COURT OF APPEAL FOR THE YUKON TERRITORY

Citation: *R. v. Good*,
2012 YKCA 2

Date: 20120316
Docket: YU0661

Between:

Regina

Respondent

And

Helen June Good
(aka Helen June Smith)

Appellant

Before: The Honourable Madam Justice Huddart
The Honourable Mr. Justice K. Mackenzie
The Honourable Madam Justice Neilson

On Appeal from: Territorial Court of Yukon, September 17, 2010
(*R. v. Good,* 2010 YKTC 96, Whitehorse Docket No. 08-00805)

Counsel for the Appellant:	B. Land-Murphy
Counsel for the Respondent:	D. McWhinnie
Place and Date of Hearing:	Vancouver, British Columbia November 15, 2011
Place and Date of Judgment:	Vancouver, British Columbia March 16, 2012

Written Reasons by:
The Honourable Madam Justice Neilson

Concurred in by:
The Honourable Madam Justice Huddart
The Honourable Mr. Justice Mackenzie

Reasons for Judgment of the Honourable Madam Justice Neilson

[1] On September 17, 2010, following her conviction for assault causing bodily harm and uttering death threats, the appellant, Helen June Good, was sentenced by a judge of the Territorial Court of the Yukon to three years' incarceration, less five months' pre-sentence custody on each count, to be served concurrently, followed by a ten-year supervision order as a long-term offender: 2010 YKTC 96. Ms. Good seeks leave to appeal that sentence on the basis that the sentencing judge failed to consider her Aboriginal status pursuant to s. 718.2(e) of the *Criminal Code*. As well, she maintains the sentence was excessive and unfit because the judge overemphasized deterrence and denunciation to the exclusion of the objectives of rehabilitation and restorative justice. She says the sentence imposed by the sentencing judge should be set aside and replaced by a sentence of two years less a day, less time served, and three years' probation should be substituted.

The Circumstances of the Offence and the Offender

[2] The offences occurred on February 2, 2009 when, after several years of abstinence, Ms. Good went drinking with her former husband, Robert Smith. While both were under the influence of alcohol, she threatened and seriously assaulted him, breaking his jaw. These convictions represented the fourth time since 1997 that she had assaulted Mr. Smith. Each time the assaults resulted in serious injuries to him, including lacerations, broken bones, and loss of part of an ear.

[3] These assaults form part of Ms. Good's 40-year history of violent criminal behaviour, beginning in 1968 and consisting predominantly of alcohol-fuelled assaults against various individuals, including minors and other women. Her criminal record shows 21 convictions, 12 of which involved violence.

[4] Ms. Good was 59 years old at sentencing. She is a member of the Carcross/Tagish First Nation, and had been living in Carcross for about 15 years. She has had an unhappy life, arising from alcoholic and neglectful parents, and

physical, sexual, and emotional abuse as a child, both at home and in Indian residential schools in the Yukon. She began drinking alcohol at age 11. Similar abusive behaviour followed her into adulthood, when she worked periodically as a prostitute on the streets to feed her alcohol and drug addictions, and became engaged in a series of abusive relationships. She had four children who were at times victims of her violence, resulting in their repeated apprehension. Two have died from drug overdoses and one is estranged. Ms. Good retains contact with the fourth, a son who has had repeated involvement with the criminal justice system. She has had an on-and-off relationship with Mr. Smith, and at the time of these charges was residing by herself in a condemned house in Carcross with no electricity or running water. She has limited education and little employment history, and has been on welfare for most of her life, but was taking courses at the community college to upgrade her education and did some volunteer work with youth in the community. While she attended counselling sessions with a psychologist following her last conviction in 2004, she abandoned these in 2008 in favour of therapy from two Christian counsellors in the community.

[5] At the sentencing, this background was set out in considerably more detail in over 260 pages of reports and assessments prepared in the course of Ms. Good's dealings with the criminal justice system since 1968. In general, these outlined her high potential for gratuitous and excessive violence when under the influence of alcohol, and the various attempts that have been made to control that behaviour through incarceration, counselling, and supervision. Two of these reports were expressly prepared for the sentencing judge. The first was a court-ordered assessment by Dr. Lohrasbe, a forensic psychiatrist. The second was a "*Gladue* Report" (*R. v. Gladue,* [1999] 1 S.C.R. 688, 133 C.C.C. (3d) 385) prepared at the request of the Carcross/Tagish First Nation by Mr. Mark Stevens, who is the manager of the Carcross/Tagish Justice Program and has known Ms. Good for ten years.

