*R v Cardinal*, 2018 NWTSC 31 **S-1-CR-2016-000044**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**COREY CARDINAL**

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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.

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**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.

1. I made this decision, not on the basis of
2. Mr. Cardinal's own case, but on the basis of a
3. hypothetical situation that his counsel put
4. forward at the constitutional challenge hearing.
5. That hypothetical situation was based in part on
6. Mr. Cardinal's case, but it assumed a much
7. younger offender with no criminal record and with
8. all the aggravating features of Mr. Cardinal's
9. case removed.
10. The hearing on Mr. Cardinal's challenge to
11. the mandatory minimum was heard at the same time
12. as another similar challenge brought by another
13. offender in an unrelated case, Tony Kakfwi. My
14. decision to strike down the mandatory minimum
15. sentence based on Mr. Cardinal's submissions
16. meant that Mr. Kakfwi was also successful on his
17. challenge. *R v Kakfwi*, 2018 NWTSC 13.
18. Earlier this week, I imposed a sentence on
19. Mr. Kakfwi at the conclusion of a sentencing
20. hearing that proceeded in Fort Good Hope.
21. *R v Kakfwi*, 2018 NWTSC 30. There are differences
22. between Mr. Cardinal's case and Mr. Kakfwi's
23. case. There are some similarities as well. Some
24. of the things I said in my decision on
25. Mr. Kakfwi's sentencing apply to this case, and
26. to that extent I will refer to it. Some things I
27. said in my written decisions on the
28. constitutional challenges are relevant to
29. Mr. Cardinal's sentencing as well.
30. I will start with stating again what
31. happened on the night of the events that led to
32. this charge.
33. On the night of these events, Mr. Cardinal
34. had been drinking alcohol and smoking salvia at
35. his stepfather's home in Inuvik.
36. In the early morning hours on April 6th,
37. 2016, he and his friend, Jerry Rogers, were in
38. the living room of that residence. Two adult
39. women were also in the house. They had gone
40. upstairs and were sleeping. Mr. Cardinal broke
41. into his stepfather's gun closet and removed a
42. shotgun. He put the gun to his chin and fired,
43. intending to kill himself. Mr. Rogers intervened
44. at the moment Mr. Cardinal was pulling the
45. trigger. He pushed the gun away. This caused
46. the shot to be fired through the front door.
47. Photos taken at the scene show the hole made by
48. that first shot, at the very stop of the door
49. jamb.
50. In anger and frustration, Mr. Cardinal fired
51. a second shot through the door. The hole caused
52. by this second shoot, also shown in the
53. photographs, is in the centre of the door just
54. below the height of the door handle.
55. Mr. Cardinal left the house still holding
56. the shotgun. Mr. Rogers followed trying to
57. convince him to drop the firearm.
58. Mr. Cardinal fired a third shot into the
59. snowbank on the side of the road. The photos
60. show the trace left by that shot in the snow.
61. The photo also shows that there are houses a
62. short distance behind that snowbank.
63. Eventually Mr. Rogers was able to convince
64. Mr. Cardinal to drop the firearm. It was left in
65. the snow, and the two men kept on walking.
66. In the meantime, the RCMP had received a
67. complaint about shots being fired and two men
68. walking on the street with the gun. Police
69. officers responded to that call. They quickly
70. located Mr. Cardinal and Mr. Rogers walking on
71. the road and arrested them without incident.
72. Police officers found an unused shotgun
73. round in Mr. Cardinal's jacket pocket. They also
74. found the gun in the snowbank where Mr. Cardinal
75. had dropped it.
76. The two women who were in the house when
77. this happened told police they had gone there
78. that evening and had consumed alcohol with
79. Mr. Cardinal and Mr. Rogers. They had gone to
80. sleep upstairs. They woke up to the gunshots.
81. They stayed upstairs until Mr. Cardinal and
82. Mr. Rogers left because they were scared.
83. The stock of the shotgun had been sawed off
84. and taped. The barrel of the shotgun had also
85. been sawed off. The butt stock that had been
86. sawed off and the end of the barrel were found on
87. the kitchen table in the residence. Tape
88. matching the tape on the stock of the shotgun was
89. also found at the residence.
90. Because of the way in which it was modified,
91. the shotgun falls in the definition of a
92. prohibited firearm. There was a dispute at the
93. sentencing hearing as to whether this is an
94. aggravating factor on sentencing, but it seemed
95. undisputed that Mr. Cardinal was the one who
96. modified the firearm and that he did so because
97. he intended on using it to kill himself.
