Citation: *R. v. D.J.A.,* 2017 YKTC 56

Date: 20171101
Docket: 16-00348A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

D. J. A.

Appearances:
Ludovic Gouaillier — Counsel for the Crown
Amy Steele — Counsel for the Defence

REASONS FOR SENTENCE

[1] D.A. was found guilty after trial of having committed offences contrary to ss. 268(2), 267(a), 279(2), 349(1), 348(1)(a), 264.1(1)(a) and 430(4) of the *Criminal Code*. The ss. 267(a) and 348(1)(a) offences were conditionally stayed pursuant to the principle in ***R.*** v. ***Kienapple***, [1975] 1 S.C.R. 729.

[2] The facts upon which I found D.A. guilty of these offences are set out in ***R.*** v. [***A.***], 2017 YKTC 49. In particular, in paras. 84 and 85 I stated as follows:

> [84] I find that Mr. [A.] entered [Mr. D.'s] residence, without [Mr. D.] having invited him to do so, and he participated in the assault of [Mr. D.] In particular I find that Mr. [A.] entered into the front bedroom after [Mr. D.] had been forced into it by [Mr. S.] and jumped on the dog cage while [Mr. D.] was inside it. Further, I accept [Mr. D.'s] evidence that [Mr. S.] left the bedroom and returned with a knife, wounding [Mr. D.] with it, and that Mr.

> [A.] was maintaining control of [Mr. D.] while this occurred. I also find that Mr. [A.] told [Mr. D.] that he "was going to bury him in cement" and that this constituted a threat by Mr. [A.] to cause [Mr. D.'s] death.
>
> [85] As such Mr. [A.] is guilty of having committed the offence of aggravated assault as a party to the actions of [Mr. S.]. He is also guilty as a party to the offence of assault with a weapon and the unlawful confinement of [Mr. D.] In being inside [Mr. D.'s] residence without invitation and in committing the above offences, I also find that Mr. [A.] is guilty of the s. 349(1) and s. 348(1)(a) offences. I also find that he is guilty of uttering a threat contrary to s. 264.1(1)(a).

[3] Further, by agreement of counsel, the s. 430(4) offence was amended in order to incorporate the damage to the dog cage caused by D.A. jumping on it, and he was convicted of that offence.

[4] D.A. was before the court for sentencing on October 18, 2017. Judgment was reserved to today's date. These are my reasons for sentence.

Submissions of counsel

Crown

[5] Crown counsel submits that an appropriate global disposition is in the range of four years custody, less credit for time spent in custody on remand. As of today's date, by my calculation D.A. will have spent a total of 467 days in custody since July 23, 2017, for which he is entitled to be credited at 1.5:1, for a total of 701 days. This is the equivalent of 23 months' custody.

[6] Counsel submits that a further 18 – 24 months (less one day) custody be imposed, to be followed by a three-year period of probation.

[7] Counsel notes that this was a serious offence of violence committed against Mr. D. in his home, while D.A. was unlawfully in it.

[8] Section 348.1 stipulates that the forcible confinement offence (s. 279(2)) is aggravated when violence and/or threats of violence accompany the commission of the offence. This was certainly the case here.

[9] Counsel notes the importance of the sentencing principles of denunciation and deterrence to the circumstances of this case.

[10] Counsel submits that even in consideration of the mitigating circumstances applicable to D.A., such as his youth, demonstrated potential and ***Gladue*** factors (***R.*** v. ***Gladue***, [1999] 1 S.C.R. 688), the proposed sentence is within the appropriate range.

Counsel for D.A.

[11] Counsel submits that a global sentence of time served be imposed, to be followed by a period of probation.

[12] Counsel cites the many factors that are noted in the Pre-Sentence Report ("PSR") and the ***Gladue*** Report, including the support in the community for D.A.

Victim Impact

[13] Victim Impact Statements were filed by Mr. D.'s spouse and her mother.

[14] Mr. D.'s spouse spoke about the emotional impact this incident has had on her. Certainly her sense of trust and safety in her own home was undermined. Some of the people involved in the overall incident were people she knew, and she feels betrayed by

their actions. She and Mr. D. lost time from work and endured the financial impact of that. Further, a number of items in their home were damaged or stolen. While D.A. cannot be held responsible for the theft of property and all the damage that occurred, as there were numerous other individuals inside the residence, the assaultive incident that that he was involved in appears to be the triggering event that led to the loss and damage.

[15] Mr. D.'s mother-in-law spoke about how this assault has changed her view of the community that she was born in and that she had raised her children in. She spoke of the fear while waiting to see how serious the injuries to Mr. D. were. She continues to have nightmares about the incident, in particular in regard to what could have happened if her daughter had been at home. She notes the impact this has had on the daughter and son-in-law and states that Mr. D. and her daughter have left the community as a result of the incident. She also speaks of the impact on them of having to relive the incident by testifying at trial.

[16] Mr. D. did not provide a Victim Impact Statement. However, in his testimony at trial he stated that the incident was traumatic and frightening. I have no doubt that it was, and that the incident has had a considerable impact on him.

[17] I am familiar with Mr. D., having had him before me for a sentencing hearing on January 21, 2015. Mr. D. was raised in difficult circumstances that contributed somewhat to him committing the offences for which he was being sentenced at that time. However, between the time of the offences and the time of sentencing, Mr. D., with the strong support of his spouse and her parents, had made significant and

impressive steps towards changing the trajectory of his life in a positive direction. To my knowledge, Mr. D. has continued in that same positive direction.

[18] Mr. D. had moved to Carmacks as part of this change. As a result of the attack against him by D.A., in company with Mr. S. and M.T., he and his spouse, understandably, made the difficult choice to leave Carmacks, and the life they were building there, to start again. I can certainly appreciate the strain that this incident has had on Mr. D. and his spouse, as has been noted by his mother-in-law in her Victim Impact Statement. This said, I am hopeful that the strength and support in the relationship that was apparent to me over two years ago will provide a solid foundation for their future. Certainly the actions of D.A. have contributed to making that more difficult.

Circumstances of D.A.

[19] D.A. is currently 20 years of age. He had turned 19 one month prior to the commission of these offences.

[20] He is a member of the Little Salmon Carmacks First Nation ("LSCFN").

