

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

COREY CARDINAL

Transcript of the Reasons for Sentence delivered by
The Honourable Justice L.A. Charbonneau, sitting in
Yellowknife, in the Northwest Territories, on the 3rd day
of May, 2018.

APPEARANCES:

Mr. J. Major-Hansford: Counsel for the Crown
Ms. K. Oja: Counsel for the Accused

(Charge under s. 244.2(1)(b) of the *Criminal Code*)

1 THE COURT: Corey Cardinal has pleaded
2 guilty to a charge of having intentionally
3 discharged a firearm while being reckless as to
4 the life or safety of another person contrary to
5 Section 244.2(b) of the *Criminal Code*. Today it
6 is my duty to impose a sentence on Mr. Cardinal
7 for that offence. The maximum sentence for this
8 offence is 14 years imprisonment. Section 244.2
9 sets a mandatory minimum sentence for this
10 offence, but I have decided that that mandatory
11 sentence is contrary to Section 12 of the Charter
12 and is of no force and effect, *R v Cardinal*,
13 2018 NWTSC 12.

14 I made this decision, not on the basis of
15 Mr. Cardinal's own case, but on the basis of a
16 hypothetical situation that his counsel put
17 forward at the constitutional challenge hearing.
18 That hypothetical situation was based in part on
19 Mr. Cardinal's case, but it assumed a much
20 younger offender with no criminal record and with
21 all the aggravating features of Mr. Cardinal's
22 case removed.

23 The hearing on Mr. Cardinal's challenge to
24 the mandatory minimum was heard at the same time
25 as another similar challenge brought by another
26 offender in an unrelated case, *Tony Kakfwi*. My
27 decision to strike down the mandatory minimum

1 sentence based on Mr. Cardinal's submissions
2 meant that Mr. Kakfwi was also successful on his
3 challenge. *R v Kakfwi*, 2018 NWTSC 13.

4 Earlier this week, I imposed a sentence on
5 Mr. Kakfwi at the conclusion of a sentencing
6 hearing that proceeded in Fort Good Hope.
7 *R v Kakfwi*, 2018 NWTSC 30. There are differences
8 between Mr. Cardinal's case and Mr. Kakfwi's
9 case. There are some similarities as well. Some
10 of the things I said in my decision on
11 Mr. Kakfwi's sentencing apply to this case, and
12 to that extent I will refer to it. Some things I
13 said in my written decisions on the
14 constitutional challenges are relevant to
15 Mr. Cardinal's sentencing as well.

16 I will start with stating again what
17 happened on the night of the events that led to
18 this charge.

19 On the night of these events, Mr. Cardinal
20 had been drinking alcohol and smoking salvia at
21 his stepfather's home in Inuvik.

22 In the early morning hours on April 6th,
23 2016, he and his friend, Jerry Rogers, were in
24 the living room of that residence. Two adult
25 women were also in the house. They had gone
26 upstairs and were sleeping. Mr. Cardinal broke
27 into his stepfather's gun closet and removed a

1 shotgun. He put the gun to his chin and fired,
2 intending to kill himself. Mr. Rogers intervened
3 at the moment Mr. Cardinal was pulling the
4 trigger. He pushed the gun away. This caused
5 the shot to be fired through the front door.
6 Photos taken at the scene show the hole made by
7 that first shot, at the very top of the door
8 jamb.

9 In anger and frustration, Mr. Cardinal fired
10 a second shot through the door. The hole caused
11 by this second shoot, also shown in the
12 photographs, is in the centre of the door just
13 below the height of the door handle.

14 Mr. Cardinal left the house still holding
15 the shotgun. Mr. Rogers followed trying to
16 convince him to drop the firearm.

17 Mr. Cardinal fired a third shot into the
18 snowbank on the side of the road. The photos
19 show the trace left by that shot in the snow.
20 The photo also shows that there are houses a
21 short distance behind that snowbank.

22 Eventually Mr. Rogers was able to convince
23 Mr. Cardinal to drop the firearm. It was left in
24 the snow, and the two men kept on walking.

25 In the meantime, the RCMP had received a
26 complaint about shots being fired and two men
27 walking on the street with the gun. Police

1 officers responded to that call. They quickly
2 located Mr. Cardinal and Mr. Rogers walking on
3 the road and arrested them without incident.

4 Police officers found an unused shotgun
5 round in Mr. Cardinal's jacket pocket. They also
6 found the gun in the snowbank where Mr. Cardinal
7 had dropped it.

8 The two women who were in the house when
9 this happened told police they had gone there
10 that evening and had consumed alcohol with
11 Mr. Cardinal and Mr. Rogers. They had gone to
12 sleep upstairs. They woke up to the gunshots.
13 They stayed upstairs until Mr. Cardinal and
14 Mr. Rogers left because they were scared.

15 The stock of the shotgun had been sawed off
16 and taped. The barrel of the shotgun had also
17 been sawed off. The butt stock that had been
18 sawed off and the end of the barrel were found on
19 the kitchen table in the residence. Tape
20 matching the tape on the stock of the shotgun was
21 also found at the residence.

22 Because of the way in which it was modified,
23 the shotgun falls in the definition of a
24 prohibited firearm. There was a dispute at the
25 sentencing hearing as to whether this is an
26 aggravating factor on sentencing, but it seemed
27 undisputed that Mr. Cardinal was the one who

1 modified the firearm and that he did so because
2 he intended on using it to kill himself.

