Citation: *R. v. Edmiston*, 2023 YKTC 24

Date: 20230609
Docket: 21-00096
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Gill

REX

v.

DEVIN KYLE PATRICK EDMISTON

Appearances:
Noel Sinclair — Counsel for the Crown
Kevin W. MacGillivray — Counsel for the Defence

REASONS FOR SENTENCE

[1] GILL T.C.J. (Oral): Devin Edmiston is before the Court for the imposition of sentence on Information 21-00096 and specifically on the following counts:

> Count #3: On or about the 5th day of July in the year 2020 at or near the City of Whitehorse in the Yukon Territory, did operate a conveyance in a manner that was dangerous to the public and thereby caused the death of Travis ADAMS, contrary to Section 320.13(3) of the Criminal Code.
>
> Count #4: On or about the 5th day of July in the year 2020 at or near the City of Whitehorse in the Yukon Territory, did operate a conveyance in a manner that was dangerous to the public and thereby caused the death of Nicole SANDERSON, contrary to Section 320.13(3) of the Criminal Code.
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> Count #6: On or about the 5th day of July in the year 2020 at or near the City of Whitehorse in the Yukon Territory, did operate a conveyance in a manner that was dangerous to

> the public and thereby caused bodily harm to Zachary MCCUTCHEON, contrary to Section 320.13(2) of the Criminal Code.

[2] For these offences, the Crown seeks a sentence in the range of four to six years' incarceration concurrently on Counts 3 and 4, and a sentence of two to three years' incarceration concurrently on Count 6. The defence seeks a global sentence of two years, followed by a probation order of three years. Each of these sentencing positions comprising a penitentiary term and the Court, in agreement, that a fitting sentence in this case requires a penitentiary term, the matter precludes any consideration of a conditional sentence order.

[3] It should also be observed that this offender has already spent some time in custody awaiting the imposition of sentence which will need to be taken into consideration. I calculate that time, applying the usual enhanced credit formula, to be 41 days.

[4] Counsel are in agreement on ancillary orders, save and except for the duration of any driving prohibition. The Crown is seeking a five-year term and the defence suggesting three years to be adequate.

[5] The circumstances of the offence are set out in an Agreed Statement of Facts that was filed as Exhibit 1 at the sentencing hearing. On the date in question, Mr. Edmiston was the driver of one of two cars that were proceeding together on a family outing to Army Beach located about 45 kilometres southeast of Whitehorse. Mr. Edmiston, who has never been licensed to drive, attempted to pass the other car at a very high rate of speed, going uphill on a curved portion of the Alaska Highway that

was marked with a double solid yellow line, because oncoming traffic could not, from his vantage point, be seen. When the oncoming traffic appeared over the crest of the hill, Mr. Edmiston attempted to re-enter his side of the roadway, but that spot was then occupied by the car he had been trying to pass. This resulted in a collision between the two cars that caused his car to spin and continue its travel along the oncoming lane.

[6] Two cars approaching in the oncoming lane were able to take evasive action but Mr. Adams, travelling on his motorcycle directly behind them, did not have a chance to avoid the collision. He died instantly on impact, but he and his motorcycle were thereafter forced underneath the vehicle operated by Mr. Edmiston. The motorcycle's gasoline tank ruptured and, after emerging from underneath the car, caught fire.

[7] There were two other occupants in Mr. Edmiston's car. The sole rear seat passenger was his common-law partner, Nicole Sanderson. She was catastrophically injured in the collision and after a period of acute distress, died at the scene. The other front seat occupant, Zachary McCutcheon, suffered serious injuries that required him to be flown by medevac first to the Whitehorse Hospital and then to Vancouver for life-saving spinal and other surgical operations.

[8] Mr. Edmiston himself sustained bruising to his face and a fractured upper jaw. He was transported to Whitehorse Hospital and discharged within a couple of days, after which he spent some time in the hospital after returning to Manitoba.

[9] The car Mr. Edmiston was attempting to pass was occupied by his common-law partner's two daughters and her seven-year-old grandson. They were apparently spared physical injury but saw the direct aftermath of the accident, including witnessing

their mother's acute distress and her eventual passing at the scene.

[10] Members of Travis Adams' family, who had been following some distance behind, and others who were summoned to the scene shortly afterwards by those having first arrived, all came upon and witnessed the gruesome carnage, including the burning remains of Mr. Adams where he lay on the roadway.

[11] Such are the essential circumstances of this offence. I will address other aspects of the offending conduct in greater detail later in these reasons.

[12] Moving to the circumstances of the offender, Mr. Edmiston was 25 years old at the time of the offence and he is 28 years old today. He has a high school education and attended college briefly. Although he has a driving record, he has no prior criminal record. Information supplied on his behalf includes a number of support letters and a copy of a CBC news article referring to him, as well as a Pre-Sentence Report ("PSR") that was prepared. The author of the PSR was also Mr. Edmiston's bail supervisor for the roughly two years he has been on judicial interim release.

[13] The PSR describes a number of matters about this offender that are relevant to his sentencing, including his upbringing and his own views about the extent to which his upbringing should bear upon any sentence imposed. The PSR also reveals Mr. Edmiston's own perceptions about his offending conduct. Mr. Edmiston clearly had an upbringing that transcends misfortune and enters into the realm of regular child abuse. According to the author of the PSR, Mr. Edmiston did not wish to have the

details of that abuse detailed in open court nor did he wish to necessarily receive sympathetic treatment on account of it. He is quoted in the PSR as telling the PSR writer:

> I don't think anything in my past has anything to do with being in a car accident…I want to pay the price without having to relive my past.

[14] Mr. Edmiston, it is not this Court's intent to make you uncomfortable or relive a difficult upbringing, but it must be understood that an offender's personal circumstances, good or bad, are relevant to sentencing and must be considered by the Court. In order to be so considered they must at least, to some extent, be detailed in the Court's reasons for sentence irrespective of the offender's own preference on the matter so that the Court's reasoning is transparent and, if necessary, capable of being further reviewed.

[15] The PSR describes that this offender was born to a 17-year-old mother and was abandoned by his father not even knowing his identity. At age 4, he was molested by his mother's roommate, who was jailed for that offence. He then went into foster care for the remainder of his adolescent years where the abuse continued, including instances of being hit with rulers, forced to kneel on pencils, being subjected to cigarette burns scarring his hands, and spending lengthy periods of time locked in an attic, allowed out only to attend school. Being a volatile child, having difficulty trusting people, he explained that every time someone would touch him, he would scratch or pinch them

back because he did not know if they were there to care for him or to abuse him. When asked if he had any positive memories to share from his childhood, he told the PSR writer:

> I cannot go back into my memory and find anything but trauma. I may have had a period where I was not abused but I do not remember.

