

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HIS MAJESTY THE KING

- v -

THADEUS MCNEELY

Transcript of the Reasons for Sentence delivered by
The Honourable Deputy Justice L. A. Charbonneau,
sitting in Fort Good Hope, in the Northwest Territories,
on the 27th day of July, 2023.

APPEARANCES:

B. MacPherson	Counsel for the Crown
B. Wun	
J.K. Bran	Counsel for the Defence

Charges under s. 235(1), 268, 268 *Criminal Code*

1 THE COURT: This afternoon it is my
2 responsibility to impose a sentence on Thadeus
3 McNeely for causing the death of Samantha Kelly
4 and seriously injuring Lesley Drybones and
5 Skylynn Cook. The impact of what Mr. McNeely did
6 on this community was profound. I do not need to
7 tell anyone here that. You were the ones who
8 generously shared that with the Court earlier
9 today. I know that there is nothing that I can
10 say or do that can actually truly reflect the
11 immense harm that has been caused or repair that
12 harm. I listened carefully while some of you
13 told me directly about the effects that these
14 events had and when the Crown prosecutor read
15 other Victim Impact Statements to me; I also read
16 carefully the one that was given to me but was
17 not read in court. The impact is on the victims,
18 on their families, on the first responders and on
19 community members who waited in fear while the
20 police were searching for Mr. McNeely, and I do
21 want to thank those of you who have shared those
22 feelings with the Court. I am very sorry for
23 the impact that these events have had. To
24 Ms. Kelly's family and loved ones, I am truly
25 sorry for your loss and my heart does hurt for you.
26 The facts of what happened were repeated
27 earlier today, and I need to refer to them

1 briefly, even though they are hard to hear,
2 because for anyone who will read my decision
3 later on they need to know what this case was
4 about, what I was sentencing Mr. McNeely for today.

5 I heard that on the day this happened he had
6 been socializing with several people at a house
7 in this community. They were drinking alcohol,
8 people were coming and going. At around 8:30 at
9 night, no one knows why, he armed himself with a
10 knife and he stabbed Ms. Kelly and Ms. Cook.
11 Mr. Drybones came out of the bedroom where he had
12 been. He was met by Mr. McNeely holding a knife.
13 They began to struggle and during that struggle
14 Mr. McNeely stabbed Mr. Drybones several times.

15 The community members and the RCMP got the
16 victims to the Health Centre. Tragically
17 Ms. Kelly did die from her injuries because one
18 of the stabs pierced her lung. She had a second
19 stab wound under her arm. The other two victims
20 lost a lot of blood, and they had to be
21 medivaced. Ms. Cook sustained two stab wounds to
22 the lower back which required some stitches.
23 Mr. Drybones suffered multiple stab wounds to the
24 right collarbone area, his right upper arm, two
25 on his chest, on his lower back and one of his
26 fingers. I heard that one of the stabs into his
27 chest pierced his lung and lacerated his liver.

1 As I sadly often have occasion to say, it is
2 actually a miracle that there were not three
3 deaths following these events given the nature of
4 the injuries. Thankfully Mr. Drybones and
5 Ms. Cook did recover, at least physically. From
6 Mr. Drybones' Victim Impact Statement it is very
7 clear that he still struggles a lot emotionally.

8 After having stabbed Mr. Drybones,
9 Mr. McNeely left the scene. He went into hiding,
10 and police looked for him for two days. He knew
11 that they were looking for him. At some point
12 during his time I heard that he told
13 acquaintances that he had done something bad and
14 that he had stabbed somebody. Eventually he did
15 contact the RCMP and turned himself in and
16 thankfully that happened without any further
17 incident. The knife that he used was never
18 recovered.

