# COURT OF APPEAL OF YUKON

Citation: *R. v. James*,
2020 YKCA 11

Date: 20200428
Docket: 19-YU863

Between:

**Regina**

Appellant

And

**Kashies Charles Andrew James**

Respondent

Before: The Honourable Chief Justice Bauman
The Honourable Madam Justice Bennett
The Honourable Madam Justice Charlesworth

On appeal from: An order of the Territorial Court of Yukon, dated February 14, 2020 (*R. v. James*, 2020 YKTC 7, Whitehorse Dockets 18-00745; 18-00746; 18-00759; 18-00760A).

## Oral Reasons for Judgment

| | |
|---|---|
| Counsel for the Appellant (via videoconference): | P. Battin |
| Counsel for the Respondent: (via videoconference): | B.C. Makinson |
| Place and Date of Hearing: | Vancouver, British Columbia<br>April 28, 2020 |
| Place and Date of Judgment: | Vancouver, British Columbia<br>April 28, 2020 |

***Summary:***

*Mr. James received community-based sentences after pleading guilty to five offences, two of which were domestic assaults against his partner. The Crown applies for leave to appeal and seeks the imposition of a custodial sentence. Held: Leave to appeal granted; Appeal dismissed. The judge did not offend the parity principle, nor did he fail to give sufficient weight to the aggravating features of the case, statutory or otherwise. The sentence imposed was not demonstrably unfit.*

[1] **BENNETT J.A.**: Kashies James pleaded guilty to five offences. Two were domestic assaults against his partner, one was mischief to the property of his domestic partner, and one involved theft of her debit card. The final charge was resisting arrest. The sentencing judge, in lengthy reasons indexed at 2020 YKTC 7, imposed community-based sentences, as set out below. The Crown applies for leave to appeal the sentence, and seeks the imposition of a custodial sentence.

[2] I would grant leave to appeal, but would dismiss the appeal.

**The sentencing proceeding**

[3] An agreed statement of facts was filed, which the trial judge quoted entirely in his reasons at para. 3.

[4] In summary, on November 4, 2018, Mr. James used the complainant's debit card without her permission. She had previously provided him with the PIN, but on this date, she had not given consent to use the card.

[5] On November 30, 2018, during an argument, Mr. James broke her telephone and eyeglasses and bit her on the nose.

[6] On December 24, 2018, he broke her new television set during an argument.

[7] On January 20, 2019, during another argument, he punched the complainant in the eye resulting in a black eye, and punched a hole in the wall of her home.

[8] On February 8, 2019, Mr. James was drinking, and the complainant did not want him around in that condition. This ultimately gave rise to the charge of assault

causing bodily harm. The circumstances are set out in numbers 9–17 of the statement of facts:

> 3. …
>
> …
>
> 9. On February 8, 2019, Lesh and James had an argument. James wanted to keep drinking alcohol and Lesh did not. Lesh kept asking James to leave as she did not want him in the house if he was intoxicated.
> 10. James told Lesh "if you make me come out there to get you, I swear on my mother's grave I'll kill you". Neighbours intervened and James left the area.
> 11. James kept returning to Lesh's residence through the day. Lesh turned all her lights off and pretended that she was not home.
> 12. Between 11pm and 12pm that evening, James returned to the residence, and banged and kicked on the door trying to get in. Lesh phoned the police.
> 13. Before the RCMP responded, James broke down the door and entered Lesh's residence. He began to assault Lesh.
> 14. James punched Lesh multiple times, picked her up, sat her on his lap and bit her scapula. Once James saw blood on Lesh's face, he tried to clean her up by holding a towel to her face. James turned off the lights in the house.
> 15. Police attended and knocked on Lesh's door. James answered the door. Lesh's face was red and there was blood near her nose. She explained the [*sic*] James had kicked down her door and assaulted her.
> 16. James refused to leave Lesh's residence. After 15 minutes of speaking to police, James was told he was under arrest, and pulled away from Cst. Rosseau several times. On the drive to the police station and then on the way to Whitehorse, James repeatedly kicked at the windows and silent patrolman of the police vehicle.
> 17. Lesh was taken to the hospital in Whitehorse. She was noted to have a bite mark on her right scapula and bruising on her face, arms and legs.

[9] Several of the offences were only reported to the police at the time of the February assault.