[16] Mr. Edmiston described his numerous transfers between foster care and group homes as being more akin to human trafficking than to a childhood. Neither his mother nor any of his siblings could be found for any information that might have assisted in the preparation of the PSR.

[17] The offender has reported being single with no dependents. His last significant relationship was with Nicole Sanderson, who died in the collision he caused. He has himself attempted suicide a number of times, including at ages 11 and 13 by cutting his neck and hanging himself.

[18] Following the commission of the subject offence, he received death threats and was involuntarily placed in the psychiatric ward first at the Whitehorse Hospital and later in Manitoba as a result of his risk of suicide. More recently, he has relied on local outreach services in Steinbach, Manitoba, meeting with a counsellor weekly.

[19] While denying any current suicidal ideation, he told the PSR writer words to the effect that there would be no one before the Court to be sentenced if he did not have that outreach. He has never had the benefit of any formal mental health assessment, despite having asked for it in the past.

[20] I will be recommending that he receive it.

[21] Mr. Edmiston does not have much of a work history. Although never fired from any of his jobs, his employment was nonetheless sporadic at best.

[22] Following the commission of this offence and his release on bail, he returned to his native province of Manitoba. While fully compliant while on bail, it does not appear that his life had much direction.

[23] By the winter of 2022, finding himself homeless and sleeping in the penalty box of an outdoor hockey rink, he turned to the Steinbach Community Outreach Centre (the "Centre"). The Centre provided him with housing, and he participated in daily volunteer work there.

[24] Defence counsel, on behalf of Mr. Edmiston, filed a number of letters written by representatives, such as directors, board members, and other volunteers at the Centre. Those letters confirm Mr. Edmiston to be a valued member of the Centre by daily assisting others and handing out food, sorting donations, doing dishes, washing floors, or anything else needed. He has developed roots in that community, including attending church and forming friendships. These appear to be the first meaningful relationships in his life since offending almost three years ago.

[25] He is described in the support letters as an inspiration to many others struggling with homelessness and as expressing remorse and regret for his misconduct and having a hard time living with himself because of it.

[26] The letters confirm an offer of continuing support for him, including visits at the detention facility, if incarcerated in Manitoba, as well as housing and volunteer opportunities upon eventual release.

[27] A letter was also provided by Ms. Sheila Ginter, who is a licensed psychotherapist as well as a professor of counselling at the Steinbach Bible College specializing in cognitive behavioural therapy and trauma informed therapy. It is her expressed opinion that this offender is genuinely seeking improvement in both his cognitions and his behaviours.

[28] Lastly, defence counsel filed an article published by the CBC News posted in March 2023 describing the work of the Centre as not only legitimate but very much a prominent contributor to charitable work in the country. In that article, this offender is mentioned as one of many who have searched for direction and assistance at the Centre and who have begun to turn their life around as a result of it.

[29] The foregoing largely sets out the circumstances of the offender, and I will now proceed to outline the relevant sections of the *Criminal Code* that guide sentencing.

[30] The fundamental purpose, principles, and objectives of sentencing under the *Criminal Code* are those set out in ss. 718 to 718.2.

[31] Section 718 provides that:

> 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 …;
>
> (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.

[32] Section 718.1 provides that the fundamental principle of sentencing is that:

> A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[33] Section 718.2 provides that:

> A court that imposes a sentence shall also take into consideration the following principles:
>
> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender …;
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[34] Various case authorities have issued over the years providing guidance on the application of these statutory provisions. As just mentioned, proportionality is the fundamental principle of Canadian sentencing.

[35] In *R. v. Lacasse*, 2015 SCC 64, the Supreme Court of Canada, at para. 53, said this about the principle of proportionality:

> …Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances. …

[36] There is also the concept of retribution that is also connected to proportionality, which is recognized as a valid sentencing principle.

[37] In *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 78, quoting from page 133 of the Canadian Sentencing Commission Report on Sentencing Reform (1987), described retribution in the following terms:

> …
>
> > The ethical foundation of retributivism lies in the following principle: it is immoral to treat one person as a resource for others. From this principle it follows that the only legitimate ground for punishing a person is the blameworthiness of his or her conduct. It also

> follows that sanctions must be strictly proportionate to the culpability of a person and to the seriousness of the offence for which that person has been convicted. …

[38] The Supreme Court in *M. (C.A.)* also took great care to ensure that the principle of retribution be appropriately distinguished from that of vengeance, making at para. 80 the following remarks:

> …Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more. … [emphasis added]

[39] It is also important to distinguish the principle of retribution from that of denunciation. This was aptly addressed as well in *M. (C.A.)*, at para. 81, in the following terms:

> Retribution, as well, should be conceptually distinguished from its legitimate sibling, denunciation. Retribution requires that a judicial sentence properly reflect the moral blameworthiness of that particular offender. The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. … [emphasis added]

[40] Finally, the Court in *M. (C.A.)*, at para. 82, described the challenges inherent in crafting a proportional sentence, noting:

> … it is important to stress that neither retribution nor denunciation alone provides an exhaustive justification for the imposition of criminal sanctions [but, rather, that] retribution must be considered in conjunction with the other legitimate [and interrelated] objectives of sentencing, which include (but not limited to) deterrence, denunciation, rehabilitation and the protection of society. …

[41] I would say that in this way the guiding authorities generally hold that the principle of proportionality itself serves to act as a limiting principle. This is also reflected in the wording of s. 718.2(d) already mentioned in these reasons. Overall, this helps to ensure the sentence imposed is not one of pure vengeance but rather one that is calibrated to reflect in each instance the specific moral blameworthiness of the offender and the gravity of the offence.

[42] It is also important to describe what is meant in law by the term “degree of responsibility of the offender”.

[43] In the *Lacasse* decision, at para. 130, the Supreme Court, quoting from the Alberta Court of Appeal, at paras. 58 and 59, in *R. v. Arcand*, 2010 ABCA 363, said the following:

> …
>
> > The “degree of responsibility of the offender” as used in s. 718.1 certainly includes the mens rea level of intent, recklessness or wilful blindness associated with the actus reus of the crime committed. For this assessment, courts are able to draw extensively on criminal justice principles. The greater the harm intended or the greater the degree of recklessness or wilful blindness, the greater the moral culpability. However, the reference in s. 718.1 is not simply to the “mens rea degree of responsibility

> of the offender" at the time of commission of the crime. Parliament evidently intended "degree of responsibility of the offender" to include other factors affecting culpability. These might relate, for example, to the offender's personal circumstances, mental capacity or motive for committing the crime. …

[44] The Court in *Lacasse*, at para. 131, also noted that the two dimensions of proportionality, namely the gravity of the offence on the one hand and the degree of responsibility of the offender on the other hand, do not always operate entirely in the same direction, and I quote at para. 131:

> The application of the proportionality principle may therefore cause the two factors to conflict, particularly where the gravity of the offence points strongly to a sentence at one end of the range while the moral culpability of the offender points in the other direction. …

[45] I will now proceed to outline in greater detail the specific factors of the present case and how they relate to the guiding principles of sentence that I have just now outlined.