19 As I have already said, I realize that these
20 events had a profound impact on this community
21 based on what I heard from some of you today, and I
22 thank you again for having had the courage to share
23 that with the Court. Words cannot describe how
24 tragic it is to have a life end in this way for no
25 reason at all, again. I say "again" because, as
26 Crown counsel has pointed out, this community has
27 lost other young people in senseless acts of

1 violence fueled by alcohol and drug abuse. Each
2 time it is unspeakably sad and tragic, and it has
3 to stop. The Court can and does come in after the
4 fact and sentences offenders. I can say a lot of
5 things today that reinforce the message about
6 violence and the harm that is caused by alcohol and
7 substance abuse and how serious any stabbing is,
8 whether serious injuries are inflicted or not, but
9 the Court cannot stop these events from happening.
10 The solutions have to come from the community
11 itself.

12 In any sentencing the judge has to take into
13 account the circumstances of the person who
14 committed the offence. Mr. McNeely is still quite
15 young. I have a very detailed Presentence Report
16 that talks about his personal circumstances and
17 some of the struggles that he faced growing up. He
18 was exposed to alcohol abuse, to violence and,
19 sadly, as happens so often, he perpetuated that
20 cycle. I have to say for having read many, many
21 Presentence Reports over the years it never gets
22 less sad. It never gets less sad to hear about the
23 circumstances that some young people face in their
24 early years. It also never stops being sad to read
25 about the pain and loss that some of the young
26 people experience through family violence, through
27 neglect, through accidents, through crime, through

1 suicides.

2 The report was marked as an exhibit so I will
3 not refer to it in all its detail. It is a matter
4 of the record. But it does make clear that Mr.
5 McNeely's circumstances as an indigenous offender
6 growing up involved a lot of hardships. It struck
7 me when I read the report that he seems to have
8 insight about some things and maybe less about
9 others. For example, when he was asked if he
10 thought he could comply with conditions he said it
11 depends on who he hangs out with. If he associates
12 with negative people or unhealthy people he goes in
13 that direction, but if he associates with positive
14 people he is confident he can do better. I would
15 say that there is absolutely no doubt that Mr.
16 McNeely needs to take alcohol and substance abuse
17 out of his life and find the company of people who
18 have done the same otherwise the cycle will just
19 repeat itself over and over again, and there will
20 just be more hurt and more tragedy.

21 There are other areas, and this did cause me
22 some concern when I first read the report, where
23 Mr. McNeely's insight seems less clear. One reason
24 the Court is not entirely clear that Mr.
25 McNeely understands the impact of substance abuse
26 in his life is that at one point in the report the
27 author says that while he acknowledges that some of

1 the problems he has had are related to alcohol, he
2 does not see substance abuse as a problem. I think
3 it must be said, and at the risk of saying it
4 repeatedly, alcohol and substance abuse is a
5 problem for Mr. McNeely. His entire criminal
6 record is related to that and what happened last
7 September was related to it.

8 Today Mr. McNeely's lawyer has said that he
9 does want to take alcohol and drugs out of his
10 life. It will be a long and difficult journey, but
11 I really, really hope he sticks to that plan
12 because I think that everything about his future
13 almost certainly depends on it. Mr. McNeely has a
14 good work history. It is clear he has some skills
15 and he is able to lead a productive life when he
16 decides to. He has also got land skills,
17 traditional skills, and that too is very positive.
18 It is often said that the ability to reconnect with
19 traditional ways and with the land is a very
20 important part of the process of rehabilitation and
21 something that can really help people who have lost
22 their way to find their way back, and I hope that
23 that proves true in this case.

24 On the whole, there are many things in the
25 Presentence Report that show that the principle of
26 restraint and specifically its application as set
27 out in the cases of R v Gladue, [1999] 1 SCR 688 and

1 R v Ipeelee, 2012 SCC 13 and many others applies in
2 this case; in other words, some of these struggles
3 go some way in explaining, perhaps, some of the bad
4 choices that Mr. McNeely made and reduce his moral
5 blameworthiness.

6 That is not to say that these circumstances
7 are an excuse for the conduct though, and it is
8 important to remember that the victims and those
9 who are still today suffering from the consequences
10 of his offences are also indigenous members of this
11 community, some who have been exposed to similar
12 difficult circumstances and now, on top of that,
13 have to deal with this additional major trauma.
14 But restraint is an important sentencing principle,
15 and I have kept that in mind when considering my
16 decision.

