*R v Cayen, 2022 NWTSC 16* S-1-CR-2018-000137

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

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**-v-**

**LEVI CAYEN**

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**Transcript of the Reasons for Sentence of the Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 30th day of June, 2022.**

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**APPEARANCES:**

D. Praught/J. Andrews: Counsel for the Crown

A. Regel: Counsel for the Defence

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Introduction

THE COURT: Levi Cayen was charged with first-degree murder and robbery in relation to the death of Alexander Norwegian on the Kátł'odeeche First Nation Reserve near Hay River on December 26 and 27, 2017.

Mr. Cayen was tried by a court composed of a judge and jury. His trial proceeded in February and March 2022, over a period of five weeks. At the outset of the trial, he entered a guilty plea to the robbery charge. However, there was no agreement on the facts underlying the offence. The trial proceeded, and on March 12, 2022, the jury returned a verdict of not guilty to first-degree murder but guilty to the included offence of manslaughter.

The sentencing hearing was adjourned to allow for the preparation of a pre-sentence report. Once the hearing began, it was apparent that there were significant differences between the Crown and defence as to what the factual basis for the sentencing hearing should be. I have heard submissions on that issue and other issues on May 26, 2022, and continuing earlier this week.

On June 27, I provided a brief outline of my findings with respect to the factual issues, indicating that the sentencing decision would provide further reasons. And I made that decision so that counsel could make their sentencing submissions, and this matter could be dealt with this week rather than further adjourning the sentencing proceeding.

The Legal Framework for the Facts of the Offence.

In finding Levi Cayen not guilty of first-degree murder but guilty of the included offence of manslaughter, the jury returned a verdict, which is what they were required to do. Juries, however, do not give reasons or explain why they chose one verdict instead of another.

Following a jury's verdict, often many or most of the factual conclusions underlying the verdict are clear but there are situations that arise where some or many of the facts that lead to the verdict remain in dispute. In these cases, the sentencing judge is required to find the factual conclusions that led to the jury's verdict. This process was explained in the *R v Ferguson*, 2008 SCC 6, at paragraphs 16 to 18:

[16] The sentencing judge therefore must do his or her best to determine the facts necessary for sentencing from the issues before the jury and from the jury’s verdict. This may not require the sentencing judge to arrive at a complete theory of the facts; the sentencing judge is required to make only those factual determinations necessary for deciding the appropriate sentence in the case at hand.

[17] Two principles govern the sentencing judge in this endeavour. First, the sentencing judge “is bound by the express and implied factual implications of the jury’s verdict.” The sentencing judge “shall accept as proven all facts, express or implied, that are essential to the jury’s verdict of guilty,” and must not accept as fact any evidence consistent only with a verdict rejected by the jury.

[18] Second, when the factual implications of the jury’s verdict are ambiguous, the sentencing judge should not attempt to follow the logical process of the jury but should come to his or her own independent determination of the relevant facts. In so doing, the sentencing judge “may find any other relevant fact that was disclosed by evidence at the trial to be proven.” To rely upon any other relevant fact, the sentencing judge must be persuaded on a balance of probabilities. It follows from the purpose of the exercise that the sentencing judge should find only those facts necessary to permit the proper sentence to be imposed in the case at hand. The judge should first ask what the issues on sentencing are and then find such facts as are necessary to deal with those issues.

Levi Cayen was charged with first-degree murder. In the instructions to the jury, it was made clear to the jury what their possible verdicts were, that they could find Levi Cayen not guilty, guilty of first-degree murder, guilty of second-degree murder or guilty of manslaughter. The basis for manslaughter which left with the jury was unlawful act manslaughter.

In their deliberations, the jury was instructed to consider whether the Crown had proven each of the following essential elements of first-degree murder beyond a reasonable doubt:

1) that Levi Cayen committed an unlawful act,

2) that Levi Cayen's unlawful act caused Alexander Norwegian's death,

3) that Levi Cayen had the intent required for murder,

4) that Levi Cayen actively participated in the killing,

5) that Levi Cayen committed the offence of forcible confinement, and

6) that the forceable confinement and the murder of Alex Norwegian were part of the same series of events.

The jury was instructed to consider each of these essential elements in order. If they were satisfied beyond a reasonable doubt that the Crown had proven that Levi Cayen had committed an unlawful act and that unlawful act had caused Alexander Norwegian's death, then they had to go on and consider whether they were satisfied beyond a reasonable doubt that Levi Cayen had the intent required for murder.

The jury was instructed that if they were not satisfied beyond a reasonable doubt that Levi Cayen had the intent required for murder that they must find him not guilty of murder but guilty of included offence of manslaughter. So the jury's verdict that Levi Cayen was guilty of manslaughter means that they were satisfied beyond a reasonable doubt that Levi Cayen had committed an unlawful act and that unlawful act had caused Alexander Norwegian's death, but they were not convinced beyond a reasonable doubt that Levi Cayen had the intent required for heard murder.

Within the issue of intent, there were several things that the jury was instructed to consider. The path for intent for murder that the Crown was relying on was that Levi Cayen meant to cause Alex Norwegian bodily harm that he knew was likely to cause his death and was reckless whether death ensued or not. The jury was also required to consider the evidence of intoxication and whether that evidence caused them to have a reasonable doubt about whether Levi Cayen had the intent required for murder.

The Crown has argued that in coming to a verdict of manslaughter that the jury must have had a doubt regarding whether Levi Cayen was reckless whether death ensued or not, and that they could have done so on the basis of the telephone call he made from the Rooster following the robbery of Alexander Norwegian.

In deciding upon a verdict of manslaughter, the jury did not accept that Levi Cayen had the required specific intent for murder. That is what they were required to decide, whether the intent for murder had been established by the Crown beyond a reasonable doubt. In coming to that decision, the jury could have had a doubt whether Levi Cayen meant to cause bodily harm that he knew was likely to cause death, on recklessness, or on intoxication, or on a combination of these factors. The jury may also have arrived at a verdict for different reasons. Jurors have to agree on a unanimous verdict. They do not have to agree on why they reached a particular verdict. They do not all have to take the same path to having had a reasonable doubt on the issue of intent for murder. Individual jurors may have had different reasons for having a reasonable doubt about Levi Cayen's intent. What is important is that the jury unanimously agreed that Levi Cayen was guilty of manslaughter and therefore was not guilty of murder.

