*R v McNeely*, 2023 NWTSC 29 S-1-CR-2023-000035

 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.

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 APPEARANCES:

 B. MacPherson Counsel for the Crown

 B. Wun

 J.K. Bran Counsel for the Defence

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

 1

 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

 2

 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.

 3

 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

 4

 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

 5

 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

 6

 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

 7

 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

 8

 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,

 9

 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

 10

 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

 11

 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

 12

 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

 13

 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

 14

 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:

 15

 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

 16

 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

 17

 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

 18

 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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 1 CERTIFICATE OF TRANSCRIPT

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 3 I, the undersigned, hereby certify that the

 4 foregoing pages are a complete and accurate

 5 transcript of the proceedings taken down by me in

 6 shorthand and transcribed from my shorthand notes

 7 to the best of my skill and ability. Judicial

 8 amendments have been applied to this transcript.

 9

 10 Dated at the City of Edmonton, Province of Alberta,

 11 this 13th day of November 2023.

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 16 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 17 Darlene Sirman, CSR(A)

 18 Court Reporter

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