98. It is also undisputed that Mr. Cardinal did
99. not intend to harm anyone other than himself when
100. he fired the gun, but he admits that he was
101. reckless as to the safety of others when he
102. fired. That is why he is guilty of this
103. particular offence.
104. No one else was in the immediate presence of
105. Mr. Cardinal and Mr. Rogers when these shots were
106. fired. The reports that the police had received
107. were of shots being fired and two men walking
108. around with a gun. When police officers located
109. Mr. Cardinal and Mr. Rogers, they were both
110. apprehended and they were both eventually
111. charged. Later on Mr. Cardinal took
112. responsibility for what he had done, and after
113. his guilty plea was entered, the prosecution
114. against Mr. Rogers was stopped.
115. I now want to turn to Mr. Cardinal's
116. personal circumstances. I did not address those
117. personal circumstances in any great detail in my
118. decision on the constitutional challenge because
119. Mr. Cardinal's challenge, as I have said, was
120. based on a hypothetical situation as opposed to
121. his own circumstances.
122. 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
123. ones for their own attendance at the residential
124. school. She herself spent two and a half years
125. at Grollier Hall. She was expelled after having
126. tried to come to the defence of one of her
127. younger sisters. Her sister had wet her bed and
128. as punishment was made to stand in her urine in
129. front of the other children in the dorm.
130. Mr. Cardinal's mother came to her sister's
131. defence during this incident, and apparently this
132. is why she was expelled from the school.
133. She told the author of the Presentence
134. Report that as a young mother she did not know
135. how to raise children. She said to her at the
136. time "expressing love was hitting you". She
137. never told her children that she loved them until
138. she sought treatment for herself. As a result,
139. the children never heard that until later in
140. their lives.
141. For the first three years of his life,
142. Mr. Cardinal was raised by his cousins in
143. Tsiigehtchic. Between the ages of 3 and 8, he
144. lived with his mother and stepfather in Inuvik.
145. Although the children's physical needs, and by
146. this mean I mean food, clothing, and shelter,
147. were met, many other needs were not. The home
148. environment was dysfunctional. There was alcohol
149. abuse and domestic violence. There was violence
150. directed at Mr. Cardinal. He was eventually sent
151. out of the community.
152. His account and his mother's account on the
153. exact dates and timing is not exactly the same,
154. but what is clear is that he spent a lot of years
155. separated from his family. His mother says he
156. went to the Territorial Treatment Centre in
157. Yellowknife for two years when he was about 9
158. years old. He returned to Inuvik after that, but
159. there was an incident of him pulling a knife on
160. his sister. And after that, his mother turned
161. his custody over to the Department of Social
162. Services. Mr. Cardinal was sent to group homes
163. in southern Canada. He spent time in group homes
164. in Edmonton, Calgary, and Regina.
165. There is limited information about what
166. happened in those group homes. Mr. Cardinal
167. chose not to give his consent to have the
168. Department of Social Services share their
169. information about this period of time with the
170. author of the Presentence Report. But there is
171. some information about this time and it suggests
172. that those were very difficult times for him as
173. well. For example, while he was in Alberta, he
174. had to be hospitalized because he had taken
175. OxyContin. There are indications that there was
176. physical abuse in one of the group homes he
177. stayed at. He also told the author of the
178. Presentence Report that, while he was in one of
179. the group homes, he witnessed someone attempting
180. suicide by jumping in a fire.
181. Mr. Cardinal returned to the Northwest
182. Territories when he was 17. He stayed with his
183. sister, and later with an aunt in Tsiigehtchic,
184. but those were temporary arrangements. His only
185. steady residences were when he rented space from
186. his mother for a period of time and when he lived
187. with his girlfriend.
188. From all of this, it is very clear that
189. Mr. Cardinal lived most of his youth displaced.
190. As a child and a youth, he did not understand why
191. he was being sent away and he was upset about
192. that. He did not grow up with his siblings and
193. is not close to any of them. He does not feel he
194. has a family.
195. At the time the Presentence Report was
196. prepared, he did not want the author of the
197. report to speak to any of his family members
198. except his mother, and that is not surprising
199. under the circumstances.
200. The report also says he started abusing
201. alcohol at a very early age. The report says
202. that his stepfather found him passed out in a
203. 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
204. life. The steps he had to take to modify the
205. firearm are an indication that he had a firm
206. intention to kill himself. And if he is alive
207. today, it is because Mr. Rogers intervened just
208. as he was about to pull the trigger.