3 It is also undisputed that Mr. Cardinal did
4 not intend to harm anyone other than himself when
5 he fired the gun, but he admits that he was
6 reckless as to the safety of others when he
7 fired. That is why he is guilty of this
8 particular offence.

9 No one else was in the immediate presence of
10 Mr. Cardinal and Mr. Rogers when these shots were
11 fired. The reports that the police had received
12 were of shots being fired and two men walking
13 around with a gun. When police officers located
14 Mr. Cardinal and Mr. Rogers, they were both
15 apprehended and they were both eventually
16 charged. Later on Mr. Cardinal took
17 responsibility for what he had done, and after
18 his guilty plea was entered, the prosecution
19 against Mr. Rogers was stopped.

20 I now want to turn to Mr. Cardinal's
21 personal circumstances. I did not address those
22 personal circumstances in any great detail in my
23 decision on the constitutional challenge because
24 Mr. Cardinal's challenge, as I have said, was
25 based on a hypothetical situation as opposed to
26 his own circumstances.

27 His circumstances are outlined in detail in

1 the Presentence Report that was prepared for this
2 sentencing. I do not intend to repeat everything
3 that is in that report, and I want to say that I
4 am conscious that it must be difficult and
5 painful for Mr. Cardinal to have some of the
6 things referred to in the report talked about yet
7 again. At the same time, because those
8 circumstances are important for the purposes of
9 my decision, I do have to talk about them to some
10 extent.

11 Mr. Cardinal's lawyer said during the
12 sentencing hearing that this is a case that shows
13 a very clear example of intergenerational trauma,
14 and I completely agree.

15 Mr. Cardinal's mother went to the Grollier
16 Hall residential school in Inuvik as did her many
17 siblings. She noted that when the older siblings
18 who were attending the school would return home,
19 they treated their younger siblings in the way
20 the nuns treated them at the school. She thought
21 it was as though they were maintaining the
22 Grollier Hall rules in the home. They did things
23 like pinch her or pull her ears when she did not
24 do her chores.

25 She told the author of the Presentence
26 Report that looking back, she thinks that the
27 older siblings were trying to prepare the younger

1 ones for their own attendance at the residential
2 school. She herself spent two and a half years
3 at Grollier Hall. She was expelled after having
4 tried to come to the defence of one of her
5 younger sisters. Her sister had wet her bed and
6 as punishment was made to stand in her urine in
7 front of the other children in the dorm.
8 Mr. Cardinal's mother came to her sister's
9 defence during this incident, and apparently this
10 is why she was expelled from the school.

11 She told the author of the Presentence
12 Report that as a young mother she did not know
13 how to raise children. She said to her at the
14 time "expressing love was hitting you". She
15 never told her children that she loved them until
16 she sought treatment for herself. As a result,
17 the children never heard that until later in
18 their lives.

19 For the first three years of his life,
20 Mr. Cardinal was raised by his cousins in
21 Tsiigehchic. Between the ages of 3 and 8, he
22 lived with his mother and stepfather in Inuvik.
23 Although the children's physical needs, and by
24 this mean I mean food, clothing, and shelter,
25 were met, many other needs were not. The home
26 environment was dysfunctional. There was alcohol
27 abuse and domestic violence. There was violence

1 directed at Mr. Cardinal. He was eventually sent
2 out of the community.

3 His account and his mother's account on the
4 exact dates and timing is not exactly the same,
5 but what is clear is that he spent a lot of years
6 separated from his family. His mother says he
7 went to the Territorial Treatment Centre in
8 Yellowknife for two years when he was about 9
9 years old. He returned to Inuvik after that, but
10 there was an incident of him pulling a knife on
11 his sister. And after that, his mother turned
12 his custody over to the Department of Social
13 Services. Mr. Cardinal was sent to group homes
14 in southern Canada. He spent time in group homes
15 in Edmonton, Calgary, and Regina.

16 There is limited information about what
17 happened in those group homes. Mr. Cardinal
18 chose not to give his consent to have the
19 Department of Social Services share their
20 information about this period of time with the
21 author of the Presentence Report. But there is
22 some information about this time and it suggests
23 that those were very difficult times for him as
24 well. For example, while he was in Alberta, he
25 had to be hospitalized because he had taken
26 OxyContin. There are indications that there was
27 physical abuse in one of the group homes he

1 stayed at. He also told the author of the
2 Presentence Report that, while he was in one of
3 the group homes, he witnessed someone attempting
4 suicide by jumping in a fire.

5 Mr. Cardinal returned to the Northwest
6 Territories when he was 17. He stayed with his
7 sister, and later with an aunt in Tsiigehtchic,
8 but those were temporary arrangements. His only
9 steady residences were when he rented space from
10 his mother for a period of time and when he lived
11 with his girlfriend.

12 From all of this, it is very clear that
13 Mr. Cardinal lived most of his youth displaced.
14 As a child and a youth, he did not understand why
15 he was being sent away and he was upset about
16 that. He did not grow up with his siblings and
17 is not close to any of them. He does not feel he
18 has a family.

19 At the time the Presentence Report was
20 prepared, he did not want the author of the
21 report to speak to any of his family members
22 except his mother, and that is not surprising
23 under the circumstances.

24 The report also says he started abusing
25 alcohol at a very early age. The report says
26 that his stepfather found him passed out in a
27 snowbank when he was only 11 years old.

1 It appears that from a young age and
2 continually over subsequent years he has used
3 drugs and alcohol to cope with the immense pain
4 and anger that he has carried inside of him for
5 years.