[6] Dr. Lohrasbe interviewed Ms. Good and others familiar with her, and reviewed her earlier assessments, notably those by Dr. Boer and Dr. Stewart, two

psychologists who prepared reports for the sentencing proceedings arising from her last assault on Mr. Smith in 2003. There is little disagreement among these experts, whose opinions were directed primarily at risk assessment and means of controlling Ms. Good's violence. Dr. Lohrasbe summarized the unique aspects of her conduct at p. 6 of his report:

> It is clear that Ms. Good did have an extremely traumatic childhood and entered adulthood as a sad, dysfunctional, angry, and violent individual. What is striking about Ms. Good's history is the diversity and durability of her serious acts of violence. She has attacked men, women, and children. She has used weapons and her bare hands. She has set a house on fire to get back at a man who had angered her. She has stabbed her favorite cat to death in an attempt to copy a witchcraft ritual from a film she had seen. This is a very unusual history of violence.

[7] Dr. Lohrasbe affirmed a diagnosis of Borderline Personality Disorder, Antisocial Personality Disorder, and Alcohol Dependence. He observed that Ms. Good has little insight into the reasons for her violence, and accepts only limited responsibility for it. He found her commitment to "religion as rehabilitation" was naïve and simplistic, and would interfere with the benefit she might derive from programmes that could implement the behavioural changes required. He assessed her future risk and concluded:

> Ms. Good is a high risk for future acts of violence if she were to return to any form of substance misuse. Given her lengthy history of alcohol dependence, it should be assumed that this risk will remain high unless she has an extraordinary level of support and supervision available to her in the community in the foreseeable future. With such supports, it is possible that her level of risk can be reduced to manageable levels. Ideally however, management in the community will follow intensive and comprehensive treatment programs focused on her personality disorder, her violent offending and offer her the opportunity to reclaim her spiritual and cultural heritage.

[8] Dr. Lohrasbe recommended a specialized and intense Dialectic Behaviour Therapy program, which he described as the "gold standard" for individuals like Ms. Good, followed by a series of programs rooted in First Nations culture and spirituality, all of which were available to Aboriginal women incarcerated in federal correctional institutions. Following successful completion of these steps,

Dr. Lohrasbe recommended management in the community by a network of individuals "for the longest possible period".

[9] The *Gladue* Report prepared by Mr. Stevens is directed at providing information about Ms. Good's life circumstances and examining the community supports available to her for sentencing purposes. It exhibits a deep knowledge of her Aboriginal background and her life story, and sets these out in considerable detail. It also describes a positive experience with a pre-sentencing community circle that Ms. Good instigated to determine what support she had in the community. The report's recommendations largely mirror those of Dr. Lohrasbe. It recognizes there will be a period of incarceration, and expresses the hope this will include Dialectic Behaviour Therapy. It observes that Ms. Good has done well in the community while under court order or probation in the past, and recommends that the core of the sentence be a lengthy period of community supervision. It acknowledges Ms. Good will require significant support to address her issues in the community, lists potential sources of such support from the Carcross/Tagish First Nation, and expresses the hope she can be managed effectively and safely with these resources as long as she abstains from drugs and alcohol and has no contact with Mr. Smith.

The Sentencing Proceedings

[10] At sentencing, the Crown took the position that a three-year period of incarceration for each offence, served concurrently, and a ten-year term as a long-term offender, was an appropriate disposition. The defence initially proposed two-year concurrent sentences for each offence, followed by a three-year probation order. It altered that position at the end of the proceedings, however, when it learned that Dialectical Behaviour Therapy was also available in provincial institutions, and submitted the custodial sentences should be two years less a day for that reason.

