SUPREME COURT OF YUKON

Citation: *R v Thorn*, 2021 YKSC 30

Date: 20210513
S.C. No.: 20-01507A
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

CONNIE THORN

Corrected Decision: The text of the decision was corrected at para. 131 where changes were made on November 25, 2021

Before Justice E.M. Campbell

Appearances:
Noel Sinclair — Counsel for the Crown
Gregory Johannson — Counsel for the Defence

REASONS FOR SENTENCE

[1] CAMPBELL J. (Oral)[1]: Connie Thorn pleaded guilty to the offence of manslaughter, contrary to s. 236(b) of the *Criminal Code*, RSC 1985, c C-46 with respect to the death of Gregory Alvin Dawson on April 6, 2017, in Whitehorse, Yukon.

Facts

[2] On January 27, 2021, I accepted Ms. Thorn's guilty plea, and found her guilty of the offence of manslaughter based on the admissions of fact, made pursuant to s. 655 of the *Criminal Code*, filed with the Court for the purpose of the guilty plea and sentencing.

[1] This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication without changing the substance

[3] Essentially, the admitted facts regarding the offence are as follows:

- At the time of the offence, Ms. Thorn and Mr. Dawson were in a domestic relationship. They were living together in an apartment in Whitehorse.
- In the evening of April 6, 2017, Ms. Thorn called 911 from their apartment to report that she had returned home from a day out, and that she had discovered Mr. Dawson deceased in their apartment on the kitchen floor. She said that his body was cold, that he looked beat-up, and that he had a history of seizures, which may have been related to his death.
- Ms. Thorn told the police that she had arrived home 20 to 30 minutes earlier, and had drank some cider in her bedroom before calling 911. She told the police that the apartment was as it appeared when she returned home that evening, and that she had not moved or cleaned up anything in the apartment.
- The police attended the apartment, and found Mr. Dawson deceased, resting on his back on the kitchen floor. His face and hands were extensively covered in dried blood.
- Mr. Dawson was fully dressed, although his trousers were unbuttoned, and partially lowered, exposing some of his buttocks. That area of his body and the kitchen floor beneath him were soiled with Mr. Dawson's feces, apparently resulting from bowel incontinence proximate to the time of his death. Based upon smears in the feces on the kitchen floor, it appeared that Mr. Dawson had been moved with his pants partially lowered.

- A forensic examination of the apartment revealed bloodstaining in most of the rooms in the home, including extensive pooled bloodstains and spatter bloodstains throughout the living room on the sectional couch and the carpet, on the walls, and on the doorframe into the kitchen.
- The investigators found cushions on the couch in the living room that had been turned upside down after the blood had pooled on top of them. The cushions had been covered with a blanket.
- There were also blood stains on the bed linens in the bedroom shared by Ms. Thorn and Mr. Dawson.
- In the kitchen, investigators observed wiped bloodstains, spattered bloodstains, and pooled bloodstains on cabinets, appliances, and the floor.
- Blood stains containing Mr. Dawson's DNA were discovered on various articles of female clothing and cleaning products at various locations in the apartment, including but not limited to bloodstained pants in the bedroom, and on clothing found in a laundry container next to the bathroom. Investigators also identified bloodstains on work boots located in the kitchen, which were forensically attributed to Ms. Thorn through DNA analysis.
- Forensic examination of the residence identified other evidence suggesting a partial clean-up of blood stains in various rooms, and a recently damaged section of drywall in the living room with drywall crumbs

on the adjacent area of the floor. The apartment was otherwise relatively neat and tidy.

- An empty 750 ml bottle of vodka with traces of Mr. Dawson's blood on the spout, body, and base of the bottle mixed with traces of Mr. Dawson's and Ms. Thorn's DNA on the body and base of the bottle was found in a recycling bin in the apartment.
- During Ms. Thorn's initial 911 call to the RCMP for assistance, and on several other occasions throughout the investigation, Ms. Thorn provided statements to the RCMP indicating that she had been away from home all day on April 6th, and that she had not had any contact with Mr. Dawson since the evening of April 5th when, she said, he had unexpectedly left their apartment while she was sleeping.
- Ms. Thorn's alibi statements were contradicted by a witness living in the upstairs apartment who overheard an argument between Ms. Thorn and Mr. Dawson during the day on April 6th. That witness also heard a loud banging sound from Ms. Thorn's apartment around that time, and later heard sounds of Ms. Thorn sobbing in her apartment in the early afternoon of April 6th.
- Also, one of Mr. Dawson's relatives called Ms. Thorn during the evening of April 6th seeking to contact Mr. Dawson. Ms. Thorn informed her that Mr. Dawson was not at home at that time.

- In addition, forensic evidence indicates that there was no one other than Mr. Dawson and Ms. Thorn inside the apartment at or around the time of Mr. Dawson's death on April 6, 2017.
- A forensic autopsy of Mr. Dawson's body (remains) identified numerous recent serious internal and external blunt force trauma injuries to Mr. Dawson's head and torso.
- Ms. Thorn admits that she is responsible for the various blunt force trauma injuries, which unlawfully caused Mr. Dawson's death, including specifically:
    i) bleeding on the surface lining of the brain (recent right parietal subarachnoid hemorrhage);
    ii) multiple recent bruises, lacerations, and abrasions on Mr. Dawson's face, scalp, neck, lips, and inside his mouth;
    iii) fractures of Mr. Dawson's right third and fourth ribs; and
    iv) perforation (tear) in Mr. Dawson's small intestine, which resulted in substantial, and almost immediately fatal, internal bleeding.
- Mr. Dawson's blood alcohol concentration at the time of his death was 252 mg% (more than three times the legal blood alcohol limit for driving a motor vehicle). Also present in Mr. Dawson's blood were metabolites indicative of recent exposure to cannabis.
- Ms. Thorn admits that she lost her self-control, and assaulted Mr. Dawson using excessive force, resulting in Mr. Dawson's death.

