

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HIS MAJESTY THE KING

- v -

KELSI CAMSELL

Transcript of the Sentencing Decision delivered by
The Honourable Deputy Justice L. A. Charbonneau,
sitting in Behchoko, in the Northwest Territories,
on the 31st day of May, 2023.

APPEARANCES:

C. Brackley	Counsel for the Crown
J. Bran	Counsel for the Defence

Charges under s. 320.14(3) and 320.14(2) *Criminal Code*

1 THE COURT: Today it is my difficult
2 responsibility to sentence Kelsi Camsell for the
3 two offences that she committed on June 20, 2021.
4 That day, she made the terribly bad decision to
5 drive a motor vehicle despite the fact that she
6 had been consuming alcohol. The consequences of
7 that decision were catastrophic and
8 life-changing for a lot of people in this
9 community. One young man was injured, and
10 another one, Felix Black, did not survive the
11 crash.

12 Before I go any further, I want to
13 acknowledge at the outset that although Felix's
14 legal last name was "Black", when he was still a
15 baby his name was changed to "Felix Nitsi'izah
16 Wetade". The circumstances of that were
17 explained by his adoptive mother Marjorie Black.
18 She explained that "Nits'i" means "Wind" in the
19 Tlicho language, and that "Nitsi'izah" means "Son
20 of the Wind". She also explained that "Wetade"
21 is his adoptive father's last name, and that is
22 how he got this new name. Words and names
23 matter, and I wanted to make sure I acknowledge
24 this in my decision today.

25 Also, before I go any further, I want to
26 again express my thanks to those who prepared
27 Victim Impact Statements and shared with the

1 Court the effect that these events had for them.
2 I know it is difficult to open up about such
3 things, such very painful things, and I hope that
4 the fact that those of you who did, had an
5 opportunity to share those feelings, can play,
6 maybe a very small part, but can play a part for
7 closure and healing, and I say, again, I am very
8 sorry for your loss.

9 I am also grateful to those who took the
10 time to write letters of support for Ms. Camsell.
11 No matter what sentence I impose today, and quite
12 apart from the court process, she, like others,
13 has to live the rest of her life with these
14 events. She has to live with the knowledge of
15 being responsible for the death of her friend,
16 someone she was very close to, and she will need
17 your support and the support of all her loved
18 ones to continue on her own healing journey.

19 The sentencing process can give people an
20 opportunity to talk about their feelings about a
21 crime. Hopefully it can also provide a space
22 where people affected by a crime, and the
23 offenders themselves, to be heard and to feel
24 that they have been heard. That their
25 perspective has been heard. That the judge
26 understood their point of view regardless of the
27 ultimate outcome. Sometimes, maybe not always,

1 but sometimes that can help with closure, and I
2 do hope that this process has, even in a small
3 way, done that.

4 Sentencing is one of the hardest tasks of a
5 judge because it requires taking into account a
6 lot of things and competing interests. It would
7 be much easier if there was only one thing for me
8 to consider. If, for example, the seriousness of
9 this offence was the only thing I had to
10 consider. Or, if Ms. Camsell and her
11 rehabilitation was the only thing to consider.
12 But it is not like that.

13 In deciding what sentence to impose I have
14 to take into account the circumstances of the
15 offence; the circumstances of Ms. Camsell; and
16 the sentencing principles that are in the
17 *Criminal Code* and set out in various cases from
18 the higher courts.

19 Dealing first with what happened, I will
20 start by referring briefly to the events that led
21 to these charges. Everyone here has heard this
22 already, and I know it is painful to hear, but I
23 want to refer to it again now so that anyone
24 reading the sentencing decision later understands
25 what this case was about.

26 On June 20, 2021, in the early morning
27 hours, Ms. Camsell, Felix and two other young

1 men - Guy Tlokka and Jairen Mantla - were
2 consuming alcohol in various locations in the
3 area of Behchoko, including North Arm Park.
4 North Arm Park is a small Territorial park just
5 off the MacKenzie Highway, roughly ten kilometers
6 southwest of the junction to the Behchoko access
7 road.

8 At one point they all got into Ms. Camsell's
9 vehicle and she started driving on the highway.
10 They passed Behchoko access road and continued
11 east on the highway in the direction of
12 Yellowknife.

13 About 7.5 kilometers after the intersection
14 to the access road Ms. Camsell lost control of
15 the vehicle. It left the road, it rolled over
16 and it crashed and ended up partly submerged in
17 water.

18 The exact time of the crash is not known,
19 but using call information taken from cell phones
20 of two of the passengers, the investigation
21 established that it occurred between 3:26 AM and
22 5:07 AM.