[46] First, I conclude that this offender's conduct tilts towards the higher end of the range of moral blameworthiness for this kind of offence. The *mens rea* for this offence requires a marked departure from the standard of care that a reasonable person would observe in his or her situation. Mr. Edmiston clearly breached this standard. He demonstrated a high degree of disregard for life by attempting to pass a car that was itself travelling between 135 to 147 km/h on a road having a posted speed limit of 100 km/h, and he did so while crossing a double solid line that prohibited any passing whatsoever. In doing so, he intentionally occupied the lane exclusively reserved for

oncoming traffic under conditions of light to medium traffic volume and where his view of any such traffic was entirely obscured by the crest of the curved incline that he was on at the time.

[47] I emphasize here the duration of this dangerous driving was not a fleeting moment but, rather, a sustained attempted passing manoeuvre representing a determined effort in the face of significant risk. This risk was so obvious that it caused his passenger, Mr. McCutcheon, to voice his alarm, which the defendant did not hear likely because of the very loud music that he, as the driver of the car, had permitted.

[48] Much of the foregoing comprises the *actus reus* of the offence itself. However, there are additional aggravating factors that must also be considered, including those described in s. 320.22 of the *Criminal Code*.

[49] Section 320.22 entitled “Aggravating circumstances for sentencing purposes” sets out a number of factors, some of which are eligible for consideration as aggravating on this sentence.

[50] Section 320.22(a) sets out the first aggravating circumstance, which is where:

> (a) the commission of the offence resulted in bodily harm to, or the death of, more than one person;

[51] That is clearly the case here.

[52] The next aggravating circumstance the Crown urges the Court to adopt is that contained in s. 320.22(b), namely where:

> (b) the offender was operating a motor vehicle in a race with at least one other motor vehicle or in a contest of speed, on a street, road or highway or in another public place;

[53] Although the Crown conceded Mr. Edmiston was not racing, as racing might ordinarily imply, for example, a prearranged contest between two or more drivers, it was submitted that his decision to attempt to pass the other vehicle in his party was at the very least a contest of speed. Here I note that the Agreed Statement of Facts does not include any admission that there was a contest of speed. As such, the Court would have to infer it from those agreed facts.

[54] One challenge asserting this contention is that the *Criminal Code* does not define a contest of speed and there is nothing in the Yukon *Motor Vehicles Act*, RSY 2002, c.153, prohibiting or defining any such thing as well. To assist, the Crown provided the Court with motor vehicle act legislation from some other provinces defining the term "contest" in the context of provincial or regulatory driving offences.

[55] For example, one definition of contest includes driving in a manner indicating an intention to chase another motor vehicle. Another definition refers to any attempt to outdistance another motor vehicle while driving at a rate of speed that is a marked departure from the lawful rate of speed.

[56] The difficulty with those definitions is that, on the admitted facts, this offender cannot be determined to the criminal standard to necessarily being intending to chase the other motor vehicle or to outdistance it. The only facts before the Court regarding the driving previously along the trip is that Mr. Edmiston was driving very fast, playing loud music, and talking. No actual speed is given for either car, nor how nor whether

his distance to the other car varied, if at all. At the time he attempted the passing manoeuvre, and just exactly why he was doing that or what he would have done after the passing manoeuvre had it not resulted in the collision would be pure speculation.

[57] The other difficulty with applying any of the provincial legislation definitions is that, to the extent they describe a contest involving driving in a manner endangering any person or representing a marked departure from the applicable speed limit, those are essentially the elements of almost every case of dangerous driving, such that virtually every prosecution under the *Criminal Code* for that offence might be deemed a contest. That can simply not be the case.

[58] The driver of the other vehicle that Mr. Edmiston was attempting to pass, it would be recalled, is a daughter of his common-law partner who died in the collision. It is not known why she was travelling as fast as she was at the time of the attempted passing. All that is known is that Mr. Edmiston was attempting to pass her in a very dangerous manner and without regard to the obvious risks. That he was doing so in any manner that could only be characterized as a contest of speed as an aggravating factor under s. 320.22 of the *Criminal Code* has not been established beyond a reasonable doubt. Put differently, that there are no stronger inferences then that he was engaged in a contest of speed does not equate to that particular inference being established.

[59] The next aggravating factor to be considered is that contained in s. 320.22(g), namely, where:

> (g) the offender was not permitted, under a federal or provincial Act, to operate the conveyance.

[60] It being admitted that Mr. Edmiston has never been licensed to operate a motor vehicle his entire life, this is clearly an applicable aggravating factor and justly so, given the additional risk he thereby posed by driving on the date in question.

[61] See, in this regard, the case *R. v. Jamo*, 2022 BCCA 73, where the Court of Appeal, at para. 69, confirmed it entirely proper to infer that unlicensed drivers are less likely to understand the basic rules of the road and create a higher risk to be involved in motor vehicle accidents.

[62] A related aspect of this offender being unlicensed and thereby creating a heightened risk of harm to occupants in his car and to others on the road is that neither he nor any of his passengers were wearing seatbelts.

[63] A further aggravating factor supporting the notion that Mr. Edmiston either did not understand or alternatively did not care to follow the rules of the road is by virtue of his conviction only two months before the commission of the index offence for driving without a valid licence and for speeding. While he is clearly not being re-sentenced for that offending conduct, the fact that he failed to heed the warning inherent in those earlier infractions further demonstrates his disregard for the rules of the road and the risk that he created thereby. This further elevates his moral blameworthiness on this sentencing.

[64] Next, the Crown has submitted that the Court consider Mr. Edmiston's sobriety during the commission of this offence to be an aggravating factor. After due consideration and with respect, I cannot agree. Canadian criminal jurisprudence has overwhelmingly regarded intoxication in the commission of driving offences to be an

aggravating factor and, indeed, there are separate sections in the *Criminal Code* for causing death or bodily harm by intoxicated driving.

[65] Similarly, the previously mentioned s. 320.22 contains a subsection, namely, subsection (e), which provides that it is an aggravating factor on sentencing if the offender's blood alcohol concentration at the time of committing the offence was greater than or equal to 120 mg%.

