SUPREME COURT OF YUKON

Citation: *R v Cashaback-Myra*, 2023 YKSC 74

Date: 20230620
S.C. No. 21-01521A
T.C. No. 19-00892A
23-00187
Registry: Whitehorse
Heard: Mayo

BETWEEN:

HIS MAJESTY THE KING

AND

DANIEL FIELD CASHABACK-MYRA

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Before Chief Justice S.M. Duncan

Counsel for the Crown — Noel Sinclair

Counsel for the Defence — Vincent Larochelle

This decision was delivered in the form of Oral Reasons on June 20, 2023. The Reasons have since been edited for publication without changing the substance.

REASONS FOR SENTENCE

Introduction

[1] DUNCAN C.J. (Oral): Daniel Cashaback-Myra has pleaded guilty to three offences:

1. possession of crack cocaine, a controlled drug and substance contrary to s. 4(1) of the *Controlled Drugs and Substances Act*, SC 1996, c 19 in Saskatoon, Saskatchewan, in September 2017;
2. possession of crack cocaine and oxycodone tablets, both controlled drugs and substances contrary to s. 4(1) of the *Controlled Drugs and Substances Act* in Whitehorse on February 21, 2020; and
3. did unlawfully kill Peter Young while using a firearm, a Kel-Tec model Sub 2000 9 mm non-restricted semi-automatic carbine, at the village of Mayo on January 10, 2021.

[2] Today, we are here in Mayo where it is my role to impose a fit sentence on Daniel Cashaback-Myra for his commission of these offences. In this case, counsel have presented the Court with a joint submission for sentence: five years for the manslaughter and 90 days each for the drug offences to be served concurrently.

Joint Submissions

[3] I want to speak briefly about joint submissions. The Supreme Court of Canada decided in a case in 2016 called *R v Anthony-Cook*, 2016 SCC 43, that a joint submission by Crown counsel and defence counsel on sentence should be accepted by the Court unless that proposed joint submission would bring the administration of justice into disrepute or would be contrary to the public interest. In other words, the rejection of

a joint submission by a judge would mean that the submission is so unhinged or so unconnected from the circumstances of the offence or the circumstances of the offender that an acceptance would lead a reasonable person, who was aware of all of the circumstances, to believe that the proper functioning of the justice system had broken. The relevant circumstances include the importance of promoting certainty in resolution discussions. It is a very high threshold that would have to be met before a judge can reject a joint submission.

[4] So why is that? Why does the law place such an emphasis on an agreement reached between Crown and defence so that it makes it very difficult for the Court not to accept it?

[5] The Supreme Court explained in that same case the reasons why it is important for Crown and defence counsel and the administration of justice to have some certainty that a joint submission will be accepted by the Court, and those reasons are as follows. When an accused pleads guilty:

- they are giving up their constitutional right to a trial with all of its procedural protections;
- they are saving costs to the justice system by doing this;
- they are also saving the costs of time and the emotional toll that it takes on the victim's family and the community by not going to trial; and
- they are accepting responsibility for their actions and they can start to make amends for all the trouble that they have caused.

[6] All of these factors are to be encouraged. If an accused person cannot be assured that the sentence that the Crown agrees to when they plead guilty will be upheld by the Court, then they may be less likely to give up their rights to a trial.

[7] The Crown also benefits from guilty pleas because they have the guarantee of a conviction, which helps if they have weaknesses in their case and if they may have trouble proving guilt beyond a reasonable doubt. Beyond a reasonable doubt is a very high standard that the Crown has to meet. The Crown may be less likely to propose a joint submission and instead go to a contested sentencing hearing, or accept the risks of trial, if there were not a high degree of certainty that a joint submission would be accepted by the Court.