To try and determine why the jury reached a verdict of manslaughter and what path they took is to do what *Ferguson* specifically says not to do, that a sentencing judge is not to attempt to reconstruct the logical reasoning of the jury. My task is to accept all facts expressed or implied that are essential to the jury's verdict. It may not be necessary to arrive at a complete theory of the facts or to completely reconstruct what might have happened. A sentencing judge should only find those facts that are necessary to permit the proper sentence to be imposed and that will depend on the issues at sentencing.

Where the Crown or defence seeks to have a specific fact found, I have to consider whether the fact was essential to the jury's verdict of guilty. Where it is an aggravating fact that the Crown is seeking to have found, then I have to be satisfied that it has been established beyond a reasonable doubt.

There are two more issues to address before I move on to the specific consideration of the facts. In submissions, the defence argued that 1) the evidence of Dr. Weinberg should be given little weight because his evidence was inconsistent and because of his demeanour while testifying, and 2) that the jury's verdict does not necessarily mean that they rejected the theory that Tyler Cayen and James Thomas returned after the robbery and beat Alexander Norwegian.

To reach a verdict of manslaughter, the jury must have been satisfied beyond a reasonable doubt that Levi Cayen's unlawful act caused the death of Alexander Norwegian. This means that they were satisfied beyond a reasonable doubt that Levi Cayen's actions were a significant contributing cause of Alexander Norwegian's death, and that there was no other subsequent event that resulted in Levi Cayen's conduct no longer being a contributing cause of Alexander Norwegian's death.

This also means that the jury accepted the evidence of Dr. Weinberg regarding the cause of Alexander Norwegian's death and rejected other theories like suicide and *pectus excavatum* possibly causing his death.

The defence has suggested that there were many inconsistencies in Dr. Weinberg's evidence, but when pressed, could only point out that his evidence was inconsistent with the toxicologist regarding the effect of the levels of cocaine and its metabolites found in Alexander Norwegian's blood following the autopsy. The evidence of the toxicologist, Dr. Chatterton, and Dr. Weinberg, who was the pathologist, was somewhat different on the ingestion and effect of the consumption of cocaine. Both witnesses were both witnesses who were qualified with an expertise within a qualified area.

Dr. Chatterton's specific area of expertise was as a toxicologist, and he testified on the effects of various substances like cocaine on the human body. Dr. Weinberg was qualified as a pathologist. He conducted the autopsy, and he has a more general expertise. So where there is a difference regarding the effects of cocaine in a person's body, I would accept the evidence of Dr. Chatterton. However, the difference in the evidence of the two doctors was relatively minor and was not significant in terms of the issues that the jury had to decide.

With respect to Dr. Weinberg's demeanour, no examples were provided. During his testimony, there was nothing that stood out with respect to his demeanour other than in cross-examination when he was asked about a theory that blunt force trauma was included in the autopsy report as a significant condition contributing to death as an afterthought after the report was done, and he was also asked about pressure being put on Dr. Ball, another pathologist, to put more emphasis on blunt force trauma in the report. Not surprisingly, Dr. Weinberg reacted by taking offence. I would note that there was nothing in the evidence at trial which would suggest that either of these things occurred as suggested.

Findings of Fact.

On the night of December 26, 2017, Tyler Cayen and Sasha Cayen were at James Thomas' house. Tyler Cayen and Sasha Cayen drank alcohol and consumed crack cocaine in the kitchen, listening to music and playing cards while James Thomas was in the back room working on his house.

Later in the evening, Alex Norwegian texted Sasha Cayen, saying he was stuck in Old Village. The three of them got in James Thomas' truck and went to pull him out. When they got to Old Village, they saw Alex Norwegian's car stuck in a snowbank. They pulled his car out, and then they went back to James Thomas' house. When they got back there, Sasha Cayen pulled out a gram of crack cocaine that she said that Alex Norwegian gave her. Tyler Cayen and Sasha Cayen then smoked the crack and continued drinking.

Levi Cayen later came to the house with a Texas mickey. When Levi Cayen came over, he joined Tyler Cayen and Sasha Cayen at the kitchen table, and they continued to drink. Later on that night, James Thomas suggested to rob Alexander Norwegian. Tyler Cayen, Sasha Cayen, and Levi Cayen were all present in the kitchen when this topic came up. There was some discussion about this, and Sasha Cayen ended up texting Alex Norwegian to see where he was, to see if he was still out at the Portage.

Levi Cayen did not initially agree to the plan. He was hesitant at first. Tyler Cayen testified that Levi Cayen said that he always wanted to do something crazy, but he never had nobody to do it with. Sasha Cayen testified that she did not remember much of the conversation. Both Tyler Cayen and Sasha Cayen by that point had been drinking and consuming crack cocaine. This necessarily impacted their perception of events and recollection of what occurred.

In their evidence, Sasha's memory appeared to be less precise than that of Tyler Cayen. She was clearly reluctant to testify and frequently answered that she did not know or could not remember. Whether her memory was impacted by the consumption of drugs and alcohol, her reluctance to testify or some combination of both, the result is that her account is less reliable than that of Tyler Cayen. I find that Levi Cayen participated in the discussion of the plan and said something that indicated that he was willing to participate in the plan, acknowledging that it may not have been the precise words recollected by Tyler Cayen.

Following the agreement to carry out the plan, James Thomas and Levi Cayen took steps to prepare to go. They put on winter clothing, and Levi Cayen went home to get some winter clothing. They also looked for items around the house that could be used as weapons. James Thomas had a small miniature wooden bat that Tyler Cayen called a little fish knocker that was 12 to 14 inches long. He took that with him, along with a little bundle of rope.

Levi Cayen considered taking a pellet gun which was on a wall. He held the pellet gun, but James Thomas told him the barrel was bent so that he should not take it. Ultimately, he did not take the pellet gun. They also took a metal pipe with them.

James Thomas and Levi Cayen left on a Ski-doo to go to the Portage where they expected Alexander Norwegian to be. Sasha Cayen had been texting Alex Norwegian, so they knew that he was at the Portage. When they got to the Portage area, they stopped, and Levi Cayen dummy locked the gate to prevent Alexander Norwegian from getting away if he tried to get away.

Levi Cayen and James Thomas had with them the small wooden bat and the metal pipe and also a rope. James Thomas had the small wooden bat, and Levi Cayen used the metal pipe. James Thomas tried to smash the windows in the vehicle but was not able to do so, and Levi Cayen smashed the windows with the pipe.