- At the time she assaulted Mr. Dawson, Ms. Thorn was intoxicated from her consumption of vodka and cider. She admits that she acted in the heat of passion while intoxicated, and attacked Mr. Dawson.
- Mr. Dawson was 45 years old when he died. Mr. Dawson was of First Nations heritage.
- Ms. Thorn was 48 years old when she assaulted Mr. Dawson, and caused his death. She is of First Nations heritage.
- Ms. Thorn was first arrested in relation to the death of Mr. Dawson on October 16, 2019.

Crown’s and Defence's respective positions on sentencing

[4] Crown counsel and defence counsel are not very far apart on what they respectively submit constitutes an appropriate sentence.

[5] Crown counsel submits that a sentence of five years less time served is appropriate, considering the nature and circumstances of the offence, its impact on the family of the victim and his community, as well as the circumstances of the offender.

[6] In addition, Crown counsel seeks the following ancillary orders:

i) a DNA order, pursuant to s. 487.04 and 487.051 of the *Criminal Code*;

ii) a lifetime firearms prohibition order, pursuant to s. 109 of the *Criminal Code*; and

iii) a no contact order with a number of Mr. Dawson's relatives and friends while Ms. Thorn is serving the custodial portion of her sentence, pursuant to s. 743.21 of the *Criminal Code*.

[7] Crown counsel also seeks an order directing the Registrar of the Court to transmit all of the exhibits filed during Ms. Thorn's sentencing proceeding to the Correctional Service of Canada.

[8] Crown counsel does not seek a restitution order in this matter.

[9] Defence counsel agrees that a penitentiary sentence is warranted in this matter, but submits that a period of two years plus one day of custody, in addition to time already served by Ms. Thorn in pre-sentence custody, is appropriate in this case. Defence counsel submits that Ms. Thorn would benefit from the programming and counselling available in the federal system.

[10] Defence counsel also seeks a recommendation that Ms. Thorn serve her federal sentence at one of two Indigenous healing lodges located close to her family: the Okimaw Ohci Healing Lodge in Saskatchewan or the Buffalo Sage Wellness House in Edmonton, Alberta.

[11] Both Crown counsel and defence counsel agree that the time Ms. Thorn has spent in pre-sentence custody should be credited at a 1.5:1 ratio, considering her good behaviour while incarcerated at the Whitehorse Correctional Centre (WCC) in this matter. Crown counsel concedes that, due to her good behaviour, Ms. Thorn would have earned remission time had she been serving a sentence, and, as a result, is not opposed to Ms. Thorn receiving credit at a ratio of 1.5:1 for pre-sentence custody.

Victim impact statements and community impact statement

[12] Mr. Dawson's death was a tragic event. The victim impact statements read and filed during the sentencing hearing reveal how Mr. Dawson's death, and the

circumstances surrounding his death have deeply affected his family and friends, and how they continue to affect them emotionally and psychologically.

[13] Mr. Dawson was only 45 years old when he died. His death adds to the emotional and psychological toll that already weighed on Mr. Dawson's family, as a result of the loss of loved ones in prior tragic circumstances.

[14] By all accounts, Mr. Dawson was a kind and gentle person, who was loved by his family, and appreciated by many. Mr. Dawson had a good sense of humour. He was also an artist. Even though life was not always easy for him, he enjoyed sharing stories and helping friends. His death has left an unfillable void in the lives of his siblings, cousins, nieces and nephews, as well as his friends.

[15] As stated by Shirley Dawson, one of Mr. Dawson's cousins, who considered him a brother:

> Things will be very different for our family. We will be penalized for the rest of our lives. The hurt will never go away. While the pain will be eased over time, I will never forget my brother Greg.

[16] A community impact statement was also prepared, on behalf of the Kwanlin Dün First Nation and Ta'an Kwäch'än Council, to explain how the offence has affected both communities. Portions of the statement were read in court during the sentencing hearing.

[17] Mr. Dawson was a registered citizen of the Ta'an Kwäch'än Council (“TKC”) with close affiliation with the Kwanlin Dün First Nation (“KDFN”).

[18] The statement reveals that members of both communities were impacted emotionally, psychologically, spiritually, and economically by the offence.

[19] Members of KDFN and TKC were in shock upon learning of Mr. Dawson's death and the circumstances surrounding his death. Mr. Dawson was described as kind and gentle, and as someone who never posed a threat to anyone. Many in the community asked, “Why him?”. The shock experienced by members of the two communities was quickly replaced with great sadness, grief, and anger. In addition, a sense of guilt emerged, mainly from those in positions of helping vulnerable citizens, like Mr. Dawson. The statement indicates that since the crime occurred, there has been pressure on the First Nations to house their most vulnerable citizens.

[20] As a considerable amount of time elapsed between the commission of the offence, and the arrest of Ms. Thorn, there was also a lot of fear, concern, and speculation in the community about who could have committed the crime.

[21] The community impact statement also reveals that:

> … Hearing of the victim’s death and the way it happened brought many families within the community back to a time when they had to deal with other traumatic deaths. A lot of community members felt an immediate need and urge to reach out and help, or felt the same pain as the family because it is something they experienced before. (p. 6)

[22] In addition, after Mr. Dawson's death, a number of KDFN employees who were related to Mr. Dawson or close to him had to take leave for days, and sometimes weeks afterwards. This, in turn, affected KDFN's capacity and ability to deliver its programs, and services.

[23] At p. 7 of the community impact statement, it is further explained that:

> … When a First Nation deals with a murder, their response has to be quick to deal with the sudden grief that the community members are feeling. All regular business is cancelled and time and resources are poured into the community. …

[24] The two First Nations were also concerned about meeting the spiritual needs of their community members as a result of the death of Mr. Dawson.

[25] Finally, the statement reveals that there was a noticeable increase in substance use, as a coping mechanism, among those community members with a pre-existing, but under control, substance issue. This situation led to an increase in demand for substance use services and justice services in the community, which took an additional toll on the First Nations Health and Justice departments.