[8] Here, we have heard today both counsel explain very frankly details about this case. I would say that these details you have heard today you would not normally hear in a sentencing hearing like this because it involved their strategic thinking and it involved details that you might have heard if this matter had gone to trial. This was to help both me, as the deciding judge, understand how they arrived at this joint submission, but it was also to help you, the community, understand it. You or I may not like or agree with it, but at least if we understand how the lawyers arrived at it, it may help you eventually to be able to accept it.

[9] Here, we have heard that this case was scheduled for a jury trial. It could have taken up to seven weeks. It was not a simple or a routine case. Defence was planning to call several experts to testify about gun residue and the use of force; to challenge the evidence of where and how the bullets travelled; and possibly to argue that Mr. Cashaback-Myra acted in self-defence.

[10] The Crown was honest about the difficulties with its case. Despite prosecuting it seriously, and despite a rigorous investigation by the RCMP, there were weaknesses. Along with the issues raised by defence counsel, there were also no eyewitnesses; the evidence at the preliminary inquiry of Kaylie-Ann Hummel may not have been able to be used at trial; and there was also the real possibility that the self-defence argument the defence planned to raise would have persuaded the jury to acquit.

[11] Mr. Cashaback-Myra's acceptance of responsibility for this offence by pleading guilty has spared all of us a great deal of time and cost, not just financial but, more importantly, emotional costs of having to endure an almost seven-week trial. The guilty plea allows the community to start the process of healing.

[12] This is not to say that the Crown compromised on the sentence that they have, with defence, proposed here. I am going to try and explain in this decision why, under the law and the principles I am bound at law to apply, this is a reasonable sentence in the circumstances.

Observations

[13] I recognize and acknowledge that the loss of Peter Young's life at the age of 38 is indeed a tragedy. It is an understatement to say that the family and friends of Peter Young and, indeed, the entire community have suffered and continue to suffer from immense grief and loss. It is especially difficult in a closely knit community, such as this one, and especially with this kind of incident because it represents yet another loss from a drug-related matter.

[14] Whatever happens in this courtroom today unfortunately will not make these feelings of loss and grief disappear. A life has been taken far too soon. The justice

system cannot fix that. I wish it could. I wish we had the ability to go back in time and prevent this tragedy from occurring, but none of us can do that.

[15] My responsibility today is to look at all the circumstances of this case, the circumstances of the offence, the circumstances of the offender, the impact of that offence on the family and the community, and the aggravating and mitigating circumstances in this case. It is my responsibility to review and apply the principles of sentencing that are set out in the *Criminal Code*, RSC 1985, c C-46 ("*Criminal Code*"), to review sentences imposed in other similar cases of manslaughter, and then to provide my analysis and decision. My decision, of course, will be guided by the joint submission of counsel.

[16] What this judgment cannot do- it cannot put a value on the life of Peter Young. It cannot bring him back. It cannot fix the drug problem in Mayo or the drug problem in all of the Yukon. It cannot fix the very real pain that the family and the friends in the community feel about this loss.

[17] What I hope this judgment can do is denounce the conduct of Daniel Cashaback-Myra, deter him and others from committing offences, assist in Daniel Cashaback-Myra's rehabilitation, and promote a sense of responsibility in him, and acknowledge the harm that he has done to the community.

[18] I hope that this process will bring some measure of peace that may come with finality, some kind of closure to the community and the families, and that the community can continue on the path of healing that you have described in the community impact statement, acknowledging that this pain will still exist. I hope that you will have access

to and seek out after-care to help with the pain and suffering that may have been or will be triggered by today's proceedings.

Circumstances of the Offence

[19] I want to review briefly the circumstances of the offence.

[20] The Crown and defence, as you know, have presented an agreed statement of fact. It was read into the record this morning, filed as an exhibit to this sentencing hearing, and I need to provide a summary here for the purposes of my decision.