Alex Norwegian tried to climb in the back and out of the vehicle. James Thomas pulled Alex Norwegian out of the vehicle, and Levi Cayen and James Thomas began to hit him. They hit Alex Norwegian with the pipe and bat and kicked him.

At some point, the vehicle was searched by James Thomas. During the robbery, Alexander Norwegian was confined with a rope by his hands, and that rope was held by Levi Cayen. This was admitted by Levi Cayen in his statement to the police.

In his evidence, Dr. Weinberg noted that there was an abrasion around the side and front of Alex Norwegian's neck. It was upward slanting and on the left side and had a bit of a pattern with a vertically-oriented parallel lines. His opinion was that the overall pattern of the injuries suggested some sort of ligature like a piece of rope had been applied to Alex Norwegian's neck. This, to Dr. Weinberg, suggested that there was some period of strangulation during the incident that occurred.

In his evidence in cross-examination, Dr. Weinberg stated that he could not state the length of time that resulted in the mark being left on the neck. And when asked if it could have arose from something like Alex Norwegian being grabbed by the hood or the jacket, he replied that he could not exclude the possibility, but he thought it was unlikely based on the pattern. On this basis, I cannot conclude beyond a reasonable doubt that the rope was used around Alexander Norwegian's neck.

During the robbery, Alexander Norwegian was questioned about the location of his stash, and he offered to show them where it was. Both James Thomas and Levi Cayen participated in the beating of Alexander Norwegian. They acted jointly in the commission of the robbery and beating of Alexander Norwegian, and Levi Cayen also actively participated in the beating of Alexander Norwegian.

Afterwards, Levi Cayen saw that Alex Norwegian seemed really dazed and could not drive. Alex Norwegian had to be helped into the vehicle. James Thomas took Alexander Norwegian's jacket and other items before they left. Levi Cayen wanted to take Alex Norwegian to the hospital, but James Thomas was not interested in doing that. When they left, most of the windows were smashed out in the vehicle. They ultimately did not get any crack cocaine or any money. They saw Alexander Norwegian drive his car forward a little ways into a snowbank. Levi Cayen and James Thomas then returned to James Thomas' house, where Tyler Cayen and Sasha Cayen were still there, sitting in the kitchen.

James Thomas came in, gave Tyler Cayen his boots and told him to throw them in the fire and burn them. Levi Cayen was there when the boots were being put in the fire. Tyler Cayen put the boots in the stove and started a fire. He also later put a black garbage bag that James Thomas gave him in the fire. Other clothing items such as ski pants, gloves, a jacket, and rubber boots were also burned. James Thomas and Levi Cayen told Tyler and Sasha about what happened. Neither James Thomas nor Levi Cayen had any visible injuries on them when they returned.

Not long after they returned, Levi Cayen left to call the police from the Rooster and report a drunk driver down on the road by the Portage. Levi Cayen wanted to contact the police because Alex Norwegian had been beaten up pretty badly. Before he left, he discussed what to say with James Thomas.

He left on the snowmobile and went to the Rooster to use the pay phone and phone the police. He wanted to get help for Alex Norwegian, and he also wanted to avoid detection. The information he provided to the operator was vague, and he hung up before providing any further details or answering questions which might have assisted the police in locating Alex Norwegian. He didn't take any further steps to follow up.

Tyler Cayen and James Thomas went in James' truck to the Lagoon Road to look for Alex Norwegian's stash. Alex Norwegian had told James Thomas that his stash was on Lagoon Road. They went to two locations on Lagoon Road to look for the stash. They did not find anything and returned to James Thomas' house. Afterwards, James Thomas formed a plan with Tyler Cayen and Sasha Cayen to cover up their involvement in the robbery and death of Alex Norwegian. Levi Cayen did not participate in this cover up, but he did burn some of his clothing items at his grandfather's house.

Alexander Norwegian's immediate cause of death was hypothermia. And a significant contributing factor to his death was blunt force head injuries. The head injuries were significant. There were four lacerations on Alex Norwegian's head, a diastatic skull fracture, and mild swelling of the brain. The blunt force head trauma inflicted on Alex Norwegian would likely have resulted in an altered and decreased mental status and impacted on his ability to remove himself from the cold environment.

With respect to the lacerations, the evidence of Dr. Weinberg was that a wooden bat or a metal pipe or, less likely, some type of heavy boots could have been used to cause the injuries to Alex Norwegian. I do not think it is possible to attribute specific injuries to a specific weapon or to a specific person beyond saying that Levi Cayen and James Thomas each wielded a weapon and actively participated in the beating of Alexander Norwegian. There were also numerous other injuries that were documented to other areas of Alex Norwegian's body, indicating that a severe beating was inflicted upon him.

Those are the facts that I consider either essential to the jury's verdict or that I consider have been proved beyond a reasonable doubt.

Impact of these Offences.

A number of Victim Impact Statements were provided to the court from family and friends of Alexander Norwegian. Section 722 of the *Criminal Code* permits the Court, when determining sentence, to consider Victim Impact Statements which describe the physical or emotional harm, property damage or economic loss suffered by the victim and the impact of the offence on the victim.

There are things that are not appropriate for inclusion in a Victim Impact Statement. They should not contain criticisms of the offender or counsel for the offender, comments on the facts of the offence, comments on the verdict and what they think it should have been, recommendations as to sentence or comments about the appropriateness of a particular sentence. In this case, there are portions of some of the Victim Impact Statements that are not appropriate. I will not detail those sections but would simply note that section 722(8) permits the Court to take into account the portions of a Victim Impact Statement that it considers relevant to determining sentence and to disregard any other portion. I have done so in this case.

I have read all of the Victim Impact Statements and considered the relevant portions. They are moving and it is apparent that the death of Alexander Norwegian has affected many members of his family and his friends. He was a son, a grandson, a brother, a nephew, a boyfriend, and a friend. He left behind many people who will cherish their memories of him but also lament that there will be no new memories created with Alex.

Alexander Norwegian was a young man who was experiencing problems, who was maybe not in the best place in his life at the time of his death. But his life was much more than his death or his last moments. He was a young man who was loved by his family and friends and who had plans and dreams. He had a life to live. He was denied the chance to overcome his problems and achieve his goals. Alexander Norwegian's death has forever changed the lives of many people and it has had a devastating effect on those who loved him the most.

The Victim Impact Statements details the grief, sadness, loss, anger, pain and sorrow felt by his family and friends. I know that although I might try that I cannot understand or comprehend fully what the loss of a child does to a parent, the pain and sorrow experienced on a daily basis.

