SUPREME COURT OF YUKON

Citation: *R. v. Cornell*, 2014 YKSC 54 Date: 20141104
S.C. No. 12-01510
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

CHRISTOPHER JONATHAN DALE CORNELL

Before: Mr. Justice L.F. Gower

Appearances:

Keith D. Parkkari — Counsel for the Crown
David C. Tarnow — Counsel for the accused

REASONS FOR SENTENCING
DELIVERED FROM THE BENCH

INTRODUCTION

[1] GOWER J. (Oral): This is the sentencing of Christopher Jonathan Cornell for offences arising on September 26, 2011, at or near Haines Junction, Yukon, principally including the attempted murder of a police officer. Mr. Cornell was found guilty of all eight counts on an indictment tried before me sitting with a jury between September 9 and October 3, 2013. Crown and defence counsel are largely in agreement on a joint submission that Mr. Cornell should receive a global sentence of 11 ½ years. They further agree that Mr. Cornell's pre-sentence custody should be credited to him at the rate of 1.5-

to-1, pursuant to s. 719(3.1) of the *Criminal Code*, R.S.C. 1985, c. C-46 (the "*Code*"). Mr. Cornell also concedes that it is appropriate for this Court to find that he is a long-term offender under s. 753.1(1) of the *Code*. He further agrees to a DNA order, a lifetime firearms prohibition, and an order for forfeiture of two seized firearms. The only point in dispute between Crown and defence is the length of the supervision period under s. 753.1(3) of the *Code*. The Crown seeks the maximum duration of 10 years and defence counsel seeks a period of no longer than five years.

[2] Mr. Cornell was originally jointly charged with his then girlfriend, Jessica Rachell Johnson. However, she entered guilty pleas to four counts on the joint indictment on September 9, 2013, and was eventually sentenced separately.

FACTS

[3] Pursuant to s. 724 of the *Code*, I make the following findings of fact.

[4] On September 26, 2011, Frank Parent, then in his mid-60s, attended at Madley's General Store (the "General Store") in Haines Junction at about 5:45 AM to perform his normal janitorial duties. After mopping the floor of the store for about 15 minutes, he noticed someone going into the stock area of the store, wearing a light blue parka with a hood. Mr. Parent is 5'11" and he described the person in the stock room as being of small stature. He put his arms around the shoulders of the individual, lightly holding the person with the intention of restraining them, while that person was facing the exit door.

[5] Mr. Parent then noticed a second person out of the corner of his eye, also short in stature, wearing a light brown jacket, which was zipped up with the hood covering the person's face. Mr. Cornell was between 5'7" and 5'8" at the time and weighed approximately 140 pounds. This second person almost immediately struck Mr. Parent in

the face with a closed fist breaking his nose and sending his eyeglasses to the floor. Mr. Parent began to bleed profusely from his nose. A few seconds later, he heard a male voice say something about bear spray and saw a yellow mist in his face which caused his eyes to instantly burn and sting. Mr. Parent was totally incapacitated by this bear spray and went to the washroom to wash his face for about 10 to 15 minutes. At about 6:10 or 6:20 AM, he called the police from a phone in the main office of the General Store. As his eyes and face were still burning, he continued to flush them with water for a further period of about 10 minutes.

[6] I find that the person restrained temporarily by Mr. Parent was Ms. Johnson and the person who broke Mr. Parent's nose and bear sprayed him was Mr. Cornell.

[7] After Mr. Parent had largely recovered from the bear spray, he went to the front door of the General Store and saw two people with parkas in the parking lot attempting to load a safe taken from inside the store into a dark-coloured SUV. He then made a second call to the police.

[8] Cpl. Kim MacKellar, a member of the Royal Canadian Mounted Police, and Shane Oakley, a deputy conservation officer accompanying Cpl. MacKellar, arrived at the parking lot of the General Store shortly after 6:30 AM. Mr. Oakley observed a male person wearing a tan-coloured hoodie in the driver's seat of the SUV, and a female with a wisp of pink or orange-coloured hair in the passenger seat. I find that these people were Mr. Cornell and Ms. Johnson, respectively.

[9] As soon as Cpl. MacKellar got out of the police vehicle, the SUV reversed and then drove onto the Alaska Highway, heading north. Cpl. MacKellar and Mr. Oakley gave chase in the police vehicle, which was a fully marked and equipped RCMP truck. Cpl.

MacKellar activated the police truck's emergency lights and sporadically turned on the siren. He and Mr. Oakley never lost sight of the SUV. The vehicles were travelling at speeds above the posted speed limit, up to 130 km/h. Cpl. MacKellar and Mr. Oakley observed items being thrown out of the SUV onto the highway, including power tools, road safety markers, a generator, gas jugs and a hind-quarter of deer meat. The SUV slowed down to about 90 to 100 km/h at one point, and then began to speed up again. I find that this was when Ms. Johnson switched positions with Mr. Cornell, taking over from him in the driver's seat.

