***R v Moore,* 2018 NWTSC 11 S-1-CR-2017-000147**

# AMENDED ORIGINAL

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**JOSHUA RYAN CLIFFORD MOORE**

**Original amended as of October 26, 2018, to: Cover page: Publication ban removed**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Transcript of the Reasons for Sentence held before The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 17th day of January, 2018.

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ APPEARANCES:

Mr. A. Godfrey: Counsel for the Crown

Mr. R. Clements: Counsel for the Accused

(Charges under s. 255(3), s.255(2) of the *Criminal Code*)

# THIS DECISION IS NOT SUBJECT TO A PUBLICATION BAN

1. THE COURT: Joshua Moore has pleaded
2. guilty to charges of impaired driving causing
3. death and impaired driving causing bodily harm,
4. and I must now sentence him for that offence.
5. Crown and defence have presented the Court
6. with a joint submission. They are jointly
7. suggesting that the sentence that should be
8. imposed is two-and-a-half years' imprisonment
9. together with a driving prohibition for a period
10. of five years. They are also jointly taking the
11. position that a DNA order and a firearms
12. prohibition order should be made.
13. At the time of the sentencing hearing on

14 December 19th, I expressed concern about the

1. joint submission. Counsel said at the hearing
2. that the sentence being jointly proposed was at
3. the low end of the range. And when I questioned
4. counsel about the appropriateness of that joint
5. position, they maintained that it was a fit
6. sentence having regard to the circumstances of
7. the case, and in particular the mitigating
8. factors that are present.
9. Having now taken some time to think about
10. those submissions and having reviewed carefully
11. the cases that were filed, as well as all the
12. other materials that were filed at the hearing, I
13. am going to say at the outset that although I
14. continue to think that this is a very lenient
15. sentence, overly lenient in my view, I have also
16. concluded that because of the law that now
17. governs joint submissions, it is not open to me
18. to depart from what is being proposed as far as
19. the duration of the jail term.
20. There are aspects of the ancillary orders
21. that are being proposed that I am unable to agree
22. with, and I will explain why, but as far as the
23. jail term of two and a half years, I do not think
24. that it is open to me to depart from it.
25. I understand that from the perspective of
26. the public, it may seem contradictory to have a
27. judge say that she disagrees with a proposed
28. sentence and yet still impose that sentence, so I
29. am going to take quite a bit time this afternoon
30. to try to explain this decision.
31. As is always the case in imposing sentence,
32. a judge must take into account the circumstances
33. of the offence, the circumstances of the person
34. who committed the offence, and the legal
35. principles that govern sentencing.
36. Dealing first with the circumstances of the
37. offence. On the day of these tragic events, just
38. before 9 a.m., Mr. Moore was driving in the area
39. of Sissons Court in Yellowknife, and he came upon
40. four people he knew. He offered them a ride, and
41. they accepted. At first Mr. Moore drove around
42. and in Yellowknife. He was driving very fast.
43. One witness thought at one point he was going as
44. fast as 180 kilometers per hour. Whatever the
45. exact speed was, which is something we will never
46. know, it was scaring the passengers, and they
47. asked him to slow down.
48. Eventually Mr. Moore drove outside of
49. Yellowknife down the Ingraham Trail Highway. He
50. stopped at the recreational area at the
51. Yellowknife River Bridge. He and his passengers
52. consumed alcohol there. They got going again and
53. Mr. Moore continued driving down the Ingraham
54. Trail further east. At that point he was going
55. 100 kilometers per hour. The posted speed limit
56. for that portion of the road is 70 kilometers per
57. hour. Quite apart from the posted speed limit,
58. it is an agreed fact that 100 kilometers per hour
59. is an excessive speed to be driving on that
60. portion of the road.
61. At one point Mr. Moore went over the centre
62. line and came upon another vehicle going in the
63. opposite direction. He swerved back into his
64. lane, narrowly missing the other vehicle. 300 or
65. 400 meters further, Mr. Moore came upon a sharp
66. turn on the road just before the Prosperous Lake
67. pullout area. There is a sign on the road ahead
68. of this turn that warns that it is a sharp turn.
69. Mr. Moore was not able to negotiate this
70. turn. He hit the shoulder and lost control of
71. the vehicle. The vehicle ran off the shoulder,
72. was in the air for a few meters, then hit the
73. ditch where it rolled and came to a stop in
74. nearby water. There was water up to halfway up
75. the doors of the vehicle. Mr. Moore admits that
76. at the time of the crash, he was driving between
77. 100 and 130 kilometers per hour.
78. Other motorists came upon the crash site and
79. called for help. Emergency personnel arrived on
80. the scene shortly thereafter. The police officer
81. who spoke to Mr. Moore at the scene did not
82. initially detect any signs of impairment, but
83. when she asked him to blow his breath in her
84. face, she noted an odor of liquor. She demanded
85. that he provide a sample of his breath in a
86. screening device, and the result was a "fail."
87. Mr. Moore was arrested, advised of his rights,
88. and a Breathalyzer demand was read to him. He
89. later provided samples of his breath.
90. The results of the Breathalyzer testing were
91. that there was 100 milligrams of alcohol in
92. 100 milliliters of blood on the first sample, and
93. 90 milligrams of alcohol in 100 milliliters of
94. blood on the second sample. The legal limit is
95. 80 milligrams of alcohol in 100 milliliters of
96. blood. Mr. Moore admits that his ability to
97. operate the motor vehicle was impaired by alcohol
98. at the time of this crash, and that the alcohol
99. concentration in his blood was a significant
100. contributing cause to the crash.
101. One of the passengers miraculously was not
102. injured, but others were not so lucky. In fact,
103. the consequence of this crash were disastrous.
104. Karen Lafferty died as a result of the injuries
105. that she sustained in this crash. Another
106. passenger, April Goulet was seriously injured.
107. She suffered a broken shoulder, broken pelvis,
108. fractured ribs, and a fractured sternum, as well
109. as a contusion on her left lung. She was
110. medivaced to the Alberta Hospital in Edmonton,
111. and remained there until May 30th. She was
112. transferred back to the hospital in Yellowknife
113. and received further treatment and was discharged
114. on June 14th.
115. Another passenger suffered a broken arm as a
116. result of the crash, and had surgery. Mr. Moore
117. was injured as well. He broke his arm and
118. required several surgeries and has still not
119. fully healed.
120. Mr. Moore has been in custody since his
121. arrest, which now adds up to 242 days. Credited
122. at a rate of one and a half days of credit for
123. each day in remand, which is what the law says is
124. open to me to grant him, this adds up to
125. 363 days, which is just a few days short of
126. one year.
127. Mr. Moore pleaded guilty to these charges on

