

AMENDED ORIGINAL

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

TARIQ ST CROIX

ORIGINAL amended as of March 26, 2021 to:

Cover page: Appearances: **J. Halliburn** Co-Counsel for the Crown

**Transcript of the Reasons for Sentence of the Honourable Justice
L.A. Charbonneau, sitting in Yellowknife, in the Northwest
Territories, on the 25th day of February, 2021.**

APPEARANCES:

B. MacPherson:

Counsel for the Crown

& J. Halliburn

K. Oja:

Counsel for the Defence

Charge under s. 348(1)(b) of the *Criminal Code*

1 **REASONS FOR SENTENCE**

2 THE COURT: Mr. St Croix's sentencing hearing
3 proceeded a few weeks ago on February 11th, and on
4 that date counsel presented me with a joint submission
5 as to what the sentence should be. After much
6 consideration, I have concluded that this is not a
7 situation where I can in law decline to follow that joint
8 submission, and accordingly, I will impose my sentence
9 today in accordance with that joint submission.

10 But because this is a very serious matter,
11 I do want to give as thorough reasons as I can for my
12 decision. In doing that I am going to repeat some
13 things that have been said in other cases, but I think
14 those things perhaps need to be underscored again
15 and again.

16 The events that led to this charge
17 happened on December 31st, 2018. At the time, Mr. St
18 Croix and Ms. St Croix were in an on-again off-again
19 relationship. They had one child, who was 18 months
20 old. She was pregnant with another child. She had two
21 other children, K. and C., from a previous relationship.
22 K. was 11 and C. was seven. They both lived with her.

23 Mr. St Croix was at the time on probation
24 as a result of convictions entered in March 2018 for
25 assault, uttering threats, and a breach of recognizance.
26 Ms. St Croix was the victim in those offences too. He
27 had received a jail term which was to be followed by a

1 probation period, and that probation period included
2 conditions restricting his ability to have contact with her.

3 It was not an outright no-contact order.
4 Rather, it was a set of conditions that were designed to
5 ensure that contact only took place if she permitted it
6 and to enable her to withdraw that consent if she
7 wanted to.

8 A few months after that sentencing
9 hearing, Mr. St Croix entered into an undertaking to a
10 justice of the peace in relation to other charges that are
11 not before me today. That undertaking was entered on
12 June 7th, 2018, and it included, among other
13 conditions, a condition that he not attend the residence
14 at 641 Williams Avenue, which is the residence where
15 the assault I have to sentence him for today happened.
16 On December 31st, 2018, both of these orders were in
17 force and he breached them both.

18 Shortly after 8:00 p.m. on that New
19 Year's Eve night, Ms. St Croix and two of her children,
20 L. and K., were at the residence on the second floor.
21 They saw Mr. St Croix outside the residence. She
22 opened the door to the balcony and told him to go
23 away. He did not go away.

24 He ran up to the door of the residence,
25 broke a window beside the door and went inside the
26 house through that window. He armed himself with a
27 steak knife. He went upstairs and he attacked her with

1 the knife in the bedroom. He stabbed her several times
2 in the face, shoulder, chest and stomach, telling her
3 repeatedly "You don't love me." She was holding the
4 18-month-old child in her arms during this.

5 She handed the child to K. The child was
6 crying and K. was screaming. At one point, the knife
7 broke and the blade remained lodged in her stomach.
8 She ran outside to the balcony, but he followed her and
9 dragged her back inside. He kicked her in the head.
10 He then finally stopped his attack and left the
11 residence.

12 The police attended shortly thereafter and
13 brought her to the hospital where her wounds were
14 sutured. Mr. St Croix was located and arrested several
15 hours later. He was taken into custody and has been in
16 custody ever since.

17 The Crown has filed a book of
18 photographs showing the broken window at the
19 residence, an enormous amount of blood on the floor
20 where the attack took place, and several photographs
21 of Ms. St Croix's multiple stab wounds. They are very
22 disturbing photographs to look at. Hearing in words or
23 reading in words the description of what happened is
24 awful enough, but looking at these photographs brings
25 home the savageness and brutality of this attack.