[10] The rear window of the SUV then shattered and blew out. Mr. Oakley could see a male person wearing a tan hoodie rolling around in the back of the SUV. Again, I find that this was Mr. Cornell. Almost immediately afterwards, a bullet came through the windshield of the police truck, striking the satellite radio situated on the dashboard in front of the driver, and then the driver's side window, blowing that out. I find that this bullet was fired by Mr. Cornell from the back of the SUV.

[11] The bullet hole in the windshield was about 8-to-10 inches to the right of the center of the windshield, while facing it from the front of the truck, and about 6-to-8 inches from the bottom, at dashboard level. Particles of glass, plastic and metal fragments hit and penetrated Cpl. MacKellar in the face, eyes and body. While Cpl. MacKellar was wearing a flack jacket which protected his torso, he was injured by flying pieces of metal which penetrated his exposed left shoulder.

[12] Cpl. MacKellar brought the police truck to a stop. Mr. Oakley checked him over and placed him in the passenger seat. Mr. Oakley himself had no injuries, although he noticed blood running down Cpl. MacKellar's face.

[13] The SUV continued north on the Alaska Highway. Mr. Oakley noticed another vehicle parked on the side of the Alaska Highway about 76 m from where they were stopped. He investigated and discovered what appeared to be an intoxicated male behind the driver's wheel. Mr. Oakley placed this individual in the rear of the police truck, and drove back to Haines Junction with Cpl. MacKellar in the passenger seat. Enroute, Cpl. MacKellar radioed the RCMP dispatcher about the shooting. Upon arrival in Haines Junction, Mr. Oakley took Cpl. MacKellar to the Nursing Station to receive medical treatment, and then took the intoxicated male to the RCMP detachment. After that, he returned to the General Store to offer his assistance to those present.

[14] Later on September 26, 2011, Cpl. MacKellar was transported to Whitehorse, where he received further medical treatment. After that, he was medivaced to Vancouver where he underwent an operation to remove metal and plastic fragments from his eyes, face, chest and left shoulder. He had a follow-up operation on October 3, 2011 to remove fragments from his eyes. In total, he was off work for approximately three months. At the time of trial, he considered himself to be in “pretty good health”, although he still has fragments of metal in his shoulder and eyes.

[15] After the shooting of the police truck, I find that Ms. Johnson and Mr. Cornell continued north on the Alaska Highway in the SUV for approximately 12 kilometers. They then encountered some mechanical problems with the SUV and caused it to be driven into the ditch to the right of the northbound lane of the highway.

[16] Colin Asselstine and Ryan Stewart, employees of the Talbot Arm Motel in Destruction Bay, were driving the Motel’s cube van towards Whitehorse on the morning of September 26, 2011. At about 8:00 or 8:30 AM they stopped at the location of the

SUV, which by then had been abandoned by Mr. Cornell and Ms. Johnson. While they were inspecting the SUV in the ditch, Mr. Cornell and Ms. Johnson came out of the bush to the north of the SUV. Mr. Cornell was carrying a rifle, which was later determined to be a .357 H & H Magnum. Mr. Cornell falsely said that he and Ms. Johnson had been out hunting. When Mr. Asselstine asked if Mr. Cornell and Ms. Johnson were okay, they replied that they were, but that their motor had seized up or something and the SUV had veered off into the ditch. Mr. Cornell and Ms. Johnson accepted an offer from Mr. Asselstine to give them a ride to Haines Junction. Before getting into the Motel vehicle, Mr. Cornell and Ms. Johnson grabbed some items out of the SUV, including a grey travel bag that was later found to contain, among other things, a brown hooded Helly Hansen jacket and three canisters of bear spray. I find that this was the jacket worn by Mr. Cornell during the robbery of the General Store and during the shooting from the back of the SUV.

[17] When the group in the Motel cube van got to Haines Junction, Mr. Cornell and Ms. Johnson asked to be dropped off at the Pine Lake Campground, falsely stating that they wanted to speak to a relative about the SUV. Once dropped off at the campground, Mr. Cornell buried the Magnum rifle in some moss near the Pine River.

[18] Having been notified of the shooting of Cpl. MacKellar's police truck, the RCMP in Whitehorse dispatched officers to Haines Junction to investigate. Some of these officers set up a check stop at the Pine Lake Campground. At about 9:30 or 10:00 AM, Mr. Cornell and Ms. Johnson were seen walking in the vicinity of the campground and were arrested. Mr. Cornell was later searched and a live .357 H & H Magnum rifle round was found in one of his pants pockets. Finally, with the assistance of a police dog, the RCMP

later recovered the .357 H & H Magnum rifle from the location where Mr. Cornell had buried it in the moss.

[19] The abandoned SUV was later seized and searched by the RCMP and a spent .375 H & H Magnum rifle round was found in the rear cargo area of the vehicle. A Crown firearms expert determined that this expended cartridge case was fired in the .357 H & H Magnum rifle. Based on this and other relevant circumstantial evidence, I find that Mr. Cornell used the .357 H & H Magnum rifle to fire a round at the police truck.