7 November 6th, 2017. The sentencing hearing was

1. adjourned so that a presentence report could be
2. prepared. I heard on December 19th that early on
3. Mr. Moore expressed an intention to plead guilty
4. on this matter, and that, in fact, the resolution
5. discussions between Mr. Moore's counsel and the
6. Crown started even before the disclosure process
7. was complete. There was no preliminary hearing
8. in this case, which means that none of the
9. passengers nor any other witnesses ever had to
10. give evidence on this case.
11. After I heard sentencing submissions on

19 December 19th, the matter was adjourned to last

1. week for my decision. At the time of the
2. sentencing hearing, I had been told that
3. Ms. Lafferty's family and the other victims had
4. been made aware of their right to prepare victim
5. impact statements, but they had chosen not to
6. prepare any. This was, I was told, because they
7. were too overwhelmed by these events to do so,
8. and they were still consumed with their grief.
9. There were comments to a similar effect on the
10. presentence report, because the author had
11. attempted to contact the victims as well.
12. On the day scheduled for my decision last
13. week, counsel advised that members of
14. Ms. Lafferty's family had approached the Crown
15. and did want to provide victim impact statements.
16. So last week, instead of me giving my decision, I
17. heard these victim impact statements.
18. Ms. Lafferty's grandmother, who raised her,
19. read her victim impact statement to me herself.
20. Two others, from Ms. Lafferty's mother and her
21. sister-in-law were read by the Crown. Three
22. more, two from her sisters and one from her
23. 12-year-old niece, were not read out loud, but I
24. have read them. They were all very sad. They
25. speak volumes about the immense tragedy that
26. these events have brought to the lives of
27. Karen Lafferty's family.
28. As I said last week to family members that
29. were here, I know that nothing this Court does on
30. sentencing can bring her back and undo the
31. terrible harm that was done. I can only hope
32. that the conclusion of the criminal proceedings
33. might be one step towards healing and closure.
34. I was struck by the last words of the victim
35. impact statement of Ms. Lafferty's grandmother.
36. Those words are: (As read)
37. My husband and I talk about missing Karen a lot, but we also know that we
38. have to find a way to go ahead.
39. Those words are very true, very wise, and very
40. brave, and I do hope that those affected by these
41. tragic events will find a way to go ahead and
42. keep going, as she said.
43. Earlier this afternoon we heard another
44. victim impact statement. It was sent to the
45. Court just yesterday, and it was written by
46. Ms. Goulet. It, too, describes the impact that
47. these events had on her, both from a physical
48. point of view and from a psychological point of
49. view. Her physical injuries were significant,
50. and I do not doubt that there is a long road
51. ahead for her, even longer perhaps to heal from
52. the emotional scars that these events have left
53. on her.
54. She expresses her sadness about
55. Ms. Lafferty's death, and the impact that it has
56. had on her family. She expresses anger towards
57. Mr. Moore, and that anger is entirely
58. understandable under the circumstances.
59. The timing of the presentation of these
60. victim impact statements was unusual in the sense
61. that ordinarily I would have heard them all back
62. in December. These victim impact statements, the
63. ones that were read last week and the one that
64. was read this afternoon, certainly have assisted
65. me in understanding even more the impact that
66. this crime had. But they are not, in law, a
67. basis for changing my decision in this case.
68. The second factor that needs to be
69. considered at any sentencing, as I said already,
70. are the circumstances of the person who has
71. committed the offence. So I turn now to
72. Mr. Moore's personal circumstances. I have the
73. benefit of a detailed presentence report that
74. talks about that; about his circumstances, his
75. family's circumstances, and information about
76. specific factors that relate to his aboriginal
77. heritage. His mother has also written a letter,
78. which was filed as an exhibit, and I have read it
79. carefully.
80. The report was marked as an exhibit, and it
81. is part of the record. I am not going to refer
82. to all its details here. It is very difficult to
83. do justice to a detailed report like that simply
84. by trying to summarize it, but I will say a few
85. things about it. I have considered all of it,
86. whether I mention a specific aspect or not today.
87. Mr. Moore is now 29. He is Gwich'in. He
88. was born in Inuvik and spent the first years of
89. his life there. He has never met his biological
90. father. Until he was six, he lived with his
91. mother, his grandmother, and Jackie Storr, who
92. was his grandmother's partner at the time, as
93. well as an aunt and uncle. When he was six his
94. mother relocated to Yellowknife. For a time he
95. stayed behind in Inuvik with his grandmother and
96. Mr. Storr. Once his mother was able to get a
97. house and get settled in Yellowknife, she brought
98. him to Yellowknife. And that is where he has
99. lived since.
100. According to the author of the report,
101. Mr. Moore views himself as having had a happy
102. childhood. Mr. Moore told the author of the
103. presentence report that he had always felt loved,
104. supported, and provided for, that he had a
105. positive upbringing, free of violence, and that
106. although as a youth he saw some substance abuse
107. within the home, this stopped when he was older.
108. He described himself as having been spoiled as a
109. child, and that he often got to do as he pleased.
110. This is confirmed by his mother and others who
111. were interviewed by the author of the presentence
112. report.
113. There are indications that there was little
114. to no structure in the home. Mr. Moore was not
115. required to participate in chores, did not have a
116. curfew, and did whatever he wanted. The report
117. also says that Mr. Moore had difficulties
118. adjusting after his move to Yellowknife. He
119. associated with a group of peers who did not
120. follow the rules of their homes and did not
121. attend school. At that point his mother tried to
122. establish some rules, but in the words of the
123. presentence report, Mr. Moore was so accustomed
124. to not having any structure that nothing seemed
125. to work.
126. Mr. Moore eventually got into trouble with
127. the law. His criminal record dates back to when
128. he was a youth. It includes a variety of
129. convictions including several convictions for
130. drug offences, property offences, failures to
131. comply with court orders, and one conviction for
132. aggravated assault, for which he was sentenced to
133. 23 months imprisonment in 2012. There are no
134. drinking and driving offences on his record,
135. however.
136. It seems clear to me that Mr. Moore has
137. substance abuse issues. He started consuming
138. alcohol when he was 10 and first experimented
139. with drugs when he was 11. For a period of time
140. he was using cocaine on a regular basis. He has
141. on several occasions consumed alcohol to excess,
142. to the point of being held in the drunk tank.
143. Many of the offences that he has been convicted
144. for were committed when he was under the
145. influence of alcohol or drugs.
146. Mr. Moore sustained a head injury as a
147. result of being beaten up some 13 years ago when
148. he was around 16. He was seriously injured and
149. was in a coma for two weeks after this assault.
150. He says, and this is confirmed by his mother,
151. that to this day he has issues with his memory,
152. and he thinks that is a consequence of this head
153. injury that he suffered.
154. Mr. Moore has the continued support of his
155. mother, as he does the support of Mr. Storr.
156. Mr. Storr's relationship with Mr. Moore's
157. grandmother ended a long time ago, but Mr. Moore
158. and Mr. Storr have remained close. Mr. Moore is
159. very fortunate to have this support, more
160. fortunate than many offenders who come before the
161. Court.
162. The presentence report notes that attempts
163. were made over the years to set Mr. Moore up to
164. take counselling to address his issues. There
165. are indications in the report that some of these
166. efforts may have failed through no fault of
167. Mr. Moore's, but there are also indications that,
168. in other respects, there was a lack of motivation
169. and engagement on his part. For example, the
170. report says that in 2013, while in custody, he
171. completed the National Substance Abuse Program,
172. but he, "required a lot of assistance to do the
173. work" and "often lacked motivation."
174. Bearing in mind he was serving a sentence
175. for aggravated assault, a very serious offence,
176. this lack of motivation is troubling, to say the
177. least. More recently while on remand he has
178. attended AA meetings. This for sure is a step in
179. the right direction. On the other hand, the
180. report also says that the jail psychologist met
181. with him once, and when other attempts were made
182. to set up other meetings, Mr. Moore did not take
183. the psychologist up on that opportunity. The
184. psychologist is of the view that Mr. Moore could
185. benefit from more sessions, but, of course,
186. unless Mr. Moore himself is motivated to help
187. himself, nothing will come of this. Counselling
188. cannot be forced on a person who does not want to
189. receive it.
190. I recognize that the evidence shows that
191. Mr. Moore, as an aboriginal person, was affected
192. by the systemic and background factors that have
193. had an impact on the lives of aboriginal people
194. in this country. I also recognize that he was
195. exposed to alcohol abuse in the home for part of
196. when he was growing up. He also, no doubt, was
197. affected by not having ever known his father.
198. None of that can be overlooked in deciding what
199. his sentence should be. Mr. Moore's aboriginal
200. heritage and some of the struggles he has faced
201. must be taken into account and do mitigate his
202. blameworthiness to a point.
203. That being said, his background is far more
204. positive than many aboriginal offenders who come
205. before the Court. As has been noted in several
206. cases, the application of the principles set out
207. in the Supreme Court of Canada decisions of *R v*
208. *Gladue* and *R v Ipeelee* should not be interpreted
209. as operating an automatic reduction in the
210. sentence that should otherwise be imposed for an
211. offence, particularly for a serious offence. And
212. this is a very serious offence.
213. No one must lose sight of the fact that
214. Ms. Lafferty was also an aboriginal woman. She
215. and her family were also affected by the systemic
216. issues, disadvantages, and unfairness that *Gladue*
217. and *Ipeelee* talk about. And now on top of that,
218. they also have to deal with the added burden of
219. this terrible loss as a direct consequence of
220. Mr. Moore's actions. They have to live with this
221. pain every single day.
222. As I already noted, it appears Mr. Moore was
223. a very spoiled young man. He was not forced to
224. comply with rules, and he spent a lot of his life
225. as a teenager and young adult not following
226. rules. It also seems that Mr. Moore, at least up
227. until the time of these events was continuing to
228. be spoiled, at 29 years old, still living with
229. his mother, still dependent on her and others
230. financially. I realize he has had difficulties
231. in school, but a lot of people who do not have
232. extensive education still work to support
233. themselves. There is no reason Mr. Moore cannot
234. work to support himself, or at least help his
235. mother financially contribute to the expenses of
236. her home if he is going to continue living with
237. her.
238. Mr. Moore's behaviour on the day of these
239. events shows that his problems with the law, his
240. exposure to whatever programs were available to
241. him in custody, the added supervision he had when
242. he was on probation have not worked. They have
243. not made him more inclined to follow the rules of
244. society. He was driving without a licence. He
245. was driving faster, much, much faster, than the
246. speed limit, and he drank before driving and
247. while he was driving.
248. Mr. Moore is not a child anymore, and he has
249. to stop acting like one. Whatever struggles he

