

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**- and -**

**JOSEPH EMILE**

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**REASONS FOR SENTENCE**  
**of the**  
**HONOURABLE JUDGE DONOVAN MOLLOY**

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Heard at: Yellowknife, Northwest Territories

Date of Decision: June 13, 2019

Counsel for the Crown: Jeannie Scott

Counsel for the Accused: Patrick Bruce

[Sections 430x2, 264.1, 129, & 733.1 of the *Criminal Code*]  
[Sentencing]

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**A. INTRODUCTION**

[1] The Christmas season is a challenging time for many individuals. For some, family dynamics and alcohol abuse can result in conflict with the law. For Mr. Emile, his return to Fort Smith for the holiday season resulted in him committing a number of serious offences. Following his sister's suicide during his visit, Mr. Emile employed gasoline and death threats in a manner that continues to cause the victims fear and trauma.

[2] Ultimately I must decide what is a fit sentence based on the circumstances of the offence and Mr. Emile's circumstances. In arriving at that decision, relevant considerations include:

1. What is the proper place of his *Gladue* factors, if any, in determining sentence?
2. What consideration, if any, should be given to the fact that the female victims are Indigenous?
3. What, if any, consideration should the Court give to barring him from entering the community of Fort Smith during all of part of the probationary period?

[3] Mr. Emile entered his guilty pleas on May 7, 2019, the date these matters were set to proceed to trial. The Crown's witnesses were present and willing to testify. The Crown read in the circumstances of these offences on May 7, 2019. Submissions were received on June 12, 2019 with sentencing put over to today's date.

## **B. CIRCUMSTANCES OF THE OFFENCES**

[4] The offences occurred on January 5, 2019. Mr. Emile's family in Fort Smith had not heard from him in a while. His sisters went to Edmonton to connect with him and he agreed to return with them to Fort Smith for the holidays. During the holidays, one of his sisters took her own life.

[5] Four days after his sister's suicide, while under the influence of alcohol, Mr. Emile attended the residence of Beatrice Daniels in the early morning hours. He proceeded to bang on the door of her residence, awakening the occupants. The police were called but found no sign of Mr. Emile on their arrival.

[6] Mr. Emile returned to Ms. Daniel's residence banging on her door but again departed before the arrival of the police. While looking for him, the officers were notified that Mr. Emile was at the residence of April Wasylyshyn, threatening to burn it down using gasoline.

[7] On arrival at Ms. Wasylyshyn's residence the officers smelled a strong odour of gasoline. Ms. Wasylyshyn advised that Mr. Emile had left through the back door of her residence. The officers found him hiding behind the oil tank of a nearby residence.

[8] Officers advised Mr. Emile that he was under arrest for the offence of mischief and directed him to come out from behind the tank. After he refused, three officers were engaged in a prolonged struggle to get Mr. Emile out from his hiding place, into restraints, into the police vehicle, and, out of the police vehicle into the detachment's holding cells.

[9] On interviewing the complainants, police learned that Mr. Emile uttered a threat to Ms. Daniels while kicking her door. The threat was "you are a fucking correctional officer and I am going to fucking kill you".

[10] Ms. Wasylyshyn advised that after denying entry to Mr. Emile he returned several times, banging on her door. On his last return he started pouring gasoline on her residence, while threatening to burn both her and her residence.

[11] At the time of these offences Mr. Emile was bound by a probation order that required him to keep the peace and be of good behaviour.

### **C. THE OFFENDER'S CIRCUMSTANCES**

[12] Mr. Emile is a 31 year-old Indigenous male. A Pre-sentence Report was not requested. Mr. Emile's counsel apprised the Court of his circumstances, including factors relevant to his status as an Indigenous person and considerations pursuant to section 718.2(e).

[13] Mr. Emile's background is similar to many of the Indigenous men that come before this Court. His parents are survivors of the residential school system. Alcohol abuse and violence were not strangers to Mr. Emile and his siblings during their childhoods. Mr. Emile resided in youth homes at different points of his childhood. Dealing with the aftermath of suicides of friends and family members is also something that has had a significant detrimental impact on Mr. Emile.

[14] Mr. Emile struggles with addictions, including alcohol dependency, and was impaired by alcohol at the time of these offences.

[15] Mr. Emile primarily resided in Edmonton for a number of years prior to the events that now bring him before the Court. Mr. Emile appears to have made a life for himself in that City and has a 4 month-old child waiting for him there with his girlfriend. Of his 12 previous convictions (2 youth and 10 adult), all but one were recorded at Fort Smith.