[11] The sentencing judge reviewed Ms. Good's history of violent offences, and observed they revealed a pattern of periods of relative stability and sobriety, followed by bouts of alcohol abuse, and serious and gratuitous violence. He noted the many psychological and psychiatric assessments that confirmed her potential for violence

was very high when she was under the influence of alcohol. He referred in particular to the diagnoses of Dr. Boer and Dr. Lohrasbe, and their view that Ms. Good remained at high risk of serious further violence if she used alcohol or other intoxicants. He noted Dr. Boer's opinion that extensive and repeated counselling had accomplished no remedial effect.

[12] The sentencing judge then addressed the question of why this was so, stating:

> [22] There appears little doubt that Helen's life is the predictable result of neglect and abuse that she herself has suffered at the hands of her parents, partners, caregivers, and associates. Just as predictably, she has passed on many of those effects to her children: two are dead of drug-related causes and a son has serious psychiatric problems.
>
> [23] Unfortunately, much of the therapy and counselling Helen has engaged in over the years has been ineffective at best and, more likely, counterproductive. It has allowed Helen to see herself only as a victim and to blame her violence on her own abuse. For instance, she reports and justifies assaulting men because they reminded her of her father. She has never developed any notable empathy for her victims.

[13] He then identified three "remarkable features of Ms. Good's history of violence". The first was her persisting violent behaviour despite the fact she was nearing 60. The second was her complete tractability in the community when she was not drinking. The third was that, despite her history of violence, she continued to enjoy support in her community. With respect to this last point he stated:

> [26] The third remarkable feature of Helen's case is that, despite everything, she still enjoys a significant level of community support. During the course of the proceedings, the Court received a report authored by Mark Stevens, a justice worker with the Carcross Tagish First Nation. The report arose from a support circle held for Ms. Good in January 2010. That report, together with letters filed with the Court, clearly demonstrate the level of caring and support that exists.

[14] The sentencing judge then reviewed the statutory criteria for a long-term offender designation set out in s. 753.1(1) of the *Criminal Code:*

> 753.1 (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that

> (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
>
> (b) there is a substantial risk that the offender will reoffend; and
>
> (c) there is a reasonable possibility of eventual control of the risk in the community.

[15] The sentencing judge found it clear that a sentence of more than two years was appropriate, given Ms. Good's 40-year criminal record, the repeated assaults on her spouse, which is an aggravating factor under s. 718.2(a)(ii) of the *Criminal Code*, and the importance of deterrence, denunciation, and the protection of the public.

[16] As to the second element, the sentencing judge had no difficulty in finding Ms. Good was at a substantial risk to reoffend, holding this would be "a virtual certainty" should she again use alcohol.

[17] As to the prospect of management in the community, the judge concluded that despite the long history of violence there was reason to believe Ms. Good could be managed in the community given her increasing age, her community support, and the fact she had been able to comply with her release conditions over lengthy periods. As well, he expressed the hope that Dialectic Behaviour Therapy might curb her violence.

[18] The sentencing judge acknowledged that even if the Crown establishes the elements in s. 753.1 the decision to designate a long-term offender is discretionary, and should be exercised with caution and restraint given the significant impact the designation has on both the offender and society. He concluded, however, that Ms. Good's circumstances merited the designation, stating:

> [34] In my view, this is one of those clearest of cases. The offender's record of violence extends for over 40 years. It is punctuated only by periods of imprisonment or relatively brief periods of stability. The violence has continued to a time in life when most offenders have burned out. Her violent episodes are, most often, severe and, most often, perpetuated against defenceless victims. Despite years of therapy, the offender fails to take ownership of her violence, but continues to seek refuge in her own victimization as a justification. The assessments all say the same thing. She is at a very high risk to reoffend, particularly if she abuses alcohol.

[19] Turning to the appropriate sentence on the predicate offences, the sentencing judge found a federal term was warranted for two reasons. First, he was persuaded that the particularly intensive form of Dialectic Behaviour Therapy the experts recommended for Ms. Good was only available in the federal corrections system. While he recognized this would interrupt treatment and counselling she was receiving in the Whitehorse Correctional Centre, he was not convinced these had been productive. Second, he found a sentence of less than two years would not adequately provide for the safety and protection of the public and of Mr. Smith. He concluded a three-year term of incarceration for each offence, to run concurrently, was appropriate based on Ms. Good's history, particularly her repeated assaults on Mr. Smith. The judge then reduced the actual sentence for each offence to 31 months to account for time served.