Circumstances of the offender

[26] A comprehensive *Gladue* report was prepared in this matter, which provides valuable information and insight regarding Ms. Thorn's personal circumstances as an Indigenous person and, more particularly, as a Métis person. A thorough pre-sentence report (PSR) was also prepared and filed with the Court at sentencing. The PSR also provides valuable information with respect to Ms. Thorn.

[27] Ms. Thorn cooperated and participated in the two separate interview processes for the preparation of the *Gladue* report and the PSR.

[28] Ms. Thorn is 52 years old. She is the youngest of a family of nine children born to Lester and Lillian Dempsey. Ms. Thorn spent her childhood in Fort Smith in the Northwest Territories.

[29] Ms. Thorn is Métis and, like her parents who are both deceased, is of Woodland Cree and Chipewyan descent. Ms. Thorn is a member of the Northwest Territories Métis Nation.

[30] Ms. Thorn is an intergenerational residential school survivor. Ms. Thorn's two grandmothers had very similar lives. Both were Métis and attended residential schools,

where they endured abuse. In addition, both were forced into an arranged marriage with a fur trapper. One of Ms. Thorn's grandfathers was of Cree heritage, and he, too, attended residential school, whereas her other grandfather was of Irish descent.

[31] Ms. Thorn's father also attended residential school where he suffered abuse. Ms. Thorn's mother lived a more traditional lifestyle, and spent a lot of time "in the bush". She attended day school, and was allowed to return home in the evenings. A number of Ms. Thorn's older siblings attended residential school. Ms. Thorn knew she was Métis growing up but their father, due to the legacy of the residential school system, did not live a traditional lifestyle.

[32] Ms. Thorn grew up in a chaotic home with little support. Ms. Thorn's father was a hard worker who was often away from home. However, he suffered from an addiction to gambling and alcohol. Growing up, Ms. Thorn witnessed her father being physically and verbally abusive towards her mother and her siblings when he drank. Ms. Thorn was approximately five years old when her father had a work injury, which left him in a wheelchair. From then on, the physical abuse somewhat diminished but the drinking and the verbal abuse continued. Ms. Thorn's mother, on the other hand, was the one responsible for running the household, and caring for all her children on her own.

[33] In addition, it is reported that Ms. Thorn suffered abuse at the hands of some members of her family.

[34] Ms. Thorn started drinking alcohol at the age of 13 with other children from her neighbourhood. Around the same time, Ms. Thorn was sent to live with her older brother in Calgary for family-related reasons. She was placed in care when she was 14 years old.

[35] Ms. Thorn's drinking increased in her teenage years, and, by the age of 17, she started experimenting with marijuana. She was 18 years old when she entered into her first common-law relationship. Her partner was abusive, and she eventually left the relationship.

[36] Ms. Thorn did not finish high school at the time due to alcohol abuse, and the difficulties related to the abusive relationship she was in at the time.

[37] Ms. Thorn met her husband, Herman Thorn, in 1995. They married in 2002. They have two children together. While she is still legally married to Herman Thorn, Ms. Thorn estimates that they have only lived together for approximately one year, as Herman Thorn has been in and out of custody for most of their relationship. As a result, Ms. Thorn essentially raised their two children on her own until they were removed from her care a number of years ago.

[38] Ms. Thorn also experienced violence at the hands of Herman Thorn, who is presently in custody at the WCC awaiting sentencing on a number of criminal matters. Herman Thorn has been convicted of assault on Ms. Thorn, and one of their children. However, Ms. Thorn and Herman Thorn are allowed visits while in custody at the WCC, and do visit each other. Ms. Thorn appears ambivalent about her relationship with Herman Thorn, and has indicated to the *Gladue* writer that “she will still be his friend because he is the father of her children.”

[39] Ms. Thorn quit drinking when she was pregnant with her first child and returned to Forth Smith. She reported that she remained sober for the next 13 years.

[40] Ms. Thorn obtained a number of diplomas and certificates during that period of time, including her Grade 12 diploma.

[41] In 2012, Ms. Thorn was accepted into the Bachelor of Social Work Program at the Yukon College (now Yukon University), and moved to Whitehorse with her two children. However, she abandoned her studies due to family issues. It is around that time that she started drinking again, and fell into a downward spiral.

[42] Family and Children's Services became involved with Ms. Thorn's family in the fall of 2012. It is reported that the department's continued involvement with Ms. Thorn's family was a result of ongoing violence, and parental neglect due to alcohol and drug use. Ms. Thorn's eldest child is now an adult, whereas her youngest child remains in continuing care. Presently, Ms. Thorn does not have contact with her eldest child but has weekly phone contacts, and a monthly in-person visit with her youngest child.

[43] Ms. Thorn has been in Whitehorse since 2012, living on social assistance and temporary employment over the years.

[44] Ms. Thorn has been diagnosed with a number of conditions since arriving in Whitehorse, including post-traumatic stress disorder (PTSD), major depressive disorder, alcohol use disorder, and anxiety. Ms. Thorn indicated, during the preparation of her PSR, that her current mental health has significantly improved, and that regular reading and keeping occupied has allowed her to remain medication and symptom free for some time.

[45] It is reported that a psychological assessment conducted in 2016 indicates that Ms. Thorn's family upbringing likely led her to developing alcohol use as a primary coping tool for stress.

[46] Between 2013 and 2019, prior to her arrest in this matter, Ms. Thorn participated in extensive counselling and programming. However, despite her efforts, Ms. Thorn has

continued to drink alcohol to excess over that period of time. Ms. Thorn attended over 150 session hours of counselling with Michael Reynolds, a clinical counsellor at Mental Wellness and Substance Use Services, between 2014 and 2019. The counselling and treatment sessions included processing of childhood and adult traumas, relapse prevention, stress management, and emotional regulation.

[47] Ms. Thorn also participated in a three-week inpatient program at Mental Wellness and Substance Use Services in 2015, and a five-week inpatient program in 2019.

[48] In 2018, Ms. Thorn participated and successfully completed the addiction and trauma integrated inpatient program at Homewood Health Centre in Ontario.

