Date: August 31, 2021
File: T-1-CR-2020-001884

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

SHAWN BEAULIEU

REASONS FOR SENTENCE
of the
HONOURABLE JUDGE DONOVAN MOLLOY

Heard at:	Yellowknife, Northwest Territories
Date of Decision:	August 31, 2021
Counsel for the Crown:	Billi Wun
Counsel for the Accused:	Peter Harte and Robin Parker

[Section 268 of the *Criminal Code*]
[Sentencing]

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A. INTRODUCTION

[1] On November 7, 2020 Shawn Beaulieu was residing with his aunt and uncle pursuant to the terms of a release order. At 3:00am, after consuming alcohol and shatter (a concentrated form of cannabis) Mr. Beaulieu pursued his uncle upstairs after grabbing a large knife from the kitchen. Mr. Beaulieu proceeded to inflict a number of wounds to his uncle's back with the knife. The police were called and Mr. Beaulieu admitted his role in the stabbing to the officers.

[2] Christopher Mantla required medical attention, including stitches to close some of the knife wounds. It does not appear that his life was endangered as a consequence of this attack. Mr. Beaulieu's motivation for attacking his uncle is unclear, they had a long standing relationship of mutual affection/respect and Mr. Mantla was simply heading to his bedroom at the time of the attack. Mr. Mantla forgives Mr. Beaulieu and indicated to the Crown that he had no intention of cooperating with or participating in this prosecution.

[3] On May 17, 2021 Mr. Beaulieu entered a guilty plea to a charge pursuant to section 268 of the *Criminal Code*. Ultimately I must decide what is a fit sentence

based on the circumstances of the offence and Mr. Beaulieu's circumstances. There is a significant gulf between the sentencing positions of the parties.

B. CIRCUMSTANCES OF THE OFFENCE

[4] Mr. Beaulieu's use of a 10-inch long kitchen knife to attack his uncle from behind is extremely serious. The use of sharp edged weapons aggravates the seriousness of any assault due to the higher potential for death or serious bodily harm to ensue. Mr. Mantla is fortunate not to have suffered injuries that resulted in significant functional or other impairments. In *R. v. Lennie*, 2012 NWTSC 15, Charbonneau J., commented upon the significance of the use of edged weapons:

> *Unfortunately, incidents like the one that happened in this case, happen all too often in our communities. Unfortunately, there are many stupid, senseless fights, over stupid, senseless things, where someone at some point decides to introduce a knife in the mix. This happens all too frequently. It is reflected in the cases that were filed by the Crown, which are only a small sample of these types of cases. It is interesting to note that in some of those cases there is reference made to the prevalence of this type of offence in this jurisdiction. Our Court of Appeal, for example, made reference to it at paragraph 7 of the Morgan decision. Sadly, these incidents often happen basically over nothing of any real significance. In this case, the fight started over a lost arm wrestling match and some name calling. In R. v. Morgan, 2007 NWTSC 30 (N.W.T. S.C.), aff'd 2008 NWTCA 12 (N.W.T. C.A.), the evidence was that what led to the fight where the stabbing occurred was an argument over which city, of Edmonton or Yellowknife, was the better one. In R. v. Gonzales, [1999] N.W.T.J. No. 69 (N.W.T. S.C.), an obscene gesture made in passing, led to a fight between young people and ultimately to the victim having a knife imbedded completely in his back. And in R. v. Itsi, 2004 NWTSC 10 (N.W.T. S.C.), aff'd [2005] N.W.T.J. No. 114 (N.W.T. C.A.), and R. v. Green, 2007 NWTSC 22 (N.W.T. S.C.), the exact reason that caused the fight was never really clear on the evidence. In those cases, as in this one, the victims were very lucky. They were injured, some of them seriously, and suffered some consequences, but they fully recovered.*
>
> *There are other cases where persons who introduced knives into their fights and their victims were not so lucky. What needs to be remembered is that sometimes the story ends with someone being dead. This court has had the unfortunate task of imposing long jail terms to people who, in very similar types of circumstances, ended up killing their friend or close relative. I could refer to many cases to illustrate this point, but I will just*

> *name a few. These are all cases from the last seven or eight years. In R. v. Emile, [2008] N.W.T.J. No. 51 (N.W.T. S.C.), the accused got into a fight with his brother for an unknown reason, grabbed a knife, and stabbed him. His brother died. This court sentenced Mr. Emile to a lengthy jail term, but obviously nothing the court could do in that case could be worse than what Mr. Emile has to live with for the rest of his life.*

[5] Besides using a knife, the lack of any clear motive is also of concern in that in the absence of any identifiable triggering event, one must wonder if there is a risk of Mr. Beaulieu carrying out other random attacks. Mr. Mantla's wife and children were also present in the home on the evening in question and the attendance of the police and the significant amount of blood from the wounds must have also been extremely unsettling for them.

C. THE OFFENDER'S CIRCUMSTANCES

[6] At the time of the offence, Mr. Beaulieu was a 19 year-old Indigenous male without any prior criminal record (subsequent to the commission of this offence he was convicted of offences pursuant to sections 266, 264.1, 430, 270 and 145 of the *Criminal Code*).