[20] As to the duration of the long-term offender designation, the sentencing judge found the maximum of ten years was justified due to the difficulty of treatment, the potential for quick relapse if Ms. Good used intoxicants, and her lengthy criminal history.

Issues on Appeal

[21] Ms. Good maintains the sentencing judge erred in two respects:

a) in failing to consider her Aboriginal heritage; and

b) in overemphasizing denunciation, deterrence, and protection of the public to the exclusion of other sentencing objectives.

Analysis

[22] An appellate court approaches the review of a sentencing decision from a deferential perspective. Absent an error in principle, failure to consider a relevant factor, or overemphasis of appropriate factors, this Court will only intervene and vary a sentence if it is demonstrably unfit: *R. v. C.A.M.*, [1996] 1 S.C.R. 500 at para. 90, 105 C.C.C. (3d) 327.

Did the sentencing judge err by failing to consider Ms. Good's Aboriginal heritage?

[23] This ground of appeal is rooted in s. 718.2(e) of the *Criminal Code*, which requires a judge who is sentencing an offender to consider all available and reasonable sanctions other than imprisonment, particularly in the circumstances of Aboriginal offenders. In *Gladue*, the Supreme Court of Canada established guidelines to assist judges in that process. The Court held that s. 718.2(e) is remedial in that it directs a different approach to sentencing Aboriginal offenders that takes into account their unique circumstances. Its objectives are to respond to the over-incarceration of Aboriginal peoples, and to encourage sentencing judges to apply principles of restorative justice in addition to the more traditional sentencing principles. To give these objectives real force, the Court set out a two-stage analysis. First, a sentencing judge must consider any unique systemic or background factor that has contributed to bringing the Aboriginal offender before the Court. Second, because an Aboriginal offender's community may have a significantly different understanding of the nature of a just sanction, the judge should consider what sentencing procedures and sanctions may be appropriate, given the offender's Aboriginal heritage or connection. The Court went on to say that where there is no alternative to incarceration, the length of the term must be carefully considered in the context of these principles. Finally, the Court affirmed that despite this different approach, at the end of the analysis, the fundamental duty of the sentencing judge remains the imposition of a fit sentence for the offence and the offender.

[24] Ms. Good argues that while the materials before the sentencing judge clearly linked her Aboriginal status and background to her offences, his reasons do not mention she is an Aboriginal person, set out s. 718.2(e), or undertake the analysis mandated by *Gladue*. She acknowledges the judge mentioned the *Gladue* Report in his reasons, but says he gave it no weight, and instead expressed scepticism about its origins during submissions. Ms. Good maintains that had the sentencing judge properly considered the systemic and background factors rooted in her Aboriginal origins, and the sentencing procedures and sanctions appropriate to those

circumstances, he would have recognized that a federal custodial sentence was inappropriate as it would cut her off from her culture and community support in the Yukon. She says that on a proper *Gladue* analysis, a fit sentence that would honour the principles of restorative justice and her needs as an Aboriginal person was a shorter term of incarceration in the Territorial institution, followed by probation in her community.

[25] It is true the reasons of the sentencing judge do not expressly address Ms. Good's Aboriginal status, or the statutory and common law requirements associated with sentencing an Aboriginal offender. I note, however, that at para. 85 of *Gladue* the Supreme Court stated that s. 718.2(e) does not impose a statutory duty on a sentencing judge to provide reasons, although the Court endorsed the usefulness of reasons in the context of appellate review. As well, several decisions of this Court subsequent to *Gladue* have held that the failure to expressly mention s. 718.2(e) or the two-stage *Gladue* analysis in sentencing an Aboriginal person is not necessarily reversible error. Nevertheless, these authorities affirm that it must be apparent from the record and the reasons of the sentencing judge that his or her analysis included consideration of the offender's Aboriginal circumstances: *R. v. Sutherland,* 2009 BCCA 534 at para. 16, 281 B.C.A.C. 33; *R. v. Napesis*, 2010 BCCA 499 at para. 17, 294 B.C.A.C. 255; *R. v. Mack*, 2008 BCCA 520 at paras. 10 and 12, 263 B.C.A.C. 138; and *R. v. Awasis*, 2010 BCCA 213 at paras. 13-14, 287 B.C.A.C. 39. Most recently, in *R. v. Ladue*, 2011 BCCA 101, 271 C.C.C. (3d) 90, a decision which is presently under reserve with the Supreme Court of Canada, Madam Justice Bennett, writing for the majority, reviewed many of these authorities and, at para. 59 of her reasons, affirmed the importance of applying the analysis mandated by *Gladue* when sentencing Aboriginal offenders.