GLADUE FACTORS

[20] A *Gladue* report was prepared for this sentencing by Mark Stevens, at the request of Mr. Cornell's First Nation, which is the Kwanlin Dün First Nation. In addition, there is background information relating to Mr. Cornell's Aboriginal circumstances in the psychiatric assessment of Dr. Shabehram Lohrasbe dated February 21, 2014, which was prepared for the purposes of the Crown's long-term offender application.

[21] Mr. Cornell was born in Whitehorse on October 30, 1981, and therefore just turned 33. His mother, Susan Cornell, is a citizen of the Kwanlin Dün First Nation. His father, Dale Myra, now deceased, was a citizen of the Little Salmon Carmacks First Nation. Mr. Cornell's parents separated when he was very young.

[22] Because of his mother's drinking, Mr. Cornell lived with his paternal grandparents between the ages of three and five. These grandparents lived close to the Marsh Lake Dam, in an area known locally as Shortyville. Mr. Cornell has fond memories of the time that he spent with these grandparents and says that he learned a lot from them about living off the land. Sometimes he would also spend the summers in wall tents in the bush

on the Fish Lake Road. His grandmother taught him how to hunt gophers, rabbits and porcupines. His uncles started taking him hunting when he was six years of age.

[23] Mr. Cornell's father, Mr. Myra, was a residential school survivor and had been sexually abused during that experience. Although he was employed and able to support his family in the early years, he later began to abuse alcohol. Mr. Cornell became reacquainted with his father when he was 12. He has described him as a "hard alcoholic" who was living on the street. Mr. Myra unfortunately died in his early 50s shortly before this sentencing hearing.

[24] Mr. Cornell's mother, Susan Cornell, also abused alcohol until Mr. Cornell was seven or eight years old. However, she then quit drinking and has been sober ever since. She is now 48 years old.

[25] One of Mr. Cornell's grandmothers is also a residential school survivor.

[26] At one point after separating from Mr. Myra, Susan Cornell lived in a common-law relationship with L. S. for about two years. Ms. Cornell claims that Mr. S. was violent with her, and at one point threatened to commit suicide. Ms. Cornell removed the children from the home and took them to the women's shelter in Whitehorse.

[27] After that, Ms. Cornell claims to have had another abusive relationship of about two years with G.B.

[28] About that time, Mr. Cornell recalled child protection authorities getting involved. At one point, his mother moved temporarily to Ontario and he lived with his maternal grandmother. Ms. Cornell eventually sent for her children, and they lived for roughly a year with her in Ontario, before returning to Whitehorse.

[29] Mr. Cornell has a limited recollection of his childhood years. He says that he was bounced around with relatives and foster homes when not living with his mother. He also reported that the relatives on both sides of his family were into partying and heavy drinking. He regularly witnessed incidents of violence during these parties.

[30] Mr. Cornell says that he did not do very well in school because he was overly impulsive, and when he got frustrated he would skip classes and get into trouble. He says that he started drinking alcohol and smoking marijuana when he was around eight or nine years old. He and his friends would regularly steal from stores in downtown Whitehorse in order to trade merchandise for drugs or alcohol. Mr. Cornell claims that he was soon drinking on a daily basis.

[31] Mr. Cornell also began getting into trouble with the youth criminal justice system while he was still in elementary school. He would be picked up and taken home because of his frequent shoplifting, but there were few if any consequences for him. At that time his mother was working night shifts at a Whitehorse tavern and he was being looked after by an uncle.

[32] Mr. Cornell reports that he was also often the victim of violence within the context of the family parties, and that he learned to protect himself by responding in turn with anger and violence and learning to carry a weapon. He also reports that this is when he began to harbour considerable hostility towards authority figures.

[33] In 1992, Mr. Cornell and his mother moved in with C.J. in Haines Junction, beginning a relationship which lasted about 10 years. Mr. J. already had two sons from a previous relationship, and there was conflict between them and Mr. Cornell. Eventually,

Mr. Cornell started running away from home and returning to Whitehorse, where he would end up on the street partying.

[34] In 1994, Mr. Cornell was found guilty of mischief, theft, possession of stolen property and assault and received a period of probation of two years. This was the beginning of an extensive criminal record containing some 39 convictions up to and including April 2011. In each year after 1994, Mr. Cornell received at least one conviction per year, with the exceptions of 1998 and 2000. Particularly relevant to the offences on this sentencing are an armed robbery in 2001 and a further robbery in 2007. Mr. Cornell also has convictions for assault, arson, possession of a weapon and resisting arrest.

[35] A report prepared by a youth worker in Haines Junction for his 1994 sentencing indicated that, although Mr. Cornell was thought to be very bright academically, his behaviour in school in Haines Junction was totally unacceptable. He was noted to have a very bad temper, to be prone to bullying, to show little remorse, and to be very manipulative. He was also thought to be experimenting with alcohol and sniffing gasoline. As a result, Susan Cornell turned over custody of Mr. Cornell to the child protection authorities, where he was placed in a receiving home in Whitehorse.