26 Mr. St Croix was initially charged with
27 attempted murder, break-and-enter and attempted

1 murder, and two counts of breach of probation, as well
2 as one count of breach of undertaking. He had a
3 number of appearances in territorial court. He changed
4 counsel several times, and his preliminary hearing was
5 eventually scheduled to proceed in October 2019.

6 On the day it was scheduled to proceed it
7 was waived and he was ordered to stand trial in this
8 court. Mr. St Croix's choice of mode of trial had been
9 judge and jury, but in February 2020 he gave notice
10 that he wanted to have his trial before a judge sitting
11 alone. That trial was scheduled to proceed in
12 December 2020, with a hearing set in August 2020 to
13 determine whether a videotaped statement that K. gave
14 to the police could be used at trial pursuant to section
15 715.1 of the *Criminal Code*.

16 In November 2020, counsel advised the
17 registry of the court that this matter would resolve
18 without a trial. Mr. St Croix appeared before the court
19 on November 16 and pleaded guilty to the lesser and
20 included offence of a break-and-enter and commit
21 aggravated assault.

22 In any sentencing, the circumstances of
23 the person being sentenced must be taken into
24 account. To assist me in this regard I have the benefit
25 of the submissions of Mr. St Croix's counsel, but also a
26 detailed pre-sentence report.

27 Mr. St Croix grew up in the Caribbean, in

1 Saint Lucia. The pre-sentence report sets out the very
2 difficult circumstances of that upbringing. He grew up
3 in poverty and in an environment where violence was
4 prevalent, both in his community and in his home. He
5 was bullied outside the home and severely mistreated
6 and neglected in the home.

7 More specifically, he was subjected to
8 extreme violence and abuse by his mother. This went
9 on for years. The report says that Mr. St Croix has
10 been diagnosed with post-traumatic stress disorder
11 arising from all of this. It is hardly surprising,
12 considering the description of what happened to him
13 when he was young.

14 It would not do justice to the pre-sentence
15 report to try to summarize it here, but I have taken all of
16 these circumstances into account in considering this
17 matter. Mr. St Croix has now been able to re-establish
18 a positive relationship with his mother, who lives in
19 Ontario. One might say it is almost miraculous that this
20 has happened, given the treatment she inflicted upon
21 him as a child, but perhaps it is an indication that there
22 is always hope in these matters.

23 Mr. St Croix has a criminal record and
24 most of the convictions on it relate to the same victim.
25 Chronologically, the related convictions are the
26 following:

27 On the 17th of January, 2017, he was

1 convicted for breaching an Emergency Protection
2 Order. The offence dated back to September of the
3 previous year and he received 15 days in jail and
4 probation for that offence.

5 On January 27th, 2017, he was convicted
6 of assault causing bodily harm on this victim and
7 received a sentence of four months for that; breach of
8 undertaking related to her, he received one day
9 concurrent for that; an assault on her, for which he
10 received one month consecutive; and he was also
11 placed on probation for 18 months on all these charges.

12 Then came the convictions on March 1st,
13 2018. He was convicted of an assault again on the
14 same person, received 90 days imprisonment for that.
15 He was convicted of two counts of uttering threats to
16 her, for which he received 30 days on one count and
17 150 days consecutive on the other; as well as a breach
18 of recognizance related to her, for which he received 15
19 days consecutive.

20 He was again placed on probation. This
21 was the order that was marked as an exhibit in these
22 proceedings, which included the conditions restricting
23 contact with the victim which I have already referred to.

24 The last page of the criminal record
25 shows two more breaches. The Crown did not have
26 information about them. I thought it was important for
27 the record to be complete if possible, so I did ask the

1 clerk to check the Territorial Court records.

2 It is not going to make any difference to
3 this decision, but I can see from the Territorial Court
4 records that with respect to the two breaches that
5 appear on the record as convictions entered in March,
6 the breach dated August 16th, 2017, appears to have
7 been for a breach of a failure to report. The breach for
8 August 15th appears to have been for a breach of a
9 curfew.

10 I am not completely certain about this, but
11 I think there may be a third one, which is a breach of a
12 condition not to be at the residence on September 4th,
13 2017, which corresponds to count 15 of a 15-count
14 Information in Territorial Court file 2017-002016. But I
15 have asked the Clerk to make copies of all this and give
16 it to counsel so that if there is something missing from
17 the criminal record, steps can be taken to rectify that.