26 may have had, those cannot become permanent

27 excuses to do whatever he wants and act

1. recklessly. One can only hope that the
2. disastrous consequence of his actions on

3 May 21st, 2017, will have brought home to him

1. that he needs to make some significant changes.
2. Only time will tell. Although I accept that he
3. is sorry for the harm he has caused, and although
4. I do agree with his counsel that his attendance
5. in AA is a positive step, a step in the right
6. direction, I have to say I find it extremely
7. worrisome and disturbing that he has not shown
8. more interest in taking up the jail psychologist
9. on his offer for more sessions, considering the
10. seriousness of the offence he has committed and
11. its consequences.
12. Based on everything I have heard and read
13. about Mr. Moore, I fear that unless he engages in
14. a meaningful, long-term process to address his
15. substance abuse issues, and whatever else is at
16. the root of his behaviour, he will continue to
17. present a threat to public safety. I am not a
18. psychologist, and I do not know what processes,
19. counselling, or treatment may be needed to help
20. him make progress in this regard, but something
21. has to happen, otherwise he will be back before
22. the Court before long, possibly after having
23. caused great harm again.
24. I turn now to the legal framework. It has
    1. been recognized by the Courts for many years that
    2. drinking and driving causes a veritable carnage
    3. on the roads of this country. Every year
    4. innocent people are killed by drunk drivers. It
    5. has long been a serious problem, and it continues
    6. to be. There have been countless education
    7. campaigns, and significant effort has gone into
    8. trying to get the message through about the
    9. devastation that this totally preventable crime
    10. causes. Still, people drink and drive.
    11. People from all walks of life, all
    12. backgrounds, do this. Notably, people who are
    13. normally law-abiding, responsible citizens commit
    14. this crime sometimes, and many, many do not get
    15. caught. Many do get caught but do not have
    16. accidents and do not end up hurting anyone. But
    17. sometimes what happened in this case happens.
    18. Someone gets seriously hurt or killed.
    19. The Courts cannot single-handedly solve this
    20. problem, not any more than Courts can
    21. single-handedly solve any other social problem.
    22. Courts have a limited number of tools, mostly
    23. very blunt instruments, to respond to these
    24. crimes. Parliament decides what sentence are
    25. available and sometimes are mandatory for
    26. offences. Parliament has responded to the
    27. persistent problem of drinking and driving by
25. increasing the penalties for these offences, and
26. Courts have imposed sentence of increased
27. severity.
28. It's relatively rare that the Supreme Court
29. of Canada has occasion to deal with sentence
30. appeals, but it did a few years ago in *R v*
31. *Lacasse,* 2015 SCC 64, a case of impaired driving
32. causing death. That gave the Court a opportunity
33. to make some comments about sentencing in these
34. types of cases. Ultimately, the Supreme Court of
35. Canada restored a significant jail term that had
36. been imposed by the sentencing judge and had been
37. overturned by the Court of Appeal.
38. The case engaged a number of issues, but I
39. want to refer here primarily to the general
40. comments that the Court made, and this is the top
41. court in the country, about the sentencing
42. principles that are paramount in drunk driving
43. cases. First the Court said that deterrence and
44. denunciation are the sentencing objectives that
45. must be emphasized in these cases to convey
46. society's condemnation of drinking and driving.
47. The Court then said: (As read)
48. While it is normal for trial judges to consider sentences other than
49. imprisonment in appropriate cases, in the instant case, as in all cases in
50. which general or specific deterrence and denunciation must be emphasized,
51. the Courts have very few options other than imprisonment for meeting
52. these objectives, which are essential to the maintenance of a just,
53. peaceful, and law-abiding society.
54. The increase in the minimum and maximum sentences for impaired
55. driving offences shows that Parliament wanted such offences to be
56. punished more harshly. Despite countless awareness campaigns
57. conducted over the years, impaired driving offences still cause more
58. deaths than any other offences in Canada.