As stated in the Victim Impact Statement of his aunt, Annie Steen:

What I can tell you about the loss of loved ones, and especially loss for a child, is you never really know until you are on the other side of it. We thought we knew. We thought we could understand, but you never can. There are no words in the human dictionary to describe how a parent feels, only that you will never get over it. Grief is not linear. There is no beginning, middle, and end, but it is an ever winding road, and sometimes you end up right back to the beginning.

The actions of Levi Cayen and James Thomas on December 27, 2017, in causing the death of Alexander Norwegian, had devastating consequences to the family and friends of Alex Norwegian.

I know that no sentence I impose today can compensate for the loss of a child or the death of a loved one, or impact on the immeasurable grief and sorrow felt by the family members who are left behind to forever mourn. No sentence could ever make up for the life of Alexander and no sentence could ever be enough for those who loved him.

As a sentencing judge, I must impose a fit and appropriate sentence, considering the applicable sentencing principles, the circumstance of the offence and the offender, and the mitigating and aggravating factors. As part of this assessment, a judge cannot allow any feeling of sympathy or compassion for the offender to compromise their duty to objectively assess the offender's moral blameworthiness. Similarly, a judge cannot allow a sense of anger or outrage at the offender's conduct to compromise their duty to exercise restraint in imposing a sentence. The primary focus of a sentencing hearing is necessarily on the offender who has been found guilty of a crime.

Sentencing Principles.

The fundamental purpose of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718 of the *Criminal Code* speaks of the objectives of sentencing which include denunciation and deterrence, the separation of the offender from society where necessary, the rehabilitation of offenders and to provide reparations to victims and to the community.

Pursuant to section 718.2 of the *Criminal Code*, the Court must also consider any aggravating and mitigating factors, parity with sentences being similar for similar offenders for similar offences committed in similar circumstances, not restricting liberty if less restrictive sanctions may be appropriate, and all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders with particular attention to the circumstances of Aboriginal offenders.

Gravity of the Offence and the Moral Blameworthiness of the Offender.

The offence of manslaughter is a serious offence, one of the most serious crimes in Canada. The loss of a person's life as a result of the unlawful act of another is invariably serious. Robbery is also an inherently serious offence. A robbery which occurs in the context of a significant assault resulting in serious injuries is also very serious.

The maximum punishment for robbery is life imprisonment. The maximum punishment for manslaughter is also life imprisonment. That the maximum penalty is life imprisonment for both of these offences is another indicator that they are considered very serious offences. Parliament has reserved the maximum penalty of life imprisonment for only the most serious offences in Canadian law.

The moral blameworthiness associated with manslaughter is generally high, and, as a result, the sentences general emphasize deterrence and denunciation. The offences of manslaughter and robbery require that deterrence and denunciation be the paramount sentencing factors. The Court may consider other factors such as separation of the offender from society and the rehabilitation of the offender, among others. The use of a weapon in the commission of the offence is also a significant aggravating factor.

Unlike murder, there is no automatic sentence of life imprisonment for manslaughter, and there is no mandatory minimal sentence of imprisonment. The sentences imposed for manslaughter can very widely, and this reflects the circumstances under which manslaughter can occur. There is a broad range of conduct covered by the offence of manslaughter. Manslaughter has been described as covering:

...a wide range of cases, extending from those which may be classified as near accident at the one extreme and near murder at the other. Different degrees of moral culpability attach to each along a continuum within that spectrum. It is precisely because a sentence of manslaughter can range from a suspended sentence up to life imprisonment that the Court must determine for sentencing purposes what rung on the moral culpability ladder the offender reached when he committed the prohibited act.

*R v Laberge*, 1995 ABCA 196, at para. 6.

The Alberta Court of Appeal decision in *LaBerge* provided an analytic framework for categorizing manslaughter cases for sentencing purposes and that continues to be very useful. Evaluating an offender's degree of moral blameworthiness is not limited to an assessment of the offender's mental state at the time of the commission of the offence. As explained by Chief Justice Fraser in *Laberge* at paragraph 8:

[A] court is not limited to evaluating moral blameworthiness in terms of an offender's mental state. Indeed, it would be quite wrong to engage in that kind of contextual analysis. That is because the offender's level of moral culpability will be influenced by other factors. In the case of unlawful act manslaughter, the most important of these will be what the unlawful act itself involved. The nature and quality of the unlawful act itself, the method by which it was committed, and the manner in which it was committed in terms of the degree of planning and deliberation, are all relevant to this inquiry.

There are three broad categories into which unlawful act manslaughter may be considered for the purpose of sentencing, *R v Laberge* at paras. 9 and 10:

Unlawful acts may be divided into three broad groups: those which are likely to put the victim at risk of, or cause, bodily injury; those which are likely to put the victim at risk of, or cause, serious bodily injury; and those which are likely to put the victim at risk of, or cause, life-threatening injuries. Only when the offender's proven mental state at the time of commission of the offence is evaluated in the context of the crime itself, in other words in terms of its relative degree of seriousness, is it possible to classify for sentencing purposes the degree of fault inherent in the crime committed.

To complete the moral blameworthiness picture and to ensure that an offender is properly situated in terms of sentencing vis-à-vis others convicted of the same offence, the Court must also have regard to those personal characteristics of the offender which would mitigate or aggravate culpability.

The unlawful act in this case was the assault of Alexander Norwegian by Levi Cayen and James Thomas in the course of carrying out the robbery. The actions of Levi Cayen and James Thomas in carrying out a robbery which involved the use of a metal pipe and a wooden bat to smash the windows of Alexander Norwegian's car and to assault Alexander Norwegian in the course of the robbery are actions which aggravate culpability.

The robbery itself was planned and Levi Cayen and James Thomas went out to the Portage with the intention of jacking Alexander Norwegian. Levi Cayen had consumed alcohol and James Thomas was under the influence of drugs and alcohol. A plan was conceived to jack Alexander Norwegian. Levi Cayen did not come up with the plan. And regardless of whether he was initially reluctant or not, he went along with the plan and took steps to prepare and carry out the plan.

He knew when they left James Thomas' residence that the plan was to rob Alexander Norwegian of drugs and money. He may not have known what exactly was going to happen or that Alexander Norwegian was going to be assaulted and beaten, but he knew why they were going out to the Portage. The plan was not well thought out and was one conceived by people under the influence of alcohol and drugs as they sat around drinking. But it was a plan and one that involved some planning and preparation. Before they left, they took steps to prepare for the robbery, they dressed for the weather, they took weapons with them, and they considered what to take with them.