18 Mr. St Croix is not a Canadian citizen.
19 Counsel have inquired about the consequences of his
20 conviction on his status in Canada. Crown counsel has
21 advised me that Mr. St Croix will likely be "gated" which
22 means that when he is set to be released from the
23 sentence I impose today, he will be taken into custody
24 by immigration officials and deportation proceedings
25 will be launched. In other words, he will remain under
26 the state's control, it is expected, even after his
27 sentence expires.

1 It is further expected he will be
2 transported outside the territory and then the process
3 will follow its course to determine whether he will be
4 deported. Whether he will be detained during that time
5 or what will be the outcome of all of these proceedings
6 is not something that I know today.

7 The collateral consequences of a
8 sentence may be taken into account as part of the
9 personal circumstances of an offender. They are
10 neither aggravating nor mitigating. They are just part of
11 the overall circumstances, as explained by the
12 Supreme Court of Canada in *R. v. Pham*, 2013 SCC
13 15, paragraphs 11 to 13.

14 The issues that will be addressed through
15 this different process have nothing to do with this court
16 and I cannot presume what the outcome of these
17 proceedings will be. But I do have to take it into
18 account, in part because it has an impact on how the
19 conditions that are being proposed to be included in the
20 probation order should be crafted.

21 The fundamental principle of sentencing
22 is proportionality. A sentence must be proportionate to
23 the seriousness of the offence and the degree of moral
24 blameworthiness of the offender. This was an
25 extremely serious offence, aggravated by many factors.

26 I acknowledge Mr. St Croix's very difficult
27 background and the things that he suffered through

1 from a young age. Courts recognize on sentencing that
2 such backgrounds must be taken into account. They
3 may serve in part to explain why a person turns to
4 violence later in life, why they live a certain level of
5 dysfunction, why they may lack some of the tools to
6 function well in society, to cope with stress and to cope
7 with loss.

8 The law also recognizes that difficult
9 backgrounds can reduce a person's moral
10 blameworthiness in the commission of offences, but
11 only to a point, and I think and hope that Mr. St Croix
12 understands that his difficult background is not an
13 excuse for the type of behaviour that he is engaged in
14 and he must be held accountable for his actions and
15 the immense harm that he has caused.

16 Mr. St Croix's moral blameworthiness for
17 this crime is very high, in my view. I have had occasion
18 to say it in other cases; sadly, it is not rare for people
19 who commit serious crimes of violence to themselves
20 have been the victim of abuse as children and
21 sometimes as adults. But it cannot excuse extreme
22 violence and changes nothing to the concerns about
23 the protection of the public that arise from such
24 violence.

25 In this case, some of the aggravating
26 factors include, first, the fact that this happened in the
27 context of a domestic relationship, even though that

1 relationship had become an on-and-off one by that
2 point.

3 The second is that Mr. St Croix has
4 several convictions for violence and other offences
5 against the same victim.

6 Third, as I have already mentioned, he
7 was under two separate court orders, which, combined,
8 put strict parameters on any contact he could have with
9 her and prohibited him from being at that house.

10 Fourth, he broke his way into the house,
11 the place where she and her children should have felt
12 and been the safest. That type of thing has a long-
13 lasting impact on a person's ability to feel safe
14 anywhere.

15 Fifth, this was not an incident that erupted
16 as a result of a chance encounter. In contravention of
17 the court orders, he chose to go to that house. There
18 had to be some degree of planning involved.

19 Sixth, the victim was pregnant. Mr. St
20 Croix's actions, which I note included stabbing her in
21 the abdomen, put not only her life at risk, but also the
22 life of her unborn child.

23 Seventh, this brutal attack took place in
24 the presence of two children, one infant that was in the
25 victim's arms when this started, and the other who was
26 old enough to understand what was going on.