[21] He has a prior criminal history as follows:

2015-06-17 (Youth Court)

- S. 267(a)
- S. 88(2)
- S. 430(4)
- S. 145(3) x 2

- S. 129(a)
- S. 139(1) x 2
- S. 249(3)
- S. 252(1.2)
- S. 354(1)(a)
- S. 145(1)(a)

[22] These convictions are in relation to five separate RCMP files. D.A. received custodial dispositions of 90 days of time served on the ss. 267(a) and 88(2) offences, and 120 days on the s. 249(3) offence. He was sentenced to 12 months of probation on each offence, including the custodial dispositions.

[23] D.A. was still bound by the 12-month probation order at the time the offences now before the court were committed.

[24] D.A.'s father is a member of the Kwanlin Dun First Nation. Since his parents separated when he was approximately three years of age, D.A. has had very little contact with his father.

[25] D.A.'s mother is a member of the LSCFN. D.A. resided intermittently with her when he was growing up, primarily because of her struggles with substance abuse and her resultant inability to provide a safe home for him.

[26] While D.A. spent brief periods of time in the care of Family and Children's Services, once at the age of three and again at the age of seven, the majority of his childhood was spent between time residing with his mother and time residing with his grandmother. As a result he was often shuttled between Whitehorse and Carmacks.

[27] It appears that, other than one occasion when he was in the care of the Director and attended at Ranch Ehrlo group home in Saskatchewan, the only times of stability in D.A.'s youth were when he was living with his grandmother. He stated that he was happy living with her and it was a sober and stable home. Yet when he was living with his grandmother, he was lonely for his mother. When his mother would appear to be doing better, D.A. would return to live with her. However, it appears these periods of relative stability did not last long. D.A., looking back, wishes he could have lived with his grandmother on a permanent basis.

[28] There were times his grandmother needed to be out of the Yukon for extended periods of time and, when this occurred, there was greater intervention required by Family and Children's Services.

[29] D.A. states that when his mother was drunk she would be physically abusive to him. This abuse included having cups thrown at him, being whipped with an electrical cord and an occasion at the age of six or seven when she choked him. He recalled thinking on that occasion that his mother was going to kill him.

[30] He states that he was left with bruises and whip marks on his back from the beatings.

[31] He also recalls his mother and some friends partying at their home and smoking crack. He would have to bang on the bathroom door to tell her he was hungry and needed her to cook him something to eat. She would become angry at him, as would her friends. He described living with his mother as, at times, being in the middle of a party.

[32] When he was under the age of ten, there were occasions when he was living with his mother that she would kick him out of her home. He would sleep in vehicles parked on the property because he was not allowed to sleep in the house. He considered these times to be a "free for all" and he would find himself, through peer pressure, following his cousin's lead to experiment with alcohol and drugs. He would do so because he felt that no-one really cared about where he was or what he was doing.

[33] D.A. states, however, that when his mother was sober she was happy, affectionate and present in his life. Growing up, he said that he loved his mother but felt let down and neglected by her.

[34] He recalled a period of approximately six months when he was living in a foster home placement where his mother never visited him, although his grandmother did.

[35] He also recalls a two-year period around grade 5 that his mother was in a relationship with W.J. and they lived in the McIntyre subdivision. He saw W.J. as a fairly positive male figure in his life who treated him pretty well. However he could not understand why W.J. would not intervene when his mother would kick him out of the house. He expected more from W.J.

[36] Ms. A. was interviewed for the purpose of preparing the PSR. She acknowledged that she was not a good mother to D.A. due to her substance abuse issues. She experiences much guilt for not providing him with a better life.

[37] Ms. A. attributes many of her difficulties to growing up in group homes for much of her young life and being exposed to domestic violence in the home. Her mother told

the court that, due to her own struggles as a young mother, she was unable to provide Ms. A. with a good home life.

[38] I note that D.A.'s mother has been present throughout these proceedings, she has spoken, and she is supportive of him. Certainly, she has acknowledged where she may not have succeeded in her role as a mother when she was younger, but is here in court in support of him now. I am hopeful that together their relationship will develop positively from this point on.

[39] I note that D.A.'s grandmother was not a residential school attendee, as her mother was able to "hide" her in the bush when the Indian Agent came to her home. However, she recalls that many children from her community were taken away to residential school. As a result, there were no children in the community when she would return and there was a lot of drinking by the adults.

[40] Both of her parents had attended residential school and she recalled being apprehended at a young age because she almost froze to death through parental neglect. She states that she, in turn, passed on some of her personal trauma to Ms. A. She expresses her opinion that D.A. "…is a perfect example of inter-generational trauma that happened to First Nation people". She states that she told D.A. that she had not been a good parent to his mother and "Your mom had reasons to be the way she was. I played a part in it, my parents played a part in it and it was something we all grew up with".

[41] As noted in the Community History portion of the ***Gladue*** Report, “Many families in Carmacks are still struggling to deal with the inter-generational effects of residential schools”.

[42] D.A. states that community violence is a common occurrence in Carmacks. He has witnessed multiple incidents of both generalized violence and domestic violence within his extended family and the community.

[43] D.A.’s grandfather was a residential school attendee and D.A.’s grandmother notes that he has “…a real residential school mentality in that he was very structured and strict”. D.A. states that he has found it difficult to connect with his grandfather as he is “very strict and bossy”.

[44] As a young child, D.A. enjoyed participating in traditional activities, such as fish camp. However, as he grew older and fewer children attended, his interest became less.

[45] D.A. struggled in school. He was bullied as a youth and expelled on numerous occasions for being involved in fights and in conflicts with teachers. There is collateral information to support the information D.A. provided that he was physically abused by a principal at Tantalus school in Carmacks. At times he would be locked away in a classroom in the basement for disciplinary reasons. His grandmother attributes many of D.A.’s struggles in school to his being unable to establish a strong educational foundation due to the bullying and resultant suspensions that marked much of his time there. Nevertheless, D.A. has managed to obtain a grade 10 education.

[46] D.A.'s first positive school experience was at the age of 11, when he attended Ranch Ehrlo in Saskatchewan. Although initially resistant to being there, D.A. began to thrive on the educational and recreational connections he made there. Ranch Ehrlo communicated to the Director in Whitehorse that they "had had a breakthrough" with D.A.

[47] Unfortunately, and contrary to his wishes, right after this D.A. was required by the Director to return to the Yukon, apparently because of statutory requirements and the impact on D.A.'s "in care" status.