8

This sad situation, which

1. unfortunately continues to prevail today, was denounced by Justice Cory
2. more than 20 years ago.
3. And the Court here quotes what Justice Cory had
4. said, which was: (As read)
5. Every year, drunk driving leaves a terrible trail of death, injury,
6. heartbreak and destruction. From the point of view of numbers alone, it
7. has a far greater impact on Canadian society than any other crime. In
8. terms of the deaths and serious injuries resulting in
9. hospitalization, drunk driving is clearly the crime which causes the
10. most significant social loss to the country.

19

1. The Supreme Court noted as well, as I did a
2. moment ago, that this type of offence is often
3. committed by law-abiding citizens, and that those
4. people may be more sensitive to harsh sentences
5. than other types of offenders. Then after
6. speaking of ranges of sentences for these types
7. of offences across the country, the Supreme Court
8. noted at paragraph 65 of the decision that in
9. most jurisdictions, for impaired driving causing
10. death:
11. Sentences vary from 18 months to two years in the least serious
12. situations and from seven to eight years in the most serious.

5

1. These are the general legal principles that
2. emerge from that Supreme Court of Canada case.
3. Aside from that case, counsel filed a number of
4. cases at the sentencing hearing. I am not going
5. to refer to each of them in detail, but I do want
6. to make some comments about those cases. No two
7. cases are ever alike, and because of this,
8. looking at the outcome in other cases to identify
9. what the sentence should be in this case is
10. always difficult. Looking to other cases usually
11. is more helpful to identify governing principles
12. than it is in assisting in the determination of
13. what the bottom line decision should be. At the
14. same time, one of the principles of sentencing is
15. parity; the idea that similar offences committed
16. by similar offenders should result in similar
17. sentence. And because of that, it is quite
18. proper, as counsel have done, to refer to other
19. cases and their outcomes and note similarities
20. and differences between those cases and the case
21. at bar.
22. The cases provided by counsel are useful,
    1. but I disagree with some aspects of counsels'
    2. comparative analysis between those cases and this
    3. one. I am not convinced that those cases support
    4. a two-and-a-half year jail term that is being put
    5. forward for this offence committed in these
    6. circumstances. My view is that the cases filed,
    7. in particular, the ones that have most persuasive
    8. weight, support the proposition that a much more
    9. severe sentence ought to be imposed in the
    10. circumstances of this case. I find that this is
    11. so, in particular, based on the cases from the
    12. Alberta Court of Appeal, those cases being
    13. particularly persuasive in this jurisdiction
    14. given the composition of our own Court of Appeal.
    15. For example, in *R v Gibson*, 2015 ABCA 41,
    16. the sentencing judge imposed a sentence of
    17. two years and eight months, which was challenged
    18. on appeal. At the sentencing hearing, there had
    19. been a joint submission for a sentence of
    20. two years. Not only did the Court of Appeal not
    21. reduce the sentence imposed at trial, but it said
    22. that a sentence of four to five years could have
    23. easily been justified. The Court of Appeal also
    24. referred to cases from other jurisdictions where
    25. sentences of four-and-a-half years were imposed
    26. in less egregious circumstances than the ones in
    27. that case.
        1. I certainly agree with counsel that the
        2. circumstances in the *Gibson* case were more
        3. aggravating than the circumstances in this case.
        4. In particular, the accused had passed a vehicle
        5. and then stayed in the wrong lane long enough to
        6. drive two other vehicles off the road before
        7. crashing into a third, killing its occupant. And
        8. the accused blood alcohol level in *Gibson* was
        9. higher than was the case here.
        10. Still, that was a case where the accused was
        11. only 22, pleaded guilty, and had no criminal
        12. record. So there were mitigating factors. So I
        13. question whether the additional aggravating
        14. features in the *Gibson* case justify a gap of some
        15. one-and-a-half to two-and-a-half years between
        16. what the Court of Appeal said in that case could
        17. easily be justified and what is been proposed
        18. here.
        19. The case of *R v York,* 2015 ABCA 129, is
        20. another Alberta Court of Appeal decision. The
        21. accused in that case crossed the centre line and
        22. struck a motorcyclist who was going in the
        23. opposite direction, killing him. The accused's
        24. blood alcohol contents in that case were very,
        25. very high at 240 milligrams of alcohol in
        26. 100 milliliters of blood. In addition, the
        27. accused had two prior convictions for drinking
23. and driving and two prior convictions for driving
24. while disqualified. And a further aggravating
25. factor was that he walked away from the scene
26. when the victim, who eventually died, was in
27. distress. So there were aggravating factors in
28. that case that are not present in this one.
29. There was an early guilty plea, and the Court
30. found there was genuine remorse, and the
31. principles that I talked about emerging from the
32. cases of *Gladue* and *Ipeelee* were not engaged in
33. that case.
34. The sentence imposed at trial in *York* was
35. six years with the driving prohibition of
36. 10 years. Mr. York appealed and the Court of
37. Appeal upheld the sentence. One of the things
38. the Court of Appeal noted, which can be said of
39. Mr. Moore as well, is that the accused would have
40. been aware of his alcohol problem for several
41. years before these events. In its decision the
42. majority quoted from another case, this one from
43. the Manitoba Court of Appeal, *R v Ruizfuentes*,
44. 2010 MBCA 90, which identified the proper range
45. for these offences as being one to four years for
46. offenders who have no prior convictions for
47. drinking and driving or serious personal injury
48. offence. And that for those who do have a prior
49. record for driving and driving or a serious
50. personal injury offence, the range is five to
51. six years. This is in line with my view that
52. Mr. Moore's criminal record, although unrelated
53. to drinking and driving, is aggravating because
54. it does include a conviction for aggravated
55. assault, which should be taken into account in
56. deciding what a fit sentence is.
57. There was a dissenting judge in *York*, but it
58. is noteworthy that although that judge would have
59. allowed the appeal, he would have reduced the
60. sentence but still imposed a sentence of
61. five years. So, again, as with the *Gibson* case,
62. *York* has some aggravating factors that are not
63. present in this case, most significantly, the
64. higher readings, the related criminal record, and
65. the fact that the offender walked away from the
66. accident scene, but that case did not involve a
67. prolonged dangerous driving pattern as is the
68. case here. And, again, comparing the features of
69. that case with this one, I find the gap between
70. the sentence upheld by the Court of Appeal in
71. that case, even the one that would have been
72. imposed by the dissenting judge, and the sentence
73. proposed here, difficult to reconcile.
74. Counsel appear to have placed great reliance
75. on *R v Schwarz*, 2017 ABQB 224, a decision from
76. the Alberta Court of Queen's Bench. It's a
77. recent decision rendered after the Supreme Court