209. In the Presentence Report, there is more
210. information about other losses and challenges
211. that Mr. Cardinal has endured. On the whole, as
212. I have already said, it paints the picture of a
213. traumatic childhood and youth in part resulting
214. from his mother's own trauma and inability to
215. parent in the way I am sure she now wishes she
216. had. She regrets some of the things she did, but
217. then, again, she was a victim of circumstances,
218. too. And all of that is why I agree with
219. Mr. Cardinal's counsel that this is a classic
220. case of intergenerational trauma.
221. Mr. Cardinal has had many issues in his
222. life; issues of addictions, issues with anger,
223. aggression and despair. Reading about the
224. circumstances he grew up in, this is not
225. surprising at all, and I cannot express this any
226. better than did Justice Greckol, then a Judge of
227. the Alberta Court of Queen's Bench, in *R v Skani*,
228. 2002 ABQB 1097, when, talking about the difficult
229. background of the person she was sentencing in
230. that case, she said:
     1. Few mortals could withstand such a childhood and youth without becoming
     2. seriously troubled.
     3. Mr. Cardinal has a lengthy criminal record
     4. which started when he was a youth. It is hardly
     5. surprisingly in light of the circumstances I have
     6. just been talking about. There are convictions
     7. for serious offences on this record. There are
     8. weapons offences, assaults, robberies, uttering
     9. threats, assaults of peace officers in addition
     10. to convictions for several other types of
     11. offences.
     12. There are no convictions for firearms
     13. offences. However, as a result of the conviction
     14. for assault with a weapon in 2015, he was
     15. prohibited from being in the possession of a
     16. firearm when he committed this offence.
     17. Mr. Cardinal's case manager told the author
     18. of the Presentence Report that initially he was
     19. difficult to deal with and refused to meet with
     20. him when he first arrived at the jail. There was
     21. also a disciplinary incident at the jail in

22 December 2016. But over time Mr. Cardinal's

1. attitude seemed to change.
2. The case manager reported that in the months
3. before the report was prepared (the report was
4. filed in June 2017) Mr. Cardinal had been more
5. willing to meet and discuss his problems.
6. Mr. Cardinal himself told the author of the
7. report that he wants to address his alcohol and
8. other issues of unresolved grief. He
9. also expressed remorse for his actions.
10. Mr. Cardinal's change in attitude has
11. continued since the report was prepared over the
12. course of almost a year now. I heard at the
13. sentencing hearing that he has started to see a
14. counselor at the jail. He has also taken some
15. programs offered at the jail. Documents filed at
16. the sentencing hearing show that he has
17. successfully completed three programs. One
18. called, "Taking Responsibility and Control", one
19. called, "Building Better Boundaries", and one
20. called, "Living Without Violence".
21. He has also written a letter of apology that
22. was filed with the court at the sentencing
23. hearing. It shows some insight into his
24. behaviour, and the realization of some of the
25. root causes of his conduct. In it he expresses a
26. desire to change. He reiterates his apology for
27. his actions. Among other things, he writes that:
28. he realizes that what he did was very serious;
29. that someone could have been hurt very badly or
30. killed; that he put at risk his friend and
31. others; that his intention was to harm himself
32. and no one else; that alcohol and salvia made
33. things worse for him that night; and that he
34. takes full responsibility for his actions.
35. He also writes that he knows he needs more
36. help to deal with his issues. He knows he needs
37. to learn to control his feelings and that drugs
38. and alcohol are not the answer. He says he knows
39. he has to stop drinking.
40. When he was given an opportunity to speak
41. directly to the court after the lawyers'
42. submissions, he said similar things. He said
43. that, at first, he did not like counselling very
44. much, but now he realizes it is helping him and
45. he wants to continue with it. And I think that
46. is very positive.
47. On the whole of the evidence, it appears
48. that possibly for the first time Mr. Cardinal has
49. made some progress and is taking some meaningful
50. steps to try to address his issues.
51. This is just the beginning of what will be a
52. long process, but those first steps are very
53. difficult to take and he has taken them. The
54. question of counselling I think is a very good
55. example. Why is counselling hard at first?
56. Well, because it forces a person to look inside,
57. at their own issue, their own responsibility, and
58. their own power to change things as well as the
59. things that are so hurtful inside of them that
60. are causing all of this behaviour. And starting
61. that process can be very scary.
62. I imagine that is probably why Mr. Cardinal
63. did not like it very much at first, but they are
64. essential steps. And now that he has taken them,
65. he wants to continue which suggests to me that he
66. now realizes that that is what he has to do if he
67. wants to lead a happy, healthy life. It will
68. continue to be hard, but it is worthwhile.