[21] During the evening of January 9th and the early morning of January 10, 2021, Peter Young and his girlfriend April Elias were drinking alcohol in their home. They were also smoking crack cocaine that Ms. Elias had obtained that night from Kaylie-Ann Hummel, who lived in a duplex nearby with Daniel Cashaback-Myra. April Elias had purchased drugs twice from Kaylie-Ann Hummel on January 9th at 6 p.m. and 10 p.m. from Kaylie-Ann Hummel's back bedroom window. She paid once by e-Transfer and once with a computer hard drive loaded with digital movies. The transactions were facilitated by Facebook Messages between Ms. Elias and Ms. Hummel.

[22] At 2 a.m. on January 10th, Ms. Elias texted Ms. Hummel requesting additional cocaine and provided an e-Transfer of $200. Kaylie-Ann Hummel did not respond and after numerous additional texts April Elias went to her house around 5 a.m. to get the drugs or the return of her money. Daniel Cashaback-Myra answered her persistent knocks, was annoyed at being disturbed in his home at that time, and told her to leave. He eventually agreed to speak with Ms. Hummel about the return of the $200 and pushed April Elias on her shoulder away from the front door before closing it.

[23] April Elias told Peter Young about this interaction when she arrived home and after one more failed attempt to reach Kaylie-Ann Hummel by text, Peter Young went to her house shortly after 5 a.m. He was intoxicated by alcohol and crack cocaine.

[24] On arrival at the Hummel house, Peter Young was yelling angrily, banging, and kicking the door. Alarmed by this, Daniel Cashaback-Myra retrieved his loaded gun before opening the door. When he saw Peter Young standing about five metres away from the front door, he asked what he wanted. Peter Young said, "You know what I want." Daniel Cashaback-Myra told him to leave and Peter Young saw the gun he was holding, as he had stepped outside, and asked him what he was going to do with it. Daniel Cashaback-Myra said, "Nothing."

[25] Peter Young made verbal threats as he stood four to five metres away and his body language and demeanour were threatening. Daniel Cashaback-Myra fired a warning shot to the side of Peter Young as he began approaching him. Peter Young then ran towards Daniel Cashaback-Myra in a threatening way. Daniel Cashaback-Myra shot Peter Young five times in less than three seconds. The whole interaction between the two men lasted approximately one minute. Daniel Cashback-Myra fired at close distance from Peter Young. After the shots, he immediately shut the door, was in a state of panic, and fled the scene, taking the gun with him. Later that day, he surrendered himself and his gun to the RCMP but did not provide a statement.

[26] In the meantime, Peter Young was taken to the Mayo nursing station by April Elias where, after attempts at reviving him, he died of a gunshot trauma and blood loss.

[27] The defence and the Crown agree that Daniel Cashaback-Myra acted in the heat of the moment and was motivated by Peter Young's provocative behaviour. He reasonably believed Peter Young was threatening to use force against him when he approached his residence in the dark. Peter Young was 38 years old, 6'2", and 240 lbs. Daniel Cashaback-Myra is 5'6", 140 lbs, and was 22 years old at the time of the shooting. He did not know Peter Young. He fired the shots for the purpose of defending himself from the threat of force. He agrees that his actions were disproportionate, excessive, and an unreasonable use of force in the circumstances.

Circumstances of the Offender

[28] Turning to the circumstances of Daniel Cashaback-Myra. A *Gladue* report was prepared on Daniel Cashaback-Myra's behalf and it provided much helpful background information about him. I have read it thoroughly and taken the factors into account when considering this joint submission and, most particularly, the level of moral blameworthiness of Mr. Cashaback-Myra.

[29] He was born in Whitehorse and is now 25 years old. He is a member of the Little Salmon Carmacks First Nation in Carmacks, Yukon, although he does not have First Nation status. His father was a member of Little Salmon Carmacks First Nation. He died in 2013 from complications related to alcohol misuse. Daniel Cashaback-Myra's mother, Louise Cashaback, was from Rouyn-Noranda, Québec. She died of cancer in 2012 when Daniel Cashaback-Myra was 14 years old.