6 In later years, Mr. Cardinal started a
7 relationship with Sasha Larocque-Firth. That was
8 a positive relationship for him. She was a good
9 influence on him and he wanted to be better for
10 her and do better for her. Very tragically she
11 died in a motor vehicle accident in July 2014.
12 She and others were in the vehicle that was being
13 driven by someone who was drunk.

14 The driver was charged and sentenced for
15 this, *R v Kayotuk*, 2016 NWTSC 59. At his
16 sentencing hearing, there was reference to
17 Ms. Larocque-Firth, how good a person she was,
18 how much she would be missed in the community.
19 Her death was devastating for Mr. Cardinal. It
20 sent him on a downward spiral. The Presentence
21 Report says he was steadily intoxicated for two
22 consecutive months following her death and that
23 he wanted to die himself.

24 On the night of the events that I now have
25 to sentence him for he was still in a state of
26 utter grief and despair fueled by his consumption
27 of alcohol and salvia, and he wanted to end his

1 life. The steps he had to take to modify the
2 firearm are an indication that he had a firm
3 intention to kill himself. And if he is alive
4 today, it is because Mr. Rogers intervened just
5 as he was about to pull the trigger.

6 In the Presentence Report, there is more
7 information about other losses and challenges
8 that Mr. Cardinal has endured. On the whole, as
9 I have already said, it paints the picture of a
10 traumatic childhood and youth in part resulting
11 from his mother's own trauma and inability to
12 parent in the way I am sure she now wishes she
13 had. She regrets some of the things she did, but
14 then, again, she was a victim of circumstances,
15 too. And all of that is why I agree with
16 Mr. Cardinal's counsel that this is a classic
17 case of intergenerational trauma.

18 Mr. Cardinal has had many issues in his
19 life; issues of addictions, issues with anger,
20 aggression and despair. Reading about the
21 circumstances he grew up in, this is not
22 surprising at all, and I cannot express this any
23 better than did Justice Greckol, then a Judge of
24 the Alberta Court of Queen's Bench, in *R v Skani*,
25 2002 ABQB 1097, when, talking about the difficult
26 background of the person she was sentencing in
27 that case, she said:

1 Few mortals could withstand such a
2 childhood and youth without becoming
3 seriously troubled.

4 Mr. Cardinal has a lengthy criminal record
5 which started when he was a youth. It is hardly
6 surprisingly in light of the circumstances I have
7 just been talking about. There are convictions
8 for serious offences on this record. There are
9 weapons offences, assaults, robberies, uttering
10 threats, assaults of peace officers in addition
11 to convictions for several other types of
12 offences.

13 There are no convictions for firearms
14 offences. However, as a result of the conviction
15 for assault with a weapon in 2015, he was
16 prohibited from being in the possession of a
17 firearm when he committed this offence.

18 Mr. Cardinal's case manager told the author
19 of the Presentence Report that initially he was
20 difficult to deal with and refused to meet with
21 him when he first arrived at the jail. There was
22 also a disciplinary incident at the jail in
23 December 2016. But over time Mr. Cardinal's
24 attitude seemed to change.

25 The case manager reported that in the months
26 before the report was prepared (the report was
27 filed in June 2017) Mr. Cardinal had been more
28 willing to meet and discuss his problems.

1 Mr. Cardinal himself told the author of the
2 report that he wants to address his alcohol and
3 other issues of unresolved grief. He
4 also expressed remorse for his actions.

5 Mr. Cardinal's change in attitude has
6 continued since the report was prepared over the
7 course of almost a year now. I heard at the
8 sentencing hearing that he has started to see a
9 counselor at the jail. He has also taken some
10 programs offered at the jail. Documents filed at
11 the sentencing hearing show that he has
12 successfully completed three programs. One
13 called, "Taking Responsibility and Control", one
14 called, "Building Better Boundaries", and one
15 called, "Living Without Violence".

16 He has also written a letter of apology that
17 was filed with the court at the sentencing
18 hearing. It shows some insight into his
19 behaviour, and the realization of some of the
20 root causes of his conduct. In it he expresses a
21 desire to change. He reiterates his apology for
22 his actions. Among other things, he writes that:
23 he realizes that what he did was very serious;
24 that someone could have been hurt very badly or
25 killed; that he put at risk his friend and
26 others; that his intention was to harm himself
27 and no one else; that alcohol and salvia made

1 things worse for him that night; and that he
2 takes full responsibility for his actions.

3 He also writes that he knows he needs more
4 help to deal with his issues. He knows he needs
5 to learn to control his feelings and that drugs
6 and alcohol are not the answer. He says he knows
7 he has to stop drinking.

8 When he was given an opportunity to speak
9 directly to the court after the lawyers'
10 submissions, he said similar things. He said
11 that, at first, he did not like counselling very
12 much, but now he realizes it is helping him and
13 he wants to continue with it. And I think that
14 is very positive.

15 On the whole of the evidence, it appears
16 that possibly for the first time Mr. Cardinal has
17 made some progress and is taking some meaningful
18 steps to try to address his issues.

19 This is just the beginning of what will be a
20 long process, but those first steps are very
21 difficult to take and he has taken them. The
22 question of counselling I think is a very good
23 example. Why is counselling hard at first?
24 Well, because it forces a person to look inside,
25 at their own issue, their own responsibility, and
26 their own power to change things as well as the
27 things that are so hurtful inside of them that

1 are causing all of this behaviour. And starting
2 that process can be very scary.