[36] Mr. Cornell reports that he drank on a daily basis between the ages of 10 and 18. By that time he had developed acute stomach ulcers, so he stopped drinking, but continued to abuse drugs, which included marijuana, crack cocaine, and eventually heroine. He was diagnosed with Hepatitis C when he was 18 years old.

[37] As part of one of his youth sentences, Mr. Cornell was required to attend a healing camp in Old Crow in 1995, run by Randall Tetlichi. Mr. Cornell says he enjoyed that experience, as it reminded him of the time that he spent with his paternal grandparents at

Marsh Lake and on the Fish Lake Road. He enjoyed relearning the bush skills that he had been taught by members of his extended family.

[38] On another youth sentence, Mr. Cornell attended a wilderness camp near Mayo, run by Jack Smith. There, he enjoyed learning how to saw lumber and build cabins. However, the experience was marred by Mr. Cornell and another youth being involved with a break and enter at the Mayo school.

[39] At one point, Randall Tetlichi and his wife Mabel expressed an interest in fostering Mr. Cornell full-time. However, this was not successful and they ultimately asked for Mr. Cornell to be removed from their home.

[40] When Mr. Cornell returned to Whitehorse, he bounced around between staying with relatives, being on the street, and being locked up at the Young Offenders' Facility ("YOF"). At the YOF, he recalls spending a lot of time locked up in segregation.

[41] In 1999, when Mr. Cornell was 17 years old, he, along with his stepbrothers and some other friends, held up the Riverside Convenience Store with a machete. After being charged for robbery, Mr. Cornell fled the Yukon and went to British Columbia, where he resided for a couple of years. His alcohol and drug abuse continued unabated. He got into a relationship and his girlfriend became pregnant.

[42] In 2001, Mr. Cornell was arrested on a weapons charge and sent back to the Yukon to deal with the outstanding charge for armed robbery. While in remand, he learned that his girlfriend in British Columbia had been beaten up and had lost the baby. While serving his one-year jail sentence for the robbery, Mr. Cornell attempted suicide by slashing the inside of his arm with a razor blade.

[43] Following his release in 2002, Mr. Cornell started doing drugs again and committing petty crime to fund his habit. That is when his use of crack cocaine started. He got into a relationship with B. A., which was fuelled in part by their shared addiction to crack.

[44] In 2005, Mr. Cornell was sentenced to his first penitentiary term of two years, which he served in the Matsqui Institution in British Columbia. He was released on parole in 2006, but breached his parole conditions within a week or so and was returned to Matsqui to serve another year. When Judge Faulkner sentenced him for the offence of being unlawfully in a dwelling house, he described Mr. Cornell, who was then 25 years old, as a “serial offender” with a “horrendous criminal record”.

[45] In 2007, within days of his release from the penitentiary for that sentence, Mr. Cornell committed a second armed robbery of a gas station convenience store. This time he was masked and used a knife and a can of bear spray to confront the store clerk. When Judge Faulkner sentenced him for that offence, he referred to Mr. Cornell as “a career criminal”.

[46] As a result of this series of offences, Mr. Cornell spent most of the years between 2005 and 2009 at the Matsqui Institution. While there, he completed the National Aboriginal Basic Healing program in 2007. He also upgraded his education and did several other programs. He was chief of the Native Brotherhood organization within the prison for 2 ½ years.

[47] Mr. Cornell was released on parole in 2009 and attended the Jackson Lake Healing Camp, where he received support from a team of counselors and a men’s circle group. At this time he also began attending substance abuse counselling sessions

offered through the Kwanlin Dün First Nation. As well, Mr. Cornell began employment with Ryan Minet as a woodcutter. He was able to hold down this job for 18 months, which was his longest period of legitimate employment. A letter of reference from Mr. Minet was filed as an exhibit on this sentencing. In it, Mr. Minet refers to Mr. Cornell as a "valuable employee" who is always welcome to return to his company. With the exception of one slip, Mr. Cornell was able to remain clean and sober for that 18 month period. Also during this time, he resumed his relationship with B. A., and their daughter B. was born in April 2010. However, the two separated again a few months later because of B.A.'s drug use, and Susan Cornell took custody of her granddaughter, B. Mr. Cornell's period of parole ended in July 2010.

[48] Shortly after his separation from B. A., Mr. Cornell began his relationship with Jessica Johnson, his co-accused. According to Mr. Cornell, he and Ms. Johnson moved south for a period of time, but he was unable to find employment because of his criminal record. Further, both he and Ms. Johnson had a history of drug addiction. Eventually he began selling drugs to fund his habit. The two began using crack cocaine, heroin and marijuana on a daily basis

[49] After the couple returned to Whitehorse, Mr. Cornell was involved in a drug-related incident where he was clubbed on the head and stabbed six times. He suffered a collapsed lung and a broken shoulder blade, as well as a wound to his scalp. Mr. Cornell was given morphine to help with the pain from his injuries, and eventually developed an addiction to that drug as well.