[30] Daniel's father attended two different residential schools in the Yukon. Daniel Cashaback-Myra has been affected by the intergenerational trauma resulting from the history of colonialism, displacement, and residential schools, and how that history

continues to translate into lower educational achievement, lower incomes, higher unemployment, higher rates of substance abuse, and higher levels of imprisonment.

[31] Daniel Cashaback-Myra and his mother lived in Whitehorse until he was 10 years old and then they moved to Québec. After his mother died four years later, Daniel Cashaback-Myra continued to live in Québec with his sister, who is 12 years older than he. Daniel Cashaback-Myra had been very close to his mother. Her passing had an enormously negative impact on his life, as she was a source of unconditional love, stability, and protection for him.

[32] Daniel Cashaback-Myra decided he wanted to return to live in the Yukon and his sister agreed. Unfortunately, when he moved to the Yukon in 2014 when he was 16, he was unable to find a decent, suitable place to live and he became involved with drugs. He completed Grade 10 and worked at various jobs in Whitehorse on average for six months each: a dishwasher at restaurants and a general labourer.

[33] He does have family and friend supports who are committed to assisting him. He has a minor prior criminal record of two breaches for failure to appear in court. At the time of the offence, he was also prohibited from possessing a firearm.

Victim Impact Statements

[34] Turning to the impact of this incident on family, friends, and community. First, the victim impact statements. Nine people filed victim impact statements for his hearing. Seven of them were read in court. I read the other two, as requested by their authors. The statements were from Peter Young’s mother, his two sisters, two of his nieces, and four of his friends. Peter Young was a citizen of the First Nation of Na-Cho Nyäk Dun.

[35] All of those who provided statements powerfully and emotionally described the immense and unspeakable grief, sorrow, despair, anxiety, and rage they have felt since Peter Young's death. Several of his family and friends described difficulties they had in socializing with others, their fear of violence in the community, and their struggles with depression. Consistent themes emerged. Peter Young's family described him as the one who held them together by always being there to help, by organizing activities and get-togethers, and by being a protector. He took good care of his mother and was always present for his family. He was described as having compassion, the ability to give big bear hugs, and always with a ready laugh. He was a hard worker. His friends, all of whom were friends with him since childhood, described him as one who would listen without judgment, would be there to help others with their troubles, and, again, was a protector.

[36] Many of those who gave statements expressed sadness and concern for his two children, now age 12 and almost 9, to whom he was utterly devoted and who now will have to go through life without him.

[37] Many of the victim impact statements also expressed the fears that Peter Young's death has triggered about safety and security in their community. Their fears have caused them to lose trust in people and they are anxious about other drug-related incidents that may occur in their community.

Community Impact Statement

[38] Next, the community impact statement. The First Nation of Na-Cho Nyäk Dun, with the assistance of the Council of Yukon First Nations, provided a community impact statement after meeting with approximately 10 people in the community in May and

June of this year. This included Na-Cho Nyäk Dun citizens and staff working in government departments of Implementation, Health and Social Wellness, and Justice, who represent the community through their work.

[39] The ability to have a community impact statement considered by the Court in sentencing is provided for by the *Canadian Victim Bill of Rights* enacted in 2015. Its purpose is to allow communities to participate in sentencing hearings by explaining to the Court and the offender how the offence has affected the community.

[40] The impacts of this offence were described in the community impact statement, read by Chief Dawna Hope, in various ways: emotional, physical, economic, fears for security, and cultural/spiritual. Community healing was also addressed.

[41] To summarize, the statement noted at the outset that Mayo is a tight-knit community with a population of 460 people, 50 percent of whom identify as Indigenous. As was conveyed also by the individual victim impact statements, Peter Young's death has left a big hole in the community- from the children who attend school with his children, to friends around his age, to elders who watched him grow up and whom he often helped out. As one interviewee stated: "A lot of grief flooded the community. We lost a friend, a family member, a major contributor to the community." The extent of community support for Peter Young and his family was evident through the $9,000 raised through a GoFundMe campaign and given to Peter Young's mother, Beverly Blanchard, to assist her in raising his children.