[66] Even appreciating the list of aggravating factors in s. 320.22 is not intended to be exhaustive, the absence of sobriety being listed as an aggravating factor is a telling point. Indeed, penalizing sobriety flies in the face of public policy that for many years has been directed towards the goal of road safety. That this offender, while completely sober, could exercise such catastrophically poor judgment is appalling and deserving of high moral culpability, but his sobriety on the facts of this case cannot possibly be an aggravating factor.

[67] This is different than what might be the case, for example, for an offence, even a driving offence, involving planning and deliberation. In that case, clearheaded sobriety may well be more aggravating than having done so while judgment was clouded by intoxication. The case relied on by the Crown, *R. v. Shular*, 2014 ABCA 241, is precisely one of a planned driving offence, one where the offender selected his victims before driving and where sobriety indeed aided in that planning to harass or harm.

[68] That is not the case here. For that reason, this offender's sobriety is neutral. It is neither aggravating nor mitigating.

[69] The second dimension of the principle of proportionality in sentencing, as earlier mentioned, is the gravity of the offence. This aspect also weighs heavily against this offender.

[70] First, and as already noted, Mr. Edmiston's conduct resulted in more than one death, which is an aggravating factor under s. 320.22(a) of the *Criminal Code*. Travis Adams was 43 years old, still raising his family, and was a vibrant and valued member of his extended family and his community. Nicole Sanderson was a loving mother and grandmother, whom Mr. Edmiston himself also loved dearly.

[71] Also factoring into the gravity of the offence is the impact on Mr. McCutcheon. The bodily harm sustained by Mr. McCutcheon included the following:

- a fractured sternum;
- aspiration pneumonia;
- a comminuted burst type fracture in the lumbar spinal vertebrae;
- a compression fracture with disc protrusions and herniations in his lumbar spinal vertebrae;
- internal muscular bruising in the area of his lumbar spinal vertebrae; and
- temporary partial paralysis followed by mobility deficits in his legs. His treatment included a spinal fusion operation and continuing rehabilitation and pain management treatments.

[72] As detailed in Mr. McCutcheon's Victim Impact Statement, while trapped in the car following the collision and unsure if he would himself survive, he endured watching his mother-in-law expire in that very car. Following his life-saving surgery and being medevacked to Vancouver, he was bedridden for over four months and is to this day unable to work or lift more than 15 kilograms, and he continues to face treatment-related expenses he cannot afford. Notwithstanding his plight, he expressed hope for the offender.

[73] The gravity of the offence is high not only in terms of the consequences as measured by loss of life and serious injury, but also with reference to the severe impact on those friends or family members witnessing the accident and its aftermath. Victim Impact Statements were filed by both of the daughters of the deceased, Nicole Sanderson, and 20 Victim Impact Statements were filed on behalf of the deceased, Travis Adams. Many were read in court by their anguished authors or their designated proxies. Some of the victims were actually involved in the collision and others shortly afterwards came upon the grisly aftermath.

[74] From among the closest of family members, they included spouses, parents, children, and others. All they could do was helplessly watch as they tried in vain to actually comprehend what their senses of sight, sound, and smell were relaying to them.

[75] It is impossible to fully understand the impact on all of the victims. Mr. Adams was integral to the family business; his loss keenly impacting its operations and employees.

[76] The words of the victims — all of them — speak now of living in an entirely different reality, one filled with pain, emptiness, and guilt. They speak of opportunities forever lost, of being a burden on other family members who are themselves unable to cope, of strained or broken relationships, and of serious ongoing health issues they have themselves developed.

[77] In summary, the loss and impact upon many of the victims has been physical, mental, emotional, and financial and can only be described as both crippling and enduring. It should not go unrecognized that even within this collective anguish there are voices even yet encouraging this offender in the future to become a better person, to not let all of the terrible consequences be entirely in vain.

[78] That said, I now wish to make it clear there is no question that impact on victims can be considered an aggravating factor, and on the facts of this particular case as described is a significant aggravating factor. I rely on guidance provided by the Supreme Court of Canada in *Lacasse*, where, at para. 85, the Court stated as follows:

> My colleague also states that "the impact on those close to the accused cannot be considered an aggravating factor that would justify a harsher sentence for the accused" … He cites s. 718.2 of the *Criminal Code* in support of this assertion. But the list of aggravating factors in that section is not exhaustive. Also, this factor, like that of intoxication, played a secondary role in the determination of the sentence. …

[79] Now when applying the foregoing guidance, I must nonetheless be mindful of the wise words from the British Columbia Court of Appeal in *R. v. Berner*, 2013 BCCA 188, where at paras. 24 and 25, the Court stated as follows:

> Counsel for both the appellant and the Crown acknowledged on this appeal that the day in provincial court was already a sombre and difficult one. Watching the presentation that accompanied the father's victim impact statement would have been a profoundly emotional experience for all who saw it. But it is the heightening of those emotions, in a courtroom, which carries the risk of unjust consequences. One of the harms which could result from permitting victims to pay tribute to their loved ones in the public forum of the courtroom is that their expectations may be raised and their belief that the tribute will influence the length of a sentence may be encouraged.

[80] The Court continued para. 25 of that decision as follows:

> There are other dangers. While a sentencing judge must try to understand a victim's experience, he or she must do more than that. He or she must craft a fit sentence by taking into consideration all relevant legal principles, and the circumstances of the offence and the offender. In emotionally charged cases such as this, a sentencing judge must keep in mind his or her position of impartial decision maker. The sentencing judge must be wary of the risk of valuing victims, based on the strength of feelings expressed in the victim impact statement. …

[81] I will only add what I expect is obvious to all, namely that sentencing in cases such as this is by no means intended to be compensatory. Rather, the Court must be guided by sentencing legislation and sentencing principles as described by Parliament in the case authorities. All life being precious, the loss is incalculable, and no sentence can adequately reflect that, and indeed many of the victims have themselves stated that no sentence could ever be sufficient.

[82] In addition to the aforementioned aggravating factors, there are also factors which, at law, must be recognized in the mitigation or reduction of a heavier sentence that would otherwise be imposed.

[83] First, the offender accepted responsibility in these proceedings by way of his admission of guilt. That the proceedings, despite the guilty plea, have taken so long to complete is less a function or a fault to be laid entirely at the feet of the offender as much as it is in the roughly 10 months it first took for the authorities to swear the Information, and then the additional time, much of which was taken by counsel themselves to arrive at an agreed admission of contentious facts to avoid the necessity of having to call witnesses to prove those facts, even in the context of a guilty plea.

[84] Regardless, the guilty plea along with the ultimately Agreed Statement of Facts, even taking as long as it did, unquestionably spared the prosecution from having to call witnesses who would have had to relive the experience through open testimony in court about what happened and then potentially to be questioned about it.

