R. v. Takazo, 2017 NWTSC 81

 S-1-CR2017000050

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 IN THE MATTER OF:

 HER MAJESTY THE QUEEN

 - vs. -

 JAMIE TAKAZO

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 Transcript of the Reasons for Sentence by The Honourable

 Justice A. M. Mahar, at Yellowknife in the Northwest

 Territories, on August 1st, A.D., 2017.

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 APPEARANCES:

 Mr. B. MacPherson: Counsel for the Crown

 Ms. K. Oja: Counsel for the Accused

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 Charge under s. 117.01(1) and s. 87 Criminal Code

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 1 THE COURT: Good afternoon, please have

 2 a seat.

 3 Jamie Takazo is here for sentencing on two

 4 charges - first, being possession of a firearm

 5 while under an order of prohibition; and,

 6 second, pointing a firearm at Corporal Daina

 7 Basso, contrary to Section 87 of the Criminal

 8 Code.

 9 There is an Agreed Statement of Facts that

 10 was filed. I propose to simply summarize the

 11 Agreed Facts for the purpose of this judgment.

 12 On July 17th, 2008, Jamie Takazo was

 13 placed on a lifetime firearms prohibition

 14 after being convicted of forcible confinement,

 15 break and enter, use of a firearm in the

 16 commission of an offence and possession of

 17 weapon dangerous to the public peace.

 18 I have read the transcript of the reasons

 19 of Justice Schuler in that sentencing. Mr.

 20 Takazo was highly intoxicated and in the

 21 middle of a very messy breakup. He took a

 22 firearm and entered three different residences

 23 with it. First, the residence of his ex and

 24 her new boyfriend; followed by the residence

 25 of her mother, in which residence an actual

 26 round was fired into the ceiling; and then the

 27 residence of another individual. He also

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 1 confronted the RCMP and many times threatening

 2 to end his own life. The firearm was actually

 3 pointed at two individuals during the course

 4 of those events and the events took more than

 5 30 hours to resolve.

 6 On November 28th, 2016, he entered into an

 7 undertaking after being charged with some

 8 other offences which were later stayed. One

 9 of the conditions of that undertaking was to

 10 abstain from the consumption of alcohol.

 11 On January the 15th, 2017, Mr. Takazo was

 12 in Déline, he had been drinking and was

 13 heavily intoxicated. He was in distress and

 14 mentioned to a family member that he was

 15 contemplating suicide.

 16 The RCMP were notified. Constable Jason

 17 Ellefson and Corporal Daina Basso arrived on

 18 the scene in a police truck. Mr. Takazo could

 19 be seen through the open door of a shed. He

 20 screamed an obscenity at the police officers,

 21 and then retrieved a firearm. Both members

 22 saw the firearm and the door to the shed was

 23 then closed. They cleared the area, went back

 24 to the detachment to arm themselves

 25 appropriately and put on body armor.

 26 Mr. Takazo left the shed armed with a

 27 firearm. Police officers split up in an

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 1 effort to find him.

 2 He was found waving the rifle around

 3 wildly yelling that he needed help and no one

 4 would help him. The police officers lost

 5 touch with one another. There was a

 6 malfunction in one of the police radios. Mr.

 7 Takazo stopped walking, and he put the rifle

 8 to his own throat. Corporal Basso was

 9 pleading with him to put the rifle down. He

 10 then rose to his feet and pointed the barrel

 11 of the rifle directly at the police truck and

 12 yelled "I'll do it." Corporal Basso slouched

 13 down behind the truck and yelled at a couple

 14 of civilians to take cover; they did not do

 15 so. She then trained the shotgun on Mr.

 16 Takazo.

 17 Mr. Takazo continued to yell, wave the

 18 firearm about and continued to put the firearm

 19 under his chin. Officers trained their

 20 weapons on him. He moved slowly towards the

 21 police truck, yelling at the officers to take

 22 him out and to kill him. He then raised his

 23 hands in the air and at this moment one of the

 24 civilians tackled him.

 25 He was taken into custody. He was

 26 somewhat cooperative but he was also very

 27 agitated, spoke nonsense, yelling in a voice

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 1 that didn't sound like his own. Those are the

 2 events.

 3 Mr. Takazo is 43 years old. He comes from

 4 a large family with 11 siblings. He has a

 5 Grade 8 education and has very limited reading

 6 and writing skills. He was working full time

 7 as a swamper for the community of Déline when

 8 he was arrested. He was quite proud of this

 9 and it was the first time in a long time that

 10 he had long-term employment. He was on the

 11 waiting list for a home. He had been to see

 12 the mental health worker, or the nursing

 13 station, approximately three days before this

 14 incident and it was indicated at that time

 15 that he was in some distress.