78. of Canada decision in *Lacasse.* The sentencing
79. judge in that case imposed a sentence of
80. two-and-a-half years in jail in the case of
81. impaired driving causing death.
82. That case, as all these cases are, was
83. tragic. The accused had been drinking, he had
84. been having a heated conversation on the phone,
85. and had thrown the phone on the floor of his
86. vehicle in frustration. He then bent over to
87. pick up the phone while driving, went through an
88. intersection at a red light, and crashed into
89. another vehicle, killing a young child who was in
90. that other vehicle.
91. In submissions I understood counsel to say
92. that those circumstances are more aggravating
93. than what Mr. Moore did, and with respect, I
94. disagree with that assessment. Yes, the
95. behaviour in *Schwarz* was very dangerous. Yes,
96. the evidence was that his blood alcohol level was
97. higher than Mr. Moore's. Still, the crash in
98. that case was the result of decisions made over a
99. short period of time and at the worst possible
100. moment.
101. Unlike here, there was no evidence of a
102. prolonged pattern of fast and risky driving,
103. despite passengers being scared and asking the
104. driver to slow down, and despite an accident
105. having nearly happened just before the fatal
106. crash. Here we have Mr. Moore picking up people
107. just before 9 a.m. and crashing the car somewhere
108. around 9:15 and 9:30, and a lot of driving in
109. between, even taking into account the stop at the
110. Yellowknife River. So that is much, much more
111. than a brief lapse in attention or a very
112. short-lived loss of control of the vehicle. It
113. suggests reckless and risky behaviour for a long
114. period of time, all things relative.
115. When comparing the circumstances of this
116. case to those in *Schwarz*, another significant
117. factor is that in that case, the Crown put before
118. the Court evidence showing that the credibility
119. of one of the investigators, who have been a
120. critical witness for the Crown, was very much an
121. issue. That officer had falsified notes in an
122. unrelated investigation and had committed various
123. policy violations. His credibility would have
124. been challenged had the matter gone to trial.
125. That is a very unusual and very problematic
126. situation that the Crown in that case would have
127. faced if it had gone to trial. I cannot think of
128. a case that I ever heard in my experience as a
129. judge, or as a lawyer, where that particular fact
130. was put before a sentencing Court; that is, that
131. a key police witness presented with that serious
132. a credibility problem right from the start.
133. The Crown in *Schwarz* obviously recognized
134. this, because the Reasons For Sentence state that
135. the Crown said that a sentence of four years
136. would have been fit but for that weakness in the
137. Crown's case. That is mentioned at paragraph 33
138. of the decision.
139. Here, I accept that there were triable
140. issues. There usually are triable issues in
141. these types of cases. A number of technical
142. defences can be raised in impaired driving cases.
143. The admissibility of Breathalyzer results can be
144. challenged through a number of means. But still
145. there were passengers in the vehicle who could
146. have provided direct evidence about Mr. Moore's
147. drinking and his erratic driving pattern.
148. I am not dismissing the fact that Mr. Moore
149. did give up his right to put the Crown to the
150. proof of its case. I simply note that the
151. difficulties that the Crown was facing in the
152. *Schwarz* case were far more significant and far
153. from routine. It seems to me that the issues
154. that the Crown might have faced in this case, had
155. it gone to trial, were, as Chief Justice Fraser
156. put it in *Gibson*, "problems of a general nature
157. that would be often engaged in these types of
158. cases."
159. For that reason, I find the *Schwarz* decision
160. entirely distinguishable. And as well, although
161. it is a decision from a very experienced judge,
162. it remains a trial decision and carries less
163. persuasive weight than do decisions from the
164. Court of Appeal or from the Supreme Court of
165. Canada in *Lacasse*.
166. Other cases referred to, such as *R v*
167. *Stimson*, 2011 ABCA 59, and *R v Cameron*, 2016 SKQB
168. 83, also did not involve an extended pattern of
169. risky driving. The Court of Appeal made it clear
170. in *Gibson* that the *Stimson* decision did not stand
171. for the proposition that the range for impaired
172. driving causing death cases was two to four years
173. in Alberta. It commented that the circumstances
174. in that case involved a momentary loss of control
175. by the accused on an unfamiliar road after she
176. had been asked to take the wheel from the driver
177. who had become tired. Those circumstances bear
178. no resemblance to what Mr. Moore did.
179. Finally, I want to say a few words about *R v*
180. *Kayotuk*, 2016 NWTSC 59, because it is a recent
181. decision of this Court. The sentence in that
182. case was three-and-a-half years. The accused had
183. past convictions for drinking and driving, and
184. his blood alcohol level was much higher than
185. Mr. Moore's was. But as was the case in *Schwarz*,
186. there is no indication that his pattern of
187. erratic and dangerous driving was as prolonged as
188. was the case here. And very significantly,
189. *Kayotuk* was a case where the judge was presented
190. with a joint submission as to range. The
191. sentencing judge followed it, but said at
192. paragraph 15 of the decision, that he was
193. following it "somewhat reluctantly."
194. One of the consequences of the current state
195. of the law about joint submissions, which I will
196. get to in a moment, is that the precedential
197. value of a case where a judge has followed a
198. joint submission is very limited, unless of
199. course the judge says that he or she agrees that
200. the joint submission is a fit sentence. And this
201. often happens. We have had numerous cases before
202. this Court in the recent past, including a number
203. of sentencings on major drug cases, where joint
204. submissions were presented to the Court, and the
205. Court accepted them without question.
206. But when a joint submission is followed
207. reluctantly, it does not represent an endorsement
208. by the Court of the fitness of what is being
209. proposed. For those reasons, I do not find that
210. the outcome in the *Kayotuk* case is of any
211. assistance in supporting the joint submission
212. that is being presented here.
213. I generally agree with counsel in their
214. identification of the aggravating and mitigating
215. factors that are present in this case, but I do
216. not share their view as to the weight that ought
217. to be attached to those factors. Where I agree
218. completely with counsel is that the most
219. mitigating factor is by far the guilty plea. It
220. has provided certainty of outcome. It has
221. avoided the need for witnesses to relive these
222. terrible events and have to testify about what
223. happened. It has saved the time and resources
224. needed to run a preliminary hearing and a trial.
225. And avoiding that is important because both
226. levels of court are under pressure, and the
227. ability to use resources for other cases is an
228. important factor. And, finally, the guilty plea
229. is an indication of remorse. And I want to make
230. clear that I accept Mr. Moore is sorry for what
231. happened.
232. Mr. Moore's personal circumstances as an
233. aboriginal offender must also be taken into
234. account, and I accept that they reduce his
235. blameworthiness to a point, but only to a point.
236. As I have said, Mr. Moore's circumstances compare
237. favourably to those of many aboriginal offenders