23 There is no evidence before me as to the
24 pattern of driving between North Arm Park and the
25 moment of the crash, or the speed that the
26 vehicle was traveling at during that part of its
27 journey. The only thing, the only fact that I

1 have is that the speed of the vehicle immediately
2 prior to leaving the road was 178 kilometers per
3 hour. This information, it is not in the Agreed
4 Statement of Facts, but I understand that from
5 submissions, comes from systems that are part of
6 the car that record these things. The speed
7 limit on the highway is 90 kilometers per hour.

8 The road in that area is flat and straight,
9 and the outside conditions that day were that
10 visibility was clear and the road was dry.

11 Ms. Camsell was able to get out of the
12 vehicle and left the scene to get some help.
13 She was able to get a ride towards Behchoko and
14 called the police during that drive.

15 Felix was ejected from the vehicle in the
16 crash and he died from his injuries. He was
17 22 years old. Jairen suffered a bruised lung,
18 lacerated liver and severe bruising to his knees.
19 He was briefly hospitalized in Yellowknife but
20 was released the next day. He was 23 at the
21 time. Guy Tlokka was not injured. Ms. Camsell
22 for her part sustained soft tissue injuries for
23 which she received treatment.

24 She was arrested that same evening. She
25 gave a statement to police where she took
26 responsibility for driving the car. She admitted
27 that she drank a mickey of vodka that night. An

1 analysis of a sample of her blood that was taken
2 about five hours after the crash was done.
3 Police analysts calculated that her blood alcohol
4 content at 5:00 AM was between 137 and
5 202 milligrams of alcohol in 100 millilitres of
6 blood. The maximum legal limit is 80.

7 Ms. Camsell did not have a driver's license
8 in June 2021 when this happened.

9 Those are the facts, at least the ones that
10 are before me about what happened.

11 This had huge impact, of course, and I need
12 to talk about that for a little bit.

13 Courts are aware of the devastating impact
14 that drinking and driving causes. We hear about
15 it in the news. There is publicity about it. As
16 a matter of fact, even yesterday as we were
17 driving back to Yellowknife, we came upon a
18 tanker truck that had a large poster on the back
19 with a photograph of a family killed in a crash
20 caused by a drunk driver. It was produced by
21 MADD, Mothers Against Drinking and Driving. Last
22 week there was a news article on Cabin Radio,
23 with an interview with the mother of a young
24 woman who was killed by a drunk driver in Fort
25 Smith in 2008, who is also involved with MADD.
26 That mother's plea was, and I quote, "stop
27 normalizing drinking and driving". The tragic

1 consequences of drinking and driving have been
2 the subject of countless news articles, publicity
3 campaigns to try to get the message across, and
4 that general knowledge is in the community, this
5 one and others.

6 But nothing brings home the devastation that
7 drinking and driving causes as much as hearing
8 about it firsthand from the parents,
9 grandparents, siblings and loved ones of someone
10 who has lost their life in these circumstances.
11 And we did hear that in this case yesterday.

12 Twelve Victim Impact Statements were filed
13 at the sentencing hearing yesterday. Ten were
14 read in by the Crown prosecutor at the request of
15 those who prepared them. The other two were read
16 out loud by their authors, which took immense
17 courage. They were from members of Felix's
18 families, and I say "families", the plural,
19 because I heard from them, members of both
20 families, yesterday, and both his biological
21 family and the family that he was adopted into
22 when he was just a few weeks old.

23 Felix's family members loved him. He
24 brought them joy. They will never forget him or
25 stop missing him. He was a young man with his
26 whole future ahead of him. He had talents. He
27 had plans. He was funny. His loved ones looked

1 forward to the day he would have children of his
2 own because he loved those children so much. His
3 youngest niece still asks her mother when Felix
4 is coming home. This is heartbreaking.

5 The depth and intensity of the loss that
6 they all feel was palpable in this courtroom
7 yesterday, and no words of mine can fully
8 describe the magnitude of this loss.

9 The growing recognition of this harm is at
10 the root of the evolution in the sentencing
11 principles and practices in this area of the law,
12 which I will turn to a little bit later.

13 As I said at the beginning, the second thing
14 I must take into account in the sentencing
15 hearing is the circumstances of the offender, in
16 this case the circumstances of Ms. Camsell. I
17 have the benefit of a detailed Presentence Report
18 which gives me a lot of information about her
19 personal circumstances.

20 She is 32 years old and of Tlicho descent.

21 According to the author of the report, she
22 was very cooperative and forthright in the
23 preparation of the report and was very open about
24 some of the difficulties and circumstances she
25 faced growing up.