[49] Ms. Thorn also participated in a number of assessments in the context of the preparation of her PSR. Ms. Thorn scored as having a SEVERE level of problems as it relates to alcohol abuse prior to her admission into custody on the Problems Related to Drinking Scale (PRD).

[50] The Problems Related to Drinking Scale is a self-reported questionnaire, which reflects the severity of an individual's problem as a result of alcohol use. The assessment is used only to score alcohol issues, not drug problems, and does not assess physical dependency.

[51] Ms. Thorn stated to the writer of the PSR that she does not generally seek drugs but has little-self control when under the influence of alcohol, and is quick to experiment when drinking.

[52] The Drug Abuse Screening Test (DAST) is a self-reported questionnaire, which is used to reflect the severity of an individual's problems as a result of drug abuse.

However, it does not assess physical dependency. Ms. Thorn's score of five (5) is indicative of a low level of problems related to drug abuse.

[53] Ms. Thorn was also assessed with the Level of Service/Case Management Inventory, which is an assessment and case management tool that measures the risk, and need factors empirically associated with recidivism as well as offenders strengths and supervision considerations. Ms. Thorn was assessed as having a high overall level of risks and needs.

[54] Ms. Thorn has not incurred any internal charges or convictions while in custody at the WCC for this matter. She has held a variety of cleaning jobs, and has engaged in extensive programming, counselling, and educational courses covering areas from trauma and addictions to first aid and baking.

[55] In addition, the one event that was brought to the Court's attention, regarding Ms. Thorn's behaviour while in custody, reveals that Ms. Thorn is capable of insight and restraint when dealing with conflict. An Information Report from the WCC filed by the defence reveals that Ms. Thorn dealt with a conflictual situation that arose with another inmate by bringing the situation to the attention of a correctional officer, and by discussing her frustration with the officer instead of reacting in a way that could have escalated the conflict.

[56] Since July 17, 2020, Ms. Thorn has attended weekly counselling sessions with Lyall Herrington, a certified alcohol and drug counsellor working at the WCC.

[57] In addition, Ms. Thorn has been working with Daniel Witt, Clinical Counsellor with the Forensic Complex Care Team, generally on a bi-weekly basis, since October 6,

2020. Mr. Witt indicated that Ms. Thorn displays tremendous insight into her struggles. He also noted that she is open and honest in therapy.

Criminal record

[58] Ms. Thorn has 15 entries on her criminal record that dates back to 1996, when she was convicted of possession of drugs, and obstructing a peace officer while in Alberta.

[59] However, there is a gap of approximately 17 years on Ms. Thorn's record, which appears to coincide with her period of sobriety, as her next conviction was not until 2013, when she was convicted of impaired driving, flight while being pursued by a police officer, assaulting a peace officer, and failing to comply with a recognizance.

[60] Ms. Thorn has five convictions for offences of violence on her criminal record. She was convicted of simple assault once in 2015, and twice in 2017. She was also convicted of simple assault once in 2019, for an offence that occurred after the events that led to the charge before the Court. I note that Ms. Thorn was sentenced to relatively short periods of incarceration on all of these matters.

[61] Ms. Thorn was also convicted of an assault with a weapon in 2019 for another offence that occurred after the events that led to the charge before the Court.

[62] In addition, Ms. Thorn has four convictions for failing to comply with her release conditions: one in 2015, and three in 2017.

Pre-sentence custody

[63] Ms. Thorn was arrested on October 16, 2019. She remained in custody until she was granted bail. She was released on a number of conditions, including that she reside with her sister, her surety, in Fort Smith. In addition, one of the conditions of Ms. Thorn's

release was that she had to travel via the most direct route between Whitehorse and Fort Smith. She was not to overnight anywhere unless in the presence of her surety. Arrangements were made for her to do so, and, according to the records, Ms. Thorn was released from the WCC on September 17, 2020.

[64] However, Ms. Thorn missed her flight between Edmonton and Fort Smith. It appears that other arrangements were made for her to fly to Fort Smith. However, Ms. Thorn never made her flight to Fort Smith. Her sister contacted the RCMP, who eventually found Ms. Thorn intoxicated, and in possession of alcohol. Ms. Thorn was arrested on September 21, 2020, and has been remanded in custody since then.

[65] Ms. Thorn spent 338 days in custody, from the day she was arrested until the day she was released on bail. She has spent another 235 days, including today, in custody since she was re-arrested on September 21, 2020.

[66] In total, Ms. Thorn has spent 573 days in pre-sentence custody. Therefore, applying a 1.5:1 ratio, she should be credited for 859.5 days or 28.65 months of pre-sentence custody.

General principles and objectives of sentencing

[67] The fundamental purpose of sentencing is set out at s. 718 of the *Criminal Code*, which provides that:

> 718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, 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 and the harm done to victims or to the community that is caused by 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 reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[68] A sentencing judge must consider the relevant sentencing objectives in determining a fit sentence for an offender.

[69] In addition, the principle of proportionality, enunciated at s. 718.1 of the *Code*, which requires that a sentence be "proportionate to the gravity of the offence and the degree of responsibility of the offender" plays a central role in sentencing an offender (see *R v Nasogaluak*, 2010 SCC 6, ("*Nasogaluak*") at paras. 40 and 41).

[70] As stated by the Supreme Court of Canada in *Nasogaluak*, at para. 44, in sentencing an offender, "[r]egard must be had to all the circumstances of the offence and of the offender, and to the needs of the community in which the offence occurred."

[71] The principle of parity, that offenders in similar circumstances who commit similar offences should receive similar sentences, also has to be taken into account, pursuant to s. 718.2(b).

[72] In addition, the principle of restraint set out at s. 718.2(d) means, in the context of a sentence of incarceration, that the length of the sentence imposed should not be more than is necessary to achieve the relevant objectives of sentencing.

[73] Sentencing remains nonetheless an individualized process, and a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence and/or the offender, as per s. 718.2(a) of the *Criminal Code*.