[48] Compounding the turmoil caused by removing D.A. from the positive environment he was engaged in was that, when he returned to the Yukon, there was little in the way of support for him or follow-up care. While his grandmother made arrangements for D.A. to meet with Registered Psychologist Bill Stewart and LSCFN counselor Nina Bolton, he was not prepared to open up to them. In his grandmother's opinion, D.A. effectively "fell through the cracks".

[49] D.A.'s grandmother commented on the limited programming and support she felt was available from Social Services for Ms. A. and D.A. at critical times in their lives. She feels that if there had been greater programming and support, maybe things could have turned out differently for Ms. A. and D.A. She further is of the opinion that this is a common issue affecting many First Nations' families and their children.

[50] During his time at Ranch Ehrlo, his grandmother visited him several times. His mother did not visit. Once D.A. returned to the Yukon, his mother attempted to reach

out to him but he was angry and, as for his father, “He couldn’t care less about what the hell was going on…it didn’t really matter to him”.

[51] D.A. has struggled with the negative impacts his choice of peer associations have caused. As hypothesized by Mr. Stewart in a 2015 psychological assessment:

> …family history, in combination with multiple placements with alternative caregivers, have likely contributed to a strong primary attachment relationship between [D.] and his peers, many of whom are similarly involved in a detached delinquent lifestyle.

[52] D.A. states that he currently has six friends that he turns to for support, all of whom are not supportive of his criminal lifestyle. He says that his time in custody has given him time to think and has led to a better understanding of who his actual friends are. He is hopeful this will help him to make better choices with respect to his peer associations when he is released.

[53] He states that his family is not supportive of his criminal behaviour; however, some of the collateral information provided indicates that some of D.A.’s negative influences include family members involved in a criminal lifestyle.

[54] D.A. feels that he has disappointed his grandmother by his behaviour. He says that he wants to make positive changes in his life and be there for his grandparents.

[55] D.A. has a limited employment history. He held a summer job gardening for the LSCFN when he was 13 – 15 years of age. He worked for a commercial fisherman with the Taku Tlingit First Nation when he was 18 but was unable to continue in this

employment due to not being granted permission to leave the Yukon for work in British Columbia and the United States while he was on probation.

[56] D.A.'s employer was contacted and he confirmed that D.A. had a great work ethic and that he would rehire him to work as a commercial fisherman if he could.

[57] D.A. has completed odd jobs in the community of Carmacks for Elders and other community members, for which he would usually be paid, although he was not expecting to be. Collateral sources confirmed that D.A. is very considerate and helpful to Elders and other community members.

[58] D.A. stated that he turns to alcohol to numb himself, in particular to deal with how he was raised and the death of a close friend by suicide in February 2016.

[59] He has struggled with feeling let down and neglected by his mother when he was being raised and, while she has tried to make amends lately, he does not have any expectation that she will actually change. Hopefully his mother will prove him wrong.

[60] He stated that, due to his mother's struggles, and as his father was not involved in his life, he was not exposed to traditional activities. His first hunt was at the age of 14 when an uncle took him.

[61] D.A. is reluctant to talk much about mental and emotional issues. Mr. Stewart stated the following in his psychological report:

> It is apparent that [D.] continues to require a high level of support by way of individual counselling to sort through personal and family difficulties. Without continued opportunities to process these issues, he will likely resort to repressing his thoughts and feelings resulting in more acting-out

> behaviour. This will only further perpetuate maladaptive coping strategies including substance abuse, which has already provided him with a form of escape, as well [as] illegal activity which provides a mode to escape his situation and gives him a sense of excitement.

[62] By applying the Problems Related to Drinking Scale to the year prior to his being arrested and placed into custody, D.A. scored as having a substantial level of problems related to alcohol abuse. Due to the fact that he has been in custody over 12 months, D.A. currently scores as having no problems related to alcohol abuse.

[63] At the age of seven, D.A. accidently drank a rum and coke his mother had left accessible to him. He intentionally consumed hard liquor at the age of nine. He says that he only drank occasionally before he went to Ranch Ehrlo, where he never drank at all.

[64] Upon his return to the Yukon from Ranch Ehrlo he states that he only drank on weekends, usually binge drinking, but after the suicide by his friend, his drinking increased substantially to daily drinking. He would drink to the point of blacking out and become involved in physical altercations with friends.

[65] D.A. began smoking marijuana at the age of nine. He stated that this period of time coincided with the times his mother began to kick him out of the house. He did not smoke it during his time at Ranch Ehrlo until near the end when he was provided more freedom. He began to use cocaine at the approximate age of 16. He progressed, or regressed it could be said, to smoking crack cocaine an average of three times per week in the year prior to his incarceration. He has also experimented on a very limited basis with several other drugs.

[66] D.A. scores as having a moderate level of problems with drug abuse. He has admitted to the use of marijuana while incarcerated at Whitehorse Correctional Centre ("WCC"). He was subject to internal discipline at WCC as a result of being in possession of contraband.

[67] However, if the 12 months prior to his period of incarceration are considered, D.A. scores indicate a substantial level of problems related to drug abuse.

[68] D.A. scores as requiring a high level of supervision on the Criminogenic Risk Assessment. He also scores as having a high level of criminogenic need. He scores as a having medium criminal history risk rating.

[69] He is noted to have a negative attitude towards the RCMP and the criminal justice system.

Time in Remand Custody

[70] D.A. has been completing upgrading courses while in custody on remand.

[71] He has been employed in five institutional jobs while incarcerated. At times, he has struggled with completing his job duties and was terminated as a result. He was doing very well at his last job as a kitchen worker, but this was apparently terminated due to the nature of his charges, and not as a result of any negative behaviour on his part.

[72] D.A. has been involved in counselling with Ms. Bolton and with Community Re-Integration worker Lyle Harrington.

[73] He has also been involved with Alcohol and Drug Services counselling through weekly meetings with Addictions and Mental Health Counsellor Amy Smith. He states that he has been able to begin to understand how drugs have affected his life. He has expressed an interest in attending for treatment after his release from custody.

[74] He has attended on-going programming, including:

- Elder visits;
- First Nation Language Program, learning Northern Tutchone;
- Alcoholics Anonymous;
- Church service attendance;
- Completion of the Interactive Journaling Program Courage to Change: Responsible Thinking and Self-Control;
- Attendance on two occasions at Blood Ties M.E.D. Workshop;
- Attendance at two sessions of Violence Prevention programming;
- Attendance at a Positive Choices workshop with Andy Nieman;
- Attendance at a Maximizing Your Learning Potential workshop with Yukon College; and
- Participation in the First Nations Carving Program.

