written version of this at 2019 NWTSC 51, [2019] NWTJ No 58 (QL) is:

6 They began by both fighting with each other. There was some wrestling, shoving, rolling around and swinging of fists. At first, they appeared to be evenly matched. Then, according to Darcy Nerysoo in his statement to police, he “lost it”; lost his temper with his friend and cousin. *He punched Davey Stewart five times in the head and when he fell to the ground he stomped on Davey Stewart’s stomach a couple of times*. [Emphasis added]

We do not find the differences between the two sets of reasons to be problematic.

1. The Crown also submits that the estimate of blows by the respondent was “more than” 5 times. Indeed, in the pre-sentence report, the respondent suggested that he hit Mr. Stewart 8 times, but the respondent did not divide that out as between when the fight was ongoing, with both men upright, and when Mr. Stewart was down. As pointed out by counsel for the respondent on appeal, the time line and sequence are not entirely clear in the Agreed Statement of Facts.
2. Realistically, neither the sentencing judge nor this Court could ascertain exactly how the events ran. In our respectful view, the Crown’s characterization is not unreasonable and thus the sentencing judge may have erred in relation to precisely when the respondent punched the deceased in the head. At least some of such blows could well have occurred while the deceased was on the floor and likely did. The real issue on appeal is whether there is juridical significance to any such error.
3. Crown counsel also seems in its Factum to suggest there was error in the sentencing judge’s statement that the respondent accepted that “this fight became non-consensual when he inflicted serious bodily harm to Mr. Stewart” (AF para 27]. Having regard to para 15 of the Agreed Statement of Facts, it is not obvious that the reasons of the sentencing judge were incorrect on this specific point.
4. Even if there was error about precisely when the punches to the head happened, this is not a situation to where a sentencing judge was said to have sentenced the offender “for worse crimes than he admitted”: compare ***R v SEA***, 2015 ABCA 182 at paras 26-32, 323 CCC (3d) 444. In ***SEA,*** it was accepted that a sentencing judge has a gate-keeping function and, at para 30, that “sentencing judges are not bound to interpret or characterize the evidence provided to them, or its implications” in the way counsel might debate. Nor do sentencing judges have to act on what counsel suggest without supporting evidence or consent for those alleged facts: see *eg* ***R v Pahl***, 2016 BCCA 234 at para 53, 336 CCC (3d) 221. As it happens, in ***SEA***, one cause of the error appears to have been the absence of a statement of agreed facts for sentencing purposes.
5. As compared to ***SEA***, it is the Crown here which is contending, in effect, that the sentencing judge sentenced for a lesser crime than was committed.
6. Even assuming that the sentencing judge may have misconceived the sequence of events somewhat, it is not entirely clear what effect, if any, the misconception would have had on the actual sentence imposed.
7. For example, later in the reasons, the sentencing judge noted the high level of intoxication of the deceased Mr. Stewart. He also noted that the parties had accepted that the deceased had not died as a result of that condition: [AB 168/38-43; 2019 NWTSC 51 at para 9]. He then went on to say that there was a “consent fight that turned into a beating. It was a bad beating”: [AB 169/3-4; 2019 NWTSC 51 at para 10]. He also said that “[t]here is a risk of death in any serious beating, and that is acknowledged by Darcy Nerysoo through his guilty plea”: [AB 169/28-31; 2019 NWTSC 51 at para 12].
8. In addition, the sentencing judge distinguished the case from other manslaughter cases where the victim is beaten while “insensate” drawing no doubt from the agreed facts that Mr. Francis helped Mr. Stewart onto the couch after the respondent left [AB 169/44-170/5; 2019 NWTSC 51 at paras 12-13]. Crown counsel on appeal does not seize upon this reference to the deceased as not being “insensate” as being in error.
9. In sum, counsel for the respondent says that the agreed facts, and particularly para 10 thereof, are ambiguous.
10. Based on its interpretation of the agreed facts, the Crown on appeal contends that the punching of the deceased Mr. Stewart on the ground was “a brutal beating” and “the risk of serious bodily injury was obvious” [AF para 43]. With respect, this overstates the agreed facts in the other direction from what the sentencing judge is said to have done erroneously. It was admitted by the respondent that he “took it out on” the deceased and stopped when he felt it was “good enough”. Those admissions from both sides do not suggest that the respondent was consciously inflicting injuries that he subjectively knew would cause seriously bodily injury.
11. What might have been “obvious” to a person who was not grossly intoxicated is not that fair a comparison. As stated in ***R v Seymour***, [1996] 2 SCR 252 at para 21, the same ‘common sense’ that allows an inference that a sane and sober person intends the natural and probable consequences of their acts, also “makes it readily apparent that evidence of intoxication will be a relevant factor in any consideration of that inference”.
12. While the respondent’s legal culpability is determined on a modified objective test under ***R v Creighton***, [1993] 3 SCR 3 and later cases, the respondent’s actual “degree of responsibility” for the purposes of s 718.1 of the *Code* must be grounded in the evidence including what the respondent can be found to have subjectively known or appreciated.
13. It is noteworthy that even Mr. Francis does not appear to have thought the deceased faced imminent death: see Agreed Statement of Facts paras 11-12. The respondent also said to the probation officer that he was surprised at the effect of his injuries. While that is a self-serving statement in one sense, it is part of a fabric of statements by the respondent which admitted accountability. Put another way, the respondent’s conduct was grievous violence but it was not overall error for the sentencing judge to situate the events in their own context and to distinguish the events from various case precedents offered to him, some of which supported a low end of 3 years. Having regard to the respondent’s life experience, it is not incredible that he would not appreciate or know what level of harm he was inflicting.
14. Crown counsel’s second submission commences with the concession that “[i]f the impact [of the alleged error] was minor, then there is no cause for appellate intervention.” [AF para 46]. Crown counsel is correct in this concession. As stated in ***R v Friesen***, 2020 SCC 9 at para 26, 444 DLR (4th) 1:

26 As this Court confirmed in *Lacasse*, an appellate court can only intervene to vary a sentence if (1) the sentence is demonstrably unfit (para. 41), or (2) the sentencing judge made an error in principle that had an impact on the sentence (para. 44). Errors in principle include an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor. The weighing or balancing of factors can form an error in principle “[o]nly if by emphasizing one factor or by not giving enough weight to another, the trial judge exercises his or her discretion unreasonably” (*R. v. McKnight* (1999), 135 C.C.C. (3d) 41 (Ont. C.A.), at para. 35, cited in *Lacasse*, at para. 49). *Not every error in principle is material: an appellate court can only intervene if it is apparent from the trial judge’s reasons that the error had an impact on the sentence (Lacasse, at para. 44). If an error in principle had no impact on the sentence, that is the end of the error in principle analysis and appellate intervention is justified only if the sentence is demonstrably unfit.”* [Emphasis added]

1. The Supreme Court in ***Friesen*** went on to say that if there is an error that had an impact on the sentence, then the appellate court would be able to reconsider the matter anew and would not be required to find the sentence was demonstrably unfit before doing so. But the appellate court could still find the sentence outcome to be fit.
2. The Crown’s position is that the error of the sentencing judge took him towards the lower end of manslaughter cases. Were the sentencing judge to be found not to have significantly erred, it would appear that the Crown would concede that a sentence of 3 years plus 3 years probation would not be unfit within the meaning of s 687 of the *Criminal Code*.
3. But the Crown proposes the “middle” of the spectrum as being the proper measurement of the gravity of the offence. The Crown suggests 5 years. Interestingly, the Crown submits as well that the “past NWT manslaughter cases are of little assistance because of the wide variation in factual considerations” [AF para 48]. So the source of the Crown’s submission of 5 years seems somewhat attenuated.
4. In part, we agree with the Crown that the offence of manslaughter is one where greater guidance can be obtained from ***R v Laberge*** (1995), 165 AR 375 than from attempting to line up a set of numbers from a series of cases. As pointed out in ***R v Holloway***, 2014 ABCA 87 at paras 23-27, 308 CCC (3d) 145, leave denied (2015) [2014] SCCA No 464 (QL) (SCC No 36131):

23 Culpable homicide has a wide variety of potential causes. But in cases like the case at bar, where the death is the product of a protracted violent assault, the divergence from Canadian social norms is so great that it demands a sentencing response which maintains societal morale, and does not undermine confidence in the law’s commitment to social peace and safety.

24 On the other hand, the achievement of a just sanction which is intelligible, defensible and accountable is certainly not a matter of unblinking Solonic severity. Nor can it be a matter of what individual judges determine without reference to any appreciable shared standards or to the values and social needs which the sentence should reflect and serve.

