*R v Camsell*, 2023 NWTSC 20 S-1-CR-2022-000070

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 catastrophical 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
28. Court the effect that these events had for them.
29. I know it is difficult to open up about such
30. things, such very painful things, and I hope that
31. the fact that those of you who did, had an
32. opportunity to share those feelings, can play,
33. maybe a very small part, but can play a part for
34. closure and healing, and I say, again, I am very
35. sorry for your loss.
36. I am also grateful to those who took the
37. time to write letters of support for Ms. Camsell.
38. No matter what sentence I impose today, and quite
39. apart from the court process, she, like others,
40. has to live the rest of her life with these
41. events. She has to live with the knowledge of
42. being responsible for the death of her friend,
43. someone she was very close to, and she will need
44. your support and the support of all her loved
45. ones to continue on her own healing journey.
46. The sentencing process can give people an
47. opportunity to talk about their feelings about a
48. crime. Hopefully it can also provide a space
49. where people affected by a crime, and the
50. offenders themselves, to be heard and to feel
51. that they have been heard. That their
52. perspective has been heard. That the judge
53. understood their point of view regardless of the
54. ultimate outcome. Sometimes, maybe not always,
55. but sometimes that can help with closure, and I
56. do hope that this process has, even in a small
57. way, done that.
58. Sentencing is one of the hardest tasks of a
59. judge because it requires taking into account a
60. lot of things and competing interests. It would
61. be much easier if there was only one thing for me
62. to consider. If, for example, the seriousness of
63. this offence was the only thing I had to
64. consider. Or, if Ms. Camsell and her
65. rehabilitation was the only thing to consider.
66. But it is not like that.
67. In deciding what sentence to impose I have
68. to take into account the circumstances of the
69. offence; the circumstances of Ms. Camsell; and
70. the sentencing principles that are in the
71. *Criminal Code* and set out in various cases from
72. the higher courts.
73. Dealing first with what happened, I will
74. start by referring briefly to the events that led
75. to these charges. Everyone here has heard this
76. already, and I know it is painful to hear, but I
77. want to refer to it again now so that anyone
78. reading the sentencing decision later understands
79. what this case was about.
80. On June 20, 2021, in the early morning
81. hours, Ms. Camsell, Felix and two other young
82. men - Guy Tlokka and Jairen Mantla - were
83. consuming alcohol in various locations in the
84. area of Behchoko, including North Arm Park.
85. North Arm Park is a small Territorial park just
86. off the MacKenzie Highway, roughly ten kilometers
87. southwest of the junction to the Behchoko access
88. road.
89. At one point they all got into Ms. Camsell's
90. vehicle and she started driving on the highway.
91. They passed Behchoko access road and continued
92. east on the highway in the direction of
93. Yellowknife.
94. About 7.5 kilometers after the intersection
95. to the access road Ms. Camsell lost control of
96. the vehicle. It left the road, it rolled over
97. and it crashed and ended up partly submerged in
98. water.
99. The exact time of the crash is not known,
100. but using call information taken from cell phones
101. of two of the passengers, the investigation
102. established that it occurred between 3:26 AM and
103. 5:07 AM.
104. There is no evidence before me as to the
105. pattern of driving between North Arm Park and the
106. moment of the crash, or the speed that the
107. vehicle was traveling at during that part of its
108. journey. The only thing, the only fact that I
109. have is that the speed of the vehicle immediately
110. prior to leaving the road was 178 kilometers per
111. hour. This information, it is not in the Agreed
112. Statement of Facts, but I understand that from
113. submissions, comes from systems that are part of
114. the car that record these things. The speed