[10] A number of charges were laid, and Mr. James pleaded guilty to the following offences:

**February 8, 2019**

- Assault causing bodily harm contrary to s. 267(b) of the *Criminal Code*; and
- Resisting arrest contrary to s. 129(a) of the *Criminal Code.*

**November 3, 2018**

- Theft of a debit card contrary to s. 334(b) of the *Criminal Code.*

**Between November 30, 2018 and January 20, 2019**

- Mischief (damage to the cell phone and eyeglasses) contrary to s. 430(4) of the *Criminal Code*; and
- Assault contrary to s. 266 of the *Criminal Code.*

[11] The offences of assault, theft, and mischief proceeded by summary conviction, whereas the assault causing bodily harm and the resisting arrest charges were proceeded with by indictment.

[12] The sentencing judge imposed a conditional sentence order (“CSO”) of three months on the assault charge; a one-month CSO to be served concurrently on the mischief charge; a one-month CSO to be served consecutively on the theft charge; and one day in custody for the resisting arrest charge. He suspended the passing of sentence for 20 months on the charge of assault causing bodily harm. The CSOs and suspended sentence were accompanied by lengthy and strict conditions. The sentencing judge intentionally did not credit Mr. James with 75 days of pre-trial custody because of the non-custodial nature of the sentences.

**Background of Mr. James**

[13] Mr. James is a member of the Carcross Tagish First Nation. He is 24 years of age. A *Gladue* report was requested; however, when Mr. James learned that he would have to speak about his childhood, he chose not to proceed. He also did not participate in the preparation of a pre-sentence report, although he regularly attended at the probation office.

[14] The probation officer did not prepare any kind of pre-sentence report, and chose not to write anything about Mr. James' background, which could have been taken from his previous criminal conduct and possible earlier probation reports.

[15] However, his circumstances were before the Court, and set out in the following paragraphs in the reasons for sentence:

> [12] A *Gladue* Report and Pre-Sentence Report ("PSR") were ordered. Mr. James decided not to participate in the preparation of these two Reports, despite repeated opportunities being offered to him. As such, neither Report is available.
>
> [13] A letter authored by Mark Stevens of Kwanlin Dun First Nation Justice was provided. This letter is dated December 2, 2019 and was prepared for the sentencing hearing originally scheduled for December 3. Mr. Stevens is a well-known author of *Gladue* Reports in the Yukon, and was to have prepared Mr. James' *Gladue* Report.
>
> [14] Mr. Stevens wrote the letter on behalf of Mr. James' support team in Carcross. The support team includes: Ms. Lesh, Mr. James' sister Suzannah, his grandmother, Louise Johns, CTFN Health and Wellness Outreach worker, Eileen Wally, Circle Keeper, Harold Gatensby, and RCMP member Cst. David Lavalee.
>
> [15] Mr. Stevens suggests that the trauma Mr. James endured growing up is an underlying issue behind Mr. James' decision not to divulge personal information, and may be a reason for his not participating in the preparation of the *Gladue* Report and PSR, stating:
>
> > Kashies initially requested a *Gladue* Report for this sentencing hearing, but when he discovered that he would have to talk about his childhood circumstances, he declined to be interviewed. I would respectfully suggest that his refusal to participate in the *Gladue* process speaks volumes about some of the difficulties he has endured…
>
> [16] Mr. Stevens stated that, prior to the last court sitting in December 2019, he participated in a Circle process with Mr. James and the support team. He stated that there was lots of honesty within this Circle, and recognition of both the good and the bad. He noted that Mr. James, while

> struggling with communication and trust issues, also recognizes that he needs a lot of support, and that there is support in the community for him.
>
> [17] Harold Gatensby is also well known in the Carcross and Yukon communities for his work in Restorative Justice. He has known Mr. James for Mr. James' entire life, although they have not been close. He believes that Mr. James has "good" in him and that he has something to contribute to the community.
>
> [18] Mr. Gatensby also knows Ms. Lesh, what she desires from this process, and he has been a support person for her.
>
> [19] He also expressed his understanding about why Mr. James may not have wanted to discuss his life for the purposes of the preparation of the *Gladue* Report or PSR.
>
> [20] Mr. Gatensby stated that he will continue to work with the family of Mr. James and Ms. Lesh, and to be a support for them. He will also participate in setting up a working group to continue to support Mr. James.
>
> [21] Mr. James' father abandoned him when he was two years old. His mother died when he was 10 years old. Mr. James said that while he was growing up, his family was busy struggling with their own addictions and related issues. He lacked support within the family and has struggled with low self-esteem. Although he made it to Grade 8, he cannot read or write. He said that he was really essentially left alone to grow up.
>
> [22] Mr. James likes to work with his hands and to be on the land. He will do anything that he can to work.