[42] Peter Young was described as a hard worker. He has overseen the water treatment and central services plant in Mayo for many years. This important position has still not been filled. A number of his family members work in the First Nation of Na-

Cho Nyäk Dun finance department, and its operation was negatively affected after he died. It was also thought that incidents, such as what happened here, have a negative effect on employment recruiting initiatives as well as tourism in Mayo.

[43] People interviewed expressed fears about stray bullets, fears about driving through or going to the subdivision where the incident occurred, and fears for the safety of their children. They said they lock their doors now, which they never used to do. They noted the establishment of a new community safety office. They were concerned about post-traumatic stress disorder of their emergency services workers. They were also concerned about a lack of housing policies or regulations that allowed them to monitor or regulate who lives in First Nation housing in Mayo.

[44] Community members wished for a land-based healing camp, better after-care after incidents such as this, and more healthy community events to help the community to heal.

[45] I also want to note that Mr. Cashaback-Myra has been here, of course, throughout the sentencing hearing and he has heard all of the victim impact statements that have been written and heard the community impact statement that was read out today.

Principles of Sentencing

[46] I want to turn now to the principles of sentencing. They are set out in the *Criminal Code*, and I must be guided by those principles when imposing any sentence.

[47] The fundamental purpose of sentencing is twofold: first, to protect society; and second, to contribute to respect of the law and maintenance of a just, peaceful, and safe society through the imposition of sanctions. These purposes are governed by objectives

which are also set out in the *Criminal Code*, and some of which I have referred to already: first, denouncing unlawful conduct and the harm to victims or community caused by that unlawful conduct; second, deterring the offender and other persons from committing offences; third, separating the offender from society where necessary; fourth, assisting in rehabilitating offenders; fifth, providing reparations for harm done to victims and the community; and sixth, promoting a sense of responsibility in offenders and acknowledging the harm done to victims or the community.

[48] The Supreme Court of Canada in a decision in 2021, *R v Parranto*, 2021 SCC 46, summed up the goal of sentencing in each case by saying:

> [10] The goal in every case is a fair, fit and principled sanction. Proportionality is the organizing principle in reaching this goal. …

[49] What proportionality means is that the Court must work hard to ensure that the sentence imposed is proportionate to the gravity or the seriousness of the offence and the degree of responsibility or moral blameworthiness of the offender. Proportionality is "closely tied to the objective of denunciation", promotes justice for victims. and seeks to ensure the public confidence in the justice system (*R v Blagdon*, 2013 NSPC 93 at para. 10).

[50] The sentencing judge must also consider other principles that are set out in s. 718.2 of the *Criminal Code*. These include the principles of parity, restraint, and totality, as well as any aggravating and mitigating circumstances of the offence.

[51] Parity means that an imposed sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (s. 718.2(b); *R v Friesen,* 2020 SCC 9.

[52] Restraint refers to an approach that imprisonment is only to be ordered "where necessary"; an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances, such as a conditional sentence (s. 718.2(d)), and all available sanctions, other than imprisonment, that are reasonable in the circumstances should be considered for all offenders (s. 718.2(e)), with particular attention to the circumstances of Aboriginal offenders — and that is where the *Gladue* reports come in (*R v Johnson*, 2003 SCC 46 at para. 28).

[53] Totality is to ensure that the total sentence does not eliminate the rehabilitation potential of the offender (*R v Craig*, 2009 SCC 23 at para. 34). A fit sentence is always defined by the totality of the circumstances.