3 I imagine that is probably why Mr. Cardinal
4 did not like it very much at first, but they are
5 essential steps. And now that he has taken them,
6 he wants to continue which suggests to me that he
7 now realizes that that is what he has to do if he
8 wants to lead a happy, healthy life. It will
9 continue to be hard, but it is worthwhile.

10 Mr. Cardinal has plans for when he is
11 released. He has been in contact with a woman in
12 Inuvik who has been supportive of him and his
13 efforts. I heard that they speak every day over
14 the phone and that he hopes to build a
15 relationship with her when he is released. He
16 also wants to relocate to Whitehorse as he thinks
17 there would be more resources there for him and
18 that it would be a more positive place for a
19 fresh start than Inuvik.

20 There is a saying that says, "Wherever you
21 go there you are". At the same time, from the
22 Presentence Report and, in particular, based on
23 the comments made by Mr. Cardinal's mother, it
24 does appear that the people he associates with in
25 Inuvik may not be leading healthy lifestyles and
26 that it may be best for him not to stay in that
27 environment if he wants to make meaningful

1 changes.

2 Crown and defence are very far apart in
3 their positions on this matter. Mr. Cardinal has
4 been in custody since his arrest on April 6th,
5 2016. Today is May the 3rd, 2018. As of today
6 he has been on remand for just a few days short
7 of 25 months. Overall there is no reason not to
8 give him credit for the remand time on the usual
9 ratio of one and a half days of credit for each
10 day spent on remand. This means Mr. Cardinal is
11 entitled to credit for a little bit over three
12 years for the time he has spent on remand.

13 The Crown has argued that a fit sentence for
14 this offence would be one of five years. This
15 would mean today I would impose a further jail
16 term of approximately two years. The defence has
17 urged me to impose no further jail at all and to
18 sentence Mr. Cardinal to time served.

19 In deciding what to do in this difficult
20 case, there are several principles and factors
21 that I have to take into account. The first is
22 proportionality. The most important sentencing
23 principle is proportionality. It means that a
24 sentence has to be proportionate to the
25 seriousness of the offence and to the level of
26 blameworthiness of the offender. Neither of
27 these two things can be elevated above the other.

1 A proportionate sentence is one that reflects
2 both these things.

3 That balancing is especially difficult to do
4 when a very serious offence is committed by an
5 offender whose blameworthiness is reduced as a
6 result of his or her background and
7 circumstances. My recent decision in
8 *R v Bernarde*, 2018 NWTSC 27, is a very good
9 example of a case where the balancing was
10 particularly difficult and challenging.

11 That accused had committed a very serious
12 offence. He had robbed a gas station at night
13 wearing something covering his face, using a
14 firearm and having pointed it at the clerk. But
15 he suffered from Fetal Alcohol Spectrum Disorder,
16 had severe cognitive deficits, and had grown up
17 in a very difficult environment, much like
18 Mr. Cardinal. As I said in that case, no matter
19 how sympathetic the circumstances of an offender,
20 a sentence still has to reflect the seriousness
21 of the offence committed.

22 In that case I concluded that a sentence of
23 three years imprisonment should be imposed. That
24 decision is now under appeal, so we may
25 eventually receive guidance from the Court of
26 Appeal that will inform the proportionality
27 analysis in these difficult cases. But as of

1 now, my comments in that case reflect my view of
2 how it has to be undertaken.

3 In short, although there are many things
4 that reduce Mr. Cardinal's blameworthiness for
5 this offence, I cannot allow those considerations
6 to overtake the entire analysis. I must ensure
7 that the seriousness of the offence is also
8 reflected in whatever sentence I decide to
9 impose.

10 I want to return briefly to why the misuse
11 of firearms is such a serious thing. Both in the
12 *Bernarde* case and when I sentenced Mr. Kakfwi
13 earlier this week, I explained why firearm
14 offences must be treated very seriously by this
15 court.

16 The first reason to treat those offences
17 seriously is that to do so is what is consistent
18 with the will expressed by Parliament.
19 Parliament's role in our society is to make the
20 rules. And in the rules it has made, Parliament
21 has demonstrated in different ways how seriously
22 it treats firearm offences. And there is a
23 reason for that. Firearms are very dangerous
24 objects that can do a lot of damage. The damage
25 a bullet can cause is the same, irrespective of
26 the intention or level of desperation of the
27 person who pulled the trigger.

1 As I said when I ruled on the constitutional
2 challenge, firearms are prevalent in northern
3 communities. They are essential tools for those
4 who spend time on the land fishing, trapping, and
5 hunting. They are usually very accessible in
6 most of our northern communities.

7 I do accept that Mr. Cardinal did not intend
8 to harm anyone that night, but he was highly
9 intoxicated and he discharged the firearm three
10 times. As he himself acknowledges and
11 understands now, the level of risk to others was
12 high. The response of the criminal justice
13 system to the misuse of firearms must be stern
14 and has to reflect the strong condemnation of the
15 courts of this high risk conduct.

16 The next issue I want to address is the
17 relevance of sentences imposed in cases of
18 careless use of a firearm. I will address this
19 only briefly, but I must address it because in
20 submissions defence counsel referred to a number
21 of cases involving sentencings for careless use
22 of firearm offences and other weapons offences
23 and invited me to use them as a guide to decide
24 what the range of sentence should be here.

25 I have difficulty with that position.
26 Mr. Kakfwi had presented a somewhat similar
27 position as part of his constitutional challenge.