[16] Mr. James expressed remorse for his conduct, as described in para. 23:

> [23] Mr. James said that he has learned that he could lose everything. He is thankful for the support that he has in his life right now. He stated when he addressed the Court:
>
> > It would just mean the world to me to have another chance, to come back and prove, not just to myself and her and our baby and other people that are supporting me, but to the courts that I can be responsible, and leave one of the biggest things in my life that I was so dependent on, alcohol, behind me, to have a better future for our daughter, cause, its all I ever did was drink all my life and do drugs until I met her. She got pregnant and really gave me a big chance and a step again in life of keeping my family strong and bringing both our families together. This would mean the world to me to go back home with anything I could take to the table to keep showing that I'm a responsible person and I'm not going to drink no more; I'm not going to do drugs no more; I'm going to do everything I need to do to prove to her and baby and you guys that I can keep my word; I can promise that.

[17] When asked, he told the judge that he was willing to take counselling.

[18] The complainant addressed the Court as follows:

> [26] Ms. Lesh addressed the Court. She spoke with emotion, and with conviction. She stated as follows:
>
> > Okay. Sorry I had to write it down because I'm very, very nervous today.
> >
> > I just wanted to say good morning and thank you for allowing me to stand up and say my piece, something I should have done a long time ago.
> >
> > Please bear with me, as I may be a little nervous because this does determine our future right now, and it all rests in your hands.
> >
> > I want to thank everybody that has helped Kashies and I to this point. We've really relied on a lot of people, and it's not been an easy go, either.
> >
> > Kashies can be very difficult to communicate with and very stubborn who he trusts and lets into his life. In the end, it's just Kashies and I who really need to deal with this reality.
> >
> > Kashies and I started going together over a year and a half ago. We actually never really liked each other and we never wanted to be around one another. But a short period of time — Kashies and I developed a relationship like no other. We became friends, lovers, and soulmates. We both liked our drink, partying, and having a good time, but that also led to a dangerous time, a dark time for the two of us which became very violent and angry.
> >
> > With the New Year of 2019, we made a plan to love each other forever and agreed to sober up and try for a child. Three hundred and sixty-one days ago, Kashies and I started a day like no other. But this day turned out to be different. Kashies couldn't handle the sobriety and the drugs and alcohol got the better of him and he fell off and came home aggressive. I wouldn't allow him into the house, which enraged him even more, thus he broke down the door and came in and assaulted me.
> >
> > Until the news of our baby girl, which neither of us knew about until the night in question, we were sobering up and trying for our daughter today Roseanne.
> >
> > No one has been able to help Kashies 'til now. I'm the only one to stick it out. And he has opened up to me and trusted me — no counsellor, cop, lawyer, friend, family member, judge, man, or woman.
> >
> > He grew up alone and essentially on the streets. He learned how to survive. He learned how to lie, cheat, steal, and manipulate. He learned how to hurt, anger, rejection, neglect,

and denial and abuse whether sexually, physically, mentally, or emotionally.

He grew up with nothing but women and watching them — women and sisters, mothers, and aunts — get abused by the men they loved. His father left him about the same age as Roseanne is now.

Alcohol and drugs has been in his life since day one and it's only inevitable that he turn to it as well. Of course he would fight for those few things that he could rely on only in his life.

Three hundred and sixty-one days later, Kashies is a sober, clean father, husband. He has possessions and passions. He has plans and a future to rise up to.

We've agreed that we would break our inherent cycle of residential school and be better parents and role models for our precious innocent gift we have been blessed with by this Creator. Roseanne Aurora James was born on October 9, 2019, at 3:45 in the afternoon. She was delivered into this world by her father. He was the first one to touch her and hold her and look at her. When he handed her to me and together we looked at each other and cried with joy and happiness, the purity and innocence that she brings to our lives has made us better people, better parents, and better husband and wife.

If you look at both our pasts and Kashies' record and history after what we have been through, we probably should be far apart from each other. But all of this has only made us stronger and pushed us closer together. We have learned to work together, talk together, and be dedicated together for the love of this child and for the love that we have each other.