[50] Mr. Cornell's states that his longest intimate relationship has been with Ms. Johnson. The two of them had been living together and regularly consuming various drugs for approximately two years by the time of their arrest on September 26, 2011.

[51] Mr. Cornell has two younger maternal half-brothers. Stacy, age 27, lives in Whitehorse, but has not visited Mr. Cornell during his most recent period of incarceration. Jason, age 25, lives in Vancouver and sees Mr. Cornell when he comes up. Mr. Cornell identifies his mother and younger brother Jason as his closest supports.

[52] According to Mr. Stevens, who authored the *Gladue* report, Mr. Cornell still disputes some of the elements of proof that led to the jury finding him guilty of all eight counts on the indictment. Mr. Stevens states, "Put simply, Chris is not accepting responsibility for some of the more serious offences, including the attempted murder of Cpl. MacKellar."

[53] Mr. Cornell also refused to discuss anything relevant to the predicate offences with Dr. Lohrasbe, because of his pending appeal from the guilty verdicts.

[54] Mr. Cornell has had a difficult time while on remand for these offences. He readily admits that he has caused a lot of trouble while at the Whitehorse Correctional Center ("WCC"). On the other hand, he also believes that he has been a victim of discrimination and has been unfairly treated by certain guards and officials at WCC. Indeed, he has served a total of 284 days in solitary confinement as a result of various internal offences.

[55] On January 17, 2014, Mr. Cornell was sentenced to 14 months in jail on certain unrelated offences committed in mid-September 2011.

[56] Mr. Cornell's total time in remand up to and including November 4, 2014 is 27 months and 27 days.

[57] In recent months, Mr. Cornell's behaviour at WCC has been improving. He has participated in culturally-related programming such as carving, a totem workshop and a medicine pouch workshop. He has also attended the Yukon College campus, where he took the Heritage and Cultural Essential Skills program, as well as academic upgrading. Kevin Kennedy, one of the instructors at the campus, describes Mr. Cornell as "… constructive and well-behaved… a model student". In addition, Mr. Cornell has completed the following programs and courses:

- For the Sake of the Children, parenting after separation workshop - February 3, 2014;
- Substance Abuse Management Program - October 12 to November 6, 2012;
- Violence Prevention Program - August 26 to September 20, 2012;
- Standard First Aid - 2014;
- Workplace Hazardous Materials - 2014;
- Foodsafe Training, Level 1- February 18, 2014.

[58] Johnny Brass testified on behalf of Mr. Cornell. He is a 60-year-old counsellor for the Kwanlin Dün First Nation and a member of that First Nation's Jackson Lake Wellness Team. He has known Mr. Cornell for approximately seven years. He testified that he and a fellow counsellor, Phil Gatensby, have been meeting regularly with Mr. Cornell since December 13, 2013. He said that the counselling sessions last between one hour and one-and-a-half hours, and that he has had approximately seven sessions with Mr. Cornell over the last year. Mr. Brass testified that these culturally-related counselling sessions have been positive and that Mr. Cornell has been eager to pursue supports

which will allow him to improve himself in the future. He has also expressed a desire to be a good father to his young daughter. Mr. Brass said that he expects to maintain contact with Mr. Cornell after he is transferred to the federal penitentiary system, by having telephone conversations with him at least once per month. He understands that Mr. Cornell's drug addiction is a core problem for him and testified that he would probably benefit from twelve-step programming within the penitentiary system, such as Narcotics Anonymous. Mr. Brass also opined that a supervision order following Mr. Cornell's eventual release from jail would probably be beneficial for him, as it would provide him with structure and motivation to stay clean and sober. Finally, Mr. Brass testified that, barring the unforeseen, the Kwanlin Dün First Nation will be an available source of support for Mr. Cornell following his eventual release from custody.

PSYCHIATRIC EVIDENCE

[59] Dr. Lohrasbe was retained by this Court as an expert forensic psychiatrist to perform an assessment of Mr. Cornell for the purpose of the Crown's long-term offender application under s. 753.1 of the *Code*. He works with the Forensic Psychiatric Service in British Columbia, which I understand to be an arms-length government agency which performs assessments of serving prisoners and other persons in custody. Dr. Lohrasbe has performed over 6000 such assessments and, since 1997, has testified in over 130 hearings involving dangerous and long-term offenders. Dr. Lohrasbe interviewed Mr. Cornell on January 15 and 29, 2014, for a total period of approximately four hours. He also reviewed what appears to be an extensive history of Mr. Cornell, including:

- documents in an indexed binder organized under 17 tabs; and

- the contents of Mr. Cornell's file with the Correctional Services of Canada, organized into 10 files, one for each of: Sentence Management; Discipline and Dissociation; Employment; Education and Training; Psychology; and five volumes entitled "Case Management".

[60] Dr. Lohrasbe's opinion is in three parts: a psychiatric diagnosis, a risk assessment and an opinion on treatability.