[74] Furthermore, when sentencing an Indigenous offender, the Court must pay particular attention to the personal circumstances of the Indigenous offender and, more particularly, to the *Gladue* factors present in a particular case.

[75] Section 718.2(e) specifically provides that all available sanctions, other than imprisonment, that are reasonable in the circumstances, and consistent with the harm done to victims or the community, should be considered for all offenders with particular attention to the circumstances of Indigenous offenders.

[76] In *R v Ipeelee*, 2012 SCC 13, the Supreme Court of Canada provided guidance on the application of s. 718.2(e), and on the directions it gave to sentencing judges in *R v Gladue*, [1999] 1 SCR 688. The Court stated at para. 72 of *Ipeelee*:

> [72] ... The methodology set out by this Court in *Gladue* is designed to focus on those unique circumstances of an Aboriginal offender which could reasonably and justifiably impact on the sentence imposed. *Gladue* directs sentencing judges to consider: (1) the unique systemic and background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (2) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection. Both sets of circumstances bear on the ultimate question of what is a fit and proper sentence.

[77] What this means is that, first, systemic and background factors must be considered by sentencing judges, as they may have a mitigating effect on the moral

blameworthiness of the offender, even in cases involving serious offences such as manslaughter (see, *Ipeelee* at para. 73, and *R v Friesen*, 2020 SCC 9, at para. 92).

[78] Second, as stated by the Court at para. 74 of *Ipeelee*:

> [74] The second set of circumstances — the types of sanctions which may be appropriate — bears not on the degree of culpability of the offender, but on the effectiveness of the sentence itself. As Cory and Iacobucci JJ. point out, at para. 73 of *Gladue*: "What is important to recognize is that, for many if not most aboriginal offenders, the current concepts of sentencing are inappropriate because they have frequently not responded to the needs, experiences, and perspectives of aboriginal people or aboriginal communities."
> ...

[79] I now turn to the case law filed by Crown counsel and defence counsel in support of their respective positions.

Authorities filed by the Crown

[80] Crown counsel filed a number of Yukon sentencing precedents for the offence of manslaughter, which bear some similarities to the present case. The range of sentences imposed in those matters range from four years of imprisonment in *R v Couture*, 2001 YKTC 51 to six years of imprisonment in *R v Stewart*, 2005 YKTC 74.

[81] In *Couture*, the offender and the victim were in a common-law relationship. They had both consumed alcohol and drugs prior to the commission of the offence. They were arguing when the accused decided to go to bed. He awoke to the victim screaming at him. She began to assault him with a sharp object. In the course of the struggle, the offender managed to disarm the victim. He then stabbed her once. The offender fell asleep due to the effects of the alcohol and the sleeping pills he had consumed earlier that evening. When he woke up the next morning, he found his spouse dead in a pool of blood on the kitchen floor. The offender panicked. He cleaned his spouse's body,

changed her clothes, and put her to bed. He cleaned the blood on the floor, and disposed of the bloody clothing and a cocaine syringe in a dumpster outside their apartment. The offender then took a bus downtown, and began consuming alcohol.

[82] The accused entered an early guilty plea, and was remorseful.

[83] The sentencing judge found that the fact that the offender was intoxicated at the time he committed the offence was not mitigating but that it, at least, partly explained why that needless tragedy had occurred. Also, there was a history of domestic violence between the offender and the victim. The offender had been convicted of assaulting the victim on five separate occasions, and the victim had been convicted twice for assaulting the offender. The sentencing judge found that, in somewhat similar circumstances, the range of sentences was between 30 months and seven years of imprisonment. He concluded that a sentence of four years of imprisonment was appropriate in that case.

[84] In *R v Joe*, 2018 YKTC 38, the offender and the victim were drinking alcohol with others when they engaged in a brief physical altercation. At some point, the accused picked up a piece of 2x4 lumber, and hit the victim in the head. A third party intervened, and broke up the fight. The victim was taken to the health centre, as his face was bleeding heavily. He received medical assistance, and returned home. The victim died in his sleep during the night. The offender was 30 years old at the time of the offence, and the victim was 18 years old.

[85] The accused was an Indigenous person. He was an intergenerational survivor of the residential school system, who had an unstable, abusive, and traumatic childhood. The offender struggled with alcohol and drug use. He was cooperative with the police

during the investigation, and entered a guilty plea to a charge of manslaughter. He was genuinely remorseful, and apologized to the family of the victim. The offender had a prior criminal record, including a prior conviction for a violent offence. He was on probation at the time of the offence. The accused had the support of family, and friends. He wanted to rehabilitate himself, and deal with the underlying issues that led to the commission of the offence.

[86] In determining a fit sentence for the offender, the sentencing judge reviewed a number of Yukon and out-of-jurisdiction sentencing precedents where the offence was committed in the context of a fight or an argument. After concluding that the range of sentences for cases, which had some similarities to the case before him, was between two and one-half to 8 years of incarceration, and, after balancing the different factors applicable in that case, the sentencing judge determined that a global sentence of four and one-half years of imprisonment was appropriate.

[87] In *R v Asp*, 2005 YKSC 58, the offender stabbed her common-law partner in the chest with a butcher knife during an argument. The offender attempted to assist the victim, and an ambulance was called soon after the stabbing. However, the victim died as a result of the stab wound. There was a history of mutual violence between the offender and the victim. Both of them were highly intoxicated at the time of the offence. Ms. Asp pleaded guilty to manslaughter. She was 27 years old at the time of sentencing. Her upbringing included dysfunction and abuse. She had a criminal record, which included a prior offence of violence.

[88] The sentencing judge considered that the use of a weapon, the significant degree of force applied, the fact that the offender and the victim were in a common-law

relationship, and the offender's level of intoxication were aggravating. On the other hand, he found that the fact that the offender was remorseful, that she had tried to assist the victim, that she had taken some responsibility for the unlawful act, and her own rehabilitation were mitigating. The sentencing judge sentenced the accused to a total of five years of imprisonment

[89] In *R v Charlie*, [1987] YJ No 35, the offender and the victim, who were friends, had been drinking together. At some point, and for no apparent reason, the offender stabbed the victim with a kitchen knife in the stomach. The victim died from his injuries. The offender was an alcoholic, and had a criminal record.