69. Mr. Cardinal has plans for when he is
70. released. He has been in contact with a woman in
71. Inuvik who has been supportive of him and his
72. efforts. I heard that they speak every day over
73. the phone and that he hopes to build a
74. relationship with her when he is released. He
75. also wants to relocate to Whitehorse as he thinks
76. there would be more resources there for him and
77. that it would be a more positive place for a
78. fresh start than Inuvik.
79. There is a saying that says, "Wherever you
80. go there you are". At the same time, from the
81. Presentence Report and, in particular, based on
82. the comments made by Mr. Cardinal's mother, it
83. does appear that the people he associates with in
84. Inuvik may not be leading healthy lifestyles and
85. that it may be best for him not to stay in that
86. environment if he wants to make meaningful
87. changes.
88. Crown and defence are very far apart in
89. their positions on this matter. Mr. Cardinal has
90. been in custody since his arrest on April 6th,
91. 2016. Today is May the 3rd, 2018. As of today
92. he has been on remand for just a few days short
93. of 25 months. Overall there is no reason not to
94. give him credit for the remand time on the usual
95. ratio of one and a half days of credit for each
96. day spent on remand. This means Mr. Cardinal is
97. entitled to credit for a little bit over three
98. years for the time he has spent on remand.
99. The Crown has argued that a fit sentence for
100. this offence would be one of five years. This
101. would mean today I would impose a further jail
102. term of approximately two years. The defence has
103. urged me to impose no further jail at all and to
104. sentence Mr. Cardinal to time served.
105. In deciding what to do in this difficult
106. case, there are several principles and factors
107. that I have to take into account. The first is
108. proportionality. The most important sentencing
109. principle is proportionality. It means that a
110. sentence has to be proportionate to the
111. seriousness of the offence and to the level of
112. blameworthiness of the offender. Neither of
113. these two things can be elevated above the other.
114. A proportionate sentence is one that reflects
115. both these things.
116. That balancing is especially difficult to do
117. when a very serious offence is committed by an
118. offender whose blameworthiness is reduced as a
119. result of his or her background and
120. circumstances. My recent decision in
121. *R v Bernarde*, 2018 NWTSC 27, is a very good
122. example of a case where the balancing was
123. particularly difficult and challenging.
124. That accused had committed a very serious
125. offence. He had robbed a gas station at night
126. wearing something covering his face, using a
127. firearm and having pointed it at the clerk. But
128. he suffered from Fetal Alcohol Spectrum Disorder,
129. had severe cognitive deficits, and had grown up
130. in a very difficult environment, much like
131. Mr. Cardinal. As I said in that case, no matter
132. how sympathetic the circumstances of an offender,
133. a sentence still has to reflect the seriousness
134. of the offence committed.
135. In that case I concluded that a sentence of
136. three years imprisonment should be imposed. That
137. decision is now under appeal, so we may
138. eventually receive guidance from the Court of
139. Appeal that will inform the proportionality
140. analysis in these difficult cases. But as of
141. now, my comments in that case reflect my view of
142. how it has to be undertaken.
143. In short, although there are many things
144. that reduce Mr. Cardinal's blameworthiness for
145. this offence, I cannot allow those considerations
146. to overtake the entire analysis. I must ensure
147. that the seriousness of the offence is also
148. reflected in whatever sentence I decide to
149. impose.
150. I want to return briefly to why the misuse
151. of firearms is such a serious thing. Both in the
152. *Bernarde* case and when I sentenced Mr. Kakfwi
153. earlier this week, I explained why firearm
154. offences must be treated very seriously by this
155. court.
156. The first reason to treat those offences
157. seriously is that to do so is what is consistent
158. with the will expressed by Parliament.
159. Parliament's role in our society is to make the
160. rules. And in the rules it has made, Parliament
161. has demonstrated in different ways how seriously
162. it treats firearm offences. And there is a
163. reason for that. Firearms are very dangerous
164. objects that can do a lot of damage. The damage
165. a bullet can cause is the same, irrespective of
166. the intention or level of desperation of the
167. 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.
168. In arguing that the mandatory minimum sentence
169. was grossly disproportionate in comparison to
170. sentences that might otherwise be imposed for the
171. same conduct, he, too, relied on several cases
172. for careless use of a firearm. I was not
173. convinced then that those cases made a compelling
174. argument to demonstrate a gap between the
175. mandatory minimum and what would otherwise be a
176. fit sentence, *R v Kakfwi*, paras 65-70.