 16 He has a diagnosed mental illness somewhat

 17 undefined and was on antipsychotic medication

 18 although not taking it at the time. There was

 19 an indication in the judgment of Justice

 20 Schuler that there had been a brain injury or

 21 a severe trauma to the head that was suffered

 22 sometime before that incident back in 2008,

 23 and the family members had noticed that his

 24 behaviour became more erratic at that point in

 25 time. The diagnosis that we have now is one

 26 that comes through Dr. Perkins and Dr. Ripley,

 27 indicating that he has an undefined psychotic

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 1 disorder involving auditory hallucinations,

 2 and that this may well be connected to alcohol

 3 psychosis. Mr. Takazo also has a very bad

 4 habit of binge drinking, and when he does

 5 binge drink he drinks to extreme excess.

 6 Most, if not all of his family members,

 7 commented on this during the interviews for

 8 the pre-sentence report.

 9 He was sent to residential school for

 10 approximately six months, but was taken out

 11 because he complained about abusive behaviour

 12 and his parents removed him. Both of his

 13 parents are survivors of the residential

 14 school program. His mother spent five years

 15 in residential school and his father six. His

 16 father had a serious alcohol problem, would

 17 drink on a weekly basis and become violent

 18 when did he so. The family ended up splitting

 19 up for a period of time as a result of this

 20 and Children's Aid was involved.

 21 Mr. Takazo has also been witness to a

 22 number of very traumatic events. He witnessed

 23 a plane crash in which several people died.

 24 He also he witnessed a murder-suicide. There

 25 are clear indications of trauma in his past.

 26 All of these are significant Gladue

 27 factors and I take them into account.

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 1 He does not have a significant

 2 relationship in his life right now. He

 3 occupies himself primarily as a good uncle to

 4 his nieces and nephews, he takes care of them

 5 when he can, and he appears to be a valued

 6 member of his family.

 7 It would be fortunate if I could say that

 8 this event was out of character, although that

 9 analysis doesn't really hold a lot of weight

 10 when we are dealing with somebody who suffers

 11 from mental illness issues, as well as

 12 addictions issues.

 13 There are some significant factors that I

 14 take into account in differentiating this

 15 event from the earlier event that he was

 16 sentenced on. The firearm in this case was

 17 found to be unloaded when he was apprehended.

 18 Nobody was held hostage.

 19 The Court often deals with so-called

 20 attempts at "suicide by cop". I have a few

 21 comments about that in relation to the damage

 22 Mr. Takazo did. It is difficult to ascribe

 23 malice to people that are in desperate

 24 unhealthy situations. Anybody who would

 25 attempt to do something like this is almost by

 26 definition in a situation like that. The fact

 27 that it requires a huge disregard for the

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 1 other human beings involved in the process is,

 2 I suppose, a function of the level of distress

 3 and, frankly, derangement that is going on at

 4 that point in time.

 5 There is a very telling section in the

 6 pre-sentence report in which Corporal Basso is

 7 quoted.

 8 I want you to listen very carefully to

 9 this, Mr. Takazo. Corporal Basso did not

 10 provide a Victim Impact Statement because of

 11 time constraints but she did indicate that she

 12 had wanted to. I am quoting her now as she

 13 was quoted in the pre-sentence report.

 14 "I have been policing for nearly 12 years

 15 now. I come from a family of police officers.

 16 I have had some close calls, but this is the

 17 only time that I ever had the conscious

 18 thought that I was imminently going to die

 19 during a call. I say that with no drama, just

 20 as a statement of fact", Corporal Basso told

 21 the writer.

 22 She disclosed that at the point when Jamie

 23 aimed his rifle directly at her head, she

 24 clearly recalled thinking 'I am going to die,

 25 should I call my parents and tell them that I

 26 love them?'

 27 An attempt to force a police officer to

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 1 use their weapon is basically an attempt to

 2 terrify another human being into taking a

 3 life. Corporal Basso is seeking counselling

 4 for trauma at this point in time. Police

 5 officers have to deal with all manner of ugly

 6 situations. But they should never have to be

 7 confronted with something like this. I can

 8 well imagine that most police officers make it

 9 through their entire careers never having had

 10 a firearm pointed at them. It is not

 11 something that should be seen as part of the

 12 regular course of their duties. It is an

 13 extraordinarily horrifying event. We have to

 14 remember that police officers do not want to

 15 hurt people anymore than anybody else does.