[90] The sentencing judge considered that the offender's consumption of alcohol was an aggravating factor. The sentencing judge found that a sentence totalling five years of imprisonment was appropriate in that case. In coming to that conclusion, the sentencing judge made the following remark, at para. 11:

> In my view, a wise balance of the aggravating and mitigating circumstances here leads me to the conclusion that, putting aside the pre-trial custody, the case remains as it began, a tragic example of that category I described as the killing of a friend or a relative while drunk and in the face of minimal provocation. Without more, then, I would think that the appropriate sentence is five years in custody. …

[91] In *R v Stewart*, 2005 YKTC 74, the offender and the victim were friends. They got together to drink, and, at some point, had an argument. The offender passed out, and when he awoke, found the victim on the floor. He called for assistance, and attempted CPR, without success. It was determined that the victim had died as a result of an assault by the offender. The victim had multiple fresh bruises, lacerations, and injuries on his body. The victim also had a high blood alcohol concentration at the time of his

death. The offender was 47 years old. He was an Indigenous person who had grown up in an extremely dysfunctional family environment. He had a long-standing alcohol addiction. He had a lengthy criminal record, including 13 prior convictions for violent offences. The offender was remorseful, and had entered an early guilty plea.

[92] The sentencing judge found as aggravating the fact that the offender knew he had an alcohol problem, and knew he was violent when he drank, but had not taken sufficient steps to address his addiction prior to committing the offence.

[93] The sentencing judge also found as aggravating the fact that the victim was highly intoxicated, and unable to defend himself, as well as the fact that the injuries disclosed an assault that consisted of a combination of punches, kicks, and stomps, which took place over a period of time as opposed to one impulsive blow. The offender was sentenced to a total of six years of imprisonment.

[94] Crown counsel also filed the case of *R v W(J)*, [1998] YJ No 66. This matter involves specific considerations related to youth offenders. I also note that the accused in that case hid the body of the victim for months. Therefore, I do not find it as relevant as the other cases provided by the Crown in relation to the present matter.

Authorities filed by the defence

[95] In addition to the decisions provided by Crown counsel, defence counsel filed the decision of *R v Chief*, 2018 YKTC 36. In that case, the offender brutally attacked the elderly victim, who died as a result of the multiple injuries inflicted by the offender. The offender and the victim were drinking together, and both were intoxicated at the time of the offence. The offender considered the victim his grandfather. The offender had a lengthy criminal record with a number of convictions for violent offences. The offender

was an Indigenous person, and *Gladue* factors were present. The offender had been diagnosed with Fetal Alcohol Spectrum Disorder ("FASD"), and had significant cognitive difficulties.

[96] The offender's personal circumstances played a significant role in the judge's decision to impose a sentence of two years less one day followed by a three-year probation, taking into consideration credit for two years and seven months in pre-sentence custody, for a global sentence of four years and seven months of imprisonment.

[97] In determining an appropriate sentence for the offender, the sentencing judge reviewed a number of sentencing decisions. Defence counsel highlighted two in particular.

[98] In *R v Peters*, 2014 BCSC 1009, the 50-year-old Indigenous offender was sentenced to four years and five months' imprisonment for manslaughter.

[99] In that case, the offender stabbed her spouse in the heart while they were intoxicated. She had no memory of having committed the offence. She was a residential school survivor. She was remorseful.

[100] In *R v Kappi*, 2016 NUCJ 28, the offender and the victim were friends. The 26-year-old Indigenous offender stabbed the victim one time with a kitchen knife in the course of a physical altercation. It was found that the offender was not the aggressor. The offender had a positive home environment but struggled with bullying outside of the home. In addition, the offender demonstrated a high level of remorse. A sentence of three years of imprisonment was imposed for manslaughter.

[101] The cases relied on by the defence therefore range between three and approximately four years and seven months of imprisonment.

[102] I now turn to the specific sentencing objectives that I find most relevant in this case.

Specific sentencing objectives

[103] I am of the view that denunciation as well as general and specific deterrence are to be given primary consideration in a case such as this one where domestic violence resulted in the death of the offender's intimate partner.

[104] However, considering the personal circumstances of Ms. Thorn, and the *Gladue* factors present in this case, I am also of the view that rehabilitation plays a role in sentencing her for the offence before the Court.

[105] It is true that Ms. Thorn had the benefit of several hours of intensive programming and counselling to help her deal with the underlying issues that lead her to drink to excess. It is concerning that after the death of Mr. Dawson, which occurred in circumstances that involved heavy drinking, Ms. Thorn committed, and was convicted of two more violent offences. It is even more concerning that after having spent approximately a year in pre-sentence custody, which included more counselling and programming to help her deal with her issues, Ms. Thorn sabotaged her own release plan by obtaining alcohol and drinking to excess within a few days of her release from custody.

[106] However, since her return to custody, Ms. Thorn has resumed her efforts at addressing her risk factors, and living a more positive lifestyle. Mr. Witt stated that Ms. Thorn's risk factors include her history of violence, anti-social behaviour,

relationship instability, substance use, trauma, negative response to supervision, and struggle with stress, and coping.