[7] The Pre-sentence Report details some early strife between his mother and her then husband, however that relationship ended when Mr. Beaulieu was a young child. Mr. Beaulieu's upbringing and home life subsequent to that point was positive, he and his siblings were well cared for in a loving home environment without substantial conflict or other exposure to trauma.

[8] Mr. Beaulieu was generally regarded positively as a student and did not have any significant disciplinary history or any other issues at school until around his 18th birthday. The principal of the school provided a letter advising that she noticed a marked change in Mr. Beaulieu's behaviour at that time, describing what she viewed as deterioration in his behaviour. By way of examples, she referenced him hallucinating, wandering off and behaving unpredictably, observations that were inconsistent with her previous experience with him.

[9] Mary Louise Nitsiza, Mr. Beaulieu's step-mother, testified at the sentencing hearing. She too advised that she and his mother both noticed a significant deterioration in Mr. Beaulieu's behaviour and attitude at around the same time as his principal noticed the changes in him. Their formerly respectful, agreeable and loving son became difficult to deal with and parent, instead being disrespectful and defiant. She believes that these change concurred with what they noticed was

significant cannabis usage by him. The behaviour and attitude she described started at about the same time that the school principal also noted negative changes in his behaviour.

[10] The principal and his step-mother are obviously unqualified to say whether drug usage caused or contributed to his apparent decline. It appears that he may have experienced a decline in his mental health that continues to present. While no medical evidence was called, while on remand, the correctional authority saw fit to have him assessed by a medical professional and it appears that this resulted in him being prescribed a psychoactive medication normally associated with the treatment of mood disorders.

[11] Given that the Defence position largely hinged on the Court accepting that Mr. Beaulieu was and is mentally ill, it is unfortunate that it did not tender any professional medical opinion. Reports attached to the pre-sentence report suggest that in some cognitive aspects Mr. Beaulieu is a lower functioning individual with some anger management issues. Outside of those basic assessments the Court has little evidence upon which it can conclude that Mr. Beaulieu was or still is mentally ill.

D. PARTIES' POSITIONS

[12] The Crown recommended a period of imprisonment of 2 years less one day, followed by a 1 year period of supervised probation and other ancillary orders. The Crown stresses deterrence and denunciation as the primary factors that the Court should emphasize. The Crown tendered *R. v. Hunter*, 2013 NWTSC 90, *R. v. Cazon*, 2004 NWTSC 3, *R. v. Hodges*, 2017 NWTSC 9, *R. v. Morgan*, 2008 NWTCA 12 and *R. v. Thrasher*, 2019 NWTSC 57 as supporting its position. Outside of *Cazon* the remaining cases are all distinguishable and their usefulness is limited to reinforcing the position that the range of sentence for the offence committed by Mr. Beaulieu is between 2 and 5 years imprisonment.

[13] The Defence asks the Court to impose a sentence of time served (9 months) to be followed by a 2 year period of supervised probation with very strict terms and a requirement to attend a residential treatment program. The Defence tendered *R. v. Lennie*, 2012 NWTSC 15, *R. v. Hamlyn*, 2016 ABCA 127, *R. v. Porter*, 2017 YKTC 13, *R. v. Akulukjuk*, 2015 NUCJ 18 and *R. v. Klondike*, 2012 NWTSC 28 in support of its position.

E. THE PURPOSE, PRINCIPLES AND OBJECTIVES OF SENTENCING

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

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

[15] 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.

[16] 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.

[17] The principle of parity states that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[18] 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 Indigenous offenders.

F. VICTIM IMPACT

[19] As already noted, Mr. Mantla refused to cooperate with this prosecution and he did not file any victim impact statement. It appears that none of the injuries impaired his long term physical health and he has forgiven Mr. Beaulieu. That forgiveness is relevant to this sentencing decision however the larger community interest[1] in maintaining a safe and peaceful community does not make it determinative of the outcome. While it was in the context of domestic violence, the Saskatchewan Court of Appeal held in *R. v. Ochuschayoo,* 2004 CarswellSask 76 that a victim's forgiveness does not dictate the sentence that is imposed.[2]

G. AGGRAVATING AND MITIGATING CIRCUMSTANCES

[20] Mr. Beaulieu had no criminal record at the time this offence was committed. He admitted his culpability to the police and most significantly, entered a guilty plea despite being aware that the victim intended to resist participating in his prosecution. While perhaps a conviction was still probable given his confession and the physical evidence, it would have been a difficult and lengthy trial that would have likely involved the Crown compelling Mr. Mantla's attendance via an arrest warrant and having him declared to be an adverse witness.

[21] In terms of aggravating circumstances, as noted in *Lennie*, aggravated assault with a knife is an extremely serious offence and unfortunately there are an abundance of such offences in the Northwest Territories.

H. GLADUE FACTORS

[22] 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). The difficultly in applying that guidance here is that there is very little evidence that Mr. Beaulieu is impacted by many ***Gladue*** factors that would normally be considered as lessening his moral blameworthiness.