At some point before arriving at the Portage, they decided to dummy lock the gate to prevent Alexander Norwegian from leaving. Levi Cayen and James Thomas went to the Portage with the intent to rob Alexander Norwegian, and they were prepared to do so.

Hitting Alexander Norwegian multiple times with a pipe or a bat, including multiple strikes to the head area resulting in several lacerations and a diastatic skull fracture, are actions that put the victim at risk of life-threatening injuries. Levi Cayen was an active participant in beating Alexander Norwegian and held Alexander Norwegian's hands with the rope that was tied around them while James Thomas searched the vehicle. There were multiple blows to the head of Alexander Norwegian, as well as numerous injuries inflicted to other parts of his body.

This was a severe beating. The level of violence was gratuitous to what they intended to achieve. Inflicting a beating on someone does not necessarily result in the risk of life-threatening injuries, but the use of a bat or a pipe to hit the victim multiple times in the head substantially increases the risk to the victim and places the victim at the risk of life-threatening injuries. On an objective basis, the actions of Levi Cayen and James Thomas was conduct that falls within the third category of unlawful acts described in *Laberge* which could put the victim's life at risk.

Following the assault, Alexander Norwegian's clothing was taken, and he was helped into the vehicle. Levi Cayen told the police that Alexander Norwegian was really dazed, and he knew that Alexander Norwegian was bleeding. Levi Cayen knew that the windows were smashed out and that Alex Norwegian drove the vehicle a short distance into a snowbank.

Alexander Norwegian's condition following the beating was obvious to Levi Cayen because he told the police he wanted to take Alexander Norwegian to the hospital, but James Thomas was not interested. He remained so concerned about Alexander Norwegian's condition that after they returned to James Thomas house he went to make the anonymous call to the police from the Rooster and report a drunk driver in the area where they had left Alex Norwegian.

I conclude that Levi Cayen was objectively and subjectively aware that his actions and that of James Thomas in assaulting and robbing Alexander Norwegian in the manner in which they did placed him at the risk of life-threatening injuries.

Considering as well the personal characteristics of the offender. Levi Cayen was young, just 20 years old at the time of the offence. And he had been in trouble before, but he had a limited criminal record.

Just as Alexander Norwegian was not in a good place in his life, Levi Cayen was also not in a good place. He had been drinking heavily in the days and weeks before the offences. He had been consuming marijuana. He had been in contact with the police apparently on several occasions. He had dealt with Constable Steve Beck, who did his best to help Levi Cayen and refrained from charging him for some of his conduct.

He had been admitted to the psychiatric ward at Stanton Hospital two months prior to his arrest as he was suicidal. He was in an unhealthy, volatile relationship with his ex-girlfriend. This was the place that Levi Cayen was in leading up to the night of December 26, 2017.

On that night, Levi Cayen had been drinking the night of the robbery and into the early morning hours. While it was not apparent from the evidence adduced at trial that he was highly or severely intoxicated, he was obviously intoxicated to some extent. That would impact on his foresight of the consequences of his actions.

Considering the Gladue factors. Mr. Cayen is of Dene descent, and this requires me to consider specifically his background as an Aboriginal offender. The Supreme Court of Canada has given direction to trial courts in the interpretation of the section 718.2(e) in the cases of *Gladue* and *Ipeelee*.

*Gladue* requires sentencing judges to consider: 1) the unique, systemic, and background factors which may have played a part in bringing the particular Aboriginal offender before the courts, and 2) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his Aboriginal background. Both considerations inform the sentencing process and the determination of what is a fit and proper sentence. *R v Ipeelee*, 2012 SCC 13, para 72.

The systemic and background factors applicable to an offender may help in assessing his level of moral blameworthiness. They may be mitigating in nature in that they played a part in the offender's conduct. Aboriginal offenders may find themselves in situations of social and economic deprivation with a lack of opportunities and limited options for positive development, and their constrained circumstances may diminish their moral culpability: *Ipeelee*, para. 73.

The second way the Aboriginal background of an offender may be considered is in the types of sanctions which might be appropriate for the offender because of his Aboriginal background and the consideration of those sanctions may assist in this overall assessment of the effectiveness of the sentence itself: *Ipeelee*, para. 74.

Systemic and background factors do not operate as an excuse or justification for an offender's criminal acts. Instead, they provide context to enable a judge to determine an appropriate sentence. The factors do not need to be connected in some way to the particular offender and offence, unless the unique circumstances of the particular offender bear on his culpability for the offence or indicate which sentencing objectives can and should be actualized. They will not influence the ultimate sentence: *Ipeelee*, para. 83.

I have heard about Levi Cayen's background through information contained in the pre-sentence report, from counsel, and from the evidence of his mother, Wendy Ross, who testified at the sentencing hearing. The defence also submitted two letters on Mr. Cayen's behalf. One was written by the chief of the West Point First Nation, which is where Mr. Cayen is from, and the other is from Mr. Cayen's grandfather, Ted Cayen.

Levi Cayen grew up living with his parents and also with his maternal grandparents at times. He lived with his aunt for a period of time as well. He had lived in the Hay River area for his whole life. He is the oldest of three siblings, and he is close with his siblings.

His parents struggled with alcohol and this often led to arguments and domestic violence. Living with his parents did not provide a stable environment. He often stayed with his grandparents who provided more structure.

His relationship with his father was complicated, something that was reflected in the pre-sentence report but also in the statement he provided to the police following his arrest. There was frequently conflict with his father and his relationship with his father remains fragile. His father did not play a large part in raising the children or interacting with them.

While Levi's father worked, the family often struggled financially. And there were periods where there was limited income and his parents' abuse of alcohol took money from what otherwise could have been spent providing for the children.

Levi Cayen's father is a Sixties Scoop survivor. His maternal grandparents attended residential school and his mother testified that she was raised in an alcoholic home.

She acknowledged that she and her husband abused alcohol while Levi was growing up and that they did not teach Levi much in the way of skills to deal with adversity. She was somewhat aware of the struggles Levi was having with alcohol because they had reached out to a counselling centre in 2016 or 2017, but it was apparent that she was not fully aware of the extent of the problems that Levi Cayen was facing prior to his arrest.

In terms of his education, Levi Cayen dropped out of high school, but he has been working while at NSCC to obtain his GED. He had worked sporadically prior to his arrest. But as he was only 20 at the time, I would not expect his work history to be significant.