[107] A friend of Ms. Thorn, who visits her regularly at the WCC, also indicated to the author of the PSR that:

> … Noting that the subject used to excitedly plan for the day she was released from custody and could drink again, Ms. Ens expressed optimism that the subject has not mentioned needing or wanting alcohol in the last three months and is hopeful the subject has been learning to deal with stress in a more appropriate way. (p. 17)

[108] In addition, Mr. Witt, who has worked with Ms. Thorn at the WCC, is of the opinion that therapeutic intervention coupled with risk mitigation strategies can reduce Ms. Thorn's risk to reoffend violently. He has also expressed the opinion that a long-term therapeutic setting, not available in the Yukon, would be beneficial to Ms. Thorn, and would diminish her risk of relapsing upon her release as follows:

> Ms. Thorn has worked diligently with counselors and other support workers. She has benefitted from her multiple therapeutic interventions. Despite this, Ms. Thorn recently relapsed once upon re-entering the community at large. Ms. Thorn's release to the community at large, particularly in the Yukon, where she will undoubtedly encounter and re-establish relationships and connections with less-than-supportive associates and community members (due to the current charges she is alleged of committing), is of concern to me. The type of therapeutic interventions that would provide Ms. Thorn the opportunity to explore her struggles at depth, which would require sufficient time and support in a safe environment, are only available in intensive, gender-sensitive, long-term therapeutic settings, which are not currently available in the Yukon Territory. Due to the aforementioned issues with less-than-supportive associates and community members, I believe seeking out-of-territory treatment would not only benefit Ms. Thorn from a therapeutic standpoint, but address additional risk-mitigating needs. (p. 2)

[109] Ms. Thorn has expressed a desire and willingness to continue to attend, and participate in counselling and programming available to her to help her deal with her long-standing alcohol addiction, and underlying issues, which are directly related to her risk to reoffend violently, and, most specifically, programming available at healing lodges in the federal system. She stated in a letter addressed to the Court, and filed at sentencing, that she wants to use her time in custody "to understand what [she] can do that is positive for [her] life, instead of drinking it away." She concluded her letter in a way that reveals that she is capable of introspection by stating:

> … I know I have it in me to do better than I did in the past, because I've realized where I went wrong with a lot of my mistakes and what I can do differently. I know that when I was a child, I did not want or imagined growing up to be an addict, bad parent or criminal. What I really want out of life is to use my strengths, gifts for myself and others in a good way.

[110] I also note that Ms. Thorn was able to remain sober for an extended period of time prior to moving to Whitehorse. The gap in her criminal record is indicative of the link between her alcohol addiction, and her risk to reoffend in a violent manner.

[111] As such, I find that rehabilitation remains a relevant objective that I have to factor in determining an appropriate sentence for Ms. Thorn.

[112] I now turn to the mitigating and aggravating factors in this case.

Mitigating factors

[113] Ms. Thorn entered a guilty plea to the offence of manslaughter. While her guilty plea was not entered at the first opportunity, as it occurred after a relatively short and targeted preliminary inquiry, it was still entered well before trial.

[114] Also, Ms. Thorn indicated at the sentencing hearing that she has no memory of committing the offence due, among other things, to her excessive consumption of alcohol at the time. She nonetheless recognized her responsibility, expressed remorse for her actions, and acknowledged the pain and sorrow she has caused to the members of Mr. Dawson's family.

[115] In addition, Ms. Thorn is an intergenerational residential school survivor. There are a number of *Gladue* factors present in her case. While Ms. Thorn knew she was Métis, the residential school system resulted in members of her family, including her father, dissociating themselves from their Métis heritage, and depriving their children and grandchildren, including Ms. Thorn, of that meaningful connection.

[116] In addition, from an early age, Ms. Thorn witnessed alcohol abuse as well as physical and verbal abuse in her home. At some point, she was placed in care. Ms. Thorn herself was abused by some members of her family. She entered into domestic relationships in which she suffered abusive behaviour. Her own struggle with alcohol led to her children being taken away from her, and placed into care. This last comment should not be taken, by any means, as criticizing Family and Children's Services' intervention in Ms. Thorn's family matters. The limited information provided to the Court in this proceeding indicates that they acted appropriately to protect Ms. Thorn's children. My comment simply acknowledges that Ms. Thorn's difficult personal circumstances were further negatively impacted and exacerbated by losing custody of her children.

[117] As a result, I find that systemic and background *Gladue* factors have played a part in bringing Ms. Thorn before the Court, and that, consequently, they lower her moral blameworthiness.

Aggravating factors

[118] As per s. 718.2(a)(iii), it is an aggravating factor that Mr. Dawson, the victim of Ms. Thorn's assault, was her common-law partner.

[119] Also, Ms. Thorn's criminal record, which includes prior convictions for offences of violence, is an aggravating factor. As per *R v Reddick*, 17 NSR (2d) 369, at para. 8, the two convictions for offences of violence, that Ms. Thorn incurred after committing the offence before the Court, may be considered but do not carry the same weight as prior convictions in sentencing an offender.

[120] In addition, the fact that the assault was unprovoked, and clearly consisted of more than one blow, considering the number of injuries sustained by Mr. Dawson, is aggravating. However, I do not find that the bloodstains found on work boots located in the kitchen, which were forensically attributed to Ms. Thorn through DNA analysis, necessarily lead to the conclusion that Ms. Thorn used those boots in assaulting Mr. Dawson, as suggested by the Crown.

[121] Also, the fact that Ms. Thorn attempted to conceal her involvement in the commission of the offence by attempting to clean the blood off some areas of the apartment, moving items, and providing a false alibi to the police, is also aggravating.

[122] Finally, as I have concluded that Ms. Thorn's struggle with alcohol is connected to the background and systemic factors that have played a part in bringing her before the Court, I am of the view that this is not a case where her failed attempts at dealing

with her alcohol addiction prior to committing the offence before the Court, and her level of intoxication at the time of the offence, may be identified as an aggravating factor. It is, however, part of the factual matrix that led to the tragic death of Mr. Dawson.

An appropriate sentence

[123] Manslaughter is punishable by a maximum of life imprisonment. There is no minimum sentence that applies in this case, as the offence did not involve the use of a firearm (see s. 236(b)).

[124] Courts have noted in many occasions that there is a wide range of sentences imposed in manslaughter cases. This wide range reflects the many set of circumstances that can lead to a conviction for manslaughter, from near accident to near murder.

[125] In light of the facts in this matter, I am of the view that Ms. Thorn's assault on Mr. Dawson cannot be characterized as a case involving a near accident. The injuries to Mr. Dawson's head, and torso, as well as the internal and external bleeding, reveal that the assault consisted of more than one blow, and that a significant degree of force was employed.