26 She was exposed to the consequences of
27 alcohol abuse and verbal and physical violence in

1 the home. Her parents separated as a result of
2 this violence and she went to live with her
3 grandparents. They maintained a traditional
4 lifestyle, and Ms. Camsell was able to enjoy a
5 lot of positive experiences with that traditional
6 lifestyle. It was, according to her, a loving
7 and caring home.

8 She has experienced a tremendous amount of
9 losses throughout her life, more recently the
10 death of the father of her children last summer.
11 The Presentence Report says he died in a car
12 accident, and I do not have any other details,
13 but whatever the details, it obviously had a huge
14 impact on her as well as on her three children
15 now age 5, 11 and 13.

16 I read in the report that she started
17 experimenting with alcohol when she was 12 years
18 old and that alcohol abuse has been an issue for
19 her, as well as drug use. This got worse after
20 the passing of her grandmother, who she was very
21 close to, in 2006.

22 The report says that Ms. Camsell's
23 grandfather used to abuse alcohol but stopped
24 drinking several decades ago after a tragedy
25 involving one of his brothers. There was a
26 fishing trip, alcohol was consumed, and three
27 people drowned. Ms. Camsell's grandfather never

1 touched alcohol again after that. Sometimes the
2 only good that can come out of a tragedy is that
3 it triggers drastic change. That is something to
4 think about.

5 Ms. Camsell has taken concrete steps in the
6 last two years to address her issues. She has
7 attended Poundmaker's Lodge Treatment Centre.
8 She's taken advantage of counselling sessions and
9 is going to AA. As she said herself yesterday
10 though, it is not going to be a short process.
11 Addictions, trauma and other personal issues do
12 not get resolved overnight. She is very right
13 and realistic about that; it will take time. But
14 it is within her power to continue working at
15 making those changes. She wants to continue with
16 counselling and treatment, and I was very happy
17 to read that the Tlicho Government is working
18 with Poundmaker's Treatment Centre to provide
19 On-the-Land treatment programs and offering
20 workshops here in Behchoko because access to
21 those services is crucial.

22 She wants to pursue her education as well
23 and is interested in enrolling in nursing or
24 possibly a home-care program.

25 These are some of the things that are
26 mentioned in the Presentence Report. There is a
27 lot more. Some aspects of the report relate to

1 very personal issues that I need not to talk
2 about here, but they are all part of the overall
3 picture of her circumstances, and I have taken
4 all of it into account.

5 The Crown acknowledges that Ms. Camsell's
6 moral blameworthiness for the offences is reduced
7 due to these circumstances, and I will get into
8 that, again, in a moment. In this case the
9 disagreement between the Crown and the defence,
10 and the much more difficult issue, is to what
11 extent it does mitigate things and what impact it
12 should have on the sentence to be imposed.

13 It is with this in mind that I turn to
14 sentencing principles. Section 718 of the
15 *Criminal Code* says that the fundamental purpose
16 of sentencing is to protect society and to
17 contribute, along with crime prevention
18 initiatives, to respect for the law and the
19 maintenance of a just, peaceful and safe society
20 by imposing just sanctions that have one or more
21 of the following objectives, and these objectives
22 are:

23 (a) to denounce unlawful conduct and the
24 harm done to victims or to the community that is
25 caused by unlawful conduct;

26 (b) to deter offenders and other persons
27 from committing offences. That means to

1 discourage people from committing offences;

2 (c) to separate offenders from society,
3 where necessary; that is usually applicable when
4 someone is actually violent and harms other
5 people deliberately or because they are unable to
6 control their anger;

7 (d) to assist in rehabilitating offenders,
8 and that says what it says;

9 (e) to provide reparations for harm done to
10 victims or to the community; and finally,

11 (f) to promote a sense of responsibility in
12 offenders, and acknowledgement of the harm done
13 to victims or to the community.

14 These objectives have to be balanced
15 carefully. Inevitably, in any case some must
16 take precedence over others.

17 In drinking and driving offences it is well
18 established in law that denunciation and
19 deterrence are the paramount sentencing
20 principles.

21 The *Criminal Code* also outlines various
22 principles that governs sentencing. The
23 fundamental one is proportionality, and all that
24 means is that a sentence has to be proportionate
25 to the gravity of the offence and the degree of
26 responsibility of the person.

27 It goes without saying that drinking and

1 driving that results in a death is one of the
2 most serious offences in our criminal law. This
3 is despite the fact that in virtually every case,
4 as is the case in this one, the offender did not
5 intend to harm anyone, and often, like in this
6 case, the person killed or injured is a friend or
7 loved one who was a passenger in the offender's
8 car.