177. For similar reasons, I do not find the
178. sentences imposed for "careless use" cases to be
179. all that helpful in assessing what would be a fit
180. sentence here. The offence created by Section
181. 244.2 is different. The fact that I have struck
182. down one of the mandatory minimum sentences
183. created by this section does not detract from the
184. objective seriousness of the offence that it
185. creates and Parliament's clear signal about how
186. seriously the reckless discharge of a firearm
187. should be regarded.
188. The next legal principle that I want to talk
189. about relates to the principles that govern the
190. sentencing of indigenous offenders. Mr. Cardinal
191. is Inuvialuit and the principles articulated in
192. *R v Gladue*, [1999] 1 S.C.R. 688, and *R v Ipeelee*,
193. [2012] 1 S.C.R. 433, apply to his sentencing. I
194. am not going to repeat those principles here as
195. they are well established. Those principles
196. govern this sentencing hearing as they do many of
197. the sentencing hearings that we do in this
198. jurisdiction. Always the court must take
199. judicial notice of systemic factors which may
200. have played a part in bringing Mr. Cardinal
201. before the court.
202. As I hope I have made clear when I was
203. talking about Mr. Cardinal's circumstances, there
204. are numerous such factors in this case. Even
205. aside from things I can take judicial notice of,
206. his own story is a classic example of what the
207. Supreme Court of Canada was talking about in
208. *Gladue* and *Ipeelee*. Those cases do not require
209. the establishment of a causal link between those
210. circumstances and an offender's behaviour; but in
211. this case, I agree completely with Mr. Cardinal's
212. lawyer that the evidence is compelling and
213. establishes that link. His case is a very good
214. illustration of the reality that the Supreme
215. Court of Canada was trying to capture and talk
216. about in those two cases.
217. Another effect of the application of those
218. principles is that I am required to consider the
219. type of sanction that would be most appropriate
220. for Mr. Cardinal given his heritage. This is not
221. a case where anyone is suggesting that a sanction
222. other than imprisonment would be appropriate.
223. But because of the credit that has to be given
224. for the remand time, the issue of whether there
225. should be a further term of incarceration is a
226. live issue. And even if I decide a further jail
227. term is required, the length of that term must be
228. considered very carefully.
229. *Gladue* and *Ipeelee* make it clear that there
230. is no automatic reduction of what would otherwise
231. be the sentence if the offender was not
232. indigenous. Always, the ultimate goal is to
233. arrive at a proportionate sentence. The court
234. must exercise restraint and carefully consider
235. the circumstances of the offender and their
236. effect on his or her blameworthiness because that

16 may reduce the sentence from what would otherwise

1. have been appropriate.
2. The next issue I want to address, and it is
3. central in this case, is the effect of
4. Mr. Cardinal having been suicidal when this
5. happened. These events and this offence stem
6. from Mr. Cardinal's desire and attempt to kill
7. himself.
8. As the cases filed sadly demonstrate,
9. offences of all sorts, including very serious
10. ones involving the use of firearms are committed
11. by persons who are suicidal. The same issue
12. arose in Mr. Kakfwi's case.
13. Deciding what impact that this particularly
14. distressed state of mind at the time of the
15. offence should have at the sentencing stage is
16. not easy. Nor is the effect of that state of
17. mind the same in all cases.
18. In my view, there is little doubt that the
19. blameworthiness of an offender who is suicidal
20. and commits an offence without actually intending
21. any harm to anyone else is not the same as the
22. blameworthiness of someone who is acting out of
23. anger or retaliation. One difficulty, of course,
24. is that a distressed person can be all those
25. things at the same time. Emotions are not neatly
26. divided into categories at the best of times, let
27. alone when a person is intoxicated.
28. In addition, as I noted in my ruling on
29. Mr. Cardinal's constitutional challenge at
30. Paragraph 73 and 74, and as I have alluded to
31. this afternoon, the fact that a person who is
32. misusing a firearm is suicidal does not reduce
33. the risk that this person presents. On the
34. contrary, it often enhances it. A suicidal
35. desperate person has nothing to lose and may act
36. in the most reckless of ways. *R v Lyta*,
37. 2013 NUCA 10 Court of Appeal, and *R v Mikijuk*,
38. 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
39. one end we have the hypothetical situation,
40. discussed during the constitutional challenge, of
41. the very young offender who intends a shot for
42. himself, the gun being moved away at the last
43. minute, and who immediately drops the firearm
44. without doing anything else.