[26] Thus, the question is whether the record before the sentencing judge, and his reasons for judgment, reveal that he gave proper consideration to Ms. Good's Aboriginal heritage in determining a fit sentence. In answering that question, it is important to recognize that the sufficiency of the judge's reasons is not assessed by their contents alone, but also in the context of the record before him, the issues, and

the submissions of counsel: *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3 at paras. 15-20, 37-41.

[27] I begin with the broad context, and observe that both the offences and most of the sentencing proceedings occurred in Carcross, a small town in the Yukon with a substantial and engaged Aboriginal community, evidenced by the material submitted to the Court by the Carcross/Tagish First Nation. As well, counsel acknowledged during submissions that the sentencing judge has had many years of experience on the Territorial Court of the Yukon.

[28] These factors bring to mind the submissions of the respondent on this appeal to the effect that daily dealings with Aboriginal offenders in that Court have led to a degree of complacency in expressly addressing the requirements of s. 718.2(e) and *Gladue*, as these are inherent characteristics in the local context. There is some support for that view in a comment made by defence counsel before the sentencing judge to the effect that "we assume sometimes in this jurisdiction that the court players are well familiar with the experiences of Aboriginal people and resources available". As well, I note that the judge who imposed the sentence for Ms. Good's previous assault on Mr. Smith in 2004 similarly did not deal expressly with these matters in his reasons: 2004 YKTC 14.

[29] It is difficult to assess that submission from our vantage point but, if it is correct, such complacency does not well serve Ms. Good or her Aboriginal community. Nor does it ease meaningful appellate review. Even though trial judges face busy schedules, it behoves them to take their duty to Aboriginal offenders seriously: *Napesis* at para. 17.

[30] Returning to the context of the proceedings, as stated earlier, the extensive record before the judge included over 200 pages of assessments describing 40 years of Ms. Good's life. These were replete with references to systemic and background factors related to her multiple offences, including her experience in Indian residential schools, and her participation in counselling and programs directed

in part to the rehabilitative potential of resuming her traditional life and Aboriginal values.

[31] Importantly, these included the *Gladue* Report produced by her First Nation for the purpose of this sentencing, which was comprehensive and sensitive to both Ms. Good and her Aboriginal community. It is fair to say it focused entirely on her Aboriginal background and the support available to her from both Aboriginal and non-Aboriginal sources in Carcross. I disagree with Ms. Good's view that the judge exhibited scepticism about this report during the proceedings. He did raise a concern about its genesis, and the fact it did not have a statutory basis as do pre-sentence reports. He went on to say, however, that he found nothing objectionable about the report, described it as thoughtful and well-balanced, and assured the parties he would "certainly have regard to it". In my view, this exchange arose from a generic concern about the routine acceptance of "private pre-sentence reports", and was not a criticism of this report.

[32] During submissions, both the Crown and defence referred to Ms. Good's Aboriginal heritage and the role that the Carcross/Tagish First Nation might play in her reintegration into the community. The arguments of defence counsel covering s. 718.2(e), *Gladue*, Ms. Good's Aboriginal heritage, and the role this played in her offences was comprehensive and occupies several pages of the transcript.