17 There are aggravating factors here, things
18 that made this more serious. The first is that
19 with respect to each of these three victims this
20 was not a single stab wound. They were all struck
21 more than once, particularly Mr. Drybones.

22 The second is that Mr. McNeely has a criminal
23 record which includes other convictions for crimes
24 of violence. He has been to jail for relatively
25 long periods of time before. So before this
26 happened he was on notice of the type of behaviour
27 he is capable of when he is intoxicated. He was

1 actually -- and this is very aggravating -- on a
2 release order in relation to another stabbing
3 incident at the time that these events took place.
4 He is awaiting sentencing on that matter now but he
5 was already facing those charges at the time, and
6 he was on specific condition not to be in
7 possession of a knife.

8 With respect to Ms. Cook, it is aggravating
9 that she was in an intimate relationship with him
10 at the time because we should be able to expect
11 protection and support from our spouses, not
12 violence.

13 It is aggravating as well that he left the
14 scene. While other community members frantically
15 tried everything they could to help the victims he
16 just ran away. In addition, the fact that he
17 remained in hiding for a few days meant that
18 members of this community were afraid to go out,
19 prisoners in their own homes, in their own
20 community, which is obviously something that has
21 made these already-traumatic events even more
22 traumatic.

23 There are also mitigating factors. The most
24 significant one is the guilty plea. It has
25 provided the families and the victims with
26 certainty of outcome. It has avoided the trauma of
27 having to go through a trial where witnesses,

1 including the two surviving victims and the first
2 responders, would have had to re-live these events
3 and talk about them in a courtroom. I often say,
4 having presided over many trials and having seen
5 many, many times how hard it is on witnesses and
6 families to have to come to court and testify, I
7 know sparing them a trial is sparing them a lot.

8 The guilty plea is also the clearest
9 indication possible of Mr. McNeely's remorse. He
10 has apologized to the community today. I do not
11 know Mr. McNeely but he certainly seems sincere in
12 his remorse. Saying "sorry" is the first step and
13 an important one, but, Mr. McNeely, making
14 the real changes in your life, making this a
15 turning point, is something else that can help the
16 victims and their families and this community see
17 that you truly do realize the harm that you have
18 caused and that you will not go in that direction
19 again. It will be a long road, but it could be the
20 true measure, the true demonstration that you
21 actually understand how much harm you have caused
22 to never go there again.

23 Manslaughter, by definition, is the unlawful
24 killing of another person. Unlike murder, it does
25 not involve an intention to kill. So the range of
26 possible behaviour that can make out this offence
27 is very broad. It can go from something that is

1 near an accident to something that is near murder,
2 and because of that the range of possible sentences
3 is very broad too. It goes everywhere from
4 suspended sentence and probation to life
5 imprisonment.

6 Several years ago the Alberta Court of Appeal
7 in R v Laberge, 1995 ABCA 196, gave guidance to
8 trial courts by identifying categories of
9 manslaughter. The court said that manslaughter
10 fell in one of three categories: Where the
11 offender has done something that is likely to put
12 the victim at risk of bodily injury, that is the
13 least serious of the three; when the offender has
14 done something that is likely to put the victim at
15 risk of serious bodily injury, that is the middle
16 one; and the most serious type is where the
17 offender has done something that is likely to put
18 the victim at risk of life-threatening injuries.
19 Mr. McNeely's conduct given the use of the knife
20 and how he used it clearly falls in the most
21 serious category. I did not hear Mr. McNeely's
22 lawyer argue otherwise.

23 In another case the Alberta Court of Appeal
24 talked about the range of sentences that are
25 applicable to manslaughters that fall in that most
26 serious category R v Willier, 2008 ABCA 33. In
27 that case the Court said the range for that type of

1 conduct will be between eight and twelve years
2 imprisonment.

3 But, of course, none of this is an exact
4 science, and the cases that were filed by the Crown
5 show that depending on the circumstances the
6 sentences may be more or less. There are too many
7 factors to list them all: Whether someone has a
8 criminal record; whether someone has pleaded guilty
9 or had a trial; whether there are other aspects of
10 the circumstances that tip the scale one way or
11 another.