45. At the other end of the spectrum, we have
46. offenders like Mr. Lyta who is definitely
47. suicidal and whose goal is to get the police to
48. shoot him and kill him but who, in the process of
49. trying to accomplish this, engages in extremely
50. high risk behaviour, shooting repeatedly at the
51. house of police officers.
52. The same is true for an offender like
53. Mr. Mikijuk who has an entire neighbourhood under
54. siege for several hours and fires the gun at one
55. point in the direction of police as they are
56. attempting to bring the situation to a peaceful
57. end.
58. In emphasizing the seriousness of
59. Mr. Cardinal's conduct and drawing a distinction
60. between his situation and that of the reasonable
61. hypothetical discussed in the constitutional
62. challenge, the Crown focused, during sentencing
63. submissions, on the second and third shots fired
64. by Mr. Cardinal because clearly those shots were
65. not intended for himself. The Crown argued that
66. this takes this case well outside the reasonable
67. hypothetical that was examined, and that this,
68. combined with the criminal record, the fact that
69. he was under a firearms prohibition, and the fact
70. that the firearm he used was prohibited,
71. justifies the imposition of a five-year sentence.
72. I agree with the Crown that Mr. Cardinal's
73. case is different from the hypothetical
74. situation, but I disagree with the suggestion
75. that the second and third shot fired should be
76. looked at in isolation from the first one. Those
77. shots were fired very soon after the failed
78. suicide attempt.
79. I draw an important distinction between the
80. facts in *Kakfwi* and the facts in this case.
81. Although here the second and third shots were
82. fired in frustration and anger, that anger and
83. frustration was not directed at anyone. And
84. although those shots created an enhanced risk, it
85. was not the same level of risk as was the case in
86. *Lyta* or *Mikijuk*.
87. Importantly, unlike Mr. Kakfwi, Mr. Cardinal
88. did not confront police, hold siege in a
89. building, use the firearm to direct or control
90. the movement of others. Mr. Rogers persuaded him
91. to drop the firearm relatively quickly after it
92. was used because by the time police received the
93. call about the shots and made their patrol,
94. Mr. Cardinal had already abandoned the firearm in
95. the snow.
96. In my view, Mr. Cardinal's conduct is closer
97. to that presented in the reasonable hypothetical
98. than to Mr. Kakfwi's and, for that matter, it is
99. at a lower position on the spectrum than most of
100. the cases that were referred to.
101. That said, the fact remains that
102. Mr. Cardinal did more than try to kill himself
103. that night. The seriousness of what he did and
104. the risk he created cannot be subsumed completely
105. by the fact that his core intention was to kill
106. himself. There are aggravating factors here not
107. present in the hypothetical situation that I
108. examined as part of the constitutional challenge.
109. Judging by the photograph, the second shot
110. in particular could easily have had devastating
111. consequences. In particular since one shot had
112. already been fired and even if this took place at
113. night, someone could well have come to the door
114. of the residence to investigate what was
115. happening. Had that happened and had someone
116. been on the other side of that door, we probably
117. would not be dealing with a Section 244.2 charge
118. today. Firing through a door not knowing who or
119. what is on the other side is extremely reckless
120. and dangerous and it carries a high level of
121. blameworthiness.
122. The third shot in the snow, given the
123. proximity of residence also involved a high level
124. of risk, but not as much as the second shot,
125. because at least then Mr. Cardinal could see
126. where he was shooting. But still he was drunk
127. and high, and a firearm in the hands of someone
128. in that state is an extremely dangerous thing.
129. Turning to the other factors that the Crown
130. has identified as aggravating factors justifying
131. a five-year sentence, the criminal record is
132. aggravating because it includes so many
133. convictions for crimes of violence and for
134. uttering threats. The many convictions for
135. assaults against peace officers and resist arrest
136. would be much more aggravating if Mr. Cardinal
137. had used the firearm to engage in any kind of
138. confrontation with police. In *Kakfwi*, for
139. reasons I expressed in giving my decision, I
140. found this to be highly aggravating. In this
141. particular case, where no such confrontation took
142. place, I find those convictions of limited
143. relevance.
144. As far as the aggravating effect of the
145. record generally, I have kept in mind first that
146. a person should not be resentenced over and over
147. for the convictions that appear on his or her
148. criminal record.
149. I also think that the record must be weighed
150. against the broader context of Mr. Cardinal's
151. circumstances: his inability to properly express
152. feelings and anger is easily explained by his
153. life's experience. That does not give him a
154. defence or excuse his behaviour, but it puts the
155. criminal record in context.