[85] The guilty plea and accompanying expression of remorse weighs heavily in mitigation of sentence. Speaking of this offender's remorse, that remorse has also been acknowledged through some of the letters of support filed on his behalf by people he has come to know at the Centre and also in the PSR, where, on page 11, he was described by the author as often becoming emotional during his interviews, especially when speaking about the victims and the harm he caused.

[86] When asked if he had seen the victim impact statements, he told the author:

> I'm sorry and never wanted any of this to happen…what can I say to someone's family I destroyed…I can't sleep. I can't hear a firework without snapping back [to the accident]. …

[87] As a further indication of remorse, Mr. Edmiston was observed many times to be sobbing uncontrollably during the sentencing hearing submissions, particularly during the reading out into open court of the Victim Impact Statements by the victims. Mr. Edmiston was thereafter permitted to express his remorse by facing and directly addressing persons in the courtroom gallery during the sentencing submissions.

[88] His brief remarks were filed as Exhibit 6 on these proceedings, and they read as follows:

> I just wanted to take the time to say I am truly sorry for the damage that was caused by my action that day. Not a day goes by that I am not haunted by the sheer thought that someone lost their brother, their uncle, father, son, grandpa, friend, husband, mother, sister, aunt, and grandma. I understand your pain and I am sorry. The pain that has echoed through your lives is irreparable and I know there are no words I can say to ease that pain. I wish none of this had ever happened. I pray that God heals you and guides you to the peace you all deserve.

[89] In light of all of the foregoing there is no question this offender's remorse is a genuine and indeed a tormented remorse. There is also, however, the question of this offender's acceptance of responsibility, which is a factor separate and distinct from that of his remorse just described. On that issue, the question is somewhat more clouded.

[90] The author of the PSR writes that while it is clear Mr. Edmiston is remorseful and appears to appreciate the impact of his actions on others, he does also maintain that it was just an accident, that he had no malicious intent, and that he believes it to be unfair that he is being treated like a criminal. Although it is clear from other aspects of these proceedings, including his own statements to the Court indicating he is ready to face

any consequences, including incarceration, he does lack an appreciation of why that would be a just and appropriate sanction for his behaviour.

[91] In my view, even though he has admitted the essential elements of the offence and the Agreed Statement of Facts and is genuinely remorseful, there is no doubt that he fails to fully recognize for sentencing purposes his own direct role in causing this collision, preferring to still call it a horrible accident. He must understand that, even if he did not actually want it to happen, that through his own decisions about how to drive, he allowed for it to happen. This was not just an accident but, rather, was indeed a preventable tragedy deserving of the criminal sanction. His sentence must reflect a need to promote in him a sense of responsibility for his conduct that he may not otherwise be fully appreciating.

[92] I would add that there may also be an associated need to specifically deter him, although I am of the view that if there is such a need, it is not a heavy need. Although assessed as having a medium overall level of criminogenic risk and needs, he has had no issues with bail compliance for over two years. Despite alcohol not being a factor in his driving, he has foresworn alcohol consumption for the past year despite his prior regular reliance on that substance to help him cope with his childhood trauma. As he explained to the author of the PSR, facing his past without alcohol is frightening and as he described it, “sober life is scary”. He does, however, still consume marijuana.

[93] In any event, he has learned a terrible lesson for his conduct he is not likely to repeat.

[94] Overall, there is no question that he does accept responsibility in the sense of a ready willingness to accept any sentence this Court might impose, and this has been evidenced by his reticence to have his unfortunate background brought into play and as expressed to the author of the PSR, wanting to simply pay the price without any of his background being taken into consideration.

[95] It was also evident in his final statement to the Court at the close of the sentencing hearing submissions, when he stood and briefly quoted Scripture, in essence confessing to having sinned and voicing readiness to accept any consequences that might thereby now be visited upon him.

[96] I have already discussed this offender's driving record, which is not a criminal record but rather one comprised of regulatory offences, as an aggravating factor. On that date, about two months before the index offence, he was ticketed not only for driving without a licence, itself a serious regulatory offence, but also for doing so while speeding, thereby further amplifying the aggravating impact on this sentencing. It is amplifying because those same aspects of his driving, as observed in the commission of the index offence, can therefore not be said to be out of character. That said, the driving record itself is not as serious in terms of the number of infractions as compared to some other offenders who will be reviewed in the case authorities later in these reasons.

[97] I must also recognize that this offender has no prior criminal record as being a lawful mitigating circumstance.

[98] There is also the matter of death threats he received immediately following the offence, both in Whitehorse as well as in his native Manitoba. Already under suicide watch in the hospitals at both locations, the threats must have weighed heavily upon him, and they do deserve some recognition in the sentencing process.

[99] Finally, I must be mindful of this offender's relative youth and his moral culpability in connection with his abusive upbringing, which I will return to later in these reasons.

[100] I now propose to review the case authorities presented to me. While no two cases are identical on the circumstances of the offence or of the offender, they are nonetheless guides on how the different sentencing factors should be assessed and weighed to give guidance on the index case.

[101] Before commencing my review of the cases, I wish to make a few remarks regarding both sentencing trends as well as the maximum sentence available for this type of offence. From 1985 until December 2018, the maximum sentence for dangerous driving causing bodily harm was 10 years and for dangerous driving causing death was 14 years. Since then, the maximum sentence is now 14 years and life in prison, respectively. The Crown submits, and I agree, that sentences imposed in earlier cases should be read with that in mind. Crown also suggests there has been a general upward trend in sentencing regardless in light of the continuing problem with road safety and the countless injuries and deaths caused thereby.

[102] This issue was actually addressed in the Alberta Court of Appeal decision in *R. v. Atkinson*, 1989 CarswellAlta 216 (C.A.), where at para. 10, the Court stated as follows:

> The seriousness with which Parliament viewed the alarming increase in injuries and deaths on our highways as reflected in the aforementioned amendments has resulted in the imposition of longer terms of imprisonment imposed upon those persons found guilty of dangerous driving and impaired driving. …

[103] This issue is also canvassed in the decision of Smallwood J (now Chief Justice Smallwood) of the Northwest Territories Supreme Court in the case of *R. v. Theriault*, 2021 NWTSC 17, where at para. 24, she stated as follows:

> The maximum penalty of life imprisonment is reserved for the most serious offences in the *Criminal Code*. By increasing the maximum penalty to life imprisonment, Parliament is clearly demonstrating how seriously it views this offence and signalling to courts that it should do the same in sentencing for dangerous driving causing death. This sentiment is one that is also reflected in the upwards trend in sentencing for dangerous driving offences that has been apparent in the cases for some time and which predates the amendments.

