
CANADA / JUDGMENT

R. v. Hartling

2020 BCSC 1395

COURT

Supreme Court of British Columbia

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2020 BCSC 1395 R. v. Hartling

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hartling,

2020 BCSC 1395

Date: 20200819

Docket: 104919-6; 105183-2

Registry: Kamloops

Regina

v.

Bradley John Hartling

Before: The Honourable Madam Justice Donegan

Oral Reasons for Sentence

Counsel for the Crown (appearing by teleconference):

T.A. Livingston

Counsel for the Accused:

L.M. Scruton

Place and Date of Hearing:

Kamloops, B.C.

August 12, 2020

Place and Date of Judgment:

Kamloops, B.C.

August 19, 2020

Introduction

[1] On March 10, 2020, a jury convicted Bradley John Hartling of five counts on Indictment 104919-6:

- Count 1, robbery of Brett Haynes with a firearm;
- Count 2, assaulting Brett Haynes with a weapon;
- Count 3, careless use or carrying of a firearm;
- Count 4, uttering threats to Matthew Carstairs; and
- Count 5, pointing a firearm at Matthew Carstairs.

[2] Counsel jointly submit that Counts 2 and 3 on this Indictment should be conditionally stayed as a result of the application of the rule against multiple convictions first articulated in *R. v. Kienapple*, [1975] 1 S.C.R. 729. I am satisfied that the offences have the same factual and legal nexus as Count 1 and that the Rule applies, so I direct a conditional stay of proceedings in respect of Counts 2 and 3.

[3] As well, Mr. Hartling entered a plea of guilty last week to the single count on Indictment 105183-2, possessing a firearm, a handgun, while prohibited from doing so. All offences, including this one, arise out of the same events of November 4, 2017.

[4] My task is to determine the appropriate sentence. The Crown seeks a global sentence of seven years incarceration and a number of ancillary orders. The defence seeks a global sentence of four years' imprisonment on the multi-count Indictment and a two-year probationary period in the form of a suspended sentence, on the single-count Indictment. Ms. Scruton takes no issue with the ancillary orders sought by the Crown.

[5] To craft a proportionate sentence in accordance with the purpose, principles, and objectives the law requires in each unique case is one of the most delicate stages of the criminal justice process in Canada. Although this task is governed by s. 718 of the Criminal Code, R.S.C. 1985, c. C-46 [Code], and although the objectives set out in those sections guide the court and are clearly defined, it nonetheless involves by definition the exercise of a broad discretion by the court in balancing all of the relevant factors in order to meet the objectives being pursued in sentencing: *R. v. Lacasse*, 2015 SCC 64 at para. 1. Fundamental to this task is to ensure the sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender.

Circumstances of the Offences

- [6] I will begin by setting out the circumstances on the multi-count Indictment.
- [7] Although there appears to be no issue about the facts arising from the jury's guilty verdicts on Counts 1, 4 and 5, I nevertheless am required to find the facts as contemplated by s. 724 of the Code:

Information accepted

724 (1) In determining a sentence, a court may accept as proved any information disclosed at the trial or at the sentencing proceedings and any facts agreed on by the prosecutor and the offender.

Jury

- (2) Where the court is composed of a judge and jury, the court
- (a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and
 - (b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.

Disputed facts

- (3) Where there is a dispute with respect to any fact that is relevant to the determination of a sentence,
 - (a) the court shall request that evidence be adduced as to the existence of the fact unless the court is satisfied that sufficient evidence was adduced at the trial;
 - (b) the party wishing to rely on a relevant fact, including a fact contained in a presentence report, has the burden of proving it;
 - (c) either party may cross-examine any witness called by the other party;
 - (d) subject to paragraph (e), the court must be satisfied on a balance of probabilities of the existence of the disputed fact before relying on it in determining the sentence; and
 - (e) the prosecutor must establish, by proof beyond a reasonable doubt, the existence of any aggravating fact or any previous conviction by the offender.
- [8] The leading case on the principles that govern a sentencing judge in this fact-finding process following a jury verdict is *R. v. Ferguson*, 2008 SCC 6. These principles were helpfully summarized by the Nova Scotia Court of Appeal in *R. v. Landry*, 2016 NSCA 53 at paras. 48-49:
- [48] Both before and after the 1996 Criminal Code amendments and the decision of the Supreme Court of Canada in *R. v. Ferguson*, the law was fairly clear: following a jury verdict, an accused is not entitled to be sentenced according to the most lenient view of the circumstances of the offence consistent with the jury verdict. A trial judge must determine the facts for the purpose of imposing sentence guided by two fundamental principles: a trial

judge must be satisfied that the evidence establishes aggravating facts beyond a reasonable doubt, and the facts must not be inconsistent with the jury's verdict (in addition to Brown and Ferguson, see: R. v. Gauthier (1996), 78 B.C.A.C. 85 at paras. 23-24; R. v. Englehart, [1998] N.B.J. No. 150 (C.A.); R. v. Roncaioli, 2011 ONCA 378 at paras. 58-61).