238. who come before the Court.
     1. As far as aggravating factors, the most
     2. significant one is something I have already
     3. alluded to, the persistent pattern of reckless
     4. driving, despite the protests of the passengers,
     5. and despite the near collision with the oncoming
     6. vehicle before the fatal crash. Defence counsel
     7. argued during submissions that what happened
     8. after the passengers asked Mr. Moore to slow down
     9. was that he stopped at the Yellowknife River.
     10. With the greatest of respect, that is not what
     11. the agreed facts say. There is no link in the
     12. agreed facts between the passengers asking
     13. Mr. Moore to slow down and the vehicle stopping
     14. at the Yellowknife River. And even if there was,
     15. the fact is that after that stop, when they got
     16. going again after consuming more liquor,
     17. Mr. Moore again drove way too fast, and he
     18. continued to drive too fast, even after having
     19. gone over the centre line and nearly having a
     20. collision with another vehicle. I find that
     21. highly aggravating, because it shows persistent
     22. recklessness and disregard for the safety of the
     23. others.
     24. It's also aggravating in my view that there
     25. were several passengers in the vehicle whose
     26. safety he endangered. These were all potential
     27. victims. It is not because of anything Mr. Moore
239. did that Ms. Lafferty was the only one who died.
240. The reality is that Mr. Moore could have killed
241. them all.
242. The record is aggravating to a far lesser
243. degree than if it was a drinking and driving
244. record, but it is not neutral, because it shows
245. that Mr. Moore, despite being exposed to various
246. sentencing options, supervision, despite the
247. significant sentence he received for the
248. aggravating assault, has not addressed his
249. underlying issues. He cannot be treated as
250. though he is a youthful first offender. Far from
251. it. In that respect, he is different from the
252. offenders in some of the cases that I was
253. referred to.
254. To summarize, my main disagreement with the
255. positions advanced by counsel about how all of
256. these factors interplay boils down to this:
257. Number 1, I view Mr. Moore's driving pattern as
258. an aggravating factor of enormous significance
259. given the persistence of his conduct and despite
260. things that should have shaken some sense into
261. it; Number 2, I do not attach as much weight as
262. counsel seem to have to the fact that his blood
263. alcohol readings were at the low end of what is
264. illegal.
265. Higher readings are an aggravating factor.
     1. Low readings are not mitigating. Our Court of
     2. Appeal has stressed the importance of not
     3. confusing the absence of an aggravating factor
     4. with the presence of a mitigating factor in *R v*
     5. *A.J.P.J.*, 2011 NWTCA 2, at paragraph 14.
     6. Drinking and driving is dangerous because
     7. alcohol impairs motor skills but also because it
     8. impairs judgment. When they reach a certain
     9. level, high blood alcohol readings become
     10. statutorily aggravating, but as this case
     11. demonstrates, impairment caused by alcohol
     12. concentration in the blood that falls short of
     13. that threshold can still lead to disastrous
     14. consequences. A case involving a lower level of
     15. impairment does not necessarily put a case at the
     16. low end of the scale in seriousness, and it does
     17. not necessarily justify a less severe sentence if
     18. other aggravating factors are present.
     19. Number 3, while I agree that aspects of
     20. Mr. Moore's circumstances as an aboriginal
     21. offender reduce his blameworthiness to a point, I
     22. would not have attached as much weight to that as
     23. counsel seem to have.
     24. I have already talked about the ranges that
     25. the Supreme Court of Canada referred is to in
     26. *Lacasse*. I would have placed this case neither
     27. in the least serious category nor in the most
266. serious category. I would have characterized it
267. as falling in the middle of the range, and
268. considering this, I would have thought that a
269. sentence in the range of three-and-a-half to
270. four years would have been fit under the
271. circumstances. To be sure, that would not be a
272. lenient sentence by any stretch of the mind. But
273. in my view, such a sentence would have adequately
274. reflected the seriousness of the offence and been
275. in line with the stern comments of the Supreme
276. Court of Canada in *Lacasse*.
277. But I am not free in this case to simply
278. impose a sentence that I think is fit, and this
279. takes me to the law dealing with joint
280. submissions.
281. When a joint submission is presented at a
282. sentencing hearing, it alters, in a profound way,
283. the legal framework that governs the task of the
284. sentencing judge. It has long been the law that
285. joint submissions are to be given serious
286. consideration by sentencing judges, but since the
287. Supreme Court of Canada decision in *R v*
288. *Anthony-Cook*, 2016 SCR 204, the threshold that
289. must be met before a judge can decline to follow
290. a joint submission has been raised considerably.
291. Lawyers and judges know this. I want to
292. make sure that others be clear on this as well.
293. By "others" I mean Ms. Lafferty's family,
294. Ms. Goulet's family, and Ms. Goulet herself,
295. other passengers who were injured in this crash
296. and the public in general.
297. Sentencing is a highly individualized
298. process. It is anything but an exact science.
299. For any crime committed by any offender, there is
300. never only one appropriate sentence. Typically
301. there's a range of sentences that can be said to
302. achieve the various sentencing objectives and
303. conform with the principles of sentencing,
304. primarily the fundamental principle that a
305. sentence should always be proportionate to the
306. degree of gravity of the offence and the degree
307. of blameworthiness of the offender.
308. There is much to consider, and ordinarily
309. the sentencing judge considers all of those
310. principles and the positions put forward by Crown
311. and defence, and ultimately makes the call as to
312. what a fit sentence is in that particular case.
313. And in law, great deference is afforded to that
314. determination. Even the Court of Appeal is not
315. permitted to vary a sentence simply because the
316. Court of Appeal judges would have imposed a
317. different one.
318. But when a joint submission is presented,
319. that legal framework is significantly altered.
320. The framework that the Supreme Court has
321. prescribed is that a sentencing judge must follow
322. a joint submission unless to do so "would bring
323. the administration of justice into disrepute or
324. is otherwise not in the public interest." That
325. is at paragraph 29 of *Anthony-Cook*.
326. This is a higher threshold than a simple
327. fitness test, and it is a higher threshold than a
328. "demonstrable unfitness test." Both these tests
329. were considered by the Court and rejected in
330. *Anthony-Cook* at paragraphs 27, 28, and 46 to 48.
331. As a result, a sentencing judge's discretion not
332. to follow a joint submission is very, very
333. limited.
334. To illustrate in explaining just how high a
335. threshold the test entails, the Supreme Court
336. adopted language such as: (As read)
337. A joint submission will be...contrary to the public interest if...it is so
338. "markedly out of the line with the expectations of reasonable persons
339. aware of the circumstances of the case that this would view it as a
340. break down in the proper functioning of the criminal justice system."