115. limit on the highway is 90 kilometers per hour.
116. The road in that area is flat and straight,
117. and the outside conditions that day were that
118. visibility was clear and the road was dry.
119. Ms. Camsell was able to get out of the
120. vehicle and left the scene to get some help.
121. She was able to get a ride towards Behchoko and
122. called the police during that drive.
123. Felix was ejected from the vehicle in the
124. crash and he died from his injuries. He was
125. 22 years old. Jairen suffered a bruised lung,
126. lacerated liver and severe bruising to his knees.
127. He was briefly hospitalized in Yellowknife but
128. was released the next day. He was 23 at the
129. time. Guy Tlokka was not injured. Ms. Camsell
130. for her part sustained soft tissue injuries for
131. which she received treatment.
132. She was arrested that same evening. She
133. gave a statement to police where she took
134. responsibility for driving the car. She admitted
135. that she drank a mickey of vodka that night. An
136. analysis of a sample of her blood that was taken
137. about five hours after the crash was done.
138. Police analysts calculated that her blood alcohol
139. content at 5:00 AM was between 137 and
140. 202 milligrams of alcohol in 100 millilitres of
141. blood. The maximum legal limit is 80.
142. Ms. Camsell did not have a driver's license
143. in June 2021 when this happened.
144. Those are the facts, at least the ones that
145. are before me about what happened.
146. This had huge impact, of course, and I need
147. to talk about that for a little bit.
148. Courts are aware of the devastating impact
149. that drinking and driving causes. We hear about
150. it in the news. There is publicity about it. As
151. a matter of fact, even yesterday as we were
152. driving back to Yellowknife, we came upon a
153. tanker truck that had a large poster on the back
154. with a photograph of a family killed in a crash
155. caused by a drunk driver. It was produced by
156. MADD, Mothers Against Drinking and Driving. Last
157. week there was a news article on Cabin Radio,
158. with an interview with the mother of a young
159. woman who was killed by a drunk driver in Fort
160. Smith in 2008, who is also involved with MADD.
161. That mother's plea was, and I quote, "stop
162. normalizing drinking and driving". The tragic
163. consequences of drinking and driving have been
164. the subject of countless news articles, publicity
165. campaigns to try to get the message across, and
166. that general knowledge is in the community, this
167. one and others.
168. But nothing brings home the devastation that
169. drinking and driving causes as much as hearing
170. about it firsthand from the parents,
171. grandparents, siblings and loved ones of someone
172. who has lost their life in these circumstances.
173. And we did hear that in this case yesterday.
174. Twelve Victim Impact Statements were filed
175. at the sentencing hearing yesterday. Ten were
176. read in by the Crown prosecutor at the request of
177. those who prepared them. The other two were read
178. out loud by their authors, which took immense
179. courage. They were from members of Felix's
180. families, and I say "families", the plural,
181. because I heard from them, members of both
182. families, yesterday, and both his biological
183. family and the family that he was adopted into
184. when he was just a few weeks old.
185. Felix's family members loved him. He
186. brought them joy. They will never forget him or
187. stop missing him. He was a young man with his
188. whole future ahead of him. He had talents. He
189. had plans. He was funny. His loved ones looked
190. forward to the day he would have children of his
191. own because he loved those children so much. His
192. youngest niece still asks her mother when Felix
193. is coming home. This is heartbreaking.
194. The depth and intensity of the loss that
195. they all feel was palpable in this courtroom
196. yesterday, and no words of mine can fully
197. describe the magnitude of this loss.
198. The growing recognition of this harm is at
199. the root of the evolution in the sentencing
200. principles and practices in this area of the law,
201. which I will turn to a little bit later.
202. As I said at the beginning, the second thing