27 I watched K.'s videotaped statement in

1 the context of the pre-trial motion. She was remarkably
2 articulate and able to explain what happened. She saw
3 it all. It is very hard to imagine what impact this might
4 have on her over time, but there is no question it had to
5 have been an extremely traumatic event for her,
6 something that she will carry for the rest of her life. I
7 can only hope that she will get the help that she will
8 need to navigate her way to heal from that, if it is
9 possible.

10 Another factor that I am required to
11 consider is that the victim is an Indigenous woman.
12 The *Criminal Code* has been amended relatively
13 recently to add a section which I will read so that it is
14 very clear what it says. Section 718.04.

15
16 When a court imposes a sentence for an
17 offence that involved the abuse of a person
18 who is vulnerable because of personal
19 circumstances -- including because the person
20 is Aboriginal and female -- the court shall give
21 primary consideration to the objectives of
22 denunciation and deterrence of the conduct
23 that forms the basis of the offence.

24
25 That adds one more reason, and there
26 are already many reasons, why denunciation and
27 deterrence have to be at the forefront of the decision

1 that is made today on sentencing.

2 There are also mitigating factors,
3 primarily the guilty plea. I need to talk a little bit about
4 that. The guilty plea did not come at an early stage in
5 these proceedings. The victim and her children had
6 this hanging over their heads for almost two years.
7 They were not required to testify at the preliminary
8 hearing because it was waived, but a date had been
9 set. And I do not know, but I presume that they may
10 have thought for a time they would have to testify.

11 The same is true for trial. Subpoenas
12 had been issued. That is apparent on the court file,
13 and a pre-trial motion did proceed in August.

14 Another factor that is sometimes taken
15 into account in assessing the mitigating effect of a guilty
16 plea is whether an accused was inescapably caught.
17 Giving up one's right to trial is always giving up an
18 important right, but it is often argued that giving it up
19 when there are obvious problems with the Crown's
20 case is deserving of more credit than when the Crown's
21 case is very strong and a conviction appears almost
22 inevitable.

23 On paper, this appears to have been a
24 strong case. The matter was reported immediately.
25 The police responded quickly. The assailant was
26 well-known to the victim and the witness, so this is not
27 a case where identification would have been an issue.

1 K. was an eyewitness, albeit a young witness, and I will
2 say again that her video statement was clear,
3 unequivocal and convincing.

4 There is, of course, always the possibility
5 that witnesses might become uncooperative or
6 unavailable. That is not unheard of, particularly in
7 cases involving domestic violence, for a whole range of
8 very complex reasons. I understood from the Crown's
9 submissions that this concern played a part in the
10 Crown's decision-making process in arriving at this joint
11 submission.

12 In assessing the mitigating effect of the
13 guilty plea, I must also take into account, in fairness to
14 Mr. St Croix, that he pleaded guilty to an offence that
15 was less serious than what he was facing trial for.

16 And finally, probably most importantly, the
17 guilty plea did in the end avoid the need for anyone to
18 testify.

19 Even with the ruling on the section 715.1
20 application, which was, in effect, unopposed by
21 defence, that K.'s videotaped statement was admissible
22 and could have been used during the trial, she would
23 still have had to be called as a witness and she would
24 have had to answer questions. Sparing anyone that,
25 but especially sparing a child that, is sparing them a lot.

26 The guilty plea also avoided the need for
27 Ms. St Croix herself to come to court and have to

1 recount this horrific attack. She is obviously a very
2 courageous person, but even for a courageous person
3 that is not an easy experience to go through. That is
4 why a guilty plea, even one that comes two years into
5 the process, is mitigating.

6 The impact that this crime had cannot be
7 more eloquently described than how it was described
8 by Ms. St Croix herself in the victim impact statements
9 that she provided and read to the court, both on
10 February 11th and today. They have been marked as
11 exhibits. They are part of the record of these
12 proceedings. The impact of these events on her and
13 her children was profound and probably beyond what
14 any of my words today could describe.

15 The prevalence of domestic violence in
16 our society and our communities is a terrible tragedy.
17 Many suffer, and many suffer in silence. Those who try
18 to break the cycle often risk their lives in doing so, and
19 some actually lose their lives in doing so.

20 The cases that were filed at the
21 sentencing hearing represent a small sample of the
22 matters that find their way before the courts, and we
23 know that for every matter that finds its way before the
24 court, many more do not for all sorts of complicated
25 reasons. This Court has made that point in many
26 cases, including some of the ones that counsel filed.