[33] I am satisfied that when the reasons of the sentencing judge are examined in the context of those submissions and the record I have described, it is clear he was aware of and considered Ms. Good's Aboriginal antecedents and their relationship to her offences. It is evident he was familiar with the material before him. He expressly referred to several of the opinions in the psychological and psychiatric reports. His summary of Ms. Good's history at paras. 22 and 23 of his decision, set out above at para. 12 of these reasons, is clearly taken from those sources, notably the *Gladue* Report, which supports each of the statements in those paragraphs. At para. 26 of his reasons, the sentencing judge explicitly referred to that report and the support circle held for Ms. Good by the community of Carcross, clearly a restorative

undertaking. The community support he describes in that paragraph, which I have set out at para. 13, and his later comments about that support in the context of the reasonable possibility of controlling Ms. Good in the community, is clearly a reference to the support modalities available from the Carcross/Tagish First Nation as set out in the *Gladue* Report. Similarly, the letters he refers to in that paragraph mentioned aspects and consequences of Ms. Good's Aboriginal background and experiences.

[34] As to Ms. Good's argument that the imposition of a federal term of incarceration demonstrates neglect of her Aboriginal heritage, the sentencing judge's reasons properly emphasized her lengthy history of significant and gratuitous violence, her years of therapy with no apparent benefit, and her high risk to reoffend. In my view, read in the context of his reasons as a whole, it is apparent the sentencing judge was aware of Ms. Good's Aboriginal heritage but decided it could not justify a sentence of less than two years in these circumstances.

[35] I cannot fault that approach. In *Gladue* at paras. 78-79, the Supreme Court recognized the practical reality that sentences for Aboriginal offenders cannot always serve the objectives of reducing incarceration and promoting restorative justice. More serious and violent offences will merit similar custodial sentences for Aboriginal and non-Aboriginal offenders alike.

[36] The sentencing judge properly found this was such a case. There was no question Ms. Good's past record and the seriousness of these offences merited a substantial term of incarceration. He accepted Dr. Lohrasbe's opinion that optimal treatment for her was only available in a federal correctional facility. I am not persuaded the imposition of a federal term of imprisonment arose from a failure to consider her Aboriginal circumstances.

[37] It is unfortunate the sentencing judge did not deal with Ms. Good's Aboriginal heritage expressly. It is unsatisfactory for both the offender and the public to have to resort to inference to ensure those circumstances were properly considered. Nevertheless, based on the record before him and his reasons, I am satisfied the

sentencing judge was aware of and considered her Aboriginal heritage, but ultimately found it could not justify restorative measures or a reduced term of incarceration given the seriousness of the offences and Ms. Good's past history of similar violence.

[38] I would not accede to this ground of appeal.

Did the sentencing judge err in overemphasizing denunciation, deterrence, and protection of the public to the exclusion of other sentencing objectives?

[39] This ground of appeal is rooted in this part of para. 28 of the sentencing judge's reasons:

> With respect to the first consideration [under s. 753.1(1)], it is clear that a sentence of two years or more is appropriate. The Crown seeks a sentence of three years and does so with considerable justification. Helen has a forty-year-plus history of violent offending. She has repeatedly assaulted Mr. Smith, who is her husband – a statutorily aggravating factor under s. 718.2(a)(ii) of the *Criminal Code*. Denunciation, deterrence, and especially, the safety and protection of the public, all cry out for a substantial period of imprisonment. ...

[40] Ms. Good argues the sentencing judge erred in principle by placing too much weight on denunciation, deterrence, and the protection of the public, and by failing to give any weight to the objective of rehabilitation or the principles of restorative justice. She says he did not consider the passage of six years since her last offence, and failed to acknowledge the view expressed at the pre-sentencing community circle that she had come a long way. Nor did he acknowledge her progress in the community in furthering her education and volunteer work.

[41] In support of her view that her sentence is excessive and unfit, Ms. Good cites four decisions of the Territorial Court of the Yukon that imposed sentences of between eight and 12 months for spousal assaults: *R. v. Kendi*, 2007 YKTC 27; *R. v. Reeves,* 2003 YKTC 97; *R. v. Denny,* 2009 YKTC 106; and *R. v. Huebschwerlen,* 2008 YKTC 16.