203. I must take into account in the sentencing
204. hearing is the circumstances of the offender, in
205. this case the circumstances of Ms. Camsell. I
206. have the benefit of a detailed Presentence Report
207. which gives me a lot of information about her
208. personal circumstances.
209. She is 32 years old and of Tlicho descent.
210. According to the author of the report, she
211. was very cooperative and forthright in the
212. preparation of the report and was very open about
213. some of the difficulties and circumstances she
214. faced growing up.
215. She was exposed to the consequences of
216. alcohol abuse and verbal and physical violence in
217. the home. Her parents separated as a result of
218. this violence and she went to live with her
219. grandparents. They maintained a traditional
220. lifestyle, and Ms. Camsell was able to enjoy a
221. lot of positive experiences with that traditional
222. lifestyle. It was, according to her, a loving
223. and caring home.
224. She has experienced a tremendous amount of
225. losses throughout her life, more recently the
226. death of the father of her children last summer.
227. The Presentence Report says he died in a car
228. accident, and I do not have any other details,
229. but whatever the details, it obviously had a huge
230. impact on her as well as on her three children
231. now age 5, 11 and 13.
232. I read in the report that she started
233. experimenting with alcohol when she was 12 years
234. old and that alcohol abuse has been an issue for
235. her, as well as drug use. This got worse after
236. the passing of her grandmother, who she was very
237. close to, in 2006.
238. The report says that Ms. Camsell's
239. grandfather used to abuse alcohol but stopped
240. drinking several decades ago after a tragedy
241. involving one of his brothers. There was a
242. fishing trip, alcohol was consumed, and three
243. people drowned. Ms. Camsell's grandfather never
244. touched alcohol again after that. Sometimes the
245. only good that can come out of a tragedy is that
246. it triggers drastic change. That is something to
247. think about.
248. Ms. Camsell has taken concrete steps in the
249. last two years to address her issues. She has
250. attended Poundmaker's Lodge Treatment Centre.
251. She's taken advantage of counselling sessions and
252. is going to AA. As she said herself yesterday
253. though, it is not going to be a short process.
254. Addictions, trauma and other personal issues do
255. not get resolved overnight. She is very right
256. and realistic about that; it will take time. But
257. it is within her power to continue working at
258. making those changes. She wants to continue with
259. counselling and treatment, and I was very happy
260. to read that the Tlicho Government is working
261. with Poundmaker's Treatment Centre to provide
262. On-the-Land treatment programs and offering
263. workshops here in Behchoko because access to
264. those services is crucial.
265. She wants to pursue her education as well
266. and is interested in enrolling in nursing or
267. possibly a home-care program.
268. These are some of the things that are
269. mentioned in the Presentence Report. There is a
270. lot more. Some aspects of the report relate to
271. very personal issues that I need not to talk
272. about here, but they are all part of the overall
273. picture of her circumstances, and I have taken
274. all of it into account.
275. The Crown acknowledges that Ms. Camsell's
276. moral blameworthiness for the offences is reduced
277. due to these circumstances, and I will get into
278. that, again, in a moment. In this case the
279. disagreement between the Crown and the defence,
280. and the much more difficult issue, is to what
281. extent it does mitigate things and what impact it
282. should have on the sentence to be imposed.
283. It is with this in mind that I turn to
284. sentencing principles. Section 718 of the
285. *Criminal Code* says that the fundamental purpose
286. of sentencing is to protect society and to
287. contribute, along with crime prevention
288. initiatives, to respect for the law and the
289. maintenance of a just, peaceful and safe society
290. by imposing just sanctions that have one or more