Levi Cayen was also coping with childhood trauma and his mental health was impacted. He had suicidal feelings and he used alcohol to cope with his trauma and stress. He's also experienced anxiety and depression. He was also a social person who viewed himself as a leader and that was something that was confirmed by his mother. He was a leader who was not easily influenced.

Since Levi Cayen's arrest, his parents have stopped drinking, which is a positive development, and hopefully sobriety is something that they can maintain in the long term. If so, then they will be in a much better position to provide Levi with the support and help he needs when he is released from prison. Levi's grandparents also live a sober lifestyle and have done so for many years.

Through his grandfather, Levi has developed a connection to his culture and traditional lifestyle. He has a good relationship with his grandfather. His grandfather wrote in his letter about some of his experiences with Levi while he was growing up and how Levi was always there to help him around the house and in the bush. He also described teaching Levi to hunt and trap and how to fish, as well as how to survive on the land.

The Chief of the West Point First Nation indicated in his letter that Levi Cayen will have support once he is released and that the community has taken steps to address, and aims to reduce, substance abuse within that community. From all of this, I conclude that Levi Cayen will have family and community support when he is released from jail. He will need that and his own personal will and resolve to continue with his rehabilitation.

Levi Cayen also has a criminal record, with five convictions from 2017 and 2018. His first convictions occurred one month prior to the death of Alexander Norwegian. He was convicted of assault and two counts of failing to comply with release conditions. He was given a conditional discharge and placed on probation for a period of 15 months, with conditions in addition to the statutory conditions to report to a probation officer; to take counselling, treatment or programs recommended by the probation officer; and not to have any conduct with his then girlfriend without permission.

Following his arrest, Mr. Cayen was also convicted of two additional offences, for failing to comply with release conditions and for failing to comply with his probation order. For the breach of probation conviction, he was sentenced to 45 days of custody.

And it is apparent that Levi Cayen has experienced many of the things that the court frequently sees in Aboriginal offenders who come before the court: an unstable childhood, substance abuse, domestic violence, the lasting effects of residential schools, and the Sixties Scoop. There are multiple inter-generational traumas which were experienced by Levi Cayen and members of his family, which have the effect of reducing his moral culpability.

Taking into account all of these factors, I conclude that Levi Cayen's moral blameworthiness or culpability for these offences is high. It is reduced to an extent by his personal characteristics, including his Aboriginal background, but it remains high.

Aggravating Circumstances.

There is the criminal record that I've referred to. Mr. Cayen's criminal record is recent, but it is also minor in comparison to the offences that he is being sentenced for today. It is aggravating that he was on probation at the time of the offence and that he had only been on probation for one month at the time of these offences.

The circumstances of the offence are also aggravating. Alexander Norwegian was set up to be robbed. Levi Cayen and James Thomas went to rob Alex Norwegian, armed with weapons. While they may not have been planning on assaulting or killing Alex Norwegian, they were prepared for violence and showed no hesitation in resorting to violence. There was some planning and premeditation involved in these crimes. These were weapons that they brought with them.

Alex Norwegian was unarmed against two armed individuals in a remote location where he could not seek help and he did not have an opportunity to flee. Even if he had been able to flee, Levi Cayen and James Thomas had taken steps to prevent him from getting far by dummy locking the gate down the road. This is a further element of premeditation to the plan.

The level of violence inflicted on Alex Norwegian was extreme, gratuitous, and not necessary as he was willing to tell them where his stash was. The actions of Levi Cayen and James Thomas started violently with James Thomas immediately trying to smash the windows out of the vehicle and continuing from there.

There was also the element of confinement to the offence, as Alex Norwegian's hands were tied with a rope for a period of time during the incident. Alexander Norwegian was clearly badly injured when Levi Cayen and James Thomas left. He had to be helped into the vehicle, he was really dazed, and they observed him drive his vehicle into a snowbank.

James Thomas took Alexander Norwegian's jacket and other items, and they left Alex Norwegian badly injured, in a vehicle with most of its windows smashed, in a snowbank in a remote location with a gate across the only road out, in the middle of a December night. Levi Cayen also took some steps to cover up his involvement by burning his clothes following the incident.

Mitigating Circumstances.

In terms of a guilty plea, defence advised that Levi Cayen offered to plead guilty to manslaughter and robbery as early as 2018 and remained willing to resolve these matters on that basis since then. The Crown did not accept that offer and proceeded to trial on the first-degree murder charge. Mr. Cayen entered a guilty plea to the robbery at the commencement of the trial.

The defence suggests that the offer to plead guilty to the same offence that he was convicted of should be given the same mitigating effect as a guilty plea. And as I indicated, Mr. Cayen entered a guilty plea to the robbery charge. There was no agreement on the facts underlying that charge.

The Crown argues that the offer to plead guilty to manslaughter and the guilty plea to robbery are mitigating but should be of limited mitigating effect because there was no agreement on the facts, a full trial was required, witnesses had to testify, and no resources were saved.

In *R v Shyback*, 2018 ABCA 331, the Alberta Court of Appeal considered the effect of an offer to plead guilty which was not accepted. In that case, the offender was charged with murder and had offered to plead guilty to manslaughter. The offer was not accepted, and following a trial for murder, the offender was found not guilty of murder and convicted of manslaughter. An offer to plead guilty to a lesser offence and a conviction after trial for the lesser offence can be considered on sentencing as it can demonstrate a willingness to accept responsibility for the offender's actions. It can demonstrate remorse and it can be mitigating.

How the trial proceeded once that offer was rejected is also a consideration in assessing the mitigating effect of what could have been a guilty plea. While there was a guilty plea to the robbery, as I mentioned, there was no agreement on the facts. The trial was lengthy, and a number of witnesses testified. However, the length of the trial and the number of witnesses who the Crown called are not solely the responsibility of the defence. The defence did make many admissions and numerous agreed statements of facts were entered. The Crown made a decision about which witnesses it called at trial and about the evidence it led. There was some evidence which was repetitive and not in issue. That is not the responsibility of the defence. Despite their position, to my recollection, the defence cross-examined most, if not all, of the Crown's witnesses, sometimes covering areas that were apparently not in issue. In my view, the Crown and defence each bear some responsibility for the conduct of the trial. It cannot be laid solely at one side or the other.

The defence's position at trial does not eliminate the mitigating effect of the guilty plea or the offer to plead guilty. The mitigating effect is not the same as that, for example, of an early guilty plea entered with the full agreement regarding the facts, but there is still a mitigating effect to it.