[42] I am unable to accede to this ground of appeal. In *R. v. Wells,* 2000 SCC 10 at paras. 40-42, [2000] 1 S.C.R. 207, the Court dealt specifically with the role of deterrence and denunciation in sentencing Aboriginal offenders:

> However, the scope of s. 718.2(e), as it applies to all offenders, restricts the adoption of alternatives to incarceration to those sanctions that are "reasonable in the circumstances". Again, as was expressly stated in *Gladue*, the Court in no way intended to suggest that as a general rule, the greatest weight is to be given to principles of restorative justice, and less weight accorded to goals such as denunciation and deterrence. Indeed, such a general rule would contradict the individual or case-by-case nature of the sentencing process, which proceeds on the basis of inquiring whether, given the particular facts of the offence, the offender, the victim and the community, the sentence is fit in the circumstances.
>
> I should take this opportunity to stress that the guidelines as set out in *Gladue*, and reiterated in the present appeal, are not intended to provide a single test for a sentencing judge to apply in determining a reasonable sentence in the circumstances. Section 718.2(e) imposes an affirmative duty on the sentencing judge to take into account the surrounding circumstances of the offender, including the nature of the offence, the victims and the community.
>
> Notwithstanding what may well be different approaches to sentencing as between aboriginal and non-aboriginal conceptions of sentencing, it is reasonable to assume that for some aboriginal offenders, and depending upon the nature of the offence, the goals of denunciation and deterrence are fundamentally relevant to the offender's community. As held in *Gladue*, at para. 79, to the extent that generalizations may be made, the more violent and serious the offence, the more likely as a practical matter that the appropriate sentence will not differ as between aboriginal and non-aboriginal offenders, given that in these circumstances, the goals of denunciation and deterrence are accorded increasing significance.

[43] A similar view was recently endorsed by the Ontario Court of Appeal in *R. v. Ipeelee,* 2009 ONCA 892 at para. 13, 99 O.R. (3d) 419, a case presently under reserve in the Supreme Court of Canada:

> It is not at all clear to me, however, that in the circumstances of this case, consideration of his aboriginal status should lead to a reduction in his sentence for breach of the long-term offender condition. The appellant's commission of violent offences and the risk he poses for re-offending when under the influence of alcohol make the principles of denunciation, deterrence and protection of the public paramount. This is one of those cases where "the appropriate sentence will...not differ as between aboriginal and non-aboriginal offenders": *R. v. Carrière* (2002), 164 C.C.C. (3d) 569 (Ont. C.A.) at para. 17. As the appellant has been declared a long-term offender, "consideration of restorative justice and other features of aboriginal

> sentencing...play little or no role": *R. v. H.P.W.* (2003), 327 A.R. 170 (Alta. C.A.) at para. 50.

[44] In my view, the sentencing judge made no error in emphasizing the objectives of deterrence, denunciation, and protection of the public, given Ms. Good's intransigent and serious violence, and her risk of reoffending. Nor do I accept that the judge ignored the objective of rehabilitation. He chose a custodial term of three years largely to ensure that Ms. Good would have access to the "gold standard" programs available in a federal institution that, according to expert opinion, provided her only hope of treatment and ultimate rehabilitation. Further, as pointed out by Madam Justice Bennett in *Ladue* at paras. 70-74, a long-term offender designation incorporates significant elements of rehabilitation and promotes reintegration of the offender into the community. That is particularly so here. Ms. Good has previously performed well under offence-related supervision in Carcross. Both Dr. Lohrasbe and the *Gladue* Report strongly recommended lengthy and intense community supervision on her release as the best means of minimizing future risk and reintegrating her into the community. The Carcross/Tagish First Nation affirmed its willingness and ability to provide that support.

[45] The authorities provided by Ms. Good with respect to sentences for other spousal assaults fail to persuade me that her sentence was unfit. Each case is necessarily unique, and those decisions can be distinguished from this on a variety of factors, including the severity of the assaults, the history and frequency of earlier violent behaviour, the presence of ongoing risk, and the offender's potential for rehabilitation.

[46] I would not accede to this ground of appeal.

Conclusion

[47] I am satisfied the sentencing judge made no error in principle, and that the sentence imposed was fit. I would therefore dismiss the appeal.

The Honourable Madam Justice Neilson

I Agree:

The Honourable Madam Justice Huddart

I Agree:

The Honourable Mr. Justice Mackenzie