25 Proportionality is the fundamental principle applied in the search for a just sanction to maintain the public’s confidence in the credibility, the predictability and the accountability of the administration of criminal justice in relation to the crime of manslaughter for which Parliament has provided a scope of discretion up to life imprisonment (with some minimum sentences not applicable here). The approach in *Laberge* was directly aimed at assisting courts in determining that properly proportionate outcome as against appreciable common standards of culpability and responsibility and as against the practice of courts across Canada. Even before s. 718.2 of the Code expressly identified the principle of parity of sentencing, there can be no doubt that Courts across have sought over many years to develop analysis for differing forms of manslaughter that reflect the aggravating and mitigating circumstances in a coherent manner.

26 As recently reinforced by the Supreme Court in *R. v. H(AD),* 2013 SCC 28 at para. 1, 295 CCC (3d) 376, criminal offences are analyzed in terms of their conduct component (the actus reus) and their fault component (the *mens rea*). For sentencing purposes, that is precisely what the Court did in *Laberge. Laberge* followed upon the discussion defining the Constitutional scope of manslaughter as a crime in *R. v. Creighton*. [1993] 3 S.C.R. 3. The Supreme Court subsequently approved the benefit of a categorization approach in *R. v. Stone*, [1999] 2 SCR 290. *Laberge* is not a “starting point” case. It is a categorization case.

27 *Stone* at para. 245 effectively commanded appeal courts that recognized ranges to provide more precise guidance saying:

In my opinion, a clarity requirement must be read into this appellate court authority because such guides would not be useful without a clear description of the category created and the logic behind the starting point appropriate to it. The same need for clear direction applies to ranges set by appellate courts.

In other words, the Supreme Court in *Stone* has characterized as being insufficient mere conclusory statements by appeal courts that a sentence fits the “range”. For example, *Stone* did not find the reference in *R. v. Archibald* (1992), 15 BCAC 301, to “this kind of manslaughter” to be illuminating. *Laberge*, which was noted approvingly in *Stone*, was an effort to be meet the clarity obligation. This Court has since followed a similar course to *Laberge* in *R. v. Nickel*, 2012 ABCA 158, 524 AR 366.

1. The Crown’s point is taken to be that a sentencing judge should carefully evaluate the gravity of the offence and the degree of responsibility of the offender in light of the fact findings respecting *actus reus* and *mens rea*. With this we generally agree. The sentencing judge was not expressly referred to ***Laberge*** but in our view his analysis was largely consistent with the approach in ***Laberge***.
2. But according to the ***Laberge*** guidance, applied to the facts on this case, even having regard to the alleged error by the sentencing judge, this case would not be in the middle or higher levels of gravity for manslaughter. This was a case of a pointless altercation between two highly intoxicated cousins who were friends. The respondent got the advantage and then pummeled his cousin in the head, probably when the latter was on the floor. There can be no doubt that a penitentiary sentence was appropriate.
3. The question for this Court comes down to whether, even assuming an error of characterization by the sentencing judge, the circumstances are such as to make the disposition of 6 years of social control of the respondent including 3 years of imprisonment (of which he has done 24 months) unfit. We are not persuaded that it is unfit.
4. This is not to diminish the offence. Every life is precious. But every case is different. Of the objectives of sentencing in s 718 of the *Code*, we note that the goals of individual deterrence, protection of the public, rehabilitation, reparations and accountability, are not undermined by the sentence imposed and, indeed, the surveillance of the respondent will be longer than would arise with a 5-year term. As for denunciation and general deterrence we are not persuaded that this disposition falls short of serving those objectives. In so saying, we have had regard to the respondent’s life experience and that of his community through the ***Gladue*** lens.

# Conclusion

1. The appeal against sentence is dismissed.

Appeal heard on August 25, 2020

Memorandum filed at Yellowknife, NWT

this  day of August, 2020

Watson J.A.

Slatter J.A.

Authorized to sign for: Strekaf J.A.

**Appearances:**

B. MacPherson

for the Appellant

C. Davison

for the Respondent

A-1-AP-2019-000 007

IN THE COURT OF APPEAL

FOR THE NORTHWEST TERRITORIES

**Between:**

**Her Majesty the Queen**

Appellant

- and -

**Darcy Brian Nerysoo**

Respondent

MEMORANDUM OF JUDGMENT

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