With respect to remorse, Levi Cayen has demonstrated remorse for his actions. There are various indications of his remorse. His attempt to call the police demonstrated some concern for Alexander Norwegian in an attempt to get him help. His comments to the police in his statement that he wished it was him. In the pre-sentence report, he took responsibility for the offences and said he feels regret and shame. Those are comments he echoed today in addressing the court. There are also the Gladue factors that I have referred to earlier.

Position of Each of the Parties,

The Crown is seeking a sentence of 15 years for the offence of manslaughter and 10 years concurrent for the offence of robbery. In addition, the Crown seeks a DNA order pursuant to section 487.051 of the *Criminal Code*, a firearm's prohibition order pursuant to section 109 for a period of 15 years, and while initially seeking the Victim of Crime Surcharge, counsel has advised today that that is not available. The Crown is also seeking an order pursuant to section 743.6 requiring the offender to serve one half of his sentence prior to be granted full parole.

The position of the defence is that they are seeking a sentence of two years less a day, which would be one of time served, given Mr. Cayen's pre-sentence custody. The defence's alternate suggestion is that if an additional period of imprisonment is required that it be short and less than two years so that Mr. Cayen can serve his sentence in the Northwest Territories. And it would be followed by 18 months of probation, with conditions to assist Levi Cayen in reintegrating into the community and to assist with his rehabilitation, so and to include conditions such as taking counselling and treatment programs.

The defence is also suggested that the principles of *Kienapple* are engaged, and one of the offences should be stayed; alternatively, that the sentence imposed be concurrent. I agree that as both offences arose from one incident, that the sentences imposed should run concurrently, but I do not agree that *Kienapple* is applicable in this situation. There were not extensive submissions on this issue so I will address this briefly.

*Kienapple* is applicable when an offender is convicted for more than one offence where the offences have the same, or substantially the same, elements contained within each offence. The elements of robbery and manslaughter bear some commonality, but they are sufficiently different that the principles of *Kienapple* are not engaged.

Sentences of Co-Accused

In looking at the positions of the Crown and the defence in their submissions on sentence, they are clearly far apart. In order to assess what period of imprisonment might be appropriate for Mr. Cayen, one of the considerations is parity. In this case, there were three co-accused who have all been sentenced for their role in this crime.

James Thomas was convicted of second-degree murder and robbery following a trial. He received a sentence of life imprisonment with a parole ineligibility of 10 years for the murder and 10 years imprisonment for the robbery conviction. James Thomas' role in this offence was that of someone who was involved in the planning and preparation of the robbery. He was the instigator behind the plan. It was his suggestion. He was a drug dealer who supplied Tyler Cayen and Sasha Cayen with drugs, often in exchange for work, or sometimes he fronted them the drugs. At the time of these offences, he was out of drugs and the prospect of robbing Alexander Norwegian of drugs and money was obviously appealing to him. When he and Levi Cayen were unsuccessful in getting drugs from Alexander Norwegian, he and Tyler Cayen later went looking for Alex Norwegian's stash at various places on Lagoon Road.

Tyler Cayen entered a guilty plea to being an accessory after the fact to manslaughter for his role in covering up what had happened. He lied to the police. He helped James Thomas burn the items of clothing in his wood stove.

Tyler Cayen did not participate in the planning, and he did not carry out the plan. He had been a long-time cocaine addict at the time of the offence. He indicated that he did not receive any leniency or did not make a deal with the Crown with respect to his sentence in exchange for his testimony at Levi Cayen or James Thomas' trial. He received a sentence of two years less a day imprisonment and three years of probation.

Sasha Cayen entered a guilty plea to manslaughter. In January 2019, she was sentenced to three years and seven months of imprisonment. Her role was one of helping with the planning of the robbery. She sent the text messages which set up Alexander Norwegian and ensured that he was at the Portage when Levi Cayen and James Thomas got there to rob him. She did not participate in the destruction of the evidence afterwards but observed Tyler Cayen and James Thomas burning the items in the stove. As well, she indicated that she did not make any sort of deal with respect to her testimony at Levi Cayen's or James Thomas' trials.

The Crown has also filed a number of other cases, and I do not intend to review them in this decision, but I have read them, and I have considered them in assessing what the appropriate range of sentence for this offence might be.

In assessing what the appropriate range might be, the proposal of the defence of two years less a day is inappropriate for this offence and this offender, even on a guilty plea. That would be less than that of what Sasha Cayen received, who, while involved in the planning, did not participate in the actual robbery and beating like Levi Cayen and James Thomas did. Sasha Cayen also entered a guilty plea and was sentenced on the basis of an Agreed Statement of Facts without any requirement to call additional evidence.

The appropriate sentence for these offences is more in line with what the Crown has proposed, although the mitigating factors present in this case and the circumstances of the offender mean that a sentence less than the 15 years sought by the Crown would be appropriate.

Pre-Sentence Custody Credit.

Levi Cayen was arrested on January 3, 2018, and has remained in custody since. To today's date, that amounts to 1,640 days. Mr. Cayen has also served a sentence during that period which should be deducted from his overall remand credit. This sentence was imposed for an offence which occurred while he was in custody on remand for these offences.

I decline defence's suggestion that the 45 days should not be deducted at all. Failing to deduct that period of time would render the sentence imposed on May 18, 2018, meaningless. It was a separate offence to which concurrent time likely would not have been imposed. Deducting the 45 days for the sentence, which was imposed on May 18, 2018, that amounts to 1,595 days, or approximately 4 years and 4.5 months.

The Crown has argued that Mr. Cayen's conduct while in custody should result in a reduction in the standard of 1.5 days credit for every day spent in custody. Section 719(3) of the *Criminal Code* states that a person may receive credit for time in custody as a one-to-one rate, but section 719(3.1) states that if the circumstances justify it, credit can be granted to a maximum of 1.5 days for each day spent in custody.

The task of determining the assessment of credit to be granted for any time spent in custody is one that judges regularly undertake. Guidance was given in the case of *R v Summers*, 2014 SCC 26 at paragraphs 70 to 71:

In determining credit for pre-sentence custody, judges may credit at most 1.5 days for every day served where circumstances warrant. While there is now a statutory maximum, the analytical approach endorsed in *Wust* otherwise remains unchanged. Judges should continue to assign credit on the basis of the quantitative rationale, to account for lost eligibility for early release and parole during pre-sentence custody, and the qualitative rationale, to account for the relative harshness of the conditions in detention centres.