156. What I mean by that is that, just as
157. Mr. Cardinal's blameworthiness for this offence
158. is reduced by his circumstances, so, too, at
159. least in my mind, is the weight that should be
160. attached to his criminal record, particularly
161. since it does not include any convictions for
162. misusing firearms.
163. Another factor put forward by the Crown, as
164. I have referred to already, is the fact that the
165. firearm was a prohibited firearm and that it was
166. abandoned in the snow. There are, of course,
167. reasons why certain types of firearms are
168. prohibited. A modified rifle or shotgun can be
169. concealed more easily, and this is usually
170. associated with criminal activity. Here the
171. firearm was modified for the specific purpose of
172. suicide. In my view, this places this situation
173. completely outside the scope of harm that the law
174. is intended to capture. So I attach no weight at
175. all to the fact that the firearm was a prohibited
176. firearm.
177. As for it having been abandoned in the snow,
178. that is obviously not a good thing as someone
179. else could have come upon it. Had it been
180. loaded, it would have been far more aggravating
181. because of the enhanced risk for an accident.
182. But in a way, as far as impact on the
183. community and possible escalation of events, the
184. fact that Mr. Cardinal was no longer carrying the
185. firearm when the police found him may well have
186. been a better thing than if he had still been
187. carrying it, especially since he had ammunition
188. on him.
189. So on the whole, while I understand the
190. point the Crown was making in submissions about
191. this being a dangerous object having been
192. abandoned, I do not see the fact that the firearm
193. was prohibited or the fact that it was left in
194. the snow as carrying any particular weight on
195. sentencing.
196. Similarly, I find the existence of the
197. firearm prohibition of very limited effect.
198. Breaching a court order in the commission of
199. another substantive offence is an aggravating
200. factor, and court orders should be obeyed, of
201. course. But this is not a case where
202. Mr. Cardinal had guns in his home or carried a
203. gun for a period of time in blatant violation of
204. the firearms prohibition. He took possession of
205. the firearm for the sole purpose of ending his
206. life and he abandoned it shortly thereafter. So
207. I don't attach much weight to the existence of
208. the firearm prohibition, given the overall
209. context in terms of it being an aggravating
210. factors.
211. I said in my decision on *Kakfwi*, and I
212. reiterate here, that I accept general and
213. specific deterrence are not particularly relevant
214. sentencing objectives when dealing with crimes
215. committed by highly distressed, intoxicated, and
216. suicidal people. The suicidal person cannot be
217. expected to care much about the sentences of the
218. court and the possible sentencing consequences of
219. his or her action, because at the time of the
220. events they want to be dead and they are
221. expecting to die. But denunciation is still an
222. important objective to show the court's
223. disapproval of the misuse of firearms for the
224. reasons that I have already given.
225. At the same time, rehabilitation cannot be
226. completely overlooked even when denunciation is
227. paramount. Mr. Cardinal is 30 years old, so he
228. still has a lot of time to change the direction
229. of his life. He has now taken concrete steps to
230. address his issues. Based on the evidence before
231. me, this may be the first time that this
232. happened. He appears to be on a better path.
233. The road ahead will be long because no matter
234. when he is released, when he is released he will
235. have to make difficult choices every single day;
236. the choice not to numb the pain with alcohol or
237. drugs, the choice to continue with his efforts at
238. treatment and counselling even on those days
239. where it is more difficult, the choice to
240. continue working on himself.
241. Mr. Cardinal seems to have reached a point
242. where he knows what he needs to do. He is aware
243. and he has some support, but he is going to have
244. to be very strong to stick to his plan to choose
245. healthier ways, steer clear of people who are not
246. healthy, and move forward. All this to say the
247. objective of rehabilitating him should not be set
248. aside. To put it in simple terms, I do not think
249. society or the courts should give up on
250. Mr. Cardinal at this point.
251. Obviously the court has to be consistent
252. with itself. I have to be consistent with
253. myself.
254. 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
255. reduced his blameworthiness.
256. However, as I have said, there are also
257. important differences between what he did and
258. what Mr. Cardinal did. Most significantly
259. perhaps, none of the shots fired by Mr. Kakfwi
260. were intended for himself and his actions had a
261. considerable impact on many people and that
262. impact was completely predictable. He did not
263. intend to harm anybody; but he did, in fact,
264. cause immense trauma to several people in his
265. community.
266. As I said, Mr. Kakfwi's sentence on the
267. 244.2 charge had to be tempered to give effect to
268. the principle of totality. Mr. Cardinal's case
269. does not call for a sentence as significant as
270. the one Mr. Kakfwi would have received on that
271. charge if totality had not come into play.