[49] I would distill the rules for a court to follow as:

1. The sentencing judge shall accept as proven all facts, express or implied, that are essential for the jury's guilty verdict.

2 When the jury finding is ambiguous, the sentencing judge should not attempt to follow the logic of the jury. Instead, he or she must make their own independent determination as to the relevant facts.

3. The sentencing judge should only find those facts necessary to permit the proper sentence to be imposed.
4. The sentencing judge may not find as fact things that were rejected by the jury's verdict.
5. For any aggravating fact, the sentencing judge must be satisfied that the evidence is sufficiently cogent to enable her to find it proved beyond a reasonable doubt.

[9] It is with these principles in mind that I approach my fact-finding task.

[10] I think the jury's verdicts in this case are unambiguous. As essential to the jury's verdicts and necessary to permit the proper sentence to be imposed, I find the following facts.

[11] In November 2017, Matthew Carstairs was living in an apartment rented by others, located at [address omitted] in Kamloops, British Columbia. Mr. Carstairs was living and sleeping in the living room area of that apartment. Mr. Carstairs sold drugs, specifically heroin and crystal methamphetamines, out of that apartment. Mr. Carstairs set up a video surveillance system that recorded the living room area of that apartment. The events that underpin the jury's verdicts were captured by this recording system.

[12] Living in the apartment next door to the apartment occupied by Mr. Carstairs was a family of four: Derek Cornies, his wife, and their two small children. The Cornies were innocent bystanders in all of what occurred on November 4, 2017.

[13] It was at approximately 7:00 a.m. on November 4, 2017 that Brett Haynes and Katelyn Cole went to the apartment occupied by Mr. Carstairs to purchase drugs from Mr. Carstairs. They came into the living room and sat on the sofa. Shortly after both were seated, Mr. Hartling came quickly into the room and struck Mr. Haynes across the head with a loaded handgun that he was carrying. Mr. Haynes suffered a black eye as a result. When Mr. Hartling struck Mr. Haynes with the gun, the handgun accidentally discharged. Mr. Hartling then stole a set of keys from Mr. Haynes that contained a key to the truck Mr. Haynes had driven there in that morning. The truck was owned by Mr. Haynes' aunt.

- [14] After taking the keys from Mr. Haynes, Mr. Hartling pointed the gun at Matthew Carstairs, who was in the living room, and threatened to harm him if he were to "rat". Mr. Hartling then left the apartment and departed the scene in the truck he stole from Mr. Haynes.
- [15] During this event, the Cornies family slept next door. Mr. and Mrs. Cornies were sleeping on a hide-a-bed in their living room. Beside the hide-a-bed, one of their children, their infant, was sleeping in a rocker on the floor. When Mr. Hartling struck Mr. Haynes with the firearm next door, the round that discharged from it travelled through the living room wall of Mr. Carstairs' apartment into the Cornies' apartment. The bullet travelled through the wall and struck Derek Cornies in the hand as he lay sleeping on the hide-a-bed. The bullet travelled through the heel of his palm near his wrist. The pain woke him. He thought perhaps he had cut his hand on a spring from the hide-a-bed. He and his wife went to the hospital where his wound was treated. When they returned home, they located a bullet on their hide-a-bed and a hole in their living room wall. They notified authorities and an investigation ensued.
- [16] The truck Mr. Hartling stole from Mr. Haynes was located two days later near Ord Road in Kamloops, near to the location where Mr. Hartling was picked up by his then-girlfriend on November 4, 2017. During the time from when the truck was stolen to when it was recovered, panels from the dashboard in the truck's interior had been removed.
- [17] As Mr. Hartling admits through his guilty plea to the single-count Indictment, he committed all of these offences while he was subject to three different firearms prohibition orders made under authority of the Code.