Please don't dictate anymore whether he can be a father. Allow him to prove this to his daughter legally. Allow him to be the father he never had legally. Legally, she doesn't even know her father yet. But instead, she is a daddy's girl and has nothing but unconditional love for Kashies and needs him, as I know how it feels not to have a father growing up either.

If you allow Kashies to come home, we do have a plan to do family treatment together, counselling together, and help Kashies deal with his anger and his addictions. We will agree to do a two to three check-in time a week with the RCMP. And we just want to get Kashies back into the community and home so he can work and prove that he can be the family man at home.

Thank you for listening.

[19] In setting out the aggravating factors, the sentencing judge was alive to the fact that these were violent offences against a domestic partner by someone who was in a position of trust:

> [30] The aggravating factors are Mr. James' criminal record, and the fact that Ms. Lesh was in an intimate relationship with Mr. James, and that there are multiple offences of violence in which she was the victim. The offences of violence against Ms. Lesh constitute a breach of the trust relationship between them in which she should have been able to feel safe and protected. She certainly should not have had to fear violence done to against her at the hands of Mr. James. His acts of violence are serious, and their impact should not be understated.

[20] Mr. James' adult criminal record is as follows:

| Date of Offence | Offence | Sentence |
|---|---|---|
| 2014-04-25<br>WHITEHORSE YT | POSS OF PROPERTY OBTAINED BY CRIME UNDER $5000<br>SEC 354(1)(A)-355 CC | 4 MOS<br>& $200<br>& PROBATION 12 MOS |
| 2015-06-02<br>CARCROSS YT | ASSAULT SEC 266 CC | SUSPENDED SENTENCE<br>& PROBATION 1 YR |
| 2016-07-26<br>CARCROSS YT | FAIL TO COMPLY WITH PROBATION ORDER<br>SEC 733.1(1) CC | SUSPENDED SENTENCE<br>& PROBATION 4 MOS |
| 2017-02-14<br>CARCROSS YT | FAIL TO COMPLY WITH PROBATION ORDER<br>SEC 733.1(1) CC | 1 DAY |
| 2017-12-15<br>WHITEHORSE YT | CAUSING UNNECESSARY SUFFERING TO AN ANIMAL SEC 445 CC | 60 DAYS & PROBATION 12 MOS & PROHIBITION REGARDING ANIMALS OR BIRDS SEC 447.1(1) CC FOR 12 MOS |

## Position of the parties

[21] The Crown seeks leave to have this Court exercise its jurisdiction to hear both the summary and indictable offences together, pursuant to s. 676(1.1) of the *Criminal Code*. I would grant leave to join the offences in this appeal.

[22] The Crown sought a total sentence of 12 months' incarceration on all of the offences, followed by 18 months' probation. The Crown maintains that this is the correct sentence to be imposed.

[23] The Crown submits that the sentencing judge imposed a demonstrably unfit sentence by failing to apply the parity principle as codified in s. 718.2(b) of the *Criminal Code*; by failing to give sufficient weight to the aggravating factors including Mr. James' criminal record, and what it describes as "repeated and escalating domestic violence"; and by failing to give sufficient weight to the statutory aggravating factors found in s. 718.2(a)(ii), (iii) and (iii.1).

[24] The Crown has brought an application to adduce fresh evidence on the sentence appeal. That evidence consists of two transcripts of prior sentencing proceedings involving Mr. James.

[25] Mr. James sought a sentence of 90 days' incarceration for the assault causing bodily harm, plus short conditional sentence orders on the other counts, followed by 12–18 months' probation. On appeal, he seeks to uphold the sentence imposed by the sentencing judge. He opposes the introduction of fresh evidence.

## Discussion

### Standard of review

[26] The standard of review to be applied by an appellate court on a sentence appeal has recently been restated in *R. v. Friesen*, 2020 SCC 9:

> [25] Appellate courts must generally defer to sentencing judges' decisions. The sentencing judge sees and hears all the evidence and the submissions in person (*Lacasse*, at para. 48; *R. v. Shropshire*, [1995] 4 S.C.R. 227, at para. 46). The sentencing judge has regular front-line experience and usually has experience with the particular circumstances and needs of the community where the crime was committed (*Lacasse*, at para. 48; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 91). Finally, to avoid delay and the misuse of judicial resources, an appellate court should only substitute its own decision for a sentencing judge's for good reason (*Lacasse*, at para. 48; *R. v. Ramage*, 2010 ONCA 488, 257 C.C.C. (3d) 261, at para. 70).
>
> [26] As this Court confirmed in *Lacasse*, an appellate court can only intervene to vary a sentence if (1) the sentence is demonstrably unfit