[104] I will now summarize the cases presented to me. The earliest of the case authorities provided is that of *R. v. Bhalru and Khosa*, 2003 BCCA 645. These two offenders were engaged in a street race resulting in the death of a pedestrian. Although they were sentenced to a conditional sentence order, a sentence I have determined Mr. Edmiston is not eligible for, I will review it nonetheless for its sentencing principles and to give better perspective on the range of sentencing generally having regard to different factors over the years.

[105] In this case, the Appeal Court agreed it was significant that the two offenders, Mr. Khosa and Mr. Bhalru, were racing at excessive speeds on a major street lined with commercial and residential properties, but also gave due regard that their conduct did

not depart from community standards as radically as in some other cases cited, where speeds had reached as high as 150 km/h or even 200 km/h. The Court also agreed that the moral culpability of both offenders was attenuated by their youth, by their having no prior criminal record nor driving offences, and by their expression of remorse with favourable prospects for rehabilitation.

[106] This case essentially deals with young people spontaneously engaging in street racing 20 years ago, circumstances significantly different than those before this Court today.

[107] The case of *R. v. Foster*, 2004 YKSC 47, involved an offender in Whitehorse operating his motor vehicle at an excessive speed, losing control of it, and striking an individual seated on a bench at a bus stop, killing him instantly. The posted speed limit being 50 km/h, he was determined to be travelling at or about twice that speed. Mr. Foster was a 40-year-old man married with two teenage sons and determined, through criminogenic testing, to have a low risk of reoffending. Based on factors that included Mr. Foster's expression of genuine remorse, the Court determined he did not need to be specifically deterred, finding it highly unlikely that he would repeat this kind of behaviour again, concluding that his offence, while serious, was not as serious as those involving impaired driving causing death or criminal negligence causing death, both of which were then subject to a maximum life in prison. The Court noted the absence of aggravating factors commonly seen in many of these cases, such as a long history of dangerous driving, a refusal to take responsibility, a history of prior criminal offences, alcohol consumption, a failure to show remorse, leaving the scene, or a likelihood of reoffending.

[108] Mr. Foster received a 20-month conditional sentence order.

[109] *HMTQ v. Tsandaya*, 2004 YKCA 3, involves a roughly 20-year-old offender, the decision being from the Yukon Court of Appeal, where a 15-month conditional sentence order for one count of dangerous driving causing bodily harm and three counts of breach of recognizance was upheld. The driving involved a serious head-on motor vehicle collision when the offender, driving about 30 km over the 50 km speed limit, while approaching a curve and school zone, crossed center line of the road and collided with an oncoming vehicle. The collision was caused by the offender taking her attention away from her driving while attempting to locate a bottle for her two-year-old daughter. Given the age of this decision as well as the dissimilarity in fact pattern, it is of little assistance today.

[110] The next case is that *R. v. Regier*, 2010 ONSC 1963. Mr. Regier was sentenced for a 2007 driving offence to a term of six years' incarceration for dangerous driving causing the death of two individuals and bodily harm to a third. Mr. Regier was not a youthful first-time offender but, rather, a 50-year-old man having an extensive criminal record, including for domestic assault against his wife as well as multiple counts of fraud. He had 25 prior traffic convictions, including two traffic infractions that he committed while he was on bail for the matters before the Court. Given his extensive and related offending, both before and even during the court case, the Court determined this was not an isolated incident. The Court found his expression of remorse and acknowledgement of responsibility, which would ordinarily be a mitigating factor, to have no value. His sentence clearly had a heavy component of specific deterrence requiring a sentence described by the Court as being at the upper end of the range.

[111] This case is very useful for comparative purposes and sentencing principles but is significantly more aggravating in terms of the circumstances of the offender than the index case. Also, it must be recognized that Mr. Regier was convicted after a five-day trial, so there was no mitigation that he might have received had he pleaded guilty.

[112] In *R. v. Hodder* (2012) 322 Nfld. & P.E.I.R. 243 (NL Prov. Ct.), a 20-year-old offender pleaded guilty to dangerous driving causing the death of one individual and bodily harm to another. Travelling at a speed of about 140 km/h, he attempted to pass another vehicle travelling about 130 km/h. After crossing the double solid yellow line and entering the oncoming lane, the offender encountered a motorcycle coming towards him and, in an effort to avoid it, swerved sharply. Although the motorcycle was avoided, Mr. Hodder lost control of his vehicle and made contact with the car he had been attempting to pass, and his car ended up in a pond and began to sink. The deceased victim, who had told the driver to slow down and could not himself swim, drowned, and his older brother, who was also in the car, suffered bruising and lacerations to his neck, hand, and arms.

[113] Mr. Hodder pleaded guilty. He had three prior speeding tickets. He was assessed as having a borderline general cognitive ability but not having any cognitive disorder. The injured victim filed an impact statement about the loss of his younger brother and the horror of watching him drown despite his own valiant efforts to save him, indicating that he too lost part of his life that night. He also expressed the loss experienced by his girlfriend, their parents, and their sister, who also filed statements expressing their loss. Those statements are very similar as regards the heartfelt grief and consequential suffering to those filed in the index case. The Court sentenced

Mr. Hodder to two and one-half years' jail for the death he caused and 18 months concurrently for the bodily harm.

[114] Here, it must be noted this offence occurred in 2011,12 years ago, and was handed down at a time when the maximum sentence for this offence was lower. It is also important to note that Mr. Hodder caused one death, not two, and his injured victim sustained less bodily harm than Mr. McCutcheon. If sentenced today on the same facts as then, I believe Mr. Hodder would receive a longer jail sentence.

[115] The next case is that of *R. v. Grenke*, 2012 ABQB 198, where the offender, after a trial, was sentenced to four and one-half years' jail for dangerous driving causing the death of one person and one year concurrent for causing bodily harm to another, both of whom were passengers in his car. He accelerated his high-performance vehicle down an Edmonton city street reaching a speed of over 100 km/h within a city block, losing control of his car, and slamming it into a tree.

[116] As in the present case, the Court in *Grenke* observed that the primary principles of sentencing were that of denunciation and deterrence, further observing that, at that time, the vast majority of cases of this type commonly involve sentences between three- and four-years' jail.

[117] Despite having fairly positive PSRs and other reports, the Court appears to have been negatively influenced by Mr. Grenke's previous history, which included a conviction for possession of narcotics for the purpose of trafficking, for which he had received a custodial sentence, as well as having settled a prior allegation of impaired driving by pleading guilty to a highway traffic offence of careless driving. He had also

received a 24-hour alcohol-related suspension and he had 26 prior driving offences, 14 of which were for speeding. Because of his bad driving, he had been previously suspended from driving on three separate occasions.