[54] A sentencing judge has to balance these sometimes conflicting sentencing objectives and principles. No one objective is more important than another. It is up to the judge in each case to determine which objectives merit or deserve the greatest weight in the circumstances of the case. There is no mathematical formula to follow. The nature of the crime and the characteristics of the offender will inform the judge of the relative importance of each objective (*R v Deo*, 2022 BCSC 1835 ("*Deo*")). "The criminal law must reflect not only the concerns of the accused, but the concerns of the victim, and where the victim is killed, the concerns of society for the victim's fate" (para. 31, *R v Laberge*, 1995 ABCA 196 ("*Laberge*")).

Principles applicable to manslaughter and range of sentences from other cases

[55] I am going to speak now about the principles applicable to manslaughter and the range of sentences from other similar cases.

[56] As I have said, s. 718.2 of the *Criminal Code* requires that I consider the principle of parity, which means that, within reason, similar offenders who commit similar offences should receive similar sentences. Sentencing is an individualized and subjective process which reflects the unique circumstances of the specific offence and offender. But if you situate a case within the range of sentences for that same offence, some rationality, fairness, and even consistency can be achieved (see *R v Laing*, 2021 NSPC 14 at para. 66 – paraphrased). I have to look at other cases where offenders were sentenced for manslaughter and determine whether the proposed sentence here falls within the range of sentences for a similar offence in similar circumstances with a similar offender.

[57] First, what is the offence of manslaughter? It is punishable by a minimum sentence of four years' imprisonment — that is, the offence of manslaughter with a firearm, which is the offence in this case — a minimum sentence of four years' imprisonment and a maximum sentence of life in prison. However, the cases show that in this kind of situation sentences for manslaughter generally fall within the four to eight-year range of imprisonment. Sentences above that are reserved for very unusual or special circumstances (*Deo* para. 117, quoting from *R v Badhesa* 2019 BCCA 70 at para. 49).

[58] The offence of manslaughter with a firearm includes three elements: first, that the offender caused the death of the victim; second, that the shooting was an unlawful act by the offender and the consequences of that unlawful act foreseeably involved a risk of harm to the victim that was more than trivial; and third, that there was no intent to kill the victim.

[59] If there was a finding of self-defence, then the actions of the offender in firing the fatal shot would not have been unlawful. Then it would not be manslaughter because the second element would not be fulfilled.

[60] It is the third element, the intention or not to kill, that requires an assessment of the moral blameworthiness of the offender. Manslaughter means that a person has been killed through the fault of another, and this is serious. But manslaughter means that the killing is less blameworthy than murder. This has been described by many courts as existing on a sliding scale. At the higher end of the scale, where a very severe sanction is imposed, the offender has likely committed near murder. At the lower end of the scale, where the offence is closer to an accident, the offender is subject to a lesser penalty.

[61] We have another concept in the circumstances of this case that affects moral blameworthiness, and that is near self-defence. As stated in the case of *R v Alphonse*, 2018 BCSC 2045, a situation of near self-defence reduces the moral blameworthiness of an offender.

[62] I have reviewed all the cases that have been provided to me by the lawyers, as well as the cases that were described within these cases — which are many — and I will refer here only to those that I find to be the most relevant. I note, as almost all sentencing judges do in cases of manslaughter, that the case authorities provide a very wide range of outcomes with respect to manslaughter.

[63] In the case of *R v Fabas*, 2017 BCSC 1693, Mr. Fabas was a visitor in a basement suite in Chilliwack, B.C., where he was fixing electric motorcycle scooters. Another man rented the suite and sold illegal drugs from it. Mr. Fabas consumed heroin

shortly before the shooting. The victim, Mr. Williams, arrived at the suite and demanded entry, smashing living room window glass in the process. He was refused entry by another person in the suite. Mr. Fabas, the offender, then fired three shots towards the window where Mr. Williams stood, and the third shot hit him in the face between the eyes and killed him. Mr. Fabas then put the rifle in the utility room and left. He said he did not realize his shots had hit and killed the victim. The court noted there had been a history of conflict between the two men. The judge found on the facts that the act of shooting was not impulsive. The court found that Mr. Fabas had resorted to “self-help violence” within the illegal drug sub-culture. In finding that his moral blameworthiness was high, the judge also found that several factors supported a shorter sentence. Mr. Fabas pleaded guilty, was not on probation,did not have a recent criminal record, and was sincerely remorseful. He did not initiate the dispute that led to the death. The Court sentenced him to six years’ imprisonment.