[23] The pre-sentence report does contain a section entitled *Case Specific Factors Relating to the Accused as an Aboriginal Offender*. The only insight it offers however is that which I already referenced, a 'toxic' relationship between Mr. Beaulieu's biological parents that featured alcohol abuse by his parents but no physical or other significant abuse. Otherwise the report, and Ms. Nitsiza's evidence,

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[1] Contributing to *respect for the law and the maintenance of a just, peaceful and safe society* as set out in section 718 of the *Criminal Code*.
[2] See also *R. v. Bell*, 1992 CarswellAlta 477 (Alta. C.A.) and *R. v. Whitefish*, 2007 SKCA 79.

confirm that Mr. Beaulieu grew up in a supportive environment with a loving family that nurtured his physical and emotional well-being.

[24] In evaluating the pre-sentence report I am cognizant of the need to avoid taking an impoverished approach cautioned against in *R. v. Zoe*, 2020 NWTCA 1. Though there is no need to establish any causal connection between any *Gladue* factors and Mr. Beaulieu's stabbing of Mr. Mantla, here I am unable to find any significant linkages between such factors and Mr. Beaulieu's offending conduct.

I. SENTENCING AUTHORITIES

[25] The most relevant case tendered by the Crown is the decision in *Cazon*. In that case, the 20 year old Indigenous female first offender stabbed her mother for no apparent reason. At paragraph 10 of the decision the Court noted that *as the reason for this unprovoked and bizarre attack by the offender on her mother remains a mystery, the Court must be concerned about the possibility that the offender remains at risk of acting again in a dangerous way if immediately released into the community*. Even though she entered a guilty plea and was a first offender the Court imposed the equivalent of 26 months imprisonment.

[26] The authorities tendered by the Defence are also generally distinguishable:

- The altercation in *Lennie* started as a consensual fight and there were significant *Gladue* factors present, including residential schooling and exposure to violence in the home;

- *Hamlyn* involved an appeal and substituting a period of 21 months imprisonment for the original suspended sentence;

- *Porter* involved significant *Gladue* factors, including significant violence in the home and the accused having been placed in approximately 40 different foster homes as a child;

- *Akulukjuk* involved a consensual fight; and,

- *Klondike* involved significant *Gladue* factors with Shaner J. concluding *I have absolutely no doubt that many of these difficult circumstances and challenges that had been faced by Mr. Klondike have shaped his life and are directly related to the legacy of residential schools and the impact of poverty, alcohol, and isolation in so many of our aboriginal communities*.

J. SENTENCE

[27] In appropriate circumstances a court can impose a sentence that is significantly outside of the range. Such was the case in *R. v. Peters*, 2010 ONCA 30 where the Court upheld a suspended sentence for an aggravated assault that disfigured the victim's face. In upholding the sentence, the Court noted that the sentence could not be said to be manifestly unfit, particularly given *Gladue* factors that included *a difficult and disheartening upbringing in a home of violence and alcohol abuse. Ms. Peters, herself, may be suffering from Fetal Alcohol Syndrome. She has a history of abuse at the hands of her parents, of friends of her parents, and others, which started when she was three or four years of age*.

[28] In my view, the only exceptional or other circumstances present here that warrant a slight departure from the bottom of the range of sentence are the victim's forgiveness of the accused and the accused's guilty plea despite knowing that the victim was refusing to cooperate with the prosecution. There is an absence of evidence of significant *Gladue* factors and I am unable to conclude on the evidence tendered that mental illness contributed to the commission of this very serious crime.

[29] After considering all of the above, I impose upon Mr. Beaulieu a sentence of 18 months imprisonment. Mr. Beaulieu has accumulated a total remand credit of 267 days, which leaves a period of 282 days to be served.

[30] Following his sentence of imprisonment, Mr. Beaulieu will be subject to a probation for a period of 18 months, the conditions of which are:

(a) Keep the peace and be of good behaviour;

(b) Appear before the court when required to do so by the court;

(c) Report to a probation officer within 5 business days of the expiry of your sentence of imprisonment and report thereafter as required by the probation officer;

(d) Notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation;

(e) Abstain from possessing or consuming alcohol or illegal drugs, except for medications prescribed by a licensed medical practitioner;

(f) Attend any and all counselling, programming or other related activities as directed by the probation officer, including anger management counselling; and,

(g) You shall refrain from any contact or communication with Christopher Mantla and refrain from attending at his place of residence, employment or education, unless he communicates his consent to contact in advance and in writing to your probation officer.

[31] In addition to the probation order the Court makes the following orders:

i. That Mr. Beaulieu provide a sample of a bodily substance pursuant to section 487.051 (a DNA order); and,

ii. That Mr. Beaulieu be prohibited from possessing firearms and other items as enumerated in section 109 for a period of 10 years, but allowing for the sustenance exemption as set out in section 113.

Donovan Molloy
T.C.J.

Dated at Yellowknife, Northwest Territories, this 31st day of August, 2021.

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