[61] Dr. Lohrasbe's primary psychiatric diagnosis of Mr. Cornell is that he exhibits antisocial personality disorder, the essential feature of which is repeated law-breaking, and which is often associated with persistent characteristics such as irritability, aggression, recklessness, impulsivity, deceitfulness, and irresponsibility with commitments to others. In addition, Dr. Lohrasbe opined that Mr. Cornell's history and clinical presentation suggest that he also exhibits significant features of a psychopathic personality disorder ("PPD"), and that such persons are a subgroup within the larger population exhibiting antisocial personality disorder, who are of a much greater concern when assessing risk for violence, treatability and risk management. Finally in this area, Dr. Lohrasbe is of the view that Mr. Cornell's history also indicates that he probably has attention deficit disorder ("ADD") or attention deficit hyperactivity disorder ("ADHD").

[62] In performing his risk assessment, Dr. Lohrasbe used a structured professional guideline known as the HCR-20. This instrument derives its name from the three areas it explores, Historical, Clinical and Risk management, and the total number of 20 topic areas. Dr. Lohrasbe testified that this is currently the most widely-used risk assessment in the English-speaking world. The topic areas include such things as:

- previous violence;

- relationship instability;
- substance abuse;
- prior failures under supervision;
- lack of insight; and
- impulsivity.

[63] In his report, Dr. Lohrasbe goes through each of the 20 factors and opines on whether they are applicable to Mr. Cornell, and to what extent. He concludes that the ongoing risk that Mr. Cornell poses is high. Hence, the likelihood of Mr. Cornell committing a future act of violence is high, unless sustained and fundamental changes occur.

[64] With respect to Mr. Cornell's likely response to treatment, in his report, Dr. Lohrasbe stated that he was "cautiously hopeful". This opinion is based on several assumptions:

- that Mr. Cornell's maturation has been delayed by his ADD or ADHD, and that he will likely experience accelerated maturation in the next few years;
- that he is intelligent and will likely be responsive to further education and programming;
- that Mr. Cornell has demonstrated in the past that he is willing to engage in programming;
- that he is aware he may have "no more chances" after this sentencing and will likely be motivated to succeed; and

- that Mr. Cornell will likely benefit from the high intensity Aboriginal programming which will be available to him in the penitentiary in the areas of violence prevention and substance abuse.

[65] In summary, Dr. Lohrasbe concluded his report by stating that if Mr. Cornell is released from jail before obtaining the benefit of therapeutic programming:

> "1. There is a high likelihood that he will commit an act of violence.
>
> 2. There is a significant risk of serious injury to a future victim."

However, based upon the assumptions Dr. Lohrasbe has made about Mr. Cornell's treatability:

> "3. There is a realistic possibility that his risk could be reduced to the point where he can be safely managed in the community."

Finally, in relation to the supervision order, Dr. Lohrasbe concludes:

> "4. At the point that he is released into the community, a lengthy period of monitoring and supervision is crucial for ongoing risk reduction and risk management."

[66] In his testimony, Dr. Lohrasbe expanded upon his reasons for being optimistic about Mr. Cornell's treatability. Firstly, he explained that the high-intensity treatment programs in violence prevention and substance abuse are Aboriginal-focused, and are each expected to involve five hours of programming each day, for five days a week, over five months. Dr. Lohrasbe also indicated that there is a good deal of evidence that these intensive programs are successful. Further, there are follow-up programs in each area which are rated as moderately intense, and serve as a "booster" to the inmates

concerned. Dr. Lohrasbe also explained that “violence is a young man’s game” and that as Mr. Cornell ages the likelihood of him acting violently will naturally diminish.

[67] For all these reasons, Dr. Lohrasbe testified “I expect him to succeed” and “I will be more surprised if he re-offends”.

[68] On the issue of supervision and monitoring, Dr. Lohrasbe stated that there is a “mountain of evidence” that “from a therapeutic point of view, lengthy follow-up does work”, and that such supervision “ideally should go on indefinitely”. While recognizing that the duration of the supervision order is ultimately for this Court to determine, speaking as a therapist, Dr. Lohrasbe stated “I would want the longest possible period of supervision”. The rationale for this opinion, partially explicit and partially implicit, is that, should an offender start to experience difficulties following his release from jail, the supervision order allows the Parole Board, and the therapeutic experts they employ, to put measures in place which can effectively manage the difficulties before the offender commits a further criminal offence and is returned to custody. The other point stressed by Dr. Lohrasbe was that, if an offender is responding relatively well, then the intensive initial conditions of the supervision order can be adjusted and gradually reduced, so that it is less intrusive on the offender’s lifestyle.

ANALYSIS

Duration of Supervision Order

[69] In *R. v. Ipeelee*, 2012 SCC 13, the majority of the Supreme Court made a number of pertinent comments relating to the enforceability of long-term supervision orders (“LTSOs”). The majority stated that the purpose of such orders is twofold: (1) to protect the public; and (2) to rehabilitate offenders and reintegrate them into the community.