[126] In addition, Ms. Thorn did not provide nor seek assistance after realizing what she had done. Instead, she chose to conceal her involvement in Mr. Dawson's death.

[127] On the other hand, as I have already stated, she is remorseful, and the *Gladue* factors present in Ms. Thorn's case reduce her moral blameworthiness.

[128] As such, I find that this case falls more towards the middle of the range of the cases that were filed by Crown counsel and defence counsel in this matter.

[129] Before imposing sentence on Ms. Thorn, I want to acknowledge that no sentence I impose can bring Mr. Dawson back, nor can it mitigate the loss felt by his family and friends.

[130] In addition, I want to say that a sentence imposed in a criminal matter, such as this one, is in no way meant to assess or reflect the importance, the usefulness, or the value of the victim's life. No sentence could ever achieve that result.

[131] Overall, having considered:

(a) the nature and circumstances of the violent offence before the Court that led to the death of Mr. Dawson;

(b) its impact on Mr. Dawson's family, as well as on the members of his community, and on the respective governments of two First Nations he was closely associated with;

(c) Ms. Thorn's personal circumstances as an Indigenous offender;

(d) the objectives of sentencing I identified as most relevant in the present case, and the general principles of sentencing applicable to this matter;

(e) the relevant mitigating and aggravating factors; and

(f) the sentencing precedents filed by Crown counsel and defence counsel,

I am of the view that a global sentence of five years of imprisonment, less time served, is appropriate. Considering 859.5 days of pre-sentence custody, I therefore sentence Ms. Thorn to serve an additional period of 966 days.

[132] Ms. Thorn requested that I make a recommendation that she be placed at one of the Correctional Service of Canada’s healing lodges, which would help her reconnect

with her Métis heritage. Crown counsel is not opposed to the Court making such a recommendation.

[133] It is my understanding, from the reports that were filed with the Court, that Indigenous healing lodges offer culturally appropriate services and programs to offenders in a way that incorporates Indigenous values, traditions, and beliefs. The types of interventions offered to Indigenous inmates at healing lodges include contact with Elders, interaction with nature, and ceremonies. The goal is to address the factors that led to incarceration, and prepare the offenders for their reintegration into society.

[134] Considering the intergenerational trauma experienced by Ms. Thorn and her family as a result of the government imposed residential school system, and its impact on Ms. Thorn's personal circumstances as an Indigenous offender; and, considering as well, Ms. Thorn's desire to reconnect with her Métis heritage, and her needs for an intensive, long-term therapeutic settings; I am of the view that placement in one of the two healing lodges closest to Ms. Thorn's family, where she would have access to culturally meaningful programming and support, would be beneficial to help her:

(i) develop a deeper connection with, and pride in, her Métis heritage;

(ii) understand the underlying issues linked to her alcohol and substance abuse; and

(iii) ultimately address her alcohol and substance abuse issues, which were identified as her main risk factors to reoffend in a violent way.

[135] I therefore recommend that Ms. Thorn serve her federal sentence in an Indigenous healing lodge, and, more particularly, at the Okimaw Ohci Healing Lodge in Saskatchewan or the Buffalo Sage Wellness House in Edmonton, Alberta.

Ancillary orders

[136] As previously indicated, Crown counsel seeks a number of ancillary orders, including a DNA order. The defence did not raise any issue with respect to Crown counsel's request for a DNA order.

[137] Manslaughter is a “primary designated offence”, pursuant to s. 487.04 of the *Criminal Code*, and a DNA order is mandatory in this case. Accordingly, I am prepared to make an order, pursuant to s. 487.051 of the *Criminal Code*, authorizing the taking of the number of samples of bodily substances reasonably required for the purpose of DNA analysis from Ms. Thorn.

[138] Also, Crown counsel seeks a firearms prohibition order for life, pursuant to s. 109 of the *Criminal Code*. Defence counsel did not make any submissions in that regard.

[DISCUSSIONS]

[139] Therefore, considering the offence before the Court, a lifelong prohibition order is mandatory, pursuant to s. 109(2)(b) of the *Criminal Code*. I therefore order, pursuant to that section, that Ms. Thorn be prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.

[140] In addition, considering that the offence before the Court is one that involves an act of violence that caused Mr. Dawson's death, as well as Ms. Thorn's criminal record, which includes convictions for violent offences, and, more particularly, a conviction for an assault with a weapon in 2019, I am prepared to order that Ms. Thorn be prohibited from possessing any weapon for life, pursuant to s. 109(2)(a) of the *Criminal Code*.

[141] Furthermore, Ms. Thorn is not opposed to the Court granting an order that she have no contact with a number of Mr. Dawson's family members and friends while serving her custodial sentence. Therefore, pursuant to s. 743.21 of the *Criminal Code*, I order that while serving her custodial sentence, Ms. Thorn have no communication directly or indirectly with: Val Dawson, Willie Smith, Jessie Dawson, Wynette Dawson, Mary Dawson, Loretta Dawson, Edith Dawson, Ralph Blanchard, Carol Dawson, Norman Blanchard, Shirley Dawson, Tracy Blanchard, James Dawson, and Cheryl Dawson.

[142] In addition, I direct the Registrar of the Court to transmit all the exhibits filed during Ms. Thorn's sentencing proceeding to the Correctional Service of Canada.

[143] I will also request a transcript of my decision.

[DISCUSSIONS]

[144] Considering Crown counsel’s application for an order forfeiting to the Crown all offence-related property seized by the RCMP in this matter; and considering that defence counsel is not opposed to the order sought, I order that all offence related property seized by the RCMP in this matter be forfeited to Her Majesty the Queen.

[145] Also, considering defence counsel’s application that I waive the Victim Fine Surcharge for undue hardship; and considering that Crown counsel concedes that Ms. Thorn has no means to pay the surcharge; I am prepared to waive the Victim Fine Surcharge in this matter.

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CAMPBELL J.