[16] In terms of his prior convictions, the most serious is a manslaughter conviction on July 4, 2008 resulting in a 6 year period of imprisonment. In terms of his other convictions as an adult, they include:

- 1 for being unlawfully at large (2012);
- 1 for resisting arrest (2015);
- 3 for failing to comply with a recognizance/undertaking (2015 x 2 and 2017);
- 1 for breach of probation (2017);
- 2 for common assault (2015 and 2017); and,
- 1 for assault with a weapon (2017).

[17] The 2017 common assault and assault with a weapon convictions relate to a previous domestic partner, Ms. Wasylyshyn, one of the victims of the present offences.

#### **D. PARTIES' POSITIONS**

[18] The parties agree that Mr. Emile should receive 239 days credit for his time on remand (159 days actual with a credit of 1.5/1).

[19] The Crown submits that a global sentence of 18 months in custody is appropriate, followed by a 12 month period of supervised probation. A sentence of 18 months would leave Mr. Emile with 301 days to serve.

[20] Counsel for Mr. Emile submits that a suitable global sentence would be 6-12 months in custody, followed by a period of supervised probation. At the lower end of that range, Mr. Emile would have already served his sentence. At the high end, he would be left with 141 days to serve.

#### **E. THE PURPOSE, PRINCIPLES AND OBJECTIVES OF SENTENCING**

[21] In determining a fit sentence for Mr. Emile, I am guided by the:

- Purpose, principles and objectives of sentencing set out in the *Criminal Code*;
- Circumstances of the offences and of Mr. Emile, including his Indigenous status and associated *Gladue* factors; and,
- Case law.

[22] The fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;

- (e) to provide reparation for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of harm done to victims and to the community.

[23] The principle of proportionality is a fundamental principle of sentencing. It requires that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[24] The sentence should then be increased or reduced to account for any relevant aggravating or mitigating circumstances.

[25] I must also be guided by the principle of totality. It requires that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh; and the principle of parity which states that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[26] Finally, all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention paid to the circumstances of aboriginal offenders.

## **F. VICTIM IMPACT**

[27] Victim impact statements were filed by Ms. Daniels and Ms. Wasylyshyn. The statements were read into the record by the Crown. Both speak to significant trauma and a high degree of fear for their safety on Mr. Emile's return to Fort Smith.

[28] Fort Smith has a population of about 2500 persons. It is a small community and Mr. Emile's family lives in close proximity to the victims. As it is a small community, Mr. Emile's previous history of violence in the community is well known. Ms. Wasylyshyn was also victimized by Mr. Emile on a previous occasion when they then were in a domestic relationship.

[29] In all of the circumstances, I am satisfied that their fear is far from hyperbolic. Mr. Emile's return to Fort Smith will disrupt their lives via their legitimate fears, especially Ms. Wasylyshyn.

## **G. AGGRAVATING AND MITIGATING CIRCUMSTANCES**

[30] The Crown proceeded by summary conviction on all matters. Mr. Emile entered guilty pleas to the charges on the date of the trial. While the timing does

not nullify the mitigating effect of his pleas, I place lesser weight on them given that timing and with the witnesses present, there existed more than a reasonable likelihood of conviction.

[31] Further, while generally guilty pleas assume some degree of remorse on the part of offenders, I am challenged to view Mr. Emile's pleas in that light. On being given the opportunity to personally address the Court prior to his sentencing, Mr. Emile proceeded to disparage and blame Ms. Wasylyshyn for his offences related to her.

[32] Mr. Emile's prior related convictions are also aggravating. In particular, the 4 prior convictions for violent offences and the prior for resisting arrest require emphasis on denunciation, specific deterrence and the protection of the public. The prior convictions for assaulting Ms. Wasylyshyn are particularly aggravating.

[33] I recognize and consider that other than the 6 year period of imprisonment stemming from the manslaughter conviction, Mr. Emile's other custodial dispositions were of significantly shorter durations.

[34] As is appropriate and required I must consider section 718.2(e) and the guidance offered by the Supreme Court of Canada in applying Parliament's directive aimed at addressing the circumstances of Indigenous offenders (**R. v. Gladue**, [1999] 1 SCR 688; **R. v. Ipeelee**, [2012] 1 SCR 433). Mr. Emile is impacted by many **Gladue** factors that are considered as lessening moral blameworthiness.

[35] In terms of applying the **Gladue** factors in these circumstances, I note what some see as a paradox when the victims of violent crimes committed by Indigenous men are Indigenous women. In many instances, the Indigenous women have experienced the same or worse levels of disadvantage and discrimination in their lives. One must ask how do Indigenous women perceive our justice system in what may be seen as a one-sided application of the **Gladue** factors. Beyond the discrimination and disadvantages they have already faced, they have heaped on to them the repercussions of being a victim of additional violence. I note that the recent report of the National Inquiry into Missing and Murdered Indigenous Women and Girls included among its recommendations the following:

*We call upon federal, provincial, and territorial governments to thoroughly evaluate the impacts of Gladue principles and section 718.2(e) of the Criminal Code on sentencing equity as it relates to violence against Indigenous women, girls, and 2SLGBTQQIA people.<sup>1</sup>*

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<sup>1</sup> [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive\\_Summary.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf) at page 71.