> (para. 41), or (2) the sentencing judge made an error in principle that had an impact on the sentence (para. 44). Errors in principle include an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor. The weighing or balancing of factors can form an error in principle "[o]nly if by emphasizing one factor or by not giving enough weight to another, the trial judge exercises his or her discretion unreasonably" (*R. v. McKnight* (1999), 135 C.C.C. (3d) 41 (Ont. C.A.), at para. 35, cited in *Lacasse*, at para. 49). Not every error in principle is material: an appellate court can only intervene if it is apparent from the trial judge's reasons that the error had an impact on the sentence (*Lacasse*, at para. 44). If an error in principle had no impact on the sentence, that is the end of the error in principle analysis and appellate intervention is justified only if the sentence is demonstrably unfit.

[27] A sentence outside the appropriate range is not necessarily an unfit sentence: see *R. v. Nasogaluak*, 2010 SCC 6 at para. 44.

**Application to adduce fresh evidence**

[28] The test to adduce fresh evidence on a sentence appeal is found in *R. v. Sipos*, 2014 SCC 47 at para. 29:

> [29] The Court established in *R. v. Lévesque*, 2000 SCC 47, [2000] 2 S.C.R. 487, that while the sources and types of new evidence are more flexible in relation to sentence appeals, the well-known "*Palmer*" test governs admissibility of fresh evidence. That test, as is well known, sets out four criteria concerned with due diligence, relevance, credibility and impact on the result: *Palmer v. The Queen*, [1980] 1 S.C.R. 759, at p. 775. Generally, fresh evidence should not be received if it could have been obtained at trial by exercising due diligence, although this criterion is not strictly applied in criminal matters when it would be contrary to the interests of justice to do so. The evidence must be relevant in the sense that it relates to a potentially decisive issue and reasonably worthy of belief. Finally, the evidence, if accepted, must reasonably be expected to have affected the result when considered along with the trial evidence. As Charron J. explained in *R. v. Angelillo*, 2006 SCC 55, [2006] 2 S.C.R. 728, at para. 15:
>
> > In accordance with the last three of the Palmer criteria, an appellate court can therefore admit evidence only if it is relevant and credible and <u>if it could reasonably be expected to have affected the result had it been adduced at trial together with the other evidence</u>. [Emphasis added by Cromwell J.]

[29] The sentence was imposed on February 14, 2020. After the sentence was imposed, the Crown ordered and obtained transcripts of sentencing proceedings in

relation to Mr. James for April 25, 2017 and December 15, 2017—both of which occurred in the Territorial Court of Yukon.

[30] The purpose of admitting the evidence was to show that on those prior occasions, Mr. James told the judge that he was willing to attend counselling for his drinking.

[31] In my view, this evidence does not come close to meeting the test for fresh evidence on appeal. This was evidence that was readily available prior to the sentencing hearing had the Crown bothered to obtain it—especially given that the prosecution service had conducted all three cases. Had the probation officer felt it necessary, they could have obtained the information and brought it before the Court. The due diligence requirement has not been met.

[32] Furthermore, the sentencing judge was well aware that Mr. James had a history of alcohol abuse, and of his criminal record. It is not uncommon for alcoholics and addicts to make repeated tries at sobriety. The evidence before the sentencing judge was that Mr. James had remained sober the entire time he was on bail. Thus, the fresh evidence does not relate to a decisive issue, and the evidence would not, in my view, have affected the result.

[33] I would not admit the fresh evidence.

**Parity of sentences—s. 718.2(b)**

[34] The Crown submits that the sentencing judge erred in not following the decision of Ruddy C.J.T.C. in *R. v. Silverfox*, 2009 YKTC 96, where the sentences involving breaking and entering and assaulting a domestic partner were reviewed. It is not clear to me how failing to refer to a single decision, decided ten years ago and before *R. v. Ipeelee*, 2012 SCC 13, can be an error in principle in a sentence appeal.