 16 So what we are left with, on a successful

 17 attempt at this, is that somebody has actually

 18 had to kill someone and been forced into that

 19 position. It is awful. I know you were

 20 heavily intoxicated, Mr. Takazo. I know you

 21 were in severe distress at that time. But I

 22 want you to understand clearly the kind of

 23 hurt you caused. It is not simply that

 24 somebody could have walked into the line of

 25 fire, or that you could have been killed. You

 26 came very close to being killed. I think it

 27 is safe to assume that if your relative or

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 1 friend, whoever Mr. Lewison is, hadn't tackled

 2 you, that this situation would have ended

 3 quite differently. As it was, the police

 4 officers used severe restraint in not shooting

 5 sooner. It was a very dangerous situation.

 6 You have acknowledged that in your letter to

 7 the Court, and I appreciate that you

 8 understand that.

 9 While I do take into account the Gladue

 10 factors, the primary consideration that I am

 11 applying in considering an appropriate

 12 sentence is the mental health issues. It is

 13 difficult for a Court to apply a lot of the

 14 usual parameters in coming to a reasonable

 15 sentence when we are dealing with somebody who

 16 has mental health issues. You recognize in

 17 your conversation with the writer of the

 18 pre-sentence report, in your letter to the

 19 Court, and your conversations with your

 20 counsellor Mr. Stuart, that alcohol is a

 21 significant problem for you. This is the

 22 third time that you have been in trouble now

 23 for being drunk and using a firearm. It has

 24 to stop.

 25 There is very little point in considering

 26 specific and general deterrence when we are

 27 dealing with mental health issues and

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 1 distressed individuals. They are something

 2 the Court takes into account, and I hear the

 3 Crown on those issues, but the primary issue

 4 in terms of an appropriate jail term is

 5 denunciation. The community simply has to

 6 recognize how serious this is and the need to,

 7 in no uncertain terms, apply consequences.

 8 I have to also be mindful of your

 9 circumstances, and I am to a significant

 10 degree.

 11 It may seem simplistic because what I am

 12 going to do is simply apply the difference

 13 between the two positions of counsel. I don't

 14 do this in any kind of mechanistic fashion. I

 15 actually struggled with the sentence in this

 16 case. A year is simply too short to reflect

 17 the seriousness of what happened. Two years

 18 less a day, I believe, doesn't take into

 19 account sufficiently the difference between

 20 this event and the earlier event. It's not an

 21 unreasonable suggestion, neither suggestion is

 22 particularly unreasonable. I think that the

 23 necessary term of imprisonment is 18 months,

 24 and that's what I am going to give you.

 25 You will be placed on probation for a

 26 period of three years.

 27 Mr. MacPherson, I am going to indicate a

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 1 number of conditions on the probation order.

 2 If you have any concerns or any issues that

 3 you want to raise, and as well you, Ms. Oja,

 4 please let me know. I'm trying to draft this

 5 in a way that works for Mr. Takazo.

 6 I am going to make a recommendation on the

 7 warrant of committal, first off, that Mr.

 8 Takazo be considered for early release if an

 9 in-house treatment program is found for his

 10 alcohol addiction.

 11 I am also going to make a recommendation

 12 that he be considered for work release if work

 13 is found. Work is a very constructive thing

 14 for Mr. Takazo, and when he is sober he

 15 appears to be almost no trouble to anyone.

 16 You can't drink anymore. You know that,

 17 right? Whatever mental health concerns you

 18 have, they don't appear to be a criminal issue

 19 until you drink. So I am going to address

 20 both issues.

 21 The first is that you are to abstain

 22 absolutely from the possession or consuming of

 23 alcohol. That condition -- well, apart from

 24 the statutory conditions of keep the peace and

 25 be of good behaviour and report to a probation

 26 officer within three days of your release and

 27 after that as directed, you are to abstain

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 1 absolutely from the possession or consumption

 2 of alcohol or other intoxicants. I add that

 3 "other intoxicants" mindful of potential

 4 changes to the law that are coming up. There

 5 have been some troubling studies linking

 6 marijuana consumption and psychosis. I am not

 7 suggesting that in another case, counsel, I

 8 wouldn't be open to a different argument but I

 9 think in Mr. Takazo's case we will simply make

 10 it all intoxicants.

 11 You are to present yourself, upon the

 12 request of the RCMP, at your door for the

 13 purpose of verifying your sobriety. In other

 14 words, they can check to see if you have been

 15 drinking. You are dangerous enough when you

 16 drink that there has to be a little bit more

 17 than the usual terms of 'you do not drink'.