291. of the following objectives, and these objectives
292. are:
293. (a) to denounce unlawful conduct and the
294. harm done to victims or to the community that is
295. caused by unlawful conduct;
296. (b) to deter offenders and other persons
297. from committing offences. That means to
298. discourage people from committing offences;
299. (c) to separate offenders from society,
300. where necessary; that is usually applicable when
301. someone is actually violent and harms other
302. people deliberately or because they are unable to
303. control their anger;
304. (d) to assist in rehabilitating offenders,
305. and that says what it says;
306. (e) to provide reparations for harm done to
307. victims or to the community; and finally,
308. (f) to promote a sense of responsibility in
309. offenders, and acknowledgement of the harm done
310. to victims or to the community.
311. These objectives have to be balanced
312. carefully. Inevitably, in any case some must
313. take precedence over others.
314. In drinking and driving offences it is well
315. established in law that denunciation and
316. deterrence are the paramount sentencing
317. principles.
318. The *Criminal Code* also outlines various
319. principles that governs sentencing. The
320. fundamental one is proportionality, and all that
321. means is that a sentence has to be proportionate
322. to the gravity of the offence and the degree of
323. responsibility of the person.
324. 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
325. shoals and rocks without a life jacket just
326. hoping to come out on the other side without
327. injury because you are a good swimmer. There is
328. no such thing as a good driver when that driver
329. has consumed alcohol. Driving while intoxicated
330. is inherently very dangerous for others, and
331. inherently highly blameworthy. Because we know,
332. we know that even though many people drive
333. intoxicated do not get caught, or get caught at
334. some road block without anyone having been
335. harmed, sometimes, and too often, there are
336. terrible outcomes like the one in this case.
337. This is why the law has evolved the way it
338. has. Minimum penalties for some of the drinking
339. and driving offences have increased. The
340. sentencing ranges, as was noted by this Court and
341. others, have increased. At paragraph 7 of
342. *Lacasse*, the Supreme Court of Canada said that
343. this offence continues to cause more deaths than
344. any others in Canada. That deserves being
345. repeated. Drinking and driving causes more
346. deaths than any other offence in Canada. And
347. when the Supreme Court of Canada said that, it
348. quoted from a decision 20 years earlier where
349. another judge of the Supreme Court of Canada had
350. said exactly the same thing. When you think of
351. it this way it is astonishing that so many people
352. still do it.
353. That is why the objectives of denunciation
354. and deterrence have to take precedence over other
355. objectives in these cases. This does not mean
356. that other objectives, like rehabilitation,
357. should be ignored, but they cannot take
358. precedence, because while this sentencing is
359. about Ms. Camsell and the offences that she
360. committed, it is also about the pressing need for
361. this Court to continue to continue repeating the
362. same message and continue to acknowledge the
363. immense harm that is caused by these offences so
364. that people understand it before tragedy strikes
365. in their own lives. This does not just happen to
366. other people.
367. The available sentencing options for these
368. offences are broad. There is no minimum penalty.
369. But ranges have developed in the case law.
370. Ranges are guides. They are helpful, especially
371. because parity is another sentencing principle.
372. Parity means that offenders in similar
373. circumstances who commit similar offences should
374. receive sentences that are similar. That is a
375. question of justice. Of course no two cases are
376. ever alike, but wide disparity in sentencing can
377. diminish public confidence in the justice system.
378. 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 *Altiman*
             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.