9 People who get behind the wheel of a vehicle
10 after drinking are most probably always convinced
11 that nothing bad will happen, and sometimes
12 nothing does. What sentencing must address and
13 sanction is the decision to drive after having
14 consumed alcohol.

15 It is mentioned in many cases, including
16 *R. v. Lacasse*, 2015 SCC 64, at paragraph 73, that
17 this is a crime that is often committed by people
18 who are otherwise law-abiding citizens.

19 The problem is that when people have been
20 drinking, even when they have not been drinking
21 to the point of being really drunk, they are the
22 worst judge of their own level of intoxication
23 and how it may affect their judgment and
24 reflexes. The message that has to be hammered at
25 is simply "don't do it". We need to get to the
26 point where people simply will not do it. Just
27 like you do not jump into icy rapids full of

1 shoals and rocks without a life jacket just
2 hoping to come out on the other side without
3 injury because you are a good swimmer. There is
4 no such thing as a good driver when that driver
5 has consumed alcohol. Driving while intoxicated
6 is inherently very dangerous for others, and
7 inherently highly blameworthy. Because we know,
8 we know that even though many people drive
9 intoxicated do not get caught, or get caught at
10 some road block without anyone having been
11 harmed, sometimes, and too often, there are
12 terrible outcomes like the one in this case.

13 This is why the law has evolved the way it
14 has. Minimum penalties for some of the drinking
15 and driving offences have increased. The
16 sentencing ranges, as was noted by this Court and
17 others, have increased. At paragraph 7 of
18 *Lacasse*, the Supreme Court of Canada said that
19 this offence continues to cause more deaths than
20 any others in Canada. That deserves being
21 repeated. Drinking and driving causes more
22 deaths than any other offence in Canada. And
23 when the Supreme Court of Canada said that, it
24 quoted from a decision 20 years earlier where
25 another judge of the Supreme Court of Canada had
26 said exactly the same thing. When you think of
27 it this way it is astonishing that so many people

1 still do it.

2 That is why the objectives of denunciation
3 and deterrence have to take precedence over other
4 objectives in these cases. This does not mean
5 that other objectives, like rehabilitation,
6 should be ignored, but they cannot take
7 precedence, because while this sentencing is
8 about Ms. Camsell and the offences that she
9 committed, it is also about the pressing need for
10 this Court to continue to continue repeating the
11 same message and continue to acknowledge the
12 immense harm that is caused by these offences so
13 that people understand it before tragedy strikes
14 in their own lives. This does not just happen to
15 other people.

16 The available sentencing options for these
17 offences are broad. There is no minimum penalty.

18 But ranges have developed in the case law.
19 Ranges are guides. They are helpful, especially
20 because parity is another sentencing principle.
21 Parity means that offenders in similar
22 circumstances who commit similar offences should
23 receive sentences that are similar. That is a
24 question of justice. Of course no two cases are
25 ever alike, but wide disparity in sentencing can
26 diminish public confidence in the justice system.

27 In the case of *R. v. Moore*, 2018 NWTSC 11,

1 I reviewed the legal framework that governed
2 sentencing in this area. This was just a few
3 years after *Lacasse* was decided in the Supreme
4 Court of Canada, and I do not think the legal
5 framework or applicable principles has really
6 been altered.

7 In *R. v. Moore*, I referred to paragraph 65
8 of *Lacasse* where the court mentioned that a
9 review of sentences across the country showed
10 that in cases of impaired driving causing death,
11 sentences vary from 18 months to two years for
12 the so-called less serious situations, and from
13 seven to eight years in the so-called most
14 serious cases. I say "so-called" because
15 obviously by their very nature all these offences
16 are very serious.

17 In *R. v. Altiman*, 2019 ONCA 511, the court
18 said that typically sentences for these offences
19 over the past decade in Ontario have been in the
20 range of four to six years unless there are
21 aggravating factors such as past convictions for
22 related offences, in which case longer sentences
23 have been imposed. What does that suggest? It
24 suggests that even between when *Lacasse* was
25 decided and when *Altiman* was decided four years
26 later the ranges had started to increase.

27 The NWT is a vast jurisdiction but its

1 population is small. Even though sadly we get
2 cases of this sort regularly, we do not get the
3 same volume of cases as the more populated
4 jurisdictions, and for that reason the sample of
5 cases to try to identify a range that would be
6 specific to this jurisdiction is much smaller.
7 In addition, there are important nuances to
8 consider. If a sentence is, like was the case in
9 *Moore*, the result of a joint submission, it may
10 carry no precedential value at all, for reasons I
11 explained in that case. The other case from this
12 jurisdiction, *R. v. Kayotuk*, 2016 NWTSC 59, which
13 is also relatively recent, is another example.
14 There, a joint range of two-and-a-half to
15 three-and-a-half years was suggested. The Court
16 imposed a sentence at the top of that range but
17 did so with reluctance, noting that the
18 sentencing ranges had increased.