 18 They have the ability to check on you, so you

 19 have to go to the door.

 20 There is going to be another lifetime

 21 prohibition with respect to firearms section

 22 109 order.

 23 The forfeiture order that you requested,

 24 Crown, is granted.

 25 There will be a DNA order.

 26 You are to continue with counselling,

 27 assuming you are going to be seeing Mr. Stuart

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 1 once you go back to jail in any event, but you

 2 are to continue with counselling after that is

 3 over, on your probation order, as directed by

 4 your probation officer.

 5 You are to inform the probation officer of

 6 any medication regime that you are on. You

 7 are to continue seeing your psychiatrist as

 8 recommended. If you cease to take any

 9 prescribed medication for any reason, you are

 10 to immediately inform your probation officer,

 11 and you are to report after that, daily on

 12 weekdays, until you have resumed your

 13 medication regime or until you have been given

 14 written permission by your probation officer

 15 to stop reporting that frequently.

 16 I want to give your probation officer some

 17 oversight of your treatment. I am not going

 18 to order you to take medication, but I am

 19 going to order you to be in regular contact

 20 with your probation officer about it.

 21 Mr. MacPherson, is there anything you can

 22 suggest beyond what I have ordered? I don't

 23 see much point in 30 different conditions on a

 24 probation order.

 25 MR. MacPHERSON: Nothing further, thank you.

 26 THE COURT: Ms. Oja, anything?

 27 MS. OJA: No, not with respect to the

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 1 probation, Your Honour. There was an issue

 2 that was brought to my attention between the

 3 last date and today with respect to the rifle.

 4 And I have just taken a look at the forfeiture

 5 section and I am not sure that Your Honour has

 6 the ability do anything other than order that

 7 it be forfeited. But Mr. Takazo's advised

 8 that it was something belonging to his father,

 9 who is deceased. It doesn't sound as though

 10 anyone other than the deceased person is the

 11 lawful owner and so the proposal for Mr.

 12 Takazo was that it could be handed over to his

 13 brother who has a valid license. I said that

 14 I would raise it with Your Honour, but I do

 15 know that the section only permits return to a

 16 lawful owner, and so...

 17 THE COURT: Mr. MacPherson, what do you

 18 say?

 19 MR. MacPHERSON: The Crown takes the view

 20 that there isn't evidence establishing that

 21 the firearm belongs to somebody in particular,

 22 and so unfortunately the Crown asks for the

 23 forfeiture order that was applied for.

 24 THE COURT: I think, as well, sad as it

 25 is to lose a family heirloom like that, under

 26 the circumstances, Mr. Takazo, it is one of

 27 the consequences of what happened. I am not

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 1 going to be particularly creative in response

 2 to that. Thank you for raising it, though.

 3 MS. OJA: Thank you.

 4 THE COURT: Anything else, counsel?

 5 MR. MacPHERSON: Nothing further. Thank you.

 6 THE COURT: Mr. Takazo, you know what

 7 you have to do, right? Good luck.

 8 (ADJOURNMENT)

 9 THE COURT: Please be seated. I saw the

 10 clerk coming; I was thinking yes, the time

 11 served.

 12 MS. OJA: Yes (inaudible) --

 13 THE COURT: -- do we have an exact --

 14 Ms. OJA: -- (inaudible).

 15 THE COURT: Do we have an exact number

 16 of how much time he has already spent in

 17 custody?

 18 MS. OJA: He was taken into custody

 19 January 15th so that puts us at exactly six

 20 and a half months as of today of real time,

 21 and I don't know if Your Honour prefers it in

 22 days -- I haven't done it in days.

 23 THE COURT: I think that since the

 24 sentence was 18 months, we will make it six

 25 and a half months, making it nine and --

 26 MS. OJA: -- three-quarters.

 27 THE COURT: Three-quarters. I am not

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 1 exactly sure how you quarter a month into

 2 seven and a half days but I think that will

 3 probably work for Corrections in any event.

 4 So the actual sentence is 18 months -- well,

 5 the sentence is 18 months minus nine and

 6 three-quarter months, leaves us eight and a

 7 quarter months. Or, for clarity sake, eight

 8 months eight days.

 9 MS. OJA: Thank you very much, Your

 10 Honour.

 11 THE COURT: Thank you. I apologize,

 12 counsel.

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 19 Certified to be a true and

 accurate transcript pursuant

 20 to Rules 723 and 724 of the

 Supreme Court Rules,

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 26 Lois Hewitt,

 Court Reporter

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