12 To use the example of Mr. Colten McNeely's
13 case, sadly also from this community, he received
14 a sentence of seven years after trial for a
15 manslaughter which involved a stabbing. R v
16 McNeely, (Unreported, November 4, 2020,
17 CR2018-000058, NWTSC). That, I think, is fair to
18 say is very much at the lenient end of the scale
19 and was based on the unique facts as they were
20 found by the trial judge. Reading the decision it
21 appears that the judge in that case found as a fact
22 that Colten McNeely, before confronting the victim,
23 had armed himself with a knife that was for his own
24 protection because he was afraid of what the other
25 person might do in that confrontation.
26 That would be a significant factor as opposed to a
27 case like this one where the offender armed himself

1 and then went on the attack.

2 So, and I mention this because I am sure
3 community members must wonder how these different
4 types of cases can sometimes fit together and make
5 sense of different outcomes in different cases; but
6 Colten McNeely's case is very distinguishable, very
7 different on its facts as found by the trial judge
8 in that case. And I would go further and say that
9 I see that case as an exceptional situation that
10 led to an exceptional sentence based on the unique
11 facts as found by the trial judge. Because I would
12 think that a seven-year sentence, after trial, for
13 stabbing someone to death, would be extremely rare.

14 So I accept that the range of sentence I
15 should consider here is the one set out in Willier,
16 between eight and twelve years.

17 Aside from the circumstances of what happened
18 and what Mr. McNeely's circumstances are, a very
19 significant fact in my decision today and one of
20 the reasons I am able to give my decision this
21 afternoon actually is that the Crown and defence
22 have presented what is called a joint submission,
23 which simply means that they agree about what the
24 sentence should be. Usually on sentencing a judge
25 has a lot of discretion to weigh all the factors
26 and decide what the judge thinks that a sentence
27 should be; but when a joint submission is presented

1 a sentencing judge in law is obligated to follow it
2 unless the sentencing judge concludes that it is
3 completely unreasonable.

4 Here the sentence that is being jointly
5 suggested is nine years imprisonment on the
6 manslaughter charge and two-and-a-half years for
7 each of the aggravated assault charges but all to
8 be served concurrently. Bearing in mind that there
9 was a very early guilty plea or an early intention
10 communicated to plead guilty, and taking all the
11 circumstances into account, both the aggravating
12 ones and the mitigating ones, I think this position
13 that counsel have presented is reasonable. Had Mr.
14 McNeely been convicted at the trial I don't think
15 it would be a reasonable position. I don't think I
16 would be able to agree with this if this was after
17 trial and everyone had gone through the trauma of
18 having to testify, and there hadn't been some of
19 these advantages to a quick resolution, and that
20 expression of remorse. But guilty pleas are given
21 a lot of weight for reasons I have already given,
22 and a sentence of nine years imprisonment for
23 somebody who has pleaded guilty is actually a very
24 significant one.

25 No sentence that I impose can bring Ms.
26 Kelly back. And I know no sentence I impose can
27 undo the harm that was done. Courts do not have

1 that power obviously, but I think the sentence that
2 is being proposed is proportionate to the
3 seriousness of what happened and to Mr. McNeely's
4 responsibility for it, and it takes into account
5 the principle that I have to exercise as much
6 restraint as possible in a case like this one.

7 Mr. McNeely is entitled to credit for the time
8 he has already spent in custody. The defence
9 lawyer asks that I give him the usual credit, which
10 is a day-and-a-half credit for each day of remand.
11 This is because on remand there is no remission and
12 sometimes offenders do not have access to all the
13 same programs as they do as serving prisoners. The
14 Crown has not argued otherwise.

15 The Presentence Report does say that Mr.
16 McNeely has been involved in three disciplinary
17 incidents while on remand. The report does not
18 give any details. But it is also clear that he has
19 taken some programs. He is engaged in counselling,
20 and he has taken concrete steps to try to begin the
21 process to better himself. So under the
22 circumstances I will give him the credit for the
23 time he has spent in custody in the manner that his
24 lawyer has asked especially since the Crown has not
25 argued otherwise.