19 It is for appellate courts to give guidance
20 to trial courts, and maybe eventually we will get
21 that guidance in this jurisdiction, but for
22 today's purposes, my conclusion is that the
23 ranges outlined in *Altiman* at paragraph 70 are
24 what should be considered in this jurisdiction
25 when dealing with drinking and driving offences
26 that lead to a death.

27 It bears repeating: Ranges don't define the

1 sentence to be imposed. Each sentencing decision
2 remains an individualized process, and the
3 Supreme Court of Canada recognized that in
4 *Lacasse* that ranges are not straightjackets. In
5 that case the trial judge had imposed a sentence
6 much higher than the usual range because of the
7 prevalence of this offence in the region where
8 that judge was sitting, and the Supreme Court of
9 Canada said that it was not an error. The same
10 could be true of circumstances that could justify
11 the imposition of a sentence much lower than the
12 usual range.

13 Restraint is always an important
14 consideration on sentencing, but the law is that
15 it is of particular importance when sentencing an
16 indigenous offender.

17 Again, these principles are well
18 established, and I will not go over all of them
19 in all detail. They are referred to in *Altman*
20 at paragraphs 77 to 85. For today I just want to
21 underscore a few points.

22 First, the application of restraint in this
23 context does not mean an automatic reduction of
24 the sentence that would otherwise be imposed.

25 Second, the principles apply to all offences
26 even serious ones.

27 Third, there is no need for Ms. Camsell to

1 establish a causal link between her circumstances
2 as an indigenous offender and the commission of
3 these offences I am sentencing her for today.

4 Fourth, for the offender's indigenous
5 background to have an impact on the ultimate
6 sentence, the systemic and background factors
7 must have had an impact on that offender's life
8 in a way that:

9 (a) reduces the moral blameworthiness of
10 that offender or

11 (b) suggests what sentencing objectives
12 should be prioritized,
13 and sometimes it could be both.

14 This requires judges not to assume that all
15 communities share the same values and recognize
16 that given those different world views there are
17 times where sanctions other than imprisonment may
18 more effectively achieve the objectives of
19 sentencing in a particular community.

20 Those are the principles. The challenge is,
21 as always, the concrete application of these
22 principles to the facts of this case.

23 First, as I have already said, I find that the
24 range of sentence for this type of offence for
25 someone who does not have a previous related record
26 should ordinarily be between four to six years
27 imprisonment.

1 In this case there are aggravating factors:

2 There were three passengers in the car, so
3 more people put at risk.

4 The second aggravating factor was the
5 incredibly high speed that the vehicle reached
6 immediately before the crash.

7 The third is the alcohol concentration in Ms.
8 Camsell's blood, which was extrapolated to be, even
9 on the lowest of the two figures, above readings of
10 120, which makes it statutorily aggravating
11 pursuant to Section 320.22(e).

12 I would add that even before that section was
13 put in place, high readings were always treated as
14 aggravating factors in the courts across the
15 country.

16 I also consider it aggravating that
17 Ms. Camsell drove the vehicle for some distance
18 and, in particular, continued down the MacKenzie
19 Highway past the access road to Behchoko. I cannot
20 assume that there was excessive speed or erratic
21 driving, there is no evidence of that, and that is
22 not what I mean when I refer to her driving. My
23 point is simply that she drove for some time while
24 under the influence of alcohol. She did not drive
25 five blocks home, not that that would not have been
26 illegal, but the level of risk increases with the
27 duration of driving, and she did not go back into

1 town either. She simply continued down the
2 highway.

3 I will mention in passing that Ms. Camsell has
4 a criminal record, but given that it is unrelated,
5 that it is somewhat dated, there is a gap, I do not
6 think it has any significant bearing on my decision
7 today.

8 There are mitigating factors as well:

9 The guilty plea is a significant one.
10 Although it came a long time after she was charged,
11 which I recognized prolonged the uncertainty for
12 the victim's family, there are extenuating
13 circumstances. The COVID pandemic slowed things
14 down; there was a change of counsel; no date was
15 ever set for a hearing; disclosure issues had to be
16 worked out. The guilty plea avoided the
17 uncertainty of trial, the impact that a trial would
18 have had on everyone, the families of the victims,
19 the surviving passengers who likely would have had
20 to testify. I heard that there were issues that
21 Ms. Camsell could have taken to trial, including
22 the admissibility of her statement to police. A
23 person who gives up their right to trial gives up a
24 lot. I accept that Ms. Camsell should get maximum
25 credit for this guilty plea. I take into account
26 her remorse, which I believe is genuine. It is
27 evidenced by the guilty plea but also by her words

1 in the courtroom and as early as her cooperation
2 with the police when she first had contact with
3 them the very night this happened. She has made
4 the concrete steps to address her addiction and
5 underlying issues that she has struggled with for a
6 long time, and that is to her credit.