[75] He also wished to be able to participate in core justice programming but was unable to do so because of his status as a remand inmate. He indicates that he participated in all the programming that he was able to access while on remand.

[76] D.A.'s stated intention to make positive changes in his life is somewhat inconsistent with his conduct in custody. He has been convicted on five occasions of institutional offences:

- Assaultive and/or threatening behaviour;
- Fighting;
- Possession of contraband;
- Engaging in insulting or abusive behaviour towards another; and
- Disobeying directions.

[77] He also has numerous negative progress log reports.

[78] While these are behaviours that form part of the context in which D.A. is being sentenced, I certainly not going to place too much emphasis on them, as compared to what his potential is when he is in the community in a different environment. Nevertheless, as I stated, these form part of the context of who D.A. is as he stands before this court for sentencing.

[79] D.A. denies having committed the offences that he was convicted of. At the same time he states that he was simply in the wrong place at the wrong time. He said that if he had known what was going to happen that night he would not have gone out looking for M.T. and Mr. S. He acknowledges that his substance abuse issues and negative peer group associations influenced his involvement in these charges. This said, D.A. was able to express sympathy for Mr. D. and what he went through. This expression of sympathy is perceived as being genuine by the author of the PSR.

[80] D.A.'s immediate plan at the time of the sentencing hearing was to return to Carmacks to live with his grandmother. This is where he was living at the time that he committed these offences. He has his own room downstairs. He would continue to help out with the household chores.

[81] Since the sentencing hearing date of October 18, I received letters from counsel for D.A. stating that his intention was to live in Whitehorse with his older sister, J. W., her partner, J. L., and her two children. She states that no alcohol and drugs are allowed in her home and that she has a zero tolerance for this. She also indicates that, if D.A. were to "drink or mess up" that she would report him, in particular for the need of the safety of the children and their home. She and J. L. are committed to supporting D.A. to live a healthier lifestyle and in working with his probation officer to do so.

[82] In addition, a letter was provided from E.N.C. This letter indicates that D.A. has full-time employment once he is released from custody. He would generally be working from 8:00 a.m. until 5:00 p.m. providing labourer work on various job sites in the Whitehorse area, although there would be times when the work would require D.A. to leave the Whitehorse area or that it would be for longer hours, if permitted to do so. E.N.C. has enough projects to ensure that D.A. would be employed throughout the winter. Counsel for D.A. stated that she spoke with the employer and confirmed this information. She also noted that the employer stated that D.A. would not be getting a free ride but would be expected to fulfill his work obligations.

[83] I note that J. L. is a full-time employee with E.N.C. and would able to get D.A. to and from work.

[84] Further submissions were made by counsel when the matter returned before me on October 30. Crown counsel, while not necessarily being dismissive of the employment and residence option now presented, questioned the late timing, in particular as a substantial period of time had elapsed between the date of conviction

and the date of sentencing. Regardless, counsel maintains his position that further time in custody is warranted.

[85] Counsel for D.A. submits that it may be better for D.A.'s rehabilitative prospects for him to reside in Whitehorse rather than in Carmacks, particularly if he has steady employment.

[86] I note that Mr. D. and his spouse have also re-located to Whitehorse from Carmacks.

[87] I have been provided support letters from George Kontogonis, who has been employed at the Carmacks Recreation Centre for 16 years, and Mrs. Morgan Douglas-Alexander, the current principal at the Tantalus School in Carmacks. Both letters highlight the many positive attributes they have observed in D.A.

[88] In the five years Mrs. Douglas-Alexander has known D.A., she has observed how interested he was in coming in to talk to her and her husband and how helpful he was to them. She also highlights his artistic and creative side, and his love for animals and his grandmother.

[89] Mr. Kontogonis notes how respectful he has found D.A. to be and how receptive and attentive he has been in their conversations. He provides a commitment to support D.A. however he is able to.

[90] Other letters of support from community members express opinions as to D.A.'s polite, obedient, kind and gentle nature as a child. He is also noted as being intelligent,

funny and very hardworking and helpful to community members in a variety of services he has performed for them.

[91] There is a general belief in these letters that D.A. has the capability to become a valuable contributing member of the community of Carmacks.

Case Law

Crown counsel provided several cases:

[92] In ***R.*** v. ***Ayotte***, 2014 YKTC 21, a 22-year-old First Nations' offender was sentenced to a global sentence of four years imprisonment for several offences committed over a 15-day period, the most serious of which was a home invasion. Mr. Ayotte had entered guilty pleas to the offences.

[93] Mr. Ayotte had an extensive criminal record with four prior assault convictions. He came from a troubled background and had been diagnosed with Asperger Syndrome.

[94] Mr. Ayotte and two others broke into the victim's residence, and bear-sprayed, beat and robbed him. The victim continued to suffer from the significant amount of violence he was subjected to. Mr. Ayotte struck the victim in the back of the head with an axe handle he found in the residence. The offence had elements of premeditation. Mr. Ayotte was a drug user and the robbery was to enable him to buy more drugs.

[95] In para. 6 the court stated:

> The most serious of the offences committed by Mr. Ayotte is commonly referred to as home invasion. Although always treated seriously by the

> courts, a break and enter, which falls into the home invasion category, is now a statutorily aggravating factor on sentencing. …

[96] The court reviewed a number of authorities in paras. 19 and 20 and stated at para. 20:

> …The principles of denunciation and deterrence emerge as the primary sentencing factors when the sanctity and security of a person's home have been violated. Frankel J.A. stated in *Vickers* at paragraph 13:
>
> > While rehabilitation cannot be overlooked, it is of secondary importance in dealing with a case of this kind. This is particularly so when there is no indication that the offender is a good candidate for rehabilitation.

[97] Mr. Ayotte was sentenced to four-years imprisonment on the break and enter, as being the most serious offence, and concurrent sentences of varying lengths were imposed on all the remaining offences, based upon the principle of totality.

[98] In ***R.*** v. ***Rutley***, 2013 YKTC 19, the 45-year-old offender was convicted after trial of breaking and entering a residence and committing the offence of aggravated assault. The victim lost three teeth and suffered a broken arm which required surgical intervention.

[99] He had a limited criminal record, with related dated convictions for assault and being unlawfully in a dwelling house. His last conviction for an offence was in 1998.

[100] Mr. Rutley struggled with mental health issues.

[101] He was sentenced to four years imprisonment.