[64] In *R v Ward*, 2023 NLSC 15, the victim was involved in bringing drugs into Labrador West and attempting to establish a trade in illicit drugs in the area. This was a case from Newfoundland and Labrador. The offender was his associate. They were friendly, with no negative interactions. The day of the shooting, the offender was concerned about threats by third persons who were going to harm him and the victim, so he retrieved guns from his home and brought them to the residence where the victim was. He gave one gun to the victim and they were sitting across from each other. The offender said he felt the victim began taunting him and pointing the gun towards him in jerking motions. This startled the offender and he reacted by shooting at the victim. He said it was a panic reaction, or the gun discharged by accident, or that he aimed to the

right of the victim's head. In fact, the bullet struck the victim in the mouth and passed through the back of his neck, killing him. After reviewing the cases provided by Crown and defence, the judge found the facts placed the offender's actions at a low level of blameworthiness. Although the level of violence was significant, there was no planning or preparation in relation to the shooting and he responded to the victim's actions in almost a panic mode. The court found aggravating factors included the use of a firearm, and the voluntary acceptance of a toxic lifestyle involving drugs and weapons. Mitigating factors included his positive employment prospects, education and skill sets, stable and supportive relationships, and good behaviour while in remand and release pending trial. The Court imposed a sentence of 5.5 years.

[65] In *R v Quinlan*, 2009 BCSC 1327, the offender and others were drinking heavily and went into downtown Chilliwack to find more alcohol. The offender loaded his .40 calibre Smith & Wesson handgun and took it with him. The group came across another group of men and asked them for liquor. A scuffle ensued, including verbal altercations between the offender and other members of the group. One of them threw a beer bottle at the offender. He pulled out his gun, it dropped, and was noticed by the group, who all began to run away. The offender picked up the gun and fired eight shots in rapid succession as the group was running away. One bullet killed one of the group. The offender was sentenced to six years. Aggravating factors found by the court were firing multiple times at multiple people and intoxication by alcohol. Mitigating circumstances were the guilty plea, remorse, no criminal record, and good prospects for rehabilitation.

[66] The final case I will refer to is the Yukon decision of *R v Asp*, 2005 YKSC 58. While this was a conviction and sentence for manslaughter without the use of a firearm,

and was in the context of domestic violence, it is still helpful to consider it because it is a Yukon case. A 27-year-old Aboriginal offender stabbed her common-law partner in the chest with a butcher knife during an argument. There was a history of mutual violence. The offender was generally remorseful and attempted to assist the victim after the stabbing. Consumption of alcohol was an aggravating factor and the offender's upbringing included dysfunction and abuse. The sentence was five years' imprisonment.

Aggravating and mitigating factors

[67] I am going to talk now about aggravating and mitigating factors in this case.

[68] The following are what I see as aggravating factors: first, the shooting led to the tragic loss of a valued member of the community; second, the shooting occurred in the context of drug transactions; third, Daniel Cashaback-Myra had no authority or licence for a firearm; fourth, Daniel Cashaback-Myra breached the firearm provision to which he was subject; and last, Daniel Cashaback-Myra shot Peter Young five times at close range.

[69] The following I see as mitigating factors in this case. First, the shooting occurred in the heat of the moment; second, Daniel Cashaback-Myra was not involved in the drug transactions that night; third, Daniel Cashaback-Myra pleaded guilty to all the offences before the Court; fourth, Daniel Cashaback-Myra turned himself in to police the day of the shootings and surrendered the gun; fifth, Daniel Cashaback-Myra was 22 years old at the time of the shooting; sixth, Daniel Cashaback-Myra had a troubled childhood and adolescence stemming in part from the legacy of residential schools on his father's side as well as the early deaths of both parents and chaotic, unstable living arrangements; and seventh, Daniel Cashaback-Myra has no meaningful criminal record.