[36] In the circumstances of this case, given Mr. Emile's prior record and the circumstances of these offences, I need not decide what impact, if any, to place on the fact that the victims are also Indigenous. Specific deterrence has to be emphasized in Mr. Emile's case, along with protection of the public, particularly the victims of these offences.

[37] An appropriate global sentence for Mr. Emile, taking into consideration proportionality and totality is a period of 18 months, to which his remand credit of 239 days shall be applied.

[38] In discussing the terms of his proposed 12 month probation order I asked counsel for their thoughts on excluding Mr. Emile from entering the community of Fort Smith for the duration of the order.

[39] Mr. Emile has resided in Edmonton for a number of years, has property leased there and intends to reside there once released from custody. Fort Smith is a small community and it is a legitimate concern as to whether a 'banishment' condition is necessary to protect these victims, and especially Ms. Wasylyshyn.

[40] Defence counsel correctly points out the importance of familial and other supports that Indigenous persons derive from presence in their communities in the Northwest Territories. I agree but note that for Mr. Emile, given that almost all of his convictions were recorded in Fort Smith, he may be experiencing triggers there that lead him into conflict with the law.

[41] Rather than prohibit him entirely from returning to Fort Smith during the term of his probation, he may, on obtaining the prior permission of his probation officer, return to Fort Smith for periods of up to 10 days to participate in family or community celebrations, other cultural activities, funerals or urgent medical situations involving immediate members of his family. If given permission to go to Fort Smith, Mr. Emile will be required to notify the Fort Smith RCMP by telephone in advance of his planned arrival and return dates.

## H. SENTENCE

[42] For the reasons stated above, Mr. Emile is sentenced as follows:

<b>Date</b>	<b>Section of <i>Criminal Code</i></b>	<b>Sentence</b>
January 5, 2019	264.1 (Ms. Daniels)	3 months imprisonment (consecutive)
January 5, 2019	264.1	12 months



	(Ms. Wasylyshyn)	(consecutive)
January 5, 2019	430 (Ms. Wasylyshyn)	6 months (concurrent)
January 5, 2019	129	3 months (consecutive)
January 5, 2019	733.1	3 months (concurrent)

[43] A credit of 239 days will be applied to the 12 month sentence imposed in relation to the offence of uttering threats to April Wasylyshyn. In relation to the sentences imposed on the 2 mischief convictions, Mr. Emile will be subject to a probation order for 12 months from his release from custody. The terms of the probation order will be as follows:

- a) keep the peace and be of good behavior;
- b) abstain from communicating, directly or indirectly, with Beatrice Daniels or members of her immediate family, and refrain from being within 5 meters of her residence;
- c) abstain from communicating, directly or indirectly, with April Wasylyshyn or members of her immediate family, and refrain from being within 5 meters of her residence;
- d) report to a probation officer within 3 business days of your release from custody and thereafter as required by the probation officer;
- e) take counselling as recommended by the probation officer, including, but not limited to, counselling or programs dealing with, or related to, substance abuse;
- f) abstain from the consumption and being under the influence of alcohol and drugs outside of your primary residence, except for medications prescribed by a licensed medical practitioner;
- g) refrain from entering the community of Fort Smith unless you have obtained prior permission from your probation officer, who may approve your being in Fort Smith for periods of up to 10 days to participate in family or community celebrations, other cultural activities, funerals or, urgent medical situations involving immediate members of your family. If given permission to go to Fort Smith, you must notify the Fort Smith RCMP by telephone, in advance of travelling, of your planned arrival and departure dates.

[44] Section 264.1 is a secondary designated offence with respect to an order for the collection of DNA samples. Given the circumstances of these offences and Mr. Emile's prior record for violence, I am satisfied that the interests of society in crime detection and investigation outweigh the minimal incursion into Mr. Emile's privacy and security of the person caused by a DNA test and I make an order for the taking of DNA under section 487.051 of the *Criminal Code*.

[45] In relation to the uttering threats offences, there will also be a firearms prohibition order pursuant to section 110 of the *Criminal Code*. Mr. Emile will not possess firearms or any of the other items enumerated in section 110 for five years.

Donovan Molloy  
T.C.J.

Dated at Yellowknife, Northwest  
Territories, this 13<sup>th</sup> day of June,  
2019.

*R. v. Joseph Emile, 2019 NWTTC 09*

*Date: 2019 06 13*

*File: T-2-CR-2019-000091*

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