[102] In ***R.*** v. ***Henry***, 2002 YKTC 62, a 21-year-old First Nation offender was convicted on a guilty plea to having committed the offence of break and enter and committing the offence of assault causing bodily harm, as well as an offence for breaching the terms of his probation order. The offence was considered to be unprovoked, random and violent. The victim suffered a fractured nose, numerous cuts and bruises, pulled hair and a chipped tooth. The assault ended due to the intervention of the RCMP, otherwise the sentencing judge stated it would have likely been much worse.

[103] Mr. Henry's extensive criminal record was related to property offences and not offences of violence.

[104] He had an extremely difficult upbringing and was diagnosed as just falling short of meeting the diagnostic cut-off for psychopathy.

[105] In sentencing the offender to three and one-half years custody, the sentencing judge stated in para. 6:

> In fixing the sentence to be imposed in this case, I take account of the age and background of the accused, I take account of his guilty pleas, I take account of and accept the pleas of his mother that he needs help and support. I take account of the directions to sentencing judges, which are contained in the decisions of the Supreme Court of Canada in R. v. Proulx (2000), 140 C.C.C. (3d) 449 (S.C.C.), as well as in s. 718.2(e) of the Code. Despite these considerations, I am satisfied that in the final analyses, given the horrendous nature of the offence, which was an unprovoked, inexplicable and seemingly random act of violence, wherein the victim's home was invaded, she was seriously assaulted and injured and which attack ended only by the arrival of the police, that the safety and protection of the public must be the primary focus of the Court's disposition.

[106] In ***R.*** v. ***Charlie***, 2015 YKCA 3, the Court of Appeal upheld a sentence of 14 months' time served plus nine weeks custody for a 29-year-old offender convicted after a guilty plea to having committed the offence of robbery.

[107] Mr. Charlie, in the company of two others, went to the victim's residence in the belief there was alcohol there. They were all intoxicated to some degree. They knocked on the door and entered without permission having been granted. The 78-year-old victim was pushed to the ground and the three left with a number of items, including the victim's wallet with $1700.00 in it.

[108] Mr. Charlie was of Aboriginal ancestry and suffered from FAS. He had a significant criminal record, including a prior robbery. His personal circumstances had been considered by Lilles J. in ***R.*** v. ***Charlie***, 2012 YKTC 5 and, in sentencing Mr. Charlie, I, as the sentencing judge whose sentence was being appealed, included many of Lilles J.'s comments in regard to determining an appropriate sentence for Mr. Charlie.

[109] The Court of Appeal stated that the sentence was "…beyond the low end of the range of sentences imposed on similar offenders in similar circumstances. However, as has been repeatedly said, sentencing ranges are merely guidelines." The Court noted that the circumstances were exceptional (para. 41).

[110] In upholding the sentence, the Court of Appeal stated at paras. 42, 43:

> **42** Mr. Charlie presents a serious challenge to the sentencing process. He is seriously compromised, but has the potential to do well in a controlled community environment. Although he is the author of his misdeeds, they flow from his inability to control himself when he consumes alcohol or drugs. This inability derives from his FAS, which, in turn, originated from problems flowing from his Aboriginal background. Without

> rehabilitation, his pattern of offending clearly will continue. With rehabilitation, he has a chance to lead an effective life. Society is best served if that were to occur.
>
> **43** These are the factors that led the judge to impose the sentence that he did. In my view, he did not err. In a sense, this may be Mr. Charlie's last chance. He is given the opportunity to turn his life around. If he does not, society cannot continue to be compromised by his conduct.

[111] In ***R.*** v. ***Sidney***, 2008 YKTC 40, the offender was sentenced to five years imprisonment after being convicted after trial of the offences of forcible entry and robbery with violence. She, in the company of another male, forced themselves into the residence of the 83-year-old victim, pepper-sprayed him twice and threw him to the ground. He suffered multiple injuries, both from being pepper-sprayed and from the physical violence. The victim had lent the offender, who was unknown to him, $40.00 when she had knocked on his door earlier asking for him to lend it to her for gas money.

[112] Ms. Sidney had little in the way of mitigating factors. She did have a troubled childhood with alcoholic parents and times in the care of Family and Children's Services. She had a substantial criminal history but without any significant periods of time in custody.

[113] In para. 13 Faulkner J. stated:

> Considering the egregious nature of the offences for which Ms. Sidney stands convicted, it is my view that a sentence in the range sought by the Crown is fully warranted. Indeed, as I have suggested earlier, they could have, with some justification, sought an even harsher sentence. I do accept that Ms. Sidney needs treatment to get her life in order, but that treatment will be more available in the federal system. I want to make it clear that, were it not for the fact that I am keeping in mind the need to consider her rehabilitation, the sentence I am about to impose would be even longer.

[114] In ***R.*** v. ***McCormick***, 2014 YKTC 37, the offenders were co-accused in the same circumstances in which Mr. Ayotte was convicted.

[115] They each entered guilty pleas to the offence of break and enter with intent to commit the indictable offence of robbery. While Kristopher McCormack and Allen Yaklin entered into the residence with Mr. Ayotte, Kyle McCormack waited outside as a lookout.

[116] Chisholm J., who also sentenced Mr. Ayotte, noted that ***Gladue*** factors applied to all three offenders. He had been provided a joint position on sentencing for each offender.

[117] Mr. Yaklin, a 21-year-old offender with a troubled background and no criminal record, was sentenced to two and one-half years custody.

[118] Kyle McCormack, a 21-year-old offender with a troubled and difficult upbringing and a criminal record with a prior assault conviction, and who was considered to be a follower in the offence, was sentenced to three years custody.

[119] Kristopher McCormack, a 22-year-old offender with the same troubled background as his brother Kyle, had no adult convictions, having received a discharge on his one adult conviction, was sentenced to two and one-half years custody.

[120] In ***R.*** v. ***Danroth***, 2014 YKTC 8, the offender pleaded guilty to the offence of break and enter and committing the offence of bodily harm. He had no prior criminal record and a positive PSR. He accepted responsibility and was cooperative with the police.

[121] The offence was vigilante-style to redress a perceived wrong to another community member. The sleeping victim was attacked with a baseball bat by the offender and another individual. He suffered serious injuries that required him to be medivaced, although they were not permanent.