In this case there are aggravating factors:

There were three passengers in the car, so

more people put at risk.

The second aggravating factor was the

incredibly high speed that the vehicle reached

immediately before the crash.

The third is the alcohol concentration in Ms.

Camsell's blood, which was extrapolated to be, even

on the lowest of the two figures, above readings of

120, which makes it statutorily aggravating

pursuant to Section 320.22(e).

I would add that even before that section was

put in place, high readings were always treated as

aggravating factors in the courts across the

country.

I also consider it aggravating that

Ms. Camsell drove the vehicle for some distance

and, in particular, continued down the MacKenzie

Highway past the access road to Behchoko. I cannot

assume that there was excessive speed or erratic

driving, there is no evidence of that, and that is

not what I mean when I refer to her driving. My

point is simply that she drove for some time while

under the influence of alcohol. She did not drive

five blocks home, not that that would not have been

illegal, but the level of risk increases with the

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
28. in the courtroom and as early as her cooperation
29. with the police when she first had contact with
30. them the very night this happened. She has made
31. the concrete steps to address her addiction and
32. underlying issues that she has struggled with for a
33. long time, and that is to her credit.
34. The other mitigating factor is the impact of
35. her circumstances as an indigenous offender. I
36. will say that as far as the impact of those
37. circumstances on what would be an appropriate
38. sanction, there is nothing before me to suggest
39. that the community of Behchoko and Tlicho
40. community, in general, hold views about the problem
41. of drinking and driving that should cause me not to
42. treat denunciation and deterrence as a paramount
43. sentencing principle here. The devastating
44. consequences of this type of offence affects
45. members of this community just as deeply and
46. traumatically as it does people from other regions
47. in this jurisdiction and elsewhere in the country.
48. Given the size of the community and the close
49. connections between various families and people the
50. impact might be even more deeply felt. These
51. tragedies are preventable, and that is as true here
52. as it is anywhere else.
53. However, as acknowledged by the Crown, Ms.
54. Camsell's circumstances do reduce her moral
55. blameworthiness for this offence, given the things
56. that she has experienced growing up and the
57. struggles that she has had, the issue is really to
58. what extent it does and what effect it should
59. ultimately have on the sentence.
60. Several people wrote letters of support for
61. Ms. Camsell, including her 15-year-old daughter
62. whose letter, I must say, was particularly
63. heartbreaking to read. As is often the case in
64. these situations, these events had a huge impact on
65. Ms. Camsell herself and on her loved ones and will
66. continue to. As she said yesterday, she is
67. grieving too. Felix had been a part of her life
68. always and she was close to him. She is fortunate
69. to have the support of the people who are there for
70. her and she will continue to need it. I understand
71. why those people are asking me to show her
72. leniency. But the reality is that my sentence has
73. to be aligned with the law, has to be based on the
74. law, and cannot be based on any sympathy or empathy
75. I may feel for those affected, including her
76. children.
77. The Crown is asking that I impose a jail term
78. of three-and-a-half years for the drinking and
79. driving causing death charge and two years
80. concurrent for the other charge. Defence counsel
81. is urging me to impose a jail term of two years
82. less a day to allow Ms. Camsell to serve that
83. sentence in the community under a regime of house
84. arrest with exceptions, with conditions to also
85. continue treatment and counselling, and with a
86. community service work order. This type of
87. sentencing that the defence is asking for is called
88. a conditional sentence, and the *Criminal Code* sets
89. out the legal framework that governs this
90. sentencing tool. It is only available if the
91. sentence imposed is less than two years, and also
92. the Court has to be satisfied that allowing the
93. person to serve their jail term in the community
94. would not endanger the safety of the community and
95. would be consistent with the fundamental purpose
96. and principles of sentencing.
97. There are certain offences for which this
98. sentencing tool is not available. That list
99. started off as a relatively small one when the
100. section was first added to the *Criminal Code* and
101. then it grew longer through various amendments, and
102. there came a point where that sentencing tool was
103. not possible for a large number of offences.
104. Until recently, one of the exclusions was an
105. offence that resulted in bodily harm and where the
106. maximum punishment was ten years imprisonment.
107. That took out conditional sentencing, as I say, for
108. many, many of the offences in the *Criminal Code*.
109. With these most recent amendments, it is available
110. again for many offences including this one.
111. But the other criteria remain. As I just
112. said, they include that a sentence must be less