27 This Court talked about it at length in *R.*

1 *v. Inuktalik*, 2014 NWTSC, at pages 14 to 20. I am not
2 going to read these comments here, but I completely
3 agree with them. They talk about the devastating
4 effects of domestic violence.

5 It bears repeating, family violence is not a
6 private matter. It is not a private problem. It is a
7 societal problem and it should be a concern for every
8 one of us in the community, not just the victims and
9 victim support groups, not just for those who work in the
10 justice system. It should be a concern to all.

11 The information that is set out in the
12 publication of the Research and Statistics Division of
13 the Department of Justice, which was marked as
14 Exhibit 6 in these proceedings, paints an extremely
15 bleak picture, one that should be a serious concern to
16 politicians, citizens, courts, basically everyone.

17 Family violence occurs in all sorts of
18 different ways, and as with all things, we see a range of
19 degrees of violence. Mr. St Croix's conduct falls at the
20 very high end of the spectrum of seriousness. Looking
21 at what he did, repeatedly stabbing his victim, looking
22 at her injuries, I think it is a matter of pure luck that Mr.
23 St Croix is not facing sentencing for a homicide today.

24 Again, as I have unfortunately have had
25 occasion to say many times before, I have dealt with a
26 number of homicide cases where a single stab was all
27 that it took for someone to be killed. Often it is a matter

1 of centimetres.

2 The joint submission I am presented with
3 is for a sentence of five years. Because of the remand
4 time, that is, the time that Mr. St Croix has already
5 spent in custody, this would result in the imposition of a
6 jail term under two years, which opens the door to
7 probation.

8 Counsel are jointly suggesting that the jail
9 term be followed by probation for three years, which
10 they say should include a condition that is geared
11 towards rehabilitation, that is, that Mr. St Croix take
12 counselling as directed. But mostly, they agree that it
13 should include conditions designed to protect Ms. St
14 Croix. I can certainly understand that from her
15 perspective, the idea that a court order can protect her
16 must ring extremely hollow, given that two different
17 court orders were in force when this crime happened.

18 Counsel acknowledged that a five-year
19 jail term for this offence is a lenient position. Crown
20 counsel went as far as to say, with his usual candour,
21 that the Crown has arrived at this position with some
22 hesitation. Defence counsel also recognized that the
23 position is lenient, at the low end of the range, but she
24 has also argued that it is a fit sentence and is within the
25 range.

26 A few words about ranges. In *R. v.*
27 *Morgan*, 2008 NWTCA 12, this Court determined that

1 the range of sentence for the offence of aggravated
2 assault when someone introduces a knife in what is
3 otherwise a consensual fight is between 30 months and
4 five years. The Court of Appeal upheld that decision,
5 albeit without specific comment about the range itself.
6 But that same range was applied in subsequent
7 decisions of this Court, including *R. v. Hodges*, 2015
8 NWTSC 59.

9 If that is the correct range for an
10 aggravated assault involving a stabbing that occurs in
11 the context of the escalation of what is otherwise a
12 consent fight and outside the context of a spousal
13 situation, necessarily the range for an aggravated
14 assault that occurs in the context of a spousal
15 relationship and not in the context of a consent fight
16 should be significantly higher.

17 I was referred to other decisions and I
18 have reviewed them carefully. Comparing individual
19 cases, as counsel recognized, is always a difficult
20 exercise because no two cases are ever alike. I am not
21 going to refer to all of the cases, but I will say that one
22 of the things that they do is provide a window into a
23 very sad reality. As I said, they offer a very small
24 sample of the terrible cases of domestic violence that
25 come before the courts.

26 *R. v. Football*, 2006 NWTSC 69, was
27 about a two-day-long beating. *R. v. Kuniluisie*, 1998

1 Carswell NWT 129, was about an offender pouring
2 camping fuel on the victim and lighting her on fire. *R. v.*
3 *Inuktalik*, 2014 NWTSC 75, was about a violent beating
4 that the court characterized as vicious and horrific and
5 included biting the victim's face to the point that she
6 was left disfigured and required multiple surgeries.