26 The other thing that is part of the joint
27 submission is that there be two other orders made:

1 The first is a DNA order which is mandatory because
2 this is a primary designated offence. The second
3 is a firearms prohibition order that will commence
4 today and end ten years from release. The defence
5 has asked me to consider granting exemption, which
6 basically means that under circumstances I could
7 permit that Mr. McNeely have a firearm to carry out
8 sustenance activities on the land, for example. I
9 think those would be worthwhile activities for his
10 own rehabilitation, but given the sentence that I
11 am imposing today, I think there are still too many
12 unknowns to grant that kind of an exemption today.
13 He will not be back here for some time. His
14 current plans, as I heard, are not to come back
15 here, but he also has a lot of issues to deal with,
16 such as alcohol and substance abuse, finding a way
17 to address his own trauma and anger issues in a
18 non-violent way.

19 So in my view it is best to allow the
20 competent authority to consider down the road when
21 he is released whether he should have an exemption
22 like that and be permitted to use firearms in
23 certain contexts. I think it is preferable for
24 that decision to be made later with the benefit of
25 what will happen in the meantime with his
26 programming and his progress as opposed to doing it
27 today. It is too far down the road for me to be

1 able to make a meaningful assessment of whether
2 that is a good idea or not today.

3 No one has made any submissions on the victim
4 of crime surcharge. But given the length of the
5 jail term I am about to impose I am not going to
6 order a victim of crime surcharge.

7 Can you stand up please, Mr. McNeely. Mr.
8 McNeely, for the manslaughter of Samantha Kelly, if
9 you had not spent any time on remand I would have
10 imposed a sentence of nine years as suggested by
11 both counsel. For the ten months you have already
12 spent on remand I will give you credit for 15,
13 which means I sentence you to serve a further jail
14 term of seven years and nine months. For the
15 aggravated assault of Skylynn Cook, I sentence you
16 to two-and-a-half years imprisonment but served
17 concurrently, which means at the same time; it is
18 not in addition to. And similarly for the
19 aggravated assault of Lesley Drybones, I sentence
20 you to two-and-a-half years imprisonment, again to
21 be served concurrently. Please sit down.

22 Before we close court, I want to thank again
23 the members of the community who have attended
24 today. I thank again those who shared their
25 feelings and the impact that these events had on
26 them, and I sincerely hope that the end of the
27 court proceedings will help you continue with your

1 own healing. I am not from here but I have dealt
2 with many cases, including some from here and
3 including some very, very horrible ones. I hope
4 that together you are able to find a path forward
5 so that these tragedies stop happening in this
6 beautiful community. I think that would be a great
7 way to honour Samantha Kelly's memory if at least
8 all of this were to lead to change. If years from
9 now people could look back to these terrible events
10 and be able to say something changed after that.

11 Mr. McNeely, I know you are sorry about what
12 you did and, as I said, the best way you can
13 continue to show your remorse is to do the hard
14 work and change your ways, maybe eventually become
15 an example of someone who has been able to turn
16 your life around because for you too it could be a
17 way of honouring Samantha's memory in a very real
18 way that goes way beyond the words.

19 I finally want to thank counsel for your work
20 on this case, for resolving this difficult case.

21 Now that the proceedings are coming to a
22 close, I have been asked to remind you that there
23 are counsellors here today. They will be here the
24 rest of this week and some until Monday I'm told
25 that can assist you if you feel the need to talk to
26 someone about everything that has been brought up
27 by having the sentencing hearing here, and I have

1 also been asked to remind you that there will be a
2 healing circle this evening. It will take place in
3 the field and there will be another one in this
4 building on Sunday, and so I hope that that is of
5 some benefit to you all, and to the community as a
6 whole I wish you courage and strength as you
7 continue on your path.

8 We can close court, Madam Clerk.

9 (COURT CLOSED)

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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 13th day of November 2023.

Darlene Sirman, CSR(A)
Court Reporter