[122] Mr. Danroth was sentenced to 18 months custody. The Court stated in paras. 8 and 10:

> In any event, and with all that said in Mr. Danroth's favour, the fact remains that this incident can fairly be characterized as a home invasion. The only difference is that the usual motives, that of robbery or the settling of accounts, were not present. However, deciding to engage in vigilante justice is hardly better and just as certainly to be denounced. Still, the apparently hopeless situation of Mr. Danroth's friend, Collin Johnson, and his perception of the general situation in the community leads, not to acceptance of what he did, but, at least, to some understanding of how an otherwise decent and law-abiding man might decide to do what Mr. Danroth did.
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> …
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> This is not an easy case in which to balance the need for denunciation and deterrence with the need to see to the rehabilitation of the offender. In giving as much weight as I can to Mr. Danroth's lack of record, his remorse, his complete acceptance of responsibility, his other personal circumstances, and certainly not forgetting the circumstances he found himself in, but keeping in mind that vigilantism cannot be condoned, the sentence of the Court is that you will be imprisoned for a period of 18 months.

[123] I have also considered the case of ***R.*** v. ***Germaine and Moses,*** 2007 YKTC 90.

[124] Mr. Moses believed, wrongly, that the victim had provided information to the police that resulted with Mr. Moses being charged with an offence. He broke into the victim's residence and beat him severely, causing him to suffer numerous cuts and

bruises. It was considered to be an extremely serious assault. The victim stated that he thought that he was going to die.

[125] Mr. Germaine followed Mr. Moses into the residence and joined in the attack. Mr. Germaine was ultimately, however, able to persuade Mr. Moses to stop the assault.

[126] Mr. Moses pleaded guilty to break and enter and committing the offence of assault causing bodily harm. Mr. Germaine pled guilty to the offence of assault causing bodily harm.

[127] The sentencing judge accepted a joint submission of three and one-half years custody for Mr. Moses, who was noted as having "an absolutely horrendous criminal record replete with related entries". This sentence was considered by Faulkner J. to be at the very low end of the range.

[128] Mr. Germaine, whose record was considered to be lesser only because he was much younger, was sentenced to 15 months custody in addition to the equivalent of approximately 135 days in pre-trial custody.

Application to D.A.

[129] The case law is clear that the sentencing principles of denunciation and deterrence are at the forefront when it comes to sentencing offenders who commit offences of violence in the homes of victims. That does not mean the remaining purposes, principles and objectives of sentencing are to be ignored. Certainly I am aware that in the case of D.A., a young First Nations man with the potential to do better,

I must be mindful of the importance of imposing a sentence that also gives consideration to his rehabilitation.

[130] As set out in ss. 718.2(d) and (e), and, in particular in consideration of D.A.'s Aboriginal status, I am required to impose only as much custody as is required, and to consider all other reasonable alternatives to custody in doing so, mindful of course of the need for the sentence to be consistent with the harm done to the victims and to the community.

[131] D.A.'s childhood and youth were clearly negatively impacted by the inter-generational trauma and harm that the residential school system inflicted on his family and community. His criminal actions took place in a context of damage that he had suffered that cannot be ignored. This said, he must nonetheless be held accountable for his actions. The safety and protection of the community require that this be done.

[132] The sentencing regime revolves around the fundamental principle of proportionality in s. 718.1 "A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender".

[133] The gravity of this offence was significant. Mr. D. was badly beaten and wounded in the safety of his own home. D.A. was involved in this invasion of the sanctity of Mr. D.'s home and in the attack against him.

[134] This said, I noted in paras. 89 and 90 in my judgment convicting D.A. that his involvement in the attack against Mr. D. was to some extent lesser than that of Mr. S. and M.T.

[135] In choosing to proceed to trial, certainly a choice that was within his right and that he cannot be punished for, D.A. gave up the opportunity to accept responsibility through a guilty plea which would have been considered as a mitigating factor in sentencing. Taking the matter to trial is not an aggravating factor; he has simply lost the benefit of the mitigation of a guilty plea as a result.

[136] Not only that, he also lost the opportunity to have been convicted of fewer offences, and perhaps less serious offences. This is obvious when I consider the guilty pleas which his co-accused were able to enter by reaching an agreement with Crown counsel.

[137] To some extent, it would appear to me that Crown counsel, in agreeing that the conviction be entered on the s. 349(1) offence of being unlawfully in a dwelling house and the conditional stay apply to the more serious s. 348(1)(a) offence of break and enter, recognized the actual circumstances of what occurred here and D.A.'s role in them. While the s. 349(1) offence, unlike the s. 348(1)(a) offence, does not trigger the statutorily aggravating factor set out in s. 348.1, the fact remains that the s. 279(2) offence that D.A. was convicted of does trigger this factor.

[138] Mr. S. and M.T. have not been sentenced; as I understand it their matters have been transferred to Community Wellness Court. I do not know what the sentences for each of them will be and I do not know what facts will be found by the Court at their respective sentencing hearings. As such, I do not have their sentences to guide me in determining an appropriate sentence for D.A.

[139] I find D.A.'s circumstances to be different than that of many of the offenders in the cases filed. There was often an element of premeditation in those cases that, on the evidence before me, does not exist in this case in regard to D.A. There was also an intention to rob the victim in most of these cases. On the evidence before me, there is no motive or degree of premeditation that can be attributed to D.A. There is no evidence that D.A. took anything from the residence.

[140] D.A.'s involvement would seem to be most similar to that of Mr. Germaine in the ***Germaine and Moses*** case; for some inexplicable reason he became involved in an incident of violence inside a residence that was started by others. Unlike in the ***Germaine and Moses*** case, however, D.A. did not play a significant role in causing the assault to end, although I note that Mr. D. testified that D.A. left his home prior to Mr. S. doing so. D.A. is also being sentenced for more serious offences than Mr. Germaine, a factor noted by Faulkner J. in differentiating between Mr. Moses and Mr. Germaine.

[141] This case differs somewhat from that of ***Charlie***, in that Mr. Charlie's moral responsibility was found to be diminished by his FAS status. Mr. Charlie's sentence was found to be a fit sentence due to the exceptional circumstances that existed. While I am mindful of D.A.'s circumstances, in particular his youth, his Aboriginal status and the application of the principles in ***Gladue*** and ***R.*** v. ***Ipeelee***, 2012 SCC 13, and his role in the incident, I cannot place him in quite the same category as Mr. Charlie.