1 In arguing that the mandatory minimum sentence
2 was grossly disproportionate in comparison to
3 sentences that might otherwise be imposed for the
4 same conduct, he, too, relied on several cases
5 for careless use of a firearm. I was not
6 convinced then that those cases made a compelling
7 argument to demonstrate a gap between the
8 mandatory minimum and what would otherwise be a
9 fit sentence, *R v Kakfwi*, paras 65-70.

10 For similar reasons, I do not find the
11 sentences imposed for "careless use" cases to be
12 all that helpful in assessing what would be a fit
13 sentence here. The offence created by Section
14 244.2 is different. The fact that I have struck
15 down one of the mandatory minimum sentences
16 created by this section does not detract from the
17 objective seriousness of the offence that it
18 creates and Parliament's clear signal about how
19 seriously the reckless discharge of a firearm
20 should be regarded.

21 The next legal principle that I want to talk
22 about relates to the principles that govern the
23 sentencing of indigenous offenders. Mr. Cardinal
24 is Inuvialuit and the principles articulated in
25 *R v Gladue*, [1999] 1 S.C.R. 688, and *R v Ipeelee*,
26 [2012] 1 S.C.R. 433, apply to his sentencing. I
27 am not going to repeat those principles here as

1 they are well established. Those principles
2 govern this sentencing hearing as they do many of
3 the sentencing hearings that we do in this
4 jurisdiction. Always the court must take
5 judicial notice of systemic factors which may
6 have played a part in bringing Mr. Cardinal
7 before the court.

8 As I hope I have made clear when I was
9 talking about Mr. Cardinal's circumstances, there
10 are numerous such factors in this case. Even
11 aside from things I can take judicial notice of,
12 his own story is a classic example of what the
13 Supreme Court of Canada was talking about in
14 *Gladue* and *Ipeelee*. Those cases do not require
15 the establishment of a causal link between those
16 circumstances and an offender's behaviour; but in
17 this case, I agree completely with Mr. Cardinal's
18 lawyer that the evidence is compelling and
19 establishes that link. His case is a very good
20 illustration of the reality that the Supreme
21 Court of Canada was trying to capture and talk
22 about in those two cases.

23 Another effect of the application of those
24 principles is that I am required to consider the
25 type of sanction that would be most appropriate
26 for Mr. Cardinal given his heritage. This is not
27 a case where anyone is suggesting that a sanction

1 other than imprisonment would be appropriate.
2 But because of the credit that has to be given
3 for the remand time, the issue of whether there
4 should be a further term of incarceration is a
5 live issue. And even if I decide a further jail
6 term is required, the length of that term must be
7 considered very carefully.

8 *Gladue* and *Ipeelee* make it clear that there
9 is no automatic reduction of what would otherwise
10 be the sentence if the offender was not
11 indigenous. Always, the ultimate goal is to
12 arrive at a proportionate sentence. The court
13 must exercise restraint and carefully consider
14 the circumstances of the offender and their
15 effect on his or her blameworthiness because that
16 may reduce the sentence from what would otherwise
17 have been appropriate.

18 The next issue I want to address, and it is
19 central in this case, is the effect of
20 Mr. Cardinal having been suicidal when this
21 happened. These events and this offence stem
22 from Mr. Cardinal's desire and attempt to kill
23 himself.

24 As the cases filed sadly demonstrate,
25 offences of all sorts, including very serious
26 ones involving the use of firearms are committed
27 by persons who are suicidal. The same issue

1 arose in Mr. Kakfwi's case.

2 Deciding what impact that this particularly
3 distressed state of mind at the time of the
4 offence should have at the sentencing stage is
5 not easy. Nor is the effect of that state of
6 mind the same in all cases.

7 In my view, there is little doubt that the
8 blameworthiness of an offender who is suicidal
9 and commits an offence without actually intending
10 any harm to anyone else is not the same as the
11 blameworthiness of someone who is acting out of
12 anger or retaliation. One difficulty, of course,
13 is that a distressed person can be all those
14 things at the same time. Emotions are not neatly
15 divided into categories at the best of times, let
16 alone when a person is intoxicated.

17 In addition, as I noted in my ruling on
18 Mr. Cardinal's constitutional challenge at
19 Paragraph 73 and 74, and as I have alluded to
20 this afternoon, the fact that a person who is
21 misusing a firearm is suicidal does not reduce
22 the risk that this person presents. On the
23 contrary, it often enhances it. A suicidal
24 desperate person has nothing to lose and may act
25 in the most reckless of ways. *R v Lyta*,
26 2013 NUCA 10 Court of Appeal, and *R v Mikijuk*,
27 2017 NUCJ 2, are very good examples of this.

1 Another very good example is Mr. Kakfwi's
2 case. He too was suicidal, but he also wanted to
3 make a point and draw the community's attention
4 to his problems before killing himself. So in
5 his desperate suicidal state, he marched to the
6 Fort Good Hope community hall while the Band's
7 annual meeting was taking place and fired five
8 shots in the air with a high powered rifle in the
9 parking area. This caused chaos and a general
10 panic.

11 He then went to a nearby building, and a
12 two-and-a-half hour standoff resulted. During
13 this time he fired two more shots; one as police
14 approached because he wanted to keep them away
15 and a second one when he thought police were
16 trying to get close to where he was. He also
17 fired a third shot out the window at a 45 degree
18 upwards but in the general direction of the
19 community hall to make people who had come
20 outside go back inside.