113. than two years and that a conditional sentence
114. would be consistent with the fundamental purpose
115. and principles of sentencing. Here, the safety of
116. the community is less of a concern given the lack
117. of related criminal record and the steps that Ms.
118. Camsell has taken to address her issues.
119. As defence counsel has pointed out, the
120. amendments restoring the possibility of a
121. conditional sentence for this type of offence are
122. recent, so we do not have cases in the Northwest
123. Territories where a court had to decide on the
124. issue that arises here, and I was not referred to
125. any case from anywhere else in the country where a
126. conditional sentence was imposed in a case of
127. drinking and driving causing death since these
128. recent amendments came into force.
129. I have already said what I think the
130. appropriate range is for this type of offence.
131. Here, there are aggravating factors suggesting that
132. a sentence at the low end of that range may not be
133. appropriate. That being the case and even
134. balancing that against the mitigating factors and
135. giving full effect to the mitigating impact of the
136. guilty plea and recognizing that Ms.
137. Camsell's circumstances reduce her moral
138. blameworthiness, I do not think a conditional
139. sentence can be considered because I simply do not
140. think that a sentence under two years is
141. appropriate under the circumstances. I am unable
142. to bring myself to conclude that such a sentence
143. would reflect the need for denunciation and
144. deterrence, and I also do not think it would be in
145. line with what this Court has said in other
146. relatively recent cases of this sort. It would be
147. very difficult to reconcile such a sentence, for
148. example, what I said in the case of *R. v.*
149. *Moore* and what the Court said in *Kayotuk*.
150. I fully understand that the position taken by
151. the Crown and the words that I have spoken now may
152. appear to be harsh to Ms. Camsell and her loved
153. ones, but the reality is that the position taken by
154. the Crown is actually quite restrained. The
155. sentence for this could be longer, and it certainly
156. would have been much longer after a trial.
157. To make sure that this record is complete, and
158. by this I mean the record of these proceedings, in
159. case my decision is reviewed by a higher court, I
160. do want to note that I am aware of one precedent,
161. albeit quite dated, from this jurisdiction where a
162. conditional sentence was, in fact, imposed in a
163. case of drinking and driving causing death. It is
164. a dated case from 1998 from Fort McPherson. This
165. was right after or shortly after the conditional
166. sentencing was first introduced in the *Criminal*
167. *Code* and before drinking and driving causing death
168. offences were excluded from this application. It
169. is a decision that does not have a citation but it
170. is on the Northwest Territories court's website.
171. *R v. Hugh Colin* CR03394, January 7, 1998. The
172. accused had been camping by the Peel River crossing
173. in Fort McPherson. He had been drinking. He went
174. to sleep for a while and woke up to someone having
175. stuck his truck in the water. He got into another
176. truck to get his own out, and as he was backing up,
177. he ran over his grandmother, a very respected elder
178. in the community. Tragically, she died from her
179. injuries. He pleaded guilty at a very early
180. opportunity and was obviously completely
181. devastated. Crown and defence had agreed that a
182. two-years-less-a-day sentence was appropriate. The
183. only issue was whether it should be a conditional
184. sentence. In that case the Court granted that
185. request.
186. These were unusual facts, but the accused did
187. have a related record. But that case was decided
188. over 25 years ago. As I have said many times
189. already, the range of sentences for this type of
190. offence has consistently increased since.
191. Parliament has increased the minimum sentences for
192. some of the drinking and driving offences. Courts
193. have said that sentences should be more severe.
194. Today, in 2023, with the circumstances that are
195. before me I simply do not think that a sentence of
196. two years less a day would be fit and
197. proportionate. But because I am aware of that
198. case, I thought I should mention it.
199. I will begin with the ancillary orders that
200. have been sought. The Crown seeks a DNA Order and
201. the defence opposes this. These offences are
202. secondary designated offences as they are defined
203. in the *Criminal Code*. The Code says that when
204. sentencing someone for such an offence, the Court
205. may, on application by the prosecutor and if it is
206. satisfied, if the Court is satisfied that it is in
207. the best interests of the administration of
208. justice, order a person to provide a sample for
209. inclusion in the DNA databank, which is used by
210. authorities for investigative purposes. The
211. *Criminal Code* also says that in deciding whether to
212. make the order the Court is required to consider
213. the person's criminal record, whether they have
214. been found guilty of a designated offence before,
215. the nature of the offence that they have committed,
216. the circumstances surrounding its commission, and
217. the impact that the order would have on the privacy
218. and security of that person. The Court also says