7 These things are not happening in some
8 far-away place. They are happening in our
9 communities. The prevalence of the problem is clear
10 enough, but using these cases to identify a range for
11 these serious crimes is difficult, because how does one
12 compare horrors? How does a two-day beating
13 compare with lighting someone on fire or with stabbing
14 multiple times a pregnant woman in her own home
15 while she is holding an infant?

16 One decision I do want to talk about a
17 little bit is my recent decision in *R. v. Goulet*, 2020
18 NWTSC 47, where I imposed a sentence of three years
19 in a case that involved a serious stabbing in the
20 spousal context.

21 There are some similarities between that
22 case and this one. It was a case of multiple stabbings.
23 It occurred in a spousal situation. The victim was an
24 Indigenous woman. The attack resulted in serious
25 injuries. It was another example, and I said it in that
26 decision, of it being basically a miracle that the victim
27 was not actually killed.

1 concerned that reducing each of them to take totality
2 into account would result in each sentence not
3 reflecting the seriousness of the offences. I imposed a
4 sentence of three years on the aggravated assault.

5 The sentence I imposed in *Goulet* was at
6 the very top end of the range sought by the Crown.
7 Even in the absence of a joint submission, the top end
8 of the range sought by the Crown has to be taken into
9 account by the court in imposing sentence. Appellate
10 courts tell lower courts, such as this court, that they
11 should not “jump” a Crown position, even absent a joint
12 submission, unless there is a very good reason to do
13 that. It is not something that should be done lightly.

14 I talked about an aspect of this in the
15 *Goulet* decision and I want to refer to what I said. It
16 was at paragraph 60. After talking about the issue of
17 whether the sentences should be consecutive or
18 concurrent, I said:

19
20 If I impose the sentences that I think are called
21 for here and make them consecutive, and even
22 if I adjusted them to reflect totality, I would
23 exceed the range proposed by the Crown. I
24 believe that should be avoided unless the
25 position advanced is not reasonable and I
26 cannot say the position advanced by the Crown
27 is unreasonable. It reflects remarkable restraint

1 and perhaps that is the wise thing to do,
2 dealing with a young Indigenous offender with a
3 minimal record. But I think it will be clear from
4 everything that I said that the facts that I heard
5 about at the sentencing hearing raise serious
6 concerns from a public protection point of view.

7
8 So in considering *Goulet*, there are
9 important nuances to keep in mind in deciding how
10 much weight or precedential value it has.

11 Now, having said all of that and to put it
12 bluntly, the question that I have to answer today is not
13 whether a five-year sentence is in the range or even
14 whether it is a fit sentence.

15 Normally at a sentencing hearing my role
16 would be just that. To determine, if possible, whether a
17 general range emerges from the case law and decide
18 within that range what sentence would be a fit one in
19 the specific circumstances of this case. That is a highly
20 individualized exercise and one where the sentencing
21 court's discretion, if no errors are made, is given
22 considerable deference on appeal.

23 But a joint submission removes most of
24 the discretion that a judge normally has on sentencing.
25 The Supreme Court of Canada, which is the top court
26 in the country and which decisions bind me, has so
27 decided.

1 tests that had been adopted at the appellate level
2 across the country and decided which one should
3 apply. And the one that they decided should apply, and
4 that I must apply today, is known as the public interest
5 test.

6 The Supreme Court explained what this
7 threshold means. I will quote directly from the decision
8 on this point because I am aware of recent cases
9 where it has been suggested that this test is not being
10 applied properly by appellate courts. For my part, I
11 think this test is well understood by appellate courts
12 and is clear. Rather than paraphrase it, and so
13 everyone is clear on the law that binds me today, I am
14 going to read the three paragraphs of the decision
15 where the Court explains what the public interest test
16 means. This is towards the end of the decision,
17 paragraphs 32 to 34.

18
19 Under the public interest test, a trial judge
20 should not depart from a joint submission on
21 sentence unless the proposed sentence would
22 bring the administration of justice into disrepute
23 or is otherwise contrary to the public interest.
24 But, what does this threshold mean? Two
25 decisions from the Newfoundland and Labrador
26 Court of Appeal are helpful in this regard.