21 Mr. Kakfwi was suicidal, yes, but the shots
22 he fired were not intended for himself. One
23 aspect of his use of that firearm was that he
24 used it to frighten others and control their
25 movements.

26 In my decision in that case I noted that
27 these things fall somewhere on a spectrum. At

1 one end we have the hypothetical situation,
2 discussed during the constitutional challenge, of
3 the very young offender who intends a shot for
4 himself, the gun being moved away at the last
5 minute, and who immediately drops the firearm
6 without doing anything else.

7 At the other end of the spectrum, we have
8 offenders like Mr. Lyta who is definitely
9 suicidal and whose goal is to get the police to
10 shoot him and kill him but who, in the process of
11 trying to accomplish this, engages in extremely
12 high risk behaviour, shooting repeatedly at the
13 house of police officers.

14 The same is true for an offender like
15 Mr. Mikijuk who has an entire neighbourhood under
16 siege for several hours and fires the gun at one
17 point in the direction of police as they are
18 attempting to bring the situation to a peaceful
19 end.

20 In emphasizing the seriousness of
21 Mr. Cardinal's conduct and drawing a distinction
22 between his situation and that of the reasonable
23 hypothetical discussed in the constitutional
24 challenge, the Crown focused, during sentencing
25 submissions, on the second and third shots fired
26 by Mr. Cardinal because clearly those shots were
27 not intended for himself. The Crown argued that

1 this takes this case well outside the reasonable
2 hypothetical that was examined, and that this,
3 combined with the criminal record, the fact that
4 he was under a firearms prohibition, and the fact
5 that the firearm he used was prohibited,
6 justifies the imposition of a five-year sentence.

7 I agree with the Crown that Mr. Cardinal's
8 case is different from the hypothetical
9 situation, but I disagree with the suggestion
10 that the second and third shot fired should be
11 looked at in isolation from the first one. Those
12 shots were fired very soon after the failed
13 suicide attempt.

14 I draw an important distinction between the
15 facts in *Kakfwi* and the facts in this case.
16 Although here the second and third shots were
17 fired in frustration and anger, that anger and
18 frustration was not directed at anyone. And
19 although those shots created an enhanced risk, it
20 was not the same level of risk as was the case in
21 *Lyta* or *Mikijuk*.

22 Importantly, unlike Mr. Kakfwi, Mr. Cardinal
23 did not confront police, hold siege in a
24 building, use the firearm to direct or control
25 the movement of others. Mr. Rogers persuaded him
26 to drop the firearm relatively quickly after it
27 was used because by the time police received the

1 call about the shots and made their patrol,
2 Mr. Cardinal had already abandoned the firearm in
3 the snow.

4 In my view, Mr. Cardinal's conduct is closer
5 to that presented in the reasonable hypothetical
6 than to Mr. Kakfwi's and, for that matter, it is
7 at a lower position on the spectrum than most of
8 the cases that were referred to.

9 That said, the fact remains that
10 Mr. Cardinal did more than try to kill himself
11 that night. The seriousness of what he did and
12 the risk he created cannot be subsumed completely
13 by the fact that his core intention was to kill
14 himself. There are aggravating factors here not
15 present in the hypothetical situation that I
16 examined as part of the constitutional challenge.

17 Judging by the photograph, the second shot
18 in particular could easily have had devastating
19 consequences. In particular since one shot had
20 already been fired and even if this took place at
21 night, someone could well have come to the door
22 of the residence to investigate what was
23 happening. Had that happened and had someone
24 been on the other side of that door, we probably
25 would not be dealing with a Section 244.2 charge
26 today. Firing through a door not knowing who or
27 what is on the other side is extremely reckless

1 and dangerous and it carries a high level of
2 blameworthiness.

3 The third shot in the snow, given the
4 proximity of residence also involved a high level
5 of risk, but not as much as the second shot,
6 because at least then Mr. Cardinal could see
7 where he was shooting. But still he was drunk
8 and high, and a firearm in the hands of someone
9 in that state is an extremely dangerous thing.

10 Turning to the other factors that the Crown
11 has identified as aggravating factors justifying
12 a five-year sentence, the criminal record is
13 aggravating because it includes so many
14 convictions for crimes of violence and for
15 uttering threats. The many convictions for
16 assaults against peace officers and resist arrest
17 would be much more aggravating if Mr. Cardinal
18 had used the firearm to engage in any kind of
19 confrontation with police. In *Kakfwi*, for
20 reasons I expressed in giving my decision, I
21 found this to be highly aggravating. In this
22 particular case, where no such confrontation took
23 place, I find those convictions of limited
24 relevance.

25 As far as the aggravating effect of the
26 record generally, I have kept in mind first that
27 a person should not be resentenced over and over

1 for the convictions that appear on his or her
2 criminal record.

3 I also think that the record must be weighed
4 against the broader context of Mr. Cardinal's
5 circumstances: his inability to properly express
6 feelings and anger is easily explained by his
7 life's experience. That does not give him a
8 defence or excuse his behaviour, but it puts the
9 criminal record in context.

10 What I mean by that is that, just as
11 Mr. Cardinal's blameworthiness for this offence
12 is reduced by his circumstances, so, too, at
13 least in my mind, is the weight that should be
14 attached to his criminal record, particularly
15 since it does not include any convictions for
16 misusing firearms.