Further, the intention behind the legislative regime for the enforcement of LTSOs was to create a mechanism which is “speedy and flexible” and which does not result in lengthy re-incarceration of offenders in the absence of a new crime being committed. The majority helpfully summarized the relationship between the governing legislation and s. 753.1 of the *Code* at paras. 45, 47, 50 and 54:

> “45 LTSOs are administered in accordance with the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("*CCRA*"). LTSOs must include the conditions set out in r. 161(1) of the *Corrections and Conditional Release Regulations*, SOR/92-620. In addition, the National Parole Board (NPB) may include any other condition "that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender" (*CCRA*, s. 134.1(2)). A member of the NPB may suspend an LTSO when an offender breaches any of the LTSO conditions, or where the NPB is satisfied that suspension is necessary and reasonable to prevent such a breach or to protect society (*CCRA*, s. 135.1(1)). Offenders serve the duration of the period of suspension in a federal penitentiary. Failure or refusal to comply with an LTSO is also an indictable offence under s. 753.3(1) of the *Criminal Code*, punishable by up to ten years' imprisonment.
>
> …
>
> 47 The legislative purpose of an LTSO, a form of conditional release governed by the *CCRA*, is therefore to contribute to the maintenance of a just, peaceful and safe society by facilitating the rehabilitation and reintegration of long-term offenders….
>
> …
>
> 50 …The purpose of an LTSO is two-fold: to protect the public *and* to rehabilitate offenders and reintegrate them into the community.…
>
> …

> 54 …In its recommendations, the Task Force [the Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders which recommended the amendments introducing the long- term offenders designation and the availability of LTSOs] specifically stated that a key factor to the success of a long-term offender regime is "a speedy and flexible mechanism for enforcing the orders which does not result in lengthy re-incarceration in the absence of the commission of a new crime" (p. 19 (emphasis added)).”

[70] In *R. v. J.W.R.*, 2010 BCCA 66, the British Columbia Court of Appeal held, at para. 43, that the supervision period in a LTSO is not intended to be penal, but rather to accomplish the goal of preventing future crimes:

> “43 The next question is whether the trial judge erred in imposing the maximum period of community supervision permitted by the statute - ten years. In assessing this question, it is important to recognize that the supervision period is not intended to be "penal" in the sense of being designed to achieve goals of deterrence or denunciation. The fixed sentence imposed on the offender is the means by which penal objectives are met: *R. v. L.M.*, 2008 SCC 31, [2008] 2 S.C.R. 163 at para. 40, 231 C.C.C. (3d) 310. Rather, the supervision period is intended to accomplish the goal of preventing future crimes.” (my emphasis)

[71] Under s. 135.1 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (“*CCRA”*), when an offender breaches a condition of a LTSO, a member of the Parole Board may suspend the order, authorize the apprehension of the offender, and commit the offender to a community-based residential facility, or to custody, until the suspension is cancelled or new conditions have been imposed. However, the period of the commitment must not exceed 90 days. Further, the Board member who authorizes the commitment must either cancel the suspension of the LTSO or refer the matter to the Board within 30 days of the commitment. The Board would then be required to make its determination within the remaining 60 days, so as not to exceed the overall 90-day

period. If the Board decides to cancel the suspension, it may also reprimand the offender, alter the conditions, or delay the cancellation of the suspension to a date not later than the end of the overall 90-day period, to allow the offender to participate in rehabilitative programming.

[72] If the Board decides to recommend that an information be laid charging the offender with an offence under s. 753.3 of the *Code*, then that decision must similarly be made within the overall 90-day period. Although the *CCRA* is silent on the issue, if such a criminal charge is laid, I expect that the judicial interim release provisions in the *Criminal Code* would then become engaged.

[73] Thus, the overall time periods for which an offender can be detained in custody under the *CCRA*, if at all, are relatively brief.

[74] Further, as counsel indicated at the sentencing hearing, based on speaking with the Yukon's parole officer, a minor breach, such as being late for a reporting appointment, may not engage these enforcement mechanisms at all. In addition, it is obvious from how the *CCRA* is structured, that not all breaches will result in charging the offender with a criminal offence for the breach.

[75] Finally, it is important to remember that, pursuant to s. 753.2 of the *Code*, an offender may apply to a superior court for an order reducing the duration of the LTSO, or terminating it altogether, on the ground that they are no longer a danger to the community.

[76] For all of these reasons, I questioned defence counsel at the sentencing hearing. Why would an LTSO for 10 years not be in Mr. Cornell's best interests? As I understood his argument, counsel stresses that Mr. Cornell will be in the penitentiary for a long

enough period of time to complete both of the intensive violence prevention and substance abuse programs, as well as the follow-up programs in both areas. Thus, it is reasonable to expect that Mr. Cornell will be clean, sober and non-violent upon his eventual release from prison. Further, since he also expects to have the support of his First Nation at that time, it is unnecessary to impose an LTSO for a term of more than five years. With respect, I find that argument to be entirely speculative. If indeed, Mr. Cornell does as well as defence counsel expects, it seems to me that he would have a very good chance of shortening or terminating the LTSO. On the other hand, if he does encounter difficulties along the way, then he can expect that steps will be taken by the Parole Board to assist him in coming back into line before he commits a further criminal offence. I bear in mind here the expert evidence of Dr. Lohrasbe that, from a therapeutic point of view, he would like to see an LTSO for the longest term possible. As Dr. Lohrasbe put it, one important challenge for Mr. Cornell is to begin to see that the correctional system is actually “on his side”, and that he must learn to trust the people within the system because they ultimately have his interests in mind, i.e. remaining clean, sober and crime-free. This is especially the case given that Mr. Cornell may have “no more chances” after this sentencing.