22

1. Or in deciding whether to follow a joint
2. submission: (As read)
3. Trial judges should "avoid rendering a decision that causes an informed
4. and reasonable public to lose confidence in the institution of the
5. Courts."
6. At paragraph 34 of the decision the Court
7. said: (As read)
8. Rejection denotes a submission so unhinged from the circumstances of
9. the offence and the offender, that its acceptance would lead reasonable
10. and informed persons, aware of all the relevant circumstances, including
11. the importance of promoting certainty in resolution discussions, to believe
12. that the proper functioning of the justice system has broken down.

8

9 So in summary, the question today is not

1. what sentence I would have imposed absent the
2. joint submission. The question I must answer is
3. whether sentencing Mr. Moore to two-and-a-half
4. years' imprisonment for this offence would bring
5. the administration of justice into disrepute or
6. otherwise not be in the public interest, whether
7. it would be so unhinged from the circumstances of
8. the case that it would make that reasonable and
9. informed persons, aware of all the relevant
10. circumstances and aware of the importance of
11. promoting certainty in resolution discussions,
12. believe that the proper functioning of the
13. justice system has broken down.
14. After having given the matter careful and
15. very anxious consideration, I cannot say that
16. this high threshold is met as far as the duration
17. of the jail term. As I've said, were my
18. discretion not limited by this framework, I would
19. have imposed a higher sentence than what is being
20. proposed. I would have done so because I think
21. that for this type of offence, stern sentences
22. are needed to send a consistent, firm message and
23. reflect the devastating consequence and tragedy
24. that result from drinking and driving across this
25. country.
26. The sentence being proposed places far more
27. emphasis than I would on the mitigating factors
28. in this case, and far less emphasis than I would
29. have on the aggravating features of this case.
30. But in the final analysis, I cannot say that what
31. is being proposed is so lenient that I would be
32. justified in not following it. Because in law,
33. my disagreement is not a sufficient reason to
34. reject a joint submission.
35. But as I am sure will be clear from
36. everything I have said, I accept this joint
37. submission with extreme reluctance. The sentence
38. imposed in this case should not be treated as
39. having any precedential value whatsoever, and it
40. should not be regarded as a reflection of what
41. this Court sees as a fit sentence in
42. circumstances when drinking and driving results
43. in serious injury or death following actions such
44. as the one described in this case. In following
45. this joint submission, I am simply following the
46. binding direction of the Supreme Court of Canada
47. and applying the extremely strict test that I am
48. duty-bound to apply when considering a joint
49. submission.
50. However, with respect to the proposed length
51. of the driving prohibition, I cannot impose a
52. driving prohibition of only five years. I do
53. think that doing so would be contrary to the
54. public interest.
55. I do think that reasonable and informed
56. members of the public, even knowing of the
57. importance of resolution discussions and
58. promoting certainty in outcome, would lose faith
59. in the justice system if Mr. Moore was not
60. prohibited from driving for a much longer period
61. of time than what is being proposed. I base this
62. assessment on the length of driving prohibitions
63. imposed in some of the cases that were filed, on
64. the extent of risky driving that he engaged in,
65. and on the fact that he did not even have a
66. licence at the time of these events.
67. The information about the lack of license,
68. and, in fact, a lot of information about
69. Mr. Moore's circumstances, comes from the
70. presentence report. I do not know if the Crown
71. had the benefit of that information when it
72. negotiated the joint submission, both from the
73. point of view of the length of the jail term and
74. from the point of view of the length of the
75. driving prohibition. But with the evidence
76. available to me at this stage, I think that the
77. length of driving prohibition that is being
78. proposed is wholly inadequate and would cause
79. reasonable, informed members of the public to
80. lose confidence in the Courts, especially
81. considering the extreme leniency of the jail term
82. being proposed.
83. I'm going to deal first with the ancillary
84. orders that were included in the joint
85. submission. For the reasons that I have just
86. given, I am going to depart from the joint
87. submission as far as the driving prohibition is
88. concerned, and it will be for a period of
89. ten years in addition to the jail term that will
90. be imposed today. Driving is a licenced
91. activity. It's a privilege, not a right. I find
92. the circumstance of Mr. Moore's driving egregious
93. and that to prohibit him from driving for only
94. five years would bring the administration of
95. justice into disrepute.
96. The second issue that arose during
97. submissions was the possibility of probation.
98. Given the credit that Mr. Moore will receive for
99. his remand time, the further jail term that will
100. be imposed today will be in a range that would
101. allow probation to be made part of the sentence.
102. That may well have been helpful to him. It would
103. have permitted including a no-contact condition
104. with the members of Ms. Lafferty's family, and I
105. was told they wanted that. But probation was not
106. part of the joint submission. It was raised by
107. the Crown at the sentencing hearing, and it is
108. not being agreed to by defence.
109. The time for the Crown to think about this
110. and ask for it, or discuss this possibility,
111. would have been while the terms of the joint
112. submissions were being discussed with defence.
113. The Supreme Court has made it clear that joint
114. submissions have to be approached on an as-is
115. basis and specifically guarded against the idea,
116. for example, of adding a probation order when it
117. is not part of what is being proposed. So,
118. again, following those directions from the
119. Supreme Court, I do not think it is open to me to
120. include a probationary period as part of his
121. sentence.
122. The next ancillary order that is being
123. sought is the DNA order. This is a secondary
124. designated offence, so the DNA order will issue.
125. The next ancillary order that is being
126. sought is a firearms prohibition order. Counsel
127. jointly suggest that it is mandatory pursuant to
128. Section 109 of the *Criminal Code*. That section
129. says that a firearms prohibition order is
130. mandatory for an offence when the offender is
131. liable to ten years' imprisonment or more, which
132. is the case here, for an offence in the
133. commission of which violence against a person was
134. used, threatened, or attempted.
135. At the time of the hearing I asked counsel
136. if they had any authority to support the
137. proposition that this offence fits within that
138. definition. They were unable to refer me to any.
139. Reviewing the cases that were filed at the
140. hearing and other cases, I do see that in some,
141. the Section 109 order was made. It was, for
142. example, made in *Kayotuk*. In other cases, there
143. is no mention of a Section 109 order being made.
144. In the cases where the order was made, there was
145. no analysis on this topic. It does not appear
146. that this was ever raised before.
147. I have looked into this issue, and I have
148. been unable to find any cases that have examined
149. this issue in the context of drinking and driving
150. where bodily harm or death it caused. There are
151. a few cases that have examined the issue in the
152. context of sexual offences. There are cases
153. going both ways, but the bulk of the authorities
154. seem to have concluded that sexual assault is an
155. inherently violent offence, and I agree with that
156. analysis. But it is not helpful in resolving the
157. issue in the context of drinking and driving.
158. I note that the *Youth Criminal Justice Act*
159. defines the term "violent offence," in a very
160. broad way. It includes, among other things, an
161. offence that has as one of its elements causing
162. bodily harm. It also includes offences where the
163. safety of others is endangered. So in that
164. context, impaired causing death would clearly be
165. included. But the *Criminal Code* does not include
166. any such definition.
167. The *Code* does define "serious personal
168. injury offence," and it defines it as including
169. offences involving the use or attempted use of
170. violence or conduct endangering or likely to
171. endanger the life and safety of others. The fact
172. that in that context "conduct that endangers" is
173. included specifically, in addition to the word
174. "violence," seems to confirm that the concept of
175. violence, on its own, does not include conduct
176. that merely endangers safety.
177. In the absence of a definition in the
178. *Criminal Code*, whether in general or specifically
179. applicable to Section 109, I am left with the
180. ordinary meaning of the word. The Oxford
181. Dictionary defines "violence" as:
182. Behaviour involving physical force intended to hurt, damage, or kill
183. someone or something.
184. The unlawful exercise of physical force or intimidation by the
185. exhibition of such force.