[35] The Crown, however, argues that the sentencing judge imposed a sentence that was not sought by either party, and referred to decisions without giving counsel an opportunity to distinguish them. While I agree that if a judge is going to impose a

sentence that neither party sought, it is best practice to notify counsel and seek further submissions, I conclude that it was not an error to do so in this case. The imposition of a suspended sentence was not significantly different than from what Mr. James sought; indeed, in many ways, it is more onerous. Mr. James sought a 90-day sentence for the assault causing bodily harm (with 75 days remand credit owing), followed by 12–18 months' probation. The judge instead suspended the passing of sentence for 20 months and attached rigorous conditions—the breach of which could result in the judge imposing a 20-month sentence.

[36] The Crown argues that it did not have an opportunity to distinguish the case of *R. v. Voong*, 2015 BCCA 285 relied on by the sentencing judge to suspend the passing of the sentence. However, the judge was clearly alive to the factual differences in *Voong* and the companion cases. He cited the decision solely for its statements on the purpose and principle of a suspended sentence. I do not consider his failure to advise counsel of this decision to be an error in principle.

[37] The Crown also argues that the sentencing judge referred to a press release issued by the Government of Canada Office of the Correctional Investigator, which identified that the rate of incarceration for Aboriginal people has continued to increase, as opposed to abate, since the decision in *Ipeelee*. The Supreme Court of Canada in *R. v. Gladue*, [1999] 1 S.C.R. 688 at paras. 83 and 93 instructed trial courts to take judicial notice of certain matters in relation to Aboriginal offenders. It is well-known that the incarceration rate for Aboriginal people is far higher in proportion to the population than for non-Aboriginal persons. In my view, the sentencing judge did not err by referencing this report.

[38] The sentencing judge did not, as counsel suggests, "step into the fray." I would not give effect to this argument.

**Failure to give sufficient weight to the aggravating features**

[39] The sentencing judge was clearly aware of the aggravating features in this case. The Crown argues that the judge only mentions aggravating features in seven lines of his reasons, at para. 30.

[40] This misstates the reasons. For example, the sentencing judge also said, at para. 46:

> [46] I appreciate that, in particular in cases of domestic violence, the wishes of a particular victim should not derail the sentencing process. The sentencing judge must look beyond such expressed wishes, which are at times often naive, misguided and under-informed, to the larger picture. This larger picture includes not only the future risk of harm to the present victim, or to a future partner of this offender, but also the need to denounce domestic violence and, in doing so, deter others from committing such offences of violence. At the same time, when a victim of domestic violence speaks out, that victim must be listened to and heard by the Court.

[41] The sentencing judge was well-aware that this case involved repeated acts of domestic violence, some more serious than others. The sentencing judge considered that the best way to protect the complainant, who is still in a relationship with Mr. James and wishes for it to continue, was not to incarcerate him, but to place him on strict conditions for a lengthy period of time.

[42] The sentencing judge was also obliged to apply the principles as enunciated in *Ipeelee*, which he cited at length in his reasons. He needed to give significant weight to the aggravating factors, yet apply the statutory requirement to look at other sentencing options, other than incarceration.

[43] In my view, the sentencing judge did not commit an error in principle as argued by the Crown.

**Failure to give adequate weight to s. 718.2(a)(ii), (iii) and (iii.1)**

[44] The Crown submits that the sentencing judge placed Mr. James' Aboriginal status above all of the other sentencing factors, and in particular, the fact that the complainant was a victim of domestic violence, and that he was in a position of trust. The Crown also argues that the sentencing judge failed to consider the impact on the victim.

[45] There is no question that domestic violence is a serious crime. The sentencing judge was well-aware of that. He was also aware that Mr. James was in a position of trust, and that he breached that trust. Furthermore, he was alive to the

fact that the complainant was entitled to be safe from harm by Mr. James. In addition, he reviewed her statement in its entirety. He clearly was concerned about fashioning a sentence that would best protect her, particularly in light of her ongoing desire to continue her relationship with Mr. James.

[46] In my view, the sentencing judge did not commit an error in principle as argued by the Crown.

[47] The sentencing judge heard submissions on February 4, 2020 and issued extensive reasons, (some 32 pages), ten days later. In my view, he gave careful and well-crafted reasons for sentence.

[48] In my view, the judge did not commit an error in principle that led him to impose a demonstrably unfit sentence. While I would grant leave to appeal, I would dismiss the appeal.

[49] **BAUMAN C.J.Y.C.A**.: I agree.

[50] **CHARLESWORTH J.A.**: I agree.

“The Honourable Madam Justice Bennett”