7 The other mitigating factor is the impact of
8 her circumstances as an indigenous offender. I
9 will say that as far as the impact of those
10 circumstances on what would be an appropriate
11 sanction, there is nothing before me to suggest
12 that the community of Behchoko and Tlicho
13 community, in general, hold views about the problem
14 of drinking and driving that should cause me not to
15 treat denunciation and deterrence as a paramount
16 sentencing principle here. The devastating
17 consequences of this type of offence affects
18 members of this community just as deeply and
19 traumatically as it does people from other regions
20 in this jurisdiction and elsewhere in the country.
21 Given the size of the community and the close
22 connections between various families and people the
23 impact might be even more deeply felt. These
24 tragedies are preventable, and that is as true here
25 as it is anywhere else.

26 However, as acknowledged by the Crown, Ms.
27 Camsell's circumstances do reduce her moral

1 blameworthiness for this offence, given the things
2 that she has experienced growing up and the
3 struggles that she has had, the issue is really to
4 what extent it does and what effect it should
5 ultimately have on the sentence.

6 Several people wrote letters of support for
7 Ms. Camsell, including her 15-year-old daughter
8 whose letter, I must say, was particularly
9 heartbreaking to read. As is often the case in
10 these situations, these events had a huge impact on
11 Ms. Camsell herself and on her loved ones and will
12 continue to. As she said yesterday, she is
13 grieving too. Felix had been a part of her life
14 always and she was close to him. She is fortunate
15 to have the support of the people who are there for
16 her and she will continue to need it. I understand
17 why those people are asking me to show her
18 leniency. But the reality is that my sentence has
19 to be aligned with the law, has to be based on the
20 law, and cannot be based on any sympathy or empathy
21 I may feel for those affected, including her
22 children.

23 The Crown is asking that I impose a jail term
24 of three-and-a-half years for the drinking and
25 driving causing death charge and two years
26 concurrent for the other charge. Defence counsel
27 is urging me to impose a jail term of two years

1 less a day to allow Ms. Camsell to serve that
2 sentence in the community under a regime of house
3 arrest with exceptions, with conditions to also
4 continue treatment and counselling, and with a
5 community service work order. This type of
6 sentencing that the defence is asking for is called
7 a conditional sentence, and the *Criminal Code* sets
8 out the legal framework that governs this
9 sentencing tool. It is only available if the
10 sentence imposed is less than two years, and also
11 the Court has to be satisfied that allowing the
12 person to serve their jail term in the community
13 would not endanger the safety of the community and
14 would be consistent with the fundamental purpose
15 and principles of sentencing.

16 There are certain offences for which this
17 sentencing tool is not available. That list
18 started off as a relatively small one when the
19 section was first added to the *Criminal Code* and
20 then it grew longer through various amendments, and
21 there came a point where that sentencing tool was
22 not possible for a large number of offences.

23 Until recently, one of the exclusions was an
24 offence that resulted in bodily harm and where the
25 maximum punishment was ten years imprisonment.
26 That took out conditional sentencing, as I say, for
27 many, many of the offences in the *Criminal Code*.

1 With these most recent amendments, it is available
2 again for many offences including this one.

3 But the other criteria remain. As I just
4 said, they include that a sentence must be less
5 than two years and that a conditional sentence
6 would be consistent with the fundamental purpose
7 and principles of sentencing. Here, the safety of
8 the community is less of a concern given the lack
9 of related criminal record and the steps that Ms.
10 Camsell has taken to address her issues.

11 As defence counsel has pointed out, the
12 amendments restoring the possibility of a
13 conditional sentence for this type of offence are
14 recent, so we do not have cases in the Northwest
15 Territories where a court had to decide on the
16 issue that arises here, and I was not referred to
17 any case from anywhere else in the country where a
18 conditional sentence was imposed in a case of
19 drinking and driving causing death since these
20 recent amendments came into force.