272. I think Mr. Cardinal's case also clearly
273. calls for a sentence much higher than what I had
274. assessed should be imposed in the hypothetical
275. situation examined in the constitutional
276. challenge.
277. Going back to where I started, to the
278. fundamental principle of proportionality,
279. Mr. Cardinal's sentence has to reflect that his
280. conduct created a significant risk, in
281. particular, the second and third shot but
282. especially the second. It has to reflect the
283. gravity of misusing a firearm considering the
284. reality and context of this jurisdiction where
285. firearms are prevalent. It must also take into
286. account, to some extent, his past violent
287. behaviour. But it must also reflect that his
288. blameworthiness is reduced by the very difficult
289. circumstances he has faced in his life, by the
290. fact that he has pleaded guilty and exonerated
291. Mr. Rogers, and the very significant fact that,
292. at its core, this offence was committed, not
293. simply by someone who was suicidal, but by
294. someone who was engaged in an actual suicide
295. attempt.
296. Balancing all those things, in my view, the
297. range of sentence proposed by the Crown is
298. excessive. I am not persuaded, however, that a
299. sentence of time served would be adequate; but I
300. have, as I must, given effect to the principle of
301. restraint as much as possible.
302. Can you stand up, please, Mr. Cardinal.
303. Mr. Cardinal, I have thought about this a
304. lot and I have decided that, if you did not have
305. any remand time, I would impose a sentence of
306. three and a half years. I am going to give you
307. credit for the two years and 27 days that you
308. have spent in custody already. I am giving you
309. credit for three years and one month. And so
310. that means that today I am imposing a further
311. jail term but of five months imprisonment, not
312. nearly as long as what the Crown was asking.
313. Do you understand?
314. THE ACCUSED: Yes.
315. THE COURT: All right. You can have a
316. seat now, because there is more that I am going
317. to say.
318. This jail term will be followed by a period
319. of probation, Mr. Cardinal, and this is to try to
320. assist you. It is not try to punish you further.
321. It really is to try to help your efforts at
322. rehabilitation.
323. I have read your record, and you have not
324. done particularly well with probation in the
325. past. You have not done very well at following
326. orders, and I know that. But since you say you
327. want to continue with counselling and you want to
328. try to get into treatment, having a probation
329. officer that can help you perhaps find resources
330. and guide you through this, may actually be
331. useful for you.
332. So I am not going to put many conditions in
333. there. I do not think you should ever drink
334. again, but I am not going to put a "no drinking"
335. condition because I do not want to set you up for
336. a breach. But I think you know what happens when
337. you drink and I think you know that that is not a
338. good thing.
339. The only conditions that I am going to put
340. in this Probation Order are, first, that within
341. 48 hours of your release you report to Probation
342. Services and after that you report as they direct
343. you.
344. There will be only one other condition. I
345. am going to word this carefully. I cannot force
346. you to take treatment and I cannot force you to
347. take counseling. So the way I have worded the
348. condition is that you are to consider any
349. counselling or treatment program recommended by
350. your probation officer. I hope that you will be
351. able, working with your probation officer, to
352. find the kinds of programs that will help you.
353. You have said through your lawyer that you
354. want to move to Whitehorse. If that happens,
355. your probation will be transferred to the Yukon.
356. And you are right, they do have treatment options
357. there. And if your probation is transferred to
358. the Yukon, you will have a probation officer in
359. the Yukon who can assist you. But you have to
360. stay in touch with them and make sure you let
361. everybody know what you are doing so that that
362. 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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# 1 CERTIFICATE OF TRANSCRIPT

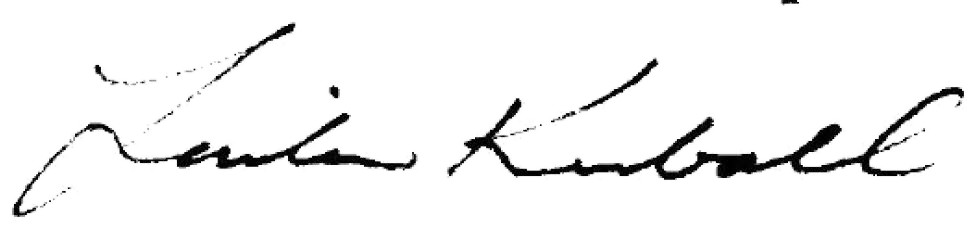
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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 22nd day of May, 2018.

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1. Certified Pursuant to Rule 723
2. of the Rules of Court

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1. Linda Kimball
2. Court Reporter

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