27

1 In *Druken*, the court held that a joint submission
2 will bring the administration of justice into
3 disrepute or be contrary to the public interest if,
4 despite the public interest considerations that
5 support imposing it, it is so "markedly out of line
6 with the expectations of reasonable persons
7 aware of the circumstances of the case that
8 they would view it as a break down in the
9 proper functioning of the criminal justice
10 system". And, as stated by the same court in
11 *R. v. B.O.2*, 2010 NLCA 19, when assessing a
12 joint submission, trial judges should "avoid
13 rendering a decision that causes an informed
14 and reasonable public to lose confidence in the
15 institution of the courts".

16 In my view, these powerful statements capture
17 the essence of the public interest test
18 developed by the Martin Committee. They
19 emphasize that a joint submission should not
20 be rejected lightly, a conclusion with which I
21 agree. Rejection denotes a submission so
22 unhinged from the circumstances of the offence
23 and the offender that its acceptance would lead
24 reasonable and informed persons, aware of all
25 the relevant circumstances, including the
26 importance of promoting certainty in resolution
27 discussions, to believe that the proper

1 functioning of the justice system had broken
2 down. This is an undeniably high threshold --
3 and for good reason.

4

5 That is the test I have to apply.

6

7 Can I say that the sentence proposed here
8 would bring the administration of justice into disrepute?
9 That it would be contrary to the public interest? That it
10 is so markedly out of line with the expectations of
11 reasonable persons aware of the circumstances of the
12 case that they would view it as a breakdown in the
13 proper functioning of the justice system? No, I cannot
14 say that, and that ends the matter. I must impose the
15 sentence that counsel have jointly proposed.

16 As I said during the sentencing hearing,
17 this law means that when counsel engage in plea
18 negotiations with a view of arriving at a joint
19 submission, in effect, the task of deciding what a fit
20 sentence is is transferred from the court to counsel.
21 One of the consequences of this is to place a great
22 weight of responsibility on counsel, one that would
23 otherwise rest with the judge.

24 I say it puts a great responsibility on
25 counsel because it means that in a way they do get the
26 last word, unless, of course, they come to an
27 agreement which, for whatever reason, is completely

1 unreasonable. I have to say I sincerely hope I will
2 never be faced with that situation because I believe that
3 counsel approach these matters with caution. And
4 rightfully do.

5 The public needs to be able to trust that
6 the positions taken are carefully weighed and
7 considered in all cases, but especially in a very serious
8 case like this one. And just so that it is crystal clear, I
9 will add that in this case I have absolutely no doubt that
10 counsel have done just that, based on the thorough
11 submissions I heard from them. I am certain that they
12 have given this matter the careful consideration that
13 they are expected to and required to in the discharge of
14 their duties.

15 It will be clear from what I have said, I
16 hope, that the focus of my analysis on this case had to
17 be whether the joint submission should be accepted in
18 light of the law that I have been talking about. That is
19 all that this decision should be interpreted as meaning.
20 It should be given no precedential value as to my views
21 or the view of this court about the range for such an
22 offence or how that range compares to the range that
23 was articulated in *R. v. Morgan*, for example. The
24 sentence I am imposing today is a recognition of the
25 law and of the fact that this joint submission does not
26 meet the threshold that would give me the power to
27 depart from it.

1 said, for three years, two months and three weeks,
2 which means the remaining jail term will be one year,
3 nine months and one week. You may sit down.

4 This will be followed by a probation for
5 three years. Although the sentence is five years, the
6 jurisprudence is clear that if remand time is taken into
7 account and brings down the sentence to one where
8 probation is available, that is an option the court has,
9 and it is absolutely, in my view, appropriate to do so,
10 and it is also part of the joint submission.

11 Although it may be that Mr. St Croix will
12 be taken into custody by immigration officials before he
13 is actually free, I think it is important that my sentence
14 standing alone be functional and not depend on outside
15 events. That is what I have tried to do in crafting the
16 conditions.

17 As we have heard, the main objective of
18 the probation order, as I understood the submissions, is
19 to prevent him from being in the NWT. This is how I
20 have chosen to address it. I will hear from counsel if
21 you see anything obviously wrong or unmanageable
22 with the wording I have chosen.