17 Another factor put forward by the Crown, as
18 I have referred to already, is the fact that the
19 firearm was a prohibited firearm and that it was
20 abandoned in the snow. There are, of course,
21 reasons why certain types of firearms are
22 prohibited. A modified rifle or shotgun can be
23 concealed more easily, and this is usually
24 associated with criminal activity. Here the
25 firearm was modified for the specific purpose of
26 suicide. In my view, this places this situation
27 completely outside the scope of harm that the law

1 is intended to capture. So I attach no weight at
2 all to the fact that the firearm was a prohibited
3 firearm.

4 As for it having been abandoned in the snow,
5 that is obviously not a good thing as someone
6 else could have come upon it. Had it been
7 loaded, it would have been far more aggravating
8 because of the enhanced risk for an accident.

9 But in a way, as far as impact on the
10 community and possible escalation of events, the
11 fact that Mr. Cardinal was no longer carrying the
12 firearm when the police found him may well have
13 been a better thing than if he had still been
14 carrying it, especially since he had ammunition
15 on him.

16 So on the whole, while I understand the
17 point the Crown was making in submissions about
18 this being a dangerous object having been
19 abandoned, I do not see the fact that the firearm
20 was prohibited or the fact that it was left in
21 the snow as carrying any particular weight on
22 sentencing.

23 Similarly, I find the existence of the
24 firearm prohibition of very limited effect.
25 Breaching a court order in the commission of
26 another substantive offence is an aggravating
27 factor, and court orders should be obeyed, of

1 course. But this is not a case where
2 Mr. Cardinal had guns in his home or carried a
3 gun for a period of time in blatant violation of
4 the firearms prohibition. He took possession of
5 the firearm for the sole purpose of ending his
6 life and he abandoned it shortly thereafter. So
7 I don't attach much weight to the existence of
8 the firearm prohibition, given the overall
9 context in terms of it being an aggravating
10 factors.

11 I said in my decision on *Kakfwi*, and I
12 reiterate here, that I accept general and
13 specific deterrence are not particularly relevant
14 sentencing objectives when dealing with crimes
15 committed by highly distressed, intoxicated, and
16 suicidal people. The suicidal person cannot be
17 expected to care much about the sentences of the
18 court and the possible sentencing consequences of
19 his or her action, because at the time of the
20 events they want to be dead and they are
21 expecting to die. But denunciation is still an
22 important objective to show the court's
23 disapproval of the misuse of firearms for the
24 reasons that I have already given.

25 At the same time, rehabilitation cannot be
26 completely overlooked even when denunciation is
27 paramount. Mr. Cardinal is 30 years old, so he

1 still has a lot of time to change the direction
2 of his life. He has now taken concrete steps to
3 address his issues. Based on the evidence before
4 me, this may be the first time that this
5 happened. He appears to be on a better path.
6 The road ahead will be long because no matter
7 when he is released, when he is released he will
8 have to make difficult choices every single day;
9 the choice not to numb the pain with alcohol or
10 drugs, the choice to continue with his efforts at
11 treatment and counselling even on those days
12 where it is more difficult, the choice to
13 continue working on himself.

14 Mr. Cardinal seems to have reached a point
15 where he knows what he needs to do. He is aware
16 and he has some support, but he is going to have
17 to be very strong to stick to his plan to choose
18 healthier ways, steer clear of people who are not
19 healthy, and move forward. All this to say the
20 objective of rehabilitating him should not be set
21 aside. To put it in simple terms, I do not think
22 society or the courts should give up on
23 Mr. Cardinal at this point.

24 Obviously the court has to be consistent
25 with itself. I have to be consistent with
26 myself.

27 In considering the hypothetical situation

1 that was presented as part of the constitutional
2 challenge, I said that in that situation a
3 sentence below the penitentiary range coupled
4 with probation would be appropriate, and that is
5 my starting point in considering what sentence is
6 appropriate for Mr. Cardinal.

7 The sentence that I imposed on Mr. Kakfwi
8 earlier this week is also something that I have
9 to consider and be consistent with. It was to my
10 knowledge the first one imposed in this
11 jurisdiction for an offence under Section 244.2.
12 Mr. Kakfwi also faced charges for uttering death
13 threats to the police officers and using a
14 firearm in the commission of that offence. And
15 for that third charge, he was required by law to
16 receive the minimum consecutive sentence of one
17 year. So the sentence on the Section 244.2
18 charge had to be tempered to give effect to the
19 principle of totality.

20 Mr. Kakfwi received a sentence of four years
21 on the 244.2 offence, one year concurrent on the
22 threats and one year consecutive on the Section
23 85 charge, for a global sentence of five years.
24 As I already noted, Mr. Kakfwi was suicidal when
25 he committed his offences. There were several
26 aspects of his circumstances including his
27 circumstances as an indigenous person that

1 reduced his blameworthiness.

2 However, as I have said, there are also
3 important differences between what he did and
4 what Mr. Cardinal did. Most significantly
5 perhaps, none of the shots fired by Mr. Kakfwi
6 were intended for himself and his actions had a
7 considerable impact on many people and that
8 impact was completely predictable. He did not
9 intend to harm anybody; but he did, in fact,
10 cause immense trauma to several people in his
11 community.

12 As I said, Mr. Kakfwi's sentence on the
13 244.2 charge had to be tempered to give effect to
14 the principle of totality. Mr. Cardinal's case
15 does not call for a sentence as significant as
16 the one Mr. Kakfwi would have received on that
17 charge if totality had not come into play.

18 I think Mr. Cardinal's case also clearly
19 calls for a sentence much higher than what I had
20 assessed should be imposed in the hypothetical
21 situation examined in the constitutional
22 challenge.