21 I have already said what I think the
22 appropriate range is for this type of offence.
23 Here, there are aggravating factors suggesting that
24 a sentence at the low end of that range may not be
25 appropriate. That being the case and even
26 balancing that against the mitigating factors and
27 giving full effect to the mitigating impact of the

1 guilty plea and recognizing that Ms.
2 Camsell's circumstances reduce her moral
3 blameworthiness, I do not think a conditional
4 sentence can be considered because I simply do not
5 think that a sentence under two years is
6 appropriate under the circumstances. I am unable
7 to bring myself to conclude that such a sentence
8 would reflect the need for denunciation and
9 deterrence, and I also do not think it would be in
10 line with what this Court has said in other
11 relatively recent cases of this sort. It would be
12 very difficult to reconcile such a sentence, for
13 example, what I said in the case of *R. v.*
14 *Moore* and what the Court said in *Kayotuk*.

15 I fully understand that the position taken by
16 the Crown and the words that I have spoken now may
17 appear to be harsh to Ms. Camsell and her loved
18 ones, but the reality is that the position taken by
19 the Crown is actually quite restrained. The
20 sentence for this could be longer, and it certainly
21 would have been much longer after a trial.

22 To make sure that this record is complete, and
23 by this I mean the record of these proceedings, in
24 case my decision is reviewed by a higher court, I
25 do want to note that I am aware of one precedent,
26 albeit quite dated, from this jurisdiction where a
27 conditional sentence was, in fact, imposed in a

1 case of drinking and driving causing death. It is
2 a dated case from 1998 from Fort McPherson. This
3 was right after or shortly after the conditional
4 sentencing was first introduced in the *Criminal*
5 *Code* and before drinking and driving causing death
6 offences were excluded from this application. It
7 is a decision that does not have a citation but it
8 is on the Northwest Territories court's website.
9 *R v. Hugh Colin* CR03394, January 7, 1998. The
10 accused had been camping by the Peel River crossing
11 in Fort McPherson. He had been drinking. He went
12 to sleep for a while and woke up to someone having
13 stuck his truck in the water. He got into another
14 truck to get his own out, and as he was backing up,
15 he ran over his grandmother, a very respected elder
16 in the community. Tragically, she died from her
17 injuries. He pleaded guilty at a very early
18 opportunity and was obviously completely
19 devastated. Crown and defence had agreed that a
20 two-years-less-a-day sentence was appropriate. The
21 only issue was whether it should be a conditional
22 sentence. In that case the Court granted that
23 request.

24 These were unusual facts, but the accused did
25 have a related record. But that case was decided
26 over 25 years ago. As I have said many times
27 already, the range of sentences for this type of

1 offence has consistently increased since.
2 Parliament has increased the minimum sentences for
3 some of the drinking and driving offences. Courts
4 have said that sentences should be more severe.
5 Today, in 2023, with the circumstances that are
6 before me I simply do not think that a sentence of
7 two years less a day would be fit and
8 proportionate. But because I am aware of that
9 case, I thought I should mention it.

10 I will begin with the ancillary orders that
11 have been sought. The Crown seeks a DNA Order and
12 the defence opposes this. These offences are
13 secondary designated offences as they are defined
14 in the *Criminal Code*. The Code says that when
15 sentencing someone for such an offence, the Court
16 may, on application by the prosecutor and if it is
17 satisfied, if the Court is satisfied that it is in
18 the best interests of the administration of
19 justice, order a person to provide a sample for
20 inclusion in the DNA databank, which is used by
21 authorities for investigative purposes. The
22 *Criminal Code* also says that in deciding whether to
23 make the order the Court is required to consider
24 the person's criminal record, whether they have
25 been found guilty of a designated offence before,
26 the nature of the offence that they have committed,
27 the circumstances surrounding its commission, and

1 the impact that the order would have on the privacy
2 and security of that person. The Court also says
3 that the Court is required to give reasons for its
4 decision.

5 I reviewed the cases that were filed in this
6 matter for many reasons but also with this issue in
7 mind. There was no mention at all of DNA orders in
8 *Lacasse, Altiman* and *R. v. Smoke*, 2014 MBCA 91, but
9 they were all appellate decisions, so it is
10 possible that the issue was not part of the appeal.
11 In *Kayotuk*, the Court said at page 10 that the DNA
12 order was mandatory, and this was in fact an error
13 because the offence is not a primary designated
14 offence. So since the Court in that case was
15 operating under the assumption that the order was
16 mandatory, there is no analysis of the relevant
17 criteria.

18 In *Moore*, I noted that this was a secondary
19 designated offence but the request for a DNA order
20 was part of a joint submission, and the law is very
21 clear that one should not depart from what is
22 sought unless it is clearly unreasonable. So there
23 is no analysis of the criteria in that decision
24 either.