219. that the Court is required to give reasons for its
220. decision.
221. I reviewed the cases that were filed in this
222. matter for many reasons but also with this issue in
223. mind. There was no mention at all of DNA orders in
224. *Lacasse*, *Altiman* and *R. v. Smoke*, 2014 MBCA 91, but
225. they were all appellate decisions, so it is
226. possible that the issue was not part of the appeal.
227. In *Kayotuk*, the Court said at page 10 that the DNA
228. order was mandatory, and this was in fact an error
229. because the offence is not a primary designated
230. offence. So since the Court in that case was
231. operating under the assumption that the order was
232. mandatory, there is no analysis of the relevant
233. criteria.
234. In *Moore*, I noted that this was a secondary
235. designated offence but the request for a DNA order
236. was part of a joint submission, and the law is very
237. clear that one should not depart from what is
238. sought unless it is clearly unreasonable. So there
239. is no analysis of the criteria in that decision
240. either.
241. In *Lagrelle*, 2019 ABQB 702, at paragraph 145,
242. the judge noted that the offences were secondary
243. designated offences and made the order. However,
244. there was no discussion of the criteria set out on
245. the section that I have referred to. And all the
246. judge said was "Accordingly this Court exercises
247. its discretion" to order that a sample be provided.
248. So in short, this is the long way to say that
249. the Code gives me discretion, says I have to
250. provide reasons, provides factors that I ought to
251. consider. Clearly, Parliament did not intend these
252. orders to be automatic for secondary designated
253. offences. The circumstances of this offence were
254. that the accused took immediate steps to get
255. assistance; she did not try to evade her
256. responsibilities for this; her record is dated and
257. unrelated; and although the procedure to obtain a
258. DNA sample is not particularly intrusive, privacy
259. interests are still engaged any time a person's DNA
260. is put into the national databank.
261. So in my view, in the circumstances of this
262. case, the factors listed in the *Criminal Code* weigh
263. against making that order, and for that reason I
264. decline to make it.
265. The second ancillary order sought, driving
266. prohibition order, it too is a discretionary order.
267. For this offence the Code says I may make this
268. order for any duration that I consider appropriate
269. plus the entire period for which the offender is
270. sentenced to imprisonment. The Crown is asking me
271. to impose a driving prohibition of seven years, and
272. the defence is asking that I make it for a shorter
273. period, between four to five years. There is no
274. doubt that being prohibited from driving for an
275. extended period of time is an inconvenience to most
276. people, but Ms. Camsell was not even entitled to
277. drive when these offences occurred. The driving
278. prohibition has to reflect this and also has to
279. reflect the aggravating factors that are present in
280. this case, in particular the speed at the time of
281. the crash and the high readings.
282. Given that I have concluded that a jail term
283. will be imposed, it will have the effect of
284. increasing the actual duration of the prohibition
285. order, because the duration of the sentence is
286. added to the driving prohibition. If Ms. Camsell
287. gets early release that period still counts part of
288. her prohibition, and for those reasons I have
289. decided the driving prohibition should be for a
290. period of six years.
291. The Crown is not pressing for the imposition
292. of a victim of crime surcharge, and in my view
293. given Ms. Camsell's precarious financial position
294. and her overall circumstances, this is an
295. appropriate case to waive the imposition of a
296. surcharge.
297. 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
298. if you need it, but I want the Warrant of Committal
299. to include the strongest recommendation that Ms.
300. Camsell be permitted to serve her sentence in the
301. Northwest Territories so that she can access the
302. programming that is available in the facility.
303. There is a good facility in Fort Smith, and also so
304. that she can remain as close as possible to her
305. children and to the people who are here to support
306. her. The authorities will get copy of my decision
307. as well so hopefully my reasons for what I am doing
308. today will be very clear to everyone.
309. Before we close court, I want to thank counsel
310. for their work on this case. I want to thank again
311. the people who shared their experiences and
312. feelings. I thank Ms. Camsell for her words
313. yesterday. I know this is a long sentence, but I
314. really feel under the circumstances and with the
315. harm it has caused by the repetition of these kinds
316. of offences I do not have any choice. And I wish
317. you the best of luck in your work and continued
318. healing, and I hope that this community can also
319. continue its work towards closure and healing.
320. (END OF EXCERPT)

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1. **CERTIFICATE OF TRANSCRIPT**

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

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

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2. Darlene Sirman, CSR(A)
3. Official Court Reporter

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