23 Now, listen carefully, sir. You will get this
24 in writing. You will get a copy of the order. You can
25 make notes if you want, but you will have a record of
26 this. The first condition will be that upon being released
27 from custody you will leave the Northwest Territories.

1 To this end, this is my direction:

2 a) No later than one month before your
3 release date you will provide Probation Services in
4 Yellowknife and the Yellowknife RCMP detachment
5 proof of purchase of a one-way airplane ticket out of the
6 city of Yellowknife to a destination outside the territory;

7 b) If that flight is not on the same day as
8 the day of your release, you are to report to Probation
9 Service in person the day you are released and report
10 daily until your flight leaves;

11 c) You will report by telephone to
12 Probation Services in Yellowknife that you have arrived
13 at your destination and are out of the territory; and

14 d) You will thereafter report to Probation
15 Services in Yellowknife as directed.

16 Second condition is you are prohibited
17 from returning to the Northwest Territories for the
18 duration of your probation order.

19 The next condition is you have no contact
20 directly or indirectly with Ms. St Croix or any of her
21 children.

22 Next, if you are taken into custody by
23 immigration officials upon your release from custody on
24 this sentence, you are to report by telephone to
25 Probation Services in Yellowknife at the earliest
26 opportunity and advise them of the situation. In that
27 event, the reporting conditions set out in condition 1 will

1 be suspended because it will be unnecessary.

2 Next, if having been taken into custody by
3 immigration officials you are subsequently released
4 from their custody, you are to report this immediately by
5 telephone to Yellowknife Probation Services and report
6 to them thereafter by telephone as required unless you
7 are advised that your probation has been transferred to
8 another jurisdiction -- that sometimes happens -- in
9 which case your reporting would be to the Ontario
10 Probation Services or wherever you might be.

11 The last condition will be that you shall
12 take counselling as recommended by your probation
13 officer.

14 I will also issue the ancillary orders that
15 were sought. They are mandatory and I heard no
16 submissions suggesting they should not be made. A
17 DNA order will issue and a firearms prohibition order
18 will issue pursuant to section 109 commencing today
19 and expiring ten days after release.

20 I will make an order that exhibits that
21 were seized during this investigation are to be returned
22 to their rightful owner if that is appropriate. Otherwise,
23 they are to be destroyed at the expiration of the appeal
24 period.

25 Have I missed anything from the Crown's
26 perspective, Mr. MacPherson?

27 B. MACPHERSON: No, thank you.

1 THE COURT: Anything from the defence's perspective?

2 K. OJA: No, Your Honour, but could I just ask you to
3 repeat the remaining quantum of sentence?

4 THE COURT: Yes. And I think your client is trying to
5 get your attention.

6 K. OJA: Mr. St Croix is just advising me that the jail has
7 offered to take him to the airport if he is in a situation
8 where he is not remaining in custody after his warrant
9 expiry date, so just to give the Court some --

10 THE COURT: Okay.

11 K. OJA: -- confidence.

12 THE COURT: It does not require any changes?

13 K. OJA: No.

14 THE COURT: Okay. So you asked me to repeat my
15 calculations. So five years. Credit for three years, two
16 months and three weeks. And by my calculation that
17 would leave one year, nine months, one week, because
18 that is three plus one and then one. Am I off? Do you
19 want me to try to break it down, Ms. Oja? Tell me if you
20 think I am wrong.

21 K. OJA: No, you're correct. Thank you. Sorry.

22 THE COURT: All right. Should we stand down briefly
23 and then address the publication ban/sealing issue?

24 B. MACPHERSON: Yes, please.

25

26 **(PROCEEDINGS CONTINUED)**

27

1 **CERTIFICATE OF TRANSCRIPT**

2 Neesons, the undersigned, hereby certify that the foregoing
3 pages are a complete and accurate transcript of the
4 proceedings transcribed from the audio recording to the best
5 of our skill and ability. Judicial amendments have been
6 applied to this transcript.

7
8 Dated at the City of Toronto, in the Province of Ontario, this
9 16th day of March, 2021.

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Kim Neeson

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Principal

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