25 In *Lagrelle*, 2019 ABQB 702, at paragraph 145,
26 the judge noted that the offences were secondary
27 designated offences and made the order. However,

1 there was no discussion of the criteria set out on
2 the section that I have referred to. And all the
3 judge said was "Accordingly this Court exercises
4 its discretion" to order that a sample be provided.

5 So in short, this is the long way to say that
6 the Code gives me discretion, says I have to
7 provide reasons, provides factors that I ought to
8 consider. Clearly, Parliament did not intend these
9 orders to be automatic for secondary designated
10 offences. The circumstances of this offence were
11 that the accused took immediate steps to get
12 assistance; she did not try to evade her
13 responsibilities for this; her record is dated and
14 unrelated; and although the procedure to obtain a
15 DNA sample is not particularly intrusive, privacy
16 interests are still engaged any time a person's DNA
17 is put into the national databank.

18 So in my view, in the circumstances of this
19 case, the factors listed in the *Criminal Code* weigh
20 against making that order, and for that reason I
21 decline to make it.

22 The second ancillary order sought, driving
23 prohibition order, it too is a discretionary order.
24 For this offence the Code says I may make this
25 order for any duration that I consider appropriate
26 plus the entire period for which the offender is
27 sentenced to imprisonment. The Crown is asking me

1 to impose a driving prohibition of seven years, and
2 the defence is asking that I make it for a shorter
3 period, between four to five years. There is no
4 doubt that being prohibited from driving for an
5 extended period of time is an inconvenience to most
6 people, but Ms. Camsell was not even entitled to
7 drive when these offences occurred. The driving
8 prohibition has to reflect this and also has to
9 reflect the aggravating factors that are present in
10 this case, in particular the speed at the time of
11 the crash and the high readings.

12 Given that I have concluded that a jail term
13 will be imposed, it will have the effect of
14 increasing the actual duration of the prohibition
15 order, because the duration of the sentence is
16 added to the driving prohibition. If Ms. Camsell
17 gets early release that period still counts part of
18 her prohibition, and for those reasons I have
19 decided the driving prohibition should be for a
20 period of six years.

21 The Crown is not pressing for the imposition
22 of a victim of crime surcharge, and in my view
23 given Ms. Camsell's precarious financial position
24 and her overall circumstances, this is an
25 appropriate case to waive the imposition of a
26 surcharge.

27 As for the sentence itself, it gives me no joy

1 to impose a jail term on Ms. Camsell. I know this
2 has been a traumatic event for her too. I know
3 that she has made efforts to address the issues,
4 and I commend her for those efforts. But as I have
5 said many times already, this sentencing is about
6 her but it is not just about her. I sincerely hope
7 that even though she was hoping for a different
8 outcome, she will make the most of what is
9 available while she is in custody and will also,
10 once released, continue accessing counselling and
11 treatment available in the community, especially if
12 On-the-Land programs are available. Because Ms.
13 Camsell got a foundation with her grandparents. A
14 foundation of traditional skills and traditional
15 ways of living, skills, land skills, and these are
16 all very positive things from her background that
17 she can build on. She is still very young and has
18 a lot of life ahead of her and very important
19 people to continue living for.

20 Stand up please, Ms. Camsell. Ms. Camsell,
21 for the charge of causing Felix Black's death my
22 sentence is three-and-a-half years imprisonment,
23 and for the other count, two years imprisonment,
24 concurrent. You can sit down.

25 Madam Clerk, I direct that you endorse the
26 Warrant of Committal with the Court's strongest
27 recommendation, and I can help you with the wording

1 if you need it, but I want the Warrant of Committal
2 to include the strongest recommendation that Ms.
3 Camsell be permitted to serve her sentence in the
4 Northwest Territories so that she can access the
5 programming that is available in the facility.
6 There is a good facility in Fort Smith, and also so
7 that she can remain as close as possible to her
8 children and to the people who are here to support
9 her. The authorities will get copy of my decision
10 as well so hopefully my reasons for what I am doing
11 today will be very clear to everyone.

12 Before we close court, I want to thank counsel
13 for their work on this case. I want to thank again
14 the people who shared their experiences and
15 feelings. I thank Ms. Camsell for her words
16 yesterday. I know this is a long sentence, but I
17 really feel under the circumstances and with the
18 harm it has caused by the repetition of these kinds
19 of offences I do not have any choice. And I wish
20 you the best of luck in your work and continued
21 healing, and I hope that this community can also
22 continue its work towards closure and healing.

23 (END OF EXCERPT)

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CERTIFICATE OF TRANSCRIPT

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

Dated at the City of Edmonton, Province of Alberta, this 9th day of June 2023.



Darlene Sirman, CSR(A)
Official Court Reporter