[142] I am mindful of what I have said in previous cases in regard to the sentencing of Aboriginal offenders, and the need to recognize the destructive systemic impacts of the residential school system and associated governmental policies on Aboriginal Peoples

in Canada, and, in sentencing Aboriginal offenders, the need to attempt to ameliorate the harm caused, by imposing sentences that are restorative in nature and that utilize all reasonable options that are available in order to avoid, if possible, custodial sentences, or, if custody must be imposed, in determining the length of the custodial disposition or whether the custodial disposition can be served conditionally in the community.

[143] As stated in ***R.*** v. ***Quock***, 2015 YKTC 32, paras. 100, 101, and 112:

> [100] Section 718.2(e) is not a statement that Aboriginal offenders should receive lesser sentences simply on the basis of being Aboriginal and the acknowledged systemic discrimination Aboriginal peoples and communities have faced in Canada. A fit sentence that accords with all the purposes, objectives and principles of sentencing must still be imposed. It is, however, required that, in the case of every offender, Aboriginal or otherwise, all available sanctions other than imprisonment that are reasonable in the circumstances should be considered. It is simply that special consideration needs to be given to the circumstances of Aboriginal offenders. This is because no group of peoples in Canada has been subjected to the same type of destructive, structural and organized systemic discrimination at the hands of the federal government as Aboriginal peoples.
>
> [101] The special circumstances of Aboriginal offenders are not solely retrospective considerations, but ones that are forward-looking as well. The sentencing judge must look to and consider all reasonable options and sanctions that may eliminate the need for a sentence of imprisonment, reduce the length of a sentence of imprisonment or, where available, allow for the imposition of a sentence of imprisonment to be served conditionally in the community.
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> …
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> [112] It is important to consider the purpose behind s. 718.2(e). In ***Ipeelee***, the Court stated in paras. 59, 60 and 75:
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> > 59 The Court held, therefore, that s. 718.2(e) of the *Code* is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing

(*Gladue*, at para. 93). It does more than affirm existing principles of sentencing; it calls upon judges to use a different method of analysis in determining a fit sentence for Aboriginal offenders. Section 718.2(e) directs sentencing judges to pay particular attention to the circumstances of Aboriginal offenders because those circumstances are unique and different from those of non-Aboriginal offenders (*Gladue*, at para. 37). When sentencing an Aboriginal offender, a judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (*Gladue*, at para. 66). Judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally, but additional case-specific information will have to come from counsel and from the pre-sentence report (*Gladue*, at paras. 83-84).

60 Courts have, at times, been hesitant to take judicial notice of the systemic and background factors affecting Aboriginal people in Canadian society (see, e.g., *R. v. Laliberte*, 2000 SKCA 27, 189 Sask. R. 190). To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples. These matters, on their own, do not necessarily justify a different sentence for Aboriginal offenders. Rather, they provide the necessary *context* for understanding and evaluating the case-specific information presented by counsel.

...

75 Section 718.2(e) does not create a race-based discount on sentencing. The provision does not ask courts to remedy the overrepresentation of Aboriginal people in prisons by artificially reducing incarceration rates. Rather, sentencing judges are required to pay particular attention to the circumstances of Aboriginal offenders in order to endeavour to achieve a truly fit and proper sentence in any particular case. This has been, and continues to be, the fundamental duty of a sentencing judge. *Gladue* is entirely consistent with the requirement that sentencing judges engage in an

> individualized assessment of all of the relevant factors and circumstances, including the status and life experiences, of the person standing before them. *Gladue* affirms this requirement and recognizes that, up to this point, Canadian courts have failed to take into account the unique circumstances of Aboriginal offenders that bear on the sentencing process. Section 718.2(e) is intended to remedy this failure by directing judges to craft sentences in a manner that is meaningful to Aboriginal peoples. Neglecting this duty would not be faithful to the core requirement of the sentencing process.

(For further comment regarding the sentencing of Aboriginal offenders, see also paras. 113-123 of ***Quock***).

[144] I noted in ***Quock*** that the sentences for aggravated assault range from a suspended sentence and probation to lengthy custodial sentences in a federal penitentiary.

[145] I am mindful that I am sentencing D.A. for aggravated assault by wounding Mr. D., not for break and enter and committing the offence of aggravated assault. His role in the assault was as a party in maintaining control over Mr. D. while Mr. S. went to the kitchen and obtained a knife, which Mr. S. used against Mr. D. by pressing it to his face before wounding him by puncturing his leg. While I do not know what foreknowledge D.A. may have had of Mr. S.' intentions in regard to the knife, his actions have nonetheless made him responsible.

[146] It appears to me from the trial evidence that the use of the knife was primarily intended to intimidate Mr. D. It certainly went somewhat beyond that when it was used to puncture his leg. However, as compared to some cases of aggravated assault, in particular those that are based upon an endangerment of life, there was some restraint

in the manner in which the knife was used. This said, in the overall context of the home invasion and assault, the significance of the use of the knife cannot be understated.

[147] I am, however, also sentencing D.A. for the s. 279(2) offence and this is a statutorily aggravated offence under s. 348.1. I note that unlike the s. 348(1)(a) offence, the maximum punishment is 10 years and not life. In the circumstances, the confinement of Mr. D. was part of a very violent and somewhat prolonged incident. While not the worst case in and of itself, it is not the least either.

[148] This is also in the context of being unlawfully in a dwelling house, for which the maximum sentence is also 10 years imprisonment and not life.

[149] The s. 264.1(1) offence of uttering threats carries a maximum sentence of five years. Again, while there is a wide range of sentence available for uttering threats, and while non-custodial dispositions are not unusual, neither are periods of incarceration. Further, the words uttered by D.A. that he was going to "bury [Mr. D.] in cement" were not said in isolation, but in circumstances where the threat to cause death was in the midst of a violent assault.

[150] In considering the statutory principles of sentencing set out in ss. 718-718.2, the case law, the circumstances of the offence, and the circumstances of D.A., and keeping in mind the fundamental purposes and principles of sentencing, I find that the appropriate disposition for these offences is as follows:

- 268(2): six months custody time served;
- 279(2): 17 months custody consecutive time served;

- 349(1): 12 months custody time served concurrent to the s. 279(2) offence;
- 264.1(1)(a): nine months custody to be served consecutive and conditionally in the community; and
- 430(4): one month custody concurrent time served with the s. 279(2) offence.

[151] In imposing the sentences as I did, I considered the principle of totality in structuring the sentences to be a combination of consecutive and concurrent, in order to achieve what I consider to be a fit sentence.