6

1. Violence implies an element of
2. deliberateness of intention. One of the features
3. of drinking and driving offences that results in
4. injury or death is, in a large majority of cases,
5. that the driver never intended for anyone to get
6. hurt or to be killed. It is a crime of
7. recklessness, of gross negligence, and we can
8. attach many adjectives to it, but I do not think
9. that it fits within the concept of use of
10. violence referred to in Section 109 of the *Code*.
11. As I have explained at length, the joint
12. submission curtails my discretion considerably,
13. but not to the point of going along with a
14. position that I think is wrong in law. I decline
15. to make a firearms prohibition order because, in
16. my view, Section 109 is not engaged in this case.
17. The victim of crime surcharge is mandatory,
18. so there will be one in the amount of $200 for
19. each of the two counts. The default time and the
20. time to pay are statutorily provided for. I will
21. also credit Mr. Moore for the time that he has
22. spent on remand on a ratio of roughly
23. one-and-a-half days of credit for each he has
24. spent on remand. Again, there is clear direction
25. from the Supreme Court of Canada that that should
26. be the norm.
27. Stand up, please, Mr. Moore. Mr. Moore, I
28. am going to follow the joint submission on
29. Count 1. But for the time that you spent on
30. remand, the sentence would have been
31. two-and-a-half years' imprisonment. For the
32. 242 days you have spent on remand, I give you
33. credit for 11-and-a-half months, so the time
34. remaining to be served will be 18-and-a-half
35. months.
36. On Count 2, the sentence will be two years'
37. imprisonment. The one-and-a-half month credit
38. for the remand time applies to that as well, so
39. the time remaining to be served on that count
40. 12-and-a-half months, and that will be
41. concurrent, which means served at the same time.
42. You may sit down.
43. There will also be, as I said, a driving
44. prohibition of ten years plus 18-and-a-half
45. months in accordance with Section 259(2)(a.1).
46. Is there anything that I have overlooked from the
47. Crown's point of view?
48. MR. GODFREY: I don't believe so, Your
    1. Honour. Thank you.
    2. THE COURT: Thank you. Anything from the
    3. defence that I have overlooked?
    4. MR. CLEMENTS: No.
    5. THE COURT: Okay. Thank you. Mr. Moore,
    6. before we close court, there are a few things I
    7. want to tell you. I hope you understand you are
    8. getting a huge break, huge, huge break today. I
    9. believe you when you say you are sorry, but being
    10. sorry is not good enough. It has to come with
    11. action. You are 29 years old, and it is time you
    12. grew up. You need to seriously work on your
    13. issues. Keep going to AA while you are in jail,
    14. and keep going to AA when you get out of jail.
    15. While you are in jail, spend some time with the
    16. psychologist and make the most use possible of
    17. the resources that are there.
    18. You are very lucky. You have the support of
    19. your mother, of Mr. Storr, and of others. You
    20. cannot bring Karen Lafferty back. You cannot
    21. undo what you have done. But the least you can
    22. do is to work on yourself in a very serious
    23. long-term way.
    24. You can talk to other people about what you
    25. have done. You can talk to other people about
    26. what happened. How it has made you feel. How it
    27. has hurt others. The kind of harm that can never
49. be undone. That is something that you actually
50. can do. That is one way you might be able to
51. start making amends. Maybe you can prevent other
52. people from doing what you did. No one ever gets
53. behind the wheel of a car thinking this is going
54. to happen. No one. So if you are able to, you
55. might want to try to be part of the solution and
56. talk about this, even if it is very hard, and
57. even if it does not put you in a very nice light.
58. But you cannot just be sorry. Sorry is not
59. good enough this time. So I hope you think
60. carefully about that, and I hope although you are
61. getting a lenient sentence today, I hope you do
62. not look at it as having gotten away with
63. something. I hope you look at it as a chance to
64. make real changes, because I hope to never have
65. to see you in court again as an accused person.
66. I hope no Court ever sees you in court again as
67. an accused person. But that is not up to me. It
68. is completely up to you.
69. So I hope you were listening. I hope you
70. were listening when those victim impact
71. statements were read last week and today, because
72. that is the reality of what is happening because
73. of what you have done. So I hope that you do
74. something about your issues.
75. Close court.

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# 3 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 31st day of January, 2018.

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

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1. Karilee Mankow
2. Court Reporter

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