[118] Although Mr. Grenke was not convicted of any intoxication-related component, alcohol was nonetheless found to have influenced his decision to show off the maximum ability of his car as a deliberate and planned event. Since Mr. Grenke was sentenced after trial, he did not have the benefit of receiving any mitigation of sentence that he would have, had he pleaded guilty. He did express remorse on sentencing.

[119] *Grenke* is, in some ways, more aggravating than the index case by virtue of the planning, the more extensive prior driving history, and the lack of guilty plea mitigation. It is also, however, a dated case when the maximum punishment was less than today, and before the more recently observed increasing trend in the direction of heavier sentences.

[120] In *R. v. Bhangal*, 2016 ONCA 857, the offender, a professional truck driver, struck an oncoming minivan head-on, killing its driver. Mr. Bhangal had fallen asleep at the wheel. He was sentenced to five years' incarceration and a 15-year driving prohibition. Having been found guilty of both dangerous driving and criminal negligence causing death, the Court stayed the dangerous driving conviction and sentenced on the criminal negligence offence. Mr. Bhangal was therefore sentenced for an offence more serious than the index case. A clear aggravating factor found by the Court was the offender having deliberately doctored his logs to avoid his rest obligations for the purposes of placing his economic interests ahead of public safety.

[121] I believe a case of a professional driver altering his logbooks and falling asleep at the wheel to be of limited assistance in the present circumstances.

[122] *R. v. Bagri*, 2017 BCCA 117 involved an appeal from a sentence following a conviction on four counts of dangerous driving causing death. Mr. Bagri was a 45-year-old professional truck driver who conducted an inadequate brake check prior to a long downhill section of the roadway. Although the ensuing accident was caused by the excessive activation of his engine-retarding "Jake brakes" rather than by any brake failure *per se*, his conduct, including the perfunctory brake check and exceeding the posted speed limit during sections of the downhill drive, was regarded as evidence of overall intentional risk-taking carrying a high moral culpability resulting in the four deaths. His sentence of three years' incarceration was upheld on the appeal.

[123] Despite Mr. Bagri being responsible for four deaths, I consider Mr. Edmiston's moral culpability to be considerably higher due to the significantly higher intentional risk-taking involved in his driving, as compared to *Bagri*. The *Bagri* case is also more than six years old and arising before the introduction of the higher maximum sentences for these crimes.

[124] *R. v. Sidhu*, 2019 SKPC 19 involved an offender convicted of dangerous driving by failing to heed a stop sign, resulting in a collision with a bus occupied by 29 people, causing serious bodily harm to 13 of them and 16 deaths, most of them teenaged children. Although he had no prior record, he was a recently employed professional

truck driver pulling a long and heavy load, failed to appreciate the immensity of his responsibility to obey the rules of the road, resulting in the complete devastation that followed.

[125] Mr. Sidhu, having pleaded guilty and expressing his heavy remorse, the Court sentenced him to eight years' incarceration for the counts involving death and five years concurrent for those causing bodily harm. The Crown had asked for a 10-year term. The offence date was prior to the most recent amendments increasing maximum punishment as previously discussed.

[126] The *Theriault* case, previously mentioned, involved an offender who, after partying and consuming alcohol and crack cocaine, drove a borrowed vehicle on a highway at over 190 km/h. Losing control of it, the car left the roadway, rolled over, and came to stop on its roof. One passenger died and another was left with serious injuries. The offender himself fled the scene and was not arrested until being located in a hospital a couple of months later. He then fled the hospital before being apprehended again. He pleaded guilty to dangerous driving causing death, dangerous driving causing bodily harm, leaving the scene of an accident that caused death, and leaving the scene of an accident that caused bodily harm.

[127] In mitigation of sentence, the Court recognized the offender's early guilty plea, like the present case, as having real value because it spared witnesses from testifying and reliving a traumatic and difficult event.

[128] Because the offender was a 45-year-old Indigenous male, the Court also recognized the existence of *Gladue* factors and *Criminal Code* provisions regarding the circumstances of Aboriginal offenders in determining an appropriate sentence.

[129] Mitigation aside, there were also many aggravating factors the Court identified, including the offender's 34 prior criminal convictions, some of which included convictions for dangerous driving causing bodily harm — in other words, a prior related criminal record — and that at the time of committing this offence the offender did not have a valid driver licence.

[130] Mr. Theriault was sentenced to five and one-half years' jail for the offence of dangerous driving causing death and three years concurrently for that of dangerous driving causing bodily harm.

[131] A prominent feature in common with the present case is that the Court also found Mr. Theriault driving without a valid licence to be a serious aggravating factor. Overall, however, *Theriault* is more aggravating as regards to the moral blameworthiness of the offender. At age 45, he was not a youthful first-time offender but, rather, more hardened, having regard to his extensive and related criminal record and criminal driving history, and his callous and uncaring attempts to avoid being brought to justice by fleeing not only the scene of the crime but thereafter the hospital.

[132] As in the present case, the Court found Mr. Theriault's moral blameworthiness to be high and the gravity of the offence serious. While he had to bear the consequences of his actions, he did not intend to hurt or kill anyone that day.

[133] Finally, in *R. v. Andre*, 2022 YKTC 9, the offender was a 20-year-old Indigenous male who was, after a trial, found guilty of driving with blood alcohol over the legal limit thereby causing the death of two teenagers and causing bodily harm to a third individual, including two lacerations to his liver, fractures to both of his forearm bones, and to some of his hand bones requiring surgical repair. All of his victims were occupants of the car he was driving which, due to his heavy intoxication at twice the legal limit, caused him to lose control of the car and it drifted off the road and hit a pole. Paramedics arriving at the scene saw an agitated male holding a deceased passenger rocking back and forth saying repeatedly, "I killed them."

[134] The victim impact statements and community impact statements filed in that case spoke of the profound loss felt by the taking of victims having much of their lives still ahead of them, but also spoke of forgiveness and of the lingering effects of colonialism and residential schools and the intergenerational issues created thereby.

[135] Despite having had a trial, where Mr. Andre disputed his intoxication as having caused the accident, he expressed remorse after his conviction. Mr. Andre had no prior criminal record, and no prior driving record was mentioned. His overall moral culpability was described as high but somewhat attenuated on account of the trauma and abuse suffered as a child. His rehabilitation was considered an important objective.

[136] The Crown sought a three-year jail term and the defence sought 18 months to two years less a day and a two-year probation order. The Court sentenced him to 30 months' jail and two years' probation.