23 Going back to where I started, to the
24 fundamental principle of proportionality,
25 Mr. Cardinal's sentence has to reflect that his
26 conduct created a significant risk, in
27 particular, the second and third shot but

1 especially the second. It has to reflect the
2 gravity of misusing a firearm considering the
3 reality and context of this jurisdiction where
4 firearms are prevalent. It must also take into
5 account, to some extent, his past violent
6 behaviour. But it must also reflect that his
7 blameworthiness is reduced by the very difficult
8 circumstances he has faced in his life, by the
9 fact that he has pleaded guilty and exonerated
10 Mr. Rogers, and the very significant fact that,
11 at its core, this offence was committed, not
12 simply by someone who was suicidal, but by
13 someone who was engaged in an actual suicide
14 attempt.

15 Balancing all those things, in my view, the
16 range of sentence proposed by the Crown is
17 excessive. I am not persuaded, however, that a
18 sentence of time served would be adequate; but I
19 have, as I must, given effect to the principle of
20 restraint as much as possible.

21 Can you stand up, please, Mr. Cardinal.

22 Mr. Cardinal, I have thought about this a
23 lot and I have decided that, if you did not have
24 any remand time, I would impose a sentence of
25 three and a half years. I am going to give you
26 credit for the two years and 27 days that you
27 have spent in custody already. I am giving you

1 credit for three years and one month. And so
2 that means that today I am imposing a further
3 jail term but of five months imprisonment, not
4 nearly as long as what the Crown was asking.

5 Do you understand?

6 THE ACCUSED: Yes.

7 THE COURT: All right. You can have a
8 seat now, because there is more that I am going
9 to say.

10 This jail term will be followed by a period
11 of probation, Mr. Cardinal, and this is to try to
12 assist you. It is not try to punish you further.
13 It really is to try to help your efforts at
14 rehabilitation.

15 I have read your record, and you have not
16 done particularly well with probation in the
17 past. You have not done very well at following
18 orders, and I know that. But since you say you
19 want to continue with counselling and you want to
20 try to get into treatment, having a probation
21 officer that can help you perhaps find resources
22 and guide you through this, may actually be
23 useful for you.

24 So I am not going to put many conditions in
25 there. I do not think you should ever drink
26 again, but I am not going to put a "no drinking"
27 condition because I do not want to set you up for

1 a breach. But I think you know what happens when
2 you drink and I think you know that that is not a
3 good thing.

4 The only conditions that I am going to put
5 in this Probation Order are, first, that within
6 48 hours of your release you report to Probation
7 Services and after that you report as they direct
8 you.

9 There will be only one other condition. I
10 am going to word this carefully. I cannot force
11 you to take treatment and I cannot force you to
12 take counseling. So the way I have worded the
13 condition is that you are to consider any
14 counselling or treatment program recommended by
15 your probation officer. I hope that you will be
16 able, working with your probation officer, to
17 find the kinds of programs that will help you.

18 You have said through your lawyer that you
19 want to move to Whitehorse. If that happens,
20 your probation will be transferred to the Yukon.
21 And you are right, they do have treatment options
22 there. And if your probation is transferred to
23 the Yukon, you will have a probation officer in
24 the Yukon who can assist you. But you have to
25 stay in touch with them and make sure you let
26 everybody know what you are doing so that that
27 support can continue to be there.

1 I do not know if I have said it, but that
2 probation will be for a period of three years
3 because you have a long road ahead of you and I
4 think you will need all the help you can get.

5 There will be a firearms prohibition for a
6 period of 20 years from your release.

7 There will be a DNA order because it is
8 mandatory for a primary designated offence.

9 I do not have a choice but to impose a
10 Victim Fine Surcharge of \$200 for this. The time
11 to pay and the default time is provided by the
12 law; but as far as I am aware, you can also work
13 it off. You might even be able to work it off
14 while you are in custody, I am not sure, but talk
15 to your case manager about that.

16 Now I imagine the firearms should be
17 forfeited. I do not imagine there can be a
18 lawful owner to a prohibited weapon. So is that
19 what the Crown is asking?

20 MR. MAJOR-HANSFORD: Yes, Your Honour, pursuant to
21 the section 491.

22 THE COURT: All right, so there will be --
23 I will ask you to, you or your office, to prepare
24 a written order confirming this, but the
25 firearm --

26 MR. MAJOR-HANSFORD: Yes.

27 THE COURT: -- is ordered forfeited.

1 Have I overlooked anything from the Crown's
2 perspective?

3 MR. MAJOR-HANSFORD: Not from the Crown's
4 perspective, thank you.

5 THE COURT: Have I overlooked anything
6 from the defence's perspective?

7 MS. OJA: No, Your Honour, thank you.

8 THE COURT: All right. Mr. Cardinal, I
9 wish you luck and I hope things work out for you.

10 And I want to thank you counsel for their
11 work throughout this case. I would appreciate if
12 you can pass this on to Mr. Green. I received
13 excellent submissions at every stage of this
14 case, and I am extremely grateful for it because
15 it was a difficult case. Close court.

16 THE COURT CLERK: Thank you, Your Honour.

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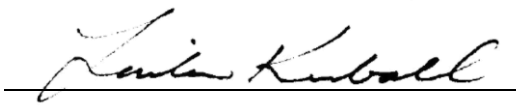
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CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 22nd day of May, 2018.

Certified Pursuant to Rule 723
of the Rules of Court



Linda Kimball
Court Reporter