The loss of early release, taken alone, will generally be a sufficient basis to award credit at the rate of 1.5 to 1, even if the conditions of detention are not particularly harsh, and parole is unlikely. Of course, a lower rate may be appropriate when detention was as a result of the offender’s bad conduct, or the offender is likely to obtain neither early release nor parole.

Both the Crown and defence have filed Corrections' records which give an insight into Mr. Cayen's time in custody over the past four and half years while he was awaiting trial and sentencing. He has attended schools and taken the exams to obtain his GED. He has successfully taken programs. He has worked in the kitchen. He has participated in counselling and has had regular sessions with the chaplain. He has applied for a program at Aurora College as well.

As well, I would note that Mr. Cayen's time in custody occurred during the Covid pandemic. And there were certain restrictions that were imposed on the correctional facilities, which included restrictions in terms of visitors and other restrictions within the facility which would have had an impact on his ability to take programs and engage in other activities at the jail.

Some of the program reports were entered into evidence and they demonstrate that Mr. Cayen actively participated in the programs he took, participated in discussions, and completed the required assignments. He was respectful and displayed a good attitude. While working in the kitchen, Mr. Cayen was assaulted by another inmate by apparently being hit in the head with a wooden utensil. He received a cut to the head that has left a scar.

The records also include reports of a number of institutional infractions that Mr. Cayen was found guilty of. I recognize that the standard of proof for conviction in correction facilities is that of a balance of probabilities. I have kept that in mind in considering these reports. The reports indicate that Mr. Cayen has over the past four years engaged in various activities that contravene the rules of the correctional facility and has been subjected to various forms of discipline, including loss of privileges and disciplinary segregation.

Some of the infractions are relatively minor such as disobeying rules or orders, whereas others are more serious such as his involvement in an attempt to bring contraband into the jail. They are of concern. They demonstrate that while Mr. Cayen has done well in custody and has taken programs and made personal progress, there were still problems and that he still has work to do.

Overall, in considering pre-sentence custody, he has exhibited some conduct which might possibly have delayed his access to early release, but this has to be balanced against the positive progress he has made while in custody. Any reduction from the

1.5-to-1 credit for pre-sentence custody should be minimal.

As stated, Mr. Cayen's pre-sentence custody amounts to 1,595 days, or approximately 4 years, 4.5 months. At credit of approximately 1.5 days for every day spent in custody, that amounts to 6.5 years of credit, which will be deducted from the sentence I will be imposing.

The Crown is also seeking an order pursuant to section 743.6 to have Mr. Cayen serve one half of his sentence before being released on full parole. This section requires the court to be satisfied, having regard to the circumstances of the commission of the offence and the character and circumstances of the offender, that the expression of society's denunciation of the offence or the objective of specific or general deterrence requires that the offender serve half of their sentence before being released on parole.

As stated by Supreme Court of Canada in the case of *R v Zinck*, 2003 SCC 6, the decision to delay parole is one that is not common and can only occur after the proper weighing of all factors, and if it appears to be required to meet the requirements of denunciation and deterrence. I have considered all of the factors in this case. Denunciation and deference are clearly important sentencing principles to be considered and the circumstances of the offence suggests that it might be appropriate. Taking into account the personal circumstances of Mr. Cayen, however, I am not convinced that it is necessary to achieve these sentencing objectives and I decline to make an order pursuant to section 743.6.

Ancillary Orders.

The Crown is seeking a DNA order. Manslaughter and robbery are both primary designated offences pursuant to section 487.04 of the *Criminal Code*. It is mandatory that there be a DNA order pursuant to section 487.051, authorizing the taking of Mr. Cayen's DNA for inclusion in the National DNA Data Bank.

A firearm prohibition order pursuant to section 109(1)(a) of the *Criminal Code*, that is an order that it mandatory. Pursuant to section 109(2), the duration of the order is for a minimum of 10 years with respect to firearms, other than a prohibited firearm or restricted firearm, and any cross-bow restricted weapon, ammunition, and explosive substance. The maximum duration is life. For prohibited firearms, restricted firearms, prohibited weapons, prohibited devices, and prohibited ammunition, the order is for life.

The Crown is seeking a firearm prohibition order for a period in excess of the minimum and suggests that a period of 15 years is appropriate. The defence appears to be suggesting that the minimal firearm prohibition order was appropriate because no firearm was used during the offences. The defence is also seeking an exemption pursuant to section 113 to permit the possession of a firearm for hunting purposes.

Given the circumstances of the offence and the youth of the offender and his limited criminal record, I will impose a firearm prohibitions order for a period of 10 years. While Mr. Cayen has participated in traditional activities like hunting and trapping over the years, I am not satisfied that he requires a firearm for sustenance purposes, and I decline to grant an exemption pursuant to section 113.

All right. Please stand, Mr. Cayen. Taking into account the circumstances of the offences, your personal circumstances, including your Aboriginal status, and the applicable sentencing principles, including specifically section 718.2(e) of the *Criminal Code*, I impose the following sentences:

For the offence of manslaughter, a period of imprisonment of 11 years, and for the offence of robbery a period of imprisonment of 7 years to be served concurrently. You will receive credit of 6.5 years for your remand time, leaving a sentence of 4.5 years left to serve. You may have a seat.

All right. Is there anything else that needs to be addressed, counsel, Mr. Praught?

D. PRAUGHT: Your Honour, just the draft disposition order the Crown tendered with respect to Exhibits 57 and 58, we're asking that the Court make an order returning those two exhibits to the James Thomas file which, as the Court knows, is currently under appeal.

THE COURT: Okay. Is there any -- do you have any position on that, Mr. Regel?

A. REGEL: Pardon me, Your Honour. I was distracted there. Could I --

D. PRAUGHT: The draft disposition order the Crown had tendered with respect to Exhibits 57 and 58, we're asking that that be issued.

A. REGEL: I take no objection to that, Your Honour.

THE COURT: Okay. So that is simply moving the exhibits within the registry for the purpose of Mr. Thomas' appeal, so that order will be granted. All right. Anything else, Mr. Praught.

D. PRAUGHT: No, Your Honour.

THE COURT: Okay. Mr. Regel, is there anything else?

A. REGEL: No, Your Honour.

THE COURT: Okay. All right. Thank you. We will adjourn.

(PROCEEDINGS CONCLUDED)

**CERTIFICATE OF TRANSCRIPT**

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

Dated at the City of Toronto, in the Province of Ontario, this 5th day of August, 2022.

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