[77] In the result, I conclude that the duration of the LTSO will be for a period of 10 years under s. 753.1(3)(b) of the *Code*, subject to any future application made by Mr. Cornell under s. 753.2.

Duration of Sentence

[78] Counsel agreed that the appropriate range of sentence in this case is from approximately 8 years to 15 years of imprisonment. This is based upon the numerous

cases provided to the Court, which are listed in the Appendix to these reasons. While some of the cases involving the attempted murder of police officers exceed this range, counsel agreed that the range is fitting once Mr. Cornell's *Gladue* factors are taken into account, as well as the significant amount of time that he has spent in segregated confinement while on remand. I accept that as reasonable in the circumstances. I also accept the joint submission that a global sentence of imprisonment of 11 ½ years is fit. As well, I agree that Mr. Cornell's pre-sentence custody should be credited at the rate of 1.5-to-1.

CONCLUSION

[79] On the eight-count indictment, I sentence Mr. Cornell to the following terms of imprisonment:

- Count 1, attempted murder of Cpl. MacKellar - 11 ½ years;
- Count 2, attempted murder of Shane Oakley - 11 ½ years concurrent;
- Count 5, aggravated assault of Cpl. MacKellar - 5 years concurrent to Counts 1 and 2;
- Count 8, robbery of Madley's General Store - 4 years consecutive to Count 5, but concurrent to Counts 1 and 2;
- Count 3, discharging a firearm with intent to prevent arrest - 4 years concurrent;
- Count 4, discharging a firearm at an RCMP vehicle - 4 years concurrent; and,
- Count 7, assault with a weapon on Frank Parent - 1 year concurrent.

Total: 11 ½ years imprisonment

[80] Count 6 is stayed pursuant to *R. v. Kienapple*, [1975] 1 S.C.R. 729.

[81] Pursuant to s. 719(3.1) of the *Criminal Code*, I order that Mr. Cornell be credited for each day of his pre-sentence custody at the rate of 1.5-to-1.

[82] Pursuant to s. 487.051 of the *Code*, I authorize the taking samples of bodily substances from Mr. Cornell for the purposes of DNA analysis.

[83] Pursuant to s. 109(3) of the *Code*, I prohibit Mr. Cornell from possessing any firearm, crossbow, restricted weapon, ammunition or explosive substance for life.

[84] Pursuant to s. 491 of the *Code*, the weapons seized from Mr. Cornell will be forfeited to the Crown.

[85] Pursuant to s. 760 of the *Code*, a copy of Dr. Lohrasbe's psychiatric assessment of Mr. Cornell, a transcript of Dr. Lohrasbe's testimony in this sentencing hearing, a copy of these reasons for sentence, and a transcript of Mr. Cornell's trial will be forwarded to the Correctional Service of Canada.

[86] In the circumstances, the victim fine surcharge is waived.

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Gower J.

APPENDIX

1. *R. v. Ponton*, 2001 BCCA 93;
2. *R. v. McArthur*, [2004] O.J. No. 721, 184 O.A.C. 108;
3. *R. v. McCallum*, 2004 BCCA 341;
4. *R. v. Forrest*, [1986] O.J. No. 330, 15 O.A.C. 104 (Ont. C.A.);
5. *R. v. C.N.L.,* [1998] B.C.J. No. 2280, 39 W.C.B. (2d) 545;
6. *R. v. Davis*, [1982] N.B.J. No. 55, 37 N.B.R. (2d) 348;
7. *R. v. Swift*, [2005] O.J. No. 3203 (O.N.C.J.);
8. *R. v. Walker*, [1998] O.J. No. 4985, C.A. No. C26022;
9. *R. v. Sidney*, 2008 YKTC 40;
10. *R. v. Linklater*, 2001 YKTC 45;
11. *R. v. Sellen*, [2008] O.J. No. 3507 (ONCA);
12. *R. v. Pelletier,* [2012] O.J. No. 4061 (ONCA);
13. *R. v. Kipp*, [2010] B.C.J. No. 762 (BCSC);
14. *R. v. Gavrilovic,* [2010] O.J. No. 2784 (ONCJ);
15. *R. v. Miller,* [2002] O.J. No. 3589 (ONCA);
16. *R. v. Alvarez,* [2014] O.J. No. 1398 (ONSC);
17. *R. v. Brien,* [2011] Q.J. No. 19189 (QCCQ);
18. *R. v. Dantimo*, [2009] O.J. No. 655 (ONCJ).