[152] Further, in allowing the 9 month sentence for the s. 264.1(1) offence to be served conditionally in the community, I have considered the statutory requirements of s. 742.1 and am satisfied that allowing D.A. to serve his sentence in the community would not endanger the safety of the community and is consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[153] I considered the opportunity for employment D.A. has been offered and the potential for a significant positive rehabilitative impact upon him. I have also considered the benefits offered D.A. through living with his sister in Whitehorse, which should assist him in avoiding some of the problems associated with returning to his community for the winter, or even next year, without steady employment. I also consider the information about D.A. being a good employee in the past and his noted ability to work well when required to do so, or otherwise offered the opportunity. I am aware of the negative reports from WCC in regard to most of his employment there, however, that is an entirely different environment, and while not irrelevant, should not be overemphasized.

[154] In my opinion, this employment and residence allows for a realistic opportunity for D.A. to change the direction of his life onto a more positive track. This, in turn, offers more protection to the community. Based on the information before me, I consider the risk of D.A. committing further acts of violence to others in the community to be significantly diminished if he has a stable residence accompanied by steady employment.

[155] I also believe that D.A., as a young man who has spent approximately 15 months in custody, and haven taken advantage of numerous positive counselling and other opportunities while in custody, is a different man than when he went into custody, and that further custody at WCC is not required to deter him from further offences. While additional time in custody will of course, protect society from any further acts of violence in the community during the time that he is in custody, in my opinion, such a further period of custody is not necessary to meet the requirements of denunciation and specific deterrence for this young man at this time, considering all the information before me and my conclusions derived therefrom. Nor is it necessary for general deterrence.

[156] There is before me a reasonable option to avoid the need for further custody at WCC and I am of the opinion that in order to comply with the fundamental principle of proportionality, and ss. 718.2(d) and (e) in particular, without foregoing the remainder of the required considerations within ss. 718 to 718.2, a fit sentence allows for D.A. to pursue that opportunity.

[157] In the event that D.A. fails to comply with the requirements of his conditional sentence, he will find himself back in custody and facing the potential of serving the remainder of his sentence at WCC.

[158] D.A. will also be sentenced to a period of probation of three years. The probation order will attach itself to all the offences except the mischief.

[159] The terms of the conditional sentence are as follows:

1. Keep the peace and be of good behaviour;

2. Appear before the court when required to do so by the court;

3. Report to a Supervisor immediately upon your release from custody and thereafter, when required by the Supervisor and in the manner directed by the Supervisor;

4. Remain within the Yukon unless you have written permission from your Supervisor;

5. Notify the Supervisor, in advance, of any change of name or address, and, promptly, of any change of employment or occupation;

6. Have no contact directly or indirectly or communication in any way with [A.D., N.D. or K.G.];

7. Do not go to any known place of residence, employment or education of [A.D., N.D. or K.G.];

8. Do not attend anywhere within the Copper Ridge Subdivision of Whitehorse, YT, except for the purposes of employment and in the direct supervision of your employer or agent of your employer;

9. Reside at [the specified address], Whitehorse, YT, abide by the rules of the residence and do not change that residence without the prior written permission of your Supervisor;

10. For the period of this conditional sentence order, at all times, you are to remain inside your residence or on your property, except with the prior written permission of your Supervisor, except for the purposes of employment including travel directly to and directly from your place of employment, except if in connection with employment if you are in the immediate presence of [J. L.], or except if you are in the custody of an approved adult approved in writing in advance with the prior written permission of your Supervisor. You must answer the door or the telephone to ensure you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition;

11. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor. Provide a sample of your breath or urine for the purpose of analysis upon demand by a Peace Officer who has reason to believe that you may have failed to comply with this condition;

12. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;

13. Attend and actively participate in all assessment and counselling programs as directed by your Supervisor, and complete them to the satisfaction of your Supervisor, for the following issues: substance abuse, alcohol abuse, anger management, psychological issues, and other issues identified by your Supervisor, and provide consents to release information to your Supervisor regarding your participation in any program you have been directed to do pursuant to this condition;

14. Participate in such education or life skills programming as directed by your Supervisor and provide your Supervisor with consents to release information in relation to your participation in any programs you have been directed to do pursuant to this condition;

15. Make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;

16. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code*;

17. Not to attend in the community of Carmacks, YT, except with the prior written permission of your Supervisor. If such permission is granted, besides any conditions the Supervisor may impose, you are to notify the

Royal Canadian Mounted Police immediately upon your attendance in Carmacks, and just prior to your leaving Carmacks.

[160] The terms of the probation order are as follows:

1. Keep the peace and be of good behaviour;

2. Appear before the court when required to do so by the court;

3. Notify the Probation Officer, in advance, of any change of name or address, and, promptly, of any change in employment or occupation;

4. Have no contact directly or indirectly or communication in any way with [A.D., N.D. or K.G.];

5. Do not go to any known place or residence, employment or education of [A.D., N.D. or K.G.];

6. Not attend anywhere within the Copper Ridge Subdivision of Whitehorse, YT, except for the purposes of employment and in the direct supervision of your employer or an agent of your employer;

7. Report to a Probation Officer immediately upon completion of your conditional sentence and thereafter, when and in the manner directly by the Probation Officer;

8. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;

9. For the first six months of this order, abide by a curfew by being inside your residence or on your property between 11:00 p.m. and 6:00 a.m. daily except with the prior written permission of your Probation Officer or except in the actual presence of a responsible adult approved in advance by your Probation Officer. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;

10. For the first year of this order, not possess or consume alcohol and /or controlled drugs or substances that have not been prescribed for you by a medical doctor;

11. For the first year of this order, not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;

12. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues: substance abuse, alcohol abuse, anger management, psychological issues any other issues identified by your Probation Officer, and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition;

13. Perform 60 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate.

Any hours spent in programming may be applied to your community service at the discretion of your Probation Officer;

14. Participate in such educational or life skills programming as directed by your Probation Officer and provide your Probation Officer with consents to release information in relation to your participation in any programs you have been directed to do pursuant to this condition;

15. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;

16. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code*.

[161] There will be a further 10-year firearms prohibition order under s. 109. This will attach only to the ss. 268(2) and 279(2) offences.

[162] Pursuant to s. 487.051, D.A. will provide a sample of his DNA for the primary designated ss. 268(2) and 279(2) offences.

[163] There will be victim surcharges in the amount of $1,000.00. Time to pay will be nine months.

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COZENS T.C.J.