[137] *Andre* is similar to the index case in terms of the number of lives taken and injured, but that is where the similarity largely ends. In some respects, it is more aggravating by virtue of the heavy alcohol consumption and less mitigating due to the lack of a guilty plea, but in other ways less aggravating because, unlike Mr. Edmiston, Mr. Andre was a licensed driver without any mention of a prior driving record and because the driving itself did not involve high speeds or inherently dangerous manoeuvres. For those reasons, I would consider this case to fall significantly below the low end of the sentencing range for Mr. Edmiston.

[138] This concludes my review of the case authorities, and I must now begin to make my final observations in the determination of this offender's sentence. I return to my primary observation that, at its root, this offender's conduct amounted to a high degree of disregard for life, and I conclude that for the following reasons:

a. He knew that he had been ticketed only two months earlier for driving unlicensed and for speeding while doing so;

b. He knew that on the date in question he was still unlicensed and not qualified to drive, even if he did drive on that day because Ms. Sanderson was not feeling well, as noted by his counsel, it does not deserve any mitigation;

c. He knew that as he drove along the highway, he was going fast and talking with the music blaring;

d. He knew he had occupants in his car who were relying on his driving judgment;

e. He knew he had not taken care to ensure he and his occupants wore their seatbelts;

f. During the passing manoeuvre, he knew or alternatively did not take the appropriate care to see that he was trying to pass a car that was itself going over 135 km/h;

g. As he attempted to pass, he knew he was doing so contrary to the solid double line and that he was therefore, under those circumstances, knowingly on the wrong side of the road in serious breach of traffic safety rules designed to ensure the protection of motorists and to help prevent the very thing that happened;

h. He knew that while he was on the wrong side of the road and because he was on a curved incline approaching the crest of a hill, he could not see if there was any oncoming traffic, traffic that he knew could be up to medium in traffic volume that day; and

i. He knew that, due to the curved incline he was climbing, any such oncoming traffic would also not be able to see him approaching.

[139] Despite all the foregoing, he still decided to attempt the pass, oblivious to the alarm being raised by his front seat passenger. This offender gambled dangerously with everyone's safety, and everyone lost.

[140] As many times noted already, this offender has a high degree of moral culpability. However, at the same time, it must be recognized that his culpability must, at least to some degree, be attenuated by his personal circumstances. He has had an upbringing not just deprived or disadvantaged in any conventional sense but, rather, one that can only be described as one of abandonment and of physical, emotional, verbal, and sexual abuse, as he was shuttled from home to home. These features of his life are being related not out of a sense of forgiving sympathy but more in terms of their impact on how he has been brought up to see the world around him and how that has impacted his cognitive response to risk-taking and thereby his capacity for moral blameworthiness.

[141] A question arises as to whether this offender has any hope of rehabilitation. Despite the horrific consequences of his actions for which he is being sentenced today, it cannot be said that he previously led a life of crime. He had, prior to this offence, no criminal record whatsoever. Although his rehabilitation is not a primary sentencing principle on this proceeding, it must not be ignored entirely, in particular given this offender's relative youth, his genuine remorse, and the progress demonstrated while most recently on bail. Based upon all the material filed at sentencing, I believe his rehabilitation is a reasonable prospect. As such, any sentence that would otherwise be imposed must at least, to some degree, be attenuated in the recognition of that objective.

[142] It is in terms of the applicable principles of deterrence and denunciation that something must be said about the objective of road safety generally. Throughout the country, countless lives are lost to road collisions. While some of these accidents are a

result of an unfortunate or momentary neglect or mistake having a fatal consequence, others, such as in the present case, fall at the higher end of moral blameworthiness because they are not merely a matter of neglect but, rather, an intentional risk-taking representing a marked departure from the standard of care of a reasonable driver and, in that sense, are entirely preventable.

[143] There is no question that this offender requires a penitentiary term. I cannot adopt the defence's submission that incarceration for a period of two years followed by a three-year probation order would be a fit sentence. On the other hand, the upper range sought by Crown is simply not supported by the case authorities involving similar offenders committing similar offences.

[144] Mr. Edmiston, please stand.

[145] Sir, on Count 3, for the dangerous driving causing the death of Travis Adams, I sentence you to a term of 4 years and 10 months to be served in a federal penitentiary. This sentence is in addition to the 41 days you have already served, making the effective sentence one just over 4 years and 11 months.

[146] On Count 4, for the dangerous driving causing the death of Nicole Sanderson, I sentence you to a term of 4 years and 10 months, plus the 41 days time served, duplicating the sentence on the previous count.

[147] On Count 6, for the dangerous driving causing bodily harm to Zachary McCutcheon, I sentence you to term of two years and five months, plus the 41 days time served, making for an effective sentence of just over two and one-half years.

[148] As regards the driving prohibition, it must be recognized that this offender has already been prohibited from driving for the duration of his bail, a period of approximately two years. In accordance with *Lacasse*, this period of time should be taken into consideration and having done so, I direct the offender hereafter be prohibited from exercising the care and control of a motor vehicle for a further period of three years.

[149] I also make the following ancillary orders, firstly on the consent of counsel, these being secondary designated offences, I am satisfied it is in the best administration of justice and I therefore order, pursuant to s. 487.051 of the *Criminal Code*, that while in custody, you provide such samples of your DNA as are suitable for analysis.

[150] I am going to ask counsel for further submissions on the s. 109 prohibition.

[DISCUSSIONS]

[151] I am harkening back that this was indeed an order that counsel were consenting to, and it was really my own curiosity.

[DISCUSSIONS]

[152] I am going to make that order. I think it is appropriate under these

circumstances, both in terms of the broader definition of violence but also in terms of this gentleman's current own personal circumstances, he should not possess firearms. So, I make that order for 10 years.

[153] Those are my reasons for that and those are my reasons generally.

[DISCUSSIONS]

[154] I recommend, as urged by counsel, that all of the exhibits, the Reasons for Judgment, the reports, et cetera, be forwarded to Correctional Service Canada for case management purposes.

[155] I also recommend that, although Mr. Edmiston is sentenced in the Yukon Territory for offences committed here, that his warrant of committal be endorsed with a recommendation that, if possible, his incarceration occur in Manitoba, thereby better promoting his local supports, including visitation and his eventual reintegration to his community there.

[156] I am also just going to note that, in terms of physical health, he was scheduled for an important diagnostic appointment for the end of May that he missed as a result of the sentencing proceedings and, in that regard, I would expect that Correctional authorities will attend to that without delay on an in-custody basis.

[157] I also recommend that he receive a formal psychological assessment to further address his rehabilitation and eventual reintegration.

[DISCUSSIONS]

[158] On the basis of all of the circumstances, the victim surcharge is waived.

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GILL T.C.J.