Analysis

[70] The Alberta Court of Appeal in a case called *Laberge* in assessing a proper penalty in the case of manslaughter said:

> [23] … [T]he court must look not only at the physical characterization of the act itself, but must assess a range of other considerations. These include the choice of weapon used to effect the unlawful act, the degree of force the offender used in perpetrating the act, the extent of the victim's injuries, the degree of violence or brutality, the existence of any additional gratuitous violence, the degree of deliberation involved in the act, what, if anything, provoked the act, the time taken to perpetrate the act and the element of chance involved in the resulting death.

[71] The principles of denunciation and deterrence are particularly important in this case. This type of unlawful conduct and the harm it has caused to the victim, his family and friends, and to the community must be denounced. The offender and others must be deterred from committing offences. But the principle of rehabilitation of the offender is also relevant. Without diminishing at all the grief and loss of the family, friends, and community, I must give weight to the very real prospects of rehabilitation of Daniel Cashaback-Myra.

[72] Daniel Cashaback-Myra's choice to use a rifle to effect the unlawful act, the five shots at close range, and the serious nature of Peter Young's injuries leading to his death all point towards a sentence at the mid or higher level of the range. However, the act occurred in a very short span of time, less than a minute. While Peter Young was not armed, he was larger than Daniel Cashaback-Myra, was behaving in a threatening manner, was angry and intoxicated, and was approaching Daniel Cashaback-Myra at his home. There was an element of panic in Daniel Cashaback-Myra's reaction. It was not a planned or deliberate act. This is a situation, in my view, that is closer to near self-

defence than it is to near murder. There was provocation, which, while not at all justifying Daniel Cashaback-Myra's use of force, which was clearly excessive in all the circumstances, serves to reduce the degree of moral blameworthiness in his case. Further, he has pled guilty, he has no significant criminal record, and he is attempting to overcome his troubled upbringing, including the *Gladue* factors that have affected his life stemming from the legacy of colonialism and residential schools.

[73] I find that five years' imprisonment is within the range for cases of manslaughter such as this where there is a context of near self-defence and an offender with reduced moral blameworthiness. This proposed sentence and the sentence that I am prepared to accept respects the principles of proportionality, parity, totality, and restraint.

Conclusion and Sentence

[74] Mr. Cashaback-Myra, would you please stand.

[75] On the offence under s. 4(1) of the *Controlled Drugs and Substances Act*, committed on September 29, 2017, I sentence you to a concurrent 90-day sentence with a forfeiture of offence-related property order, a consent to which I will sign.

[76] On the s. 4(1) *Controlled Drugs and Substances Act* offence occurring in Whitehorse, Yukon, on February 21, 2020, I sentence you to a concurrent 90-day sentence together with a forfeiture of offence-related property order.

[77] On the offence under s. 236(a), manslaughter with a firearm, occurring on January 10, 2021, in Mayo, Yukon, I sentence you to a five-year custodial sentence less credit for pre-sentencing custody at 1.5 days to 1. You have been in custody since January 10, 2021, which, with the pre-sentence credit, is a total of 1,338 days. Your remaining time to be served is 487 days or 1.3 years.

[78] With respect to the ancillary orders, I will order that DNA be provided pursuant to s. 487.051 of the *Criminal Code* and that a lifetime firearms prohibition order be imposed under s. 109 of the *Criminal Code*, and the forfeiture of offence-related property.

[79] Victim surcharge shall be waived.

[80] Is there anything else, Mr. Sinclair?

[81] MR. SINCLAIR: Crown directs a stay of proceedings on the remaining outstanding charges before the Court.

[82] THE COURT: Stay is accepted of that Indictment.

[83] Thank you.

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DUNCAN C.J.