Effect on the Victims

- [18] Mr. Haynes, Mr. Carstairs and members of the Cornies family are all victims of Mr. Hartling's crimes.
- [19] Mr. Haynes and Mr. Carstairs have not provided any victim impact statements or specific information about how these crimes have affected them. Given their obvious reluctance to testify at trial and concern over being seen in the criminal community as a "rat", I am not surprised by this.
- [20] Nevertheless, regardless of why he was present in the apartment occupied by Mr. Carstairs that morning, Mr. Haynes was the victim of serious crimes at Mr. Hartling's hand. Mr. Hartling unexpectedly entered the room and struck him in the face with a loaded handgun. Not only was his face injured, but Mr. Haynes experienced the shock of having a handgun discharge accidentally right next to his ear. His keys were then stolen and the vehicle he drove there was stolen as well.
- [21] This event would be alarming and frightening for anyone. Indeed, I saw Mr. Haynes' alarmed reaction on the video-recording and how he presented in court. It is clear these crimes had a negative impact on him.

- [22] Similarly, regardless of what he was doing that morning, Mr. Carstairs was the victim of serious crimes at Mr. Hartling's hand. Mr. Hartling pointed a firearm at Mr. Carstairs, the same firearm that had just accidentally discharged. He threatened Mr. Carstairs. This would be concerning to anyone.
- [23] Derek Cornies, his wife, and their two small children are all victims of Mr. Hartling's serious crimes that day as well. They were innocent bystanders in all of this. Mr. and Mrs. Cornies have not provided formal victim impact statements, but they both testified at trial. I am satisfied that the impact upon them and their family was significant.
- [24] Mr. Cornies suffered a physical injury to his hand that required medical attention. He also described suffering a graze wound to his stomach. However, his physical injuries are only an aspect of what he and his family suffered as a result of Mr. Hartling's crimes. In the immediate aftermath of the gun's discharge, Mr. and Mrs. Cornies had to deal with the confusion about what happened. One can only imagine the shock experienced by Mrs. Cornies, who woke to a loud popping noise, and by Mr. Cornies who woke to extreme pain in his hand. One can only imagine the confusion they experienced, not knowing what caused these things.
- [25] After being awoken in this alarming manner, they then had to get Mr. Cornies to the hospital for treatment with their two small children in tow. When they came home a couple of hours later, one can only imagine their horror as their discoveries of a bullet in the bed where they slept and a hole in their living room wall revealed to them what had actually happened, that Mr. Cornies had been shot through the wall of the neighbouring apartment only feet from where their infant child slept. Mrs. Cornies described when she testified that her "heart dropped to the bottom of my stomach" when she realized what, and what could have, occurred. Despite the horror of that realization, Mr. and Mrs. Cornies had to remain calm for their children's sake. They did everything right. They preserved the evidence they found, they notified the landlord, they called police, and they left the apartment immediately. They met police at a nearby convenience store and gave statements.
- [26] Their fear was such that they left their home, the place that they had lived for over a year, that same day and never lived there again. Their family had to be separated for a time while they searched for a new home. One's home is to be a place of safety and security. I have no doubt that this experience was terrifying for Mr. and Mrs. Cornies and has negatively impacted them and their children in these ways.

Circumstances of Mr. Hartling

- [27] Mr. Hartling is originally from Ontario and is currently 31 years old. He is the oldest of four siblings. His parents separated when he was about six years old. He continues to have the support of his family today, even though he does not see them as much and as often as he would like.

[28] Mr. Hartling is Ojibwe, from the Garden River First Nation in Ontario. Christine Dalziel, a Gladue report writer, prepared an extensive 24-page report dated June 17, 2020 detailing Mr. Hartling's history and personal circumstances. I have read the report several times. I find it unnecessary to review every detail here and am satisfied that Ms. Dalziel summarized it well at pages 20 and 21 of her report. She wrote that Mr. Hartling has suffered a number of adverse factors that are known to affect Indigenous people in general and that he has suffered these adverse factors throughout his life. These include, in general categories:

- substance abuse, both personally within his family and within his extended family;
- family breakdown;
- poverty as a child and youth;
- lack of healthy parental role models;
- being a witness to his mother being abused by both his father and his stepfather;
- emotional, verbal, physical and spiritual abuse at the hand of his father, stepfather and uncle;
- sexual assault by an uncle's friend;
- lack of positive relationships due to lifestyle;
- suicide - he found his girlfriend's mother hanging;
- early criminal involvement;
- family history of incarceration;
- foster care - he lived with and was under legal custody of his aunt, as were his brother and sisters;
- dislocation from his indigenous community, negative outlook due to family and community history of substance misuse;
- loss of identity, culture, ancestral knowledge - his mother lost her status due to Bill C-31; and
- intergenerational effects flowing from residential schools, including his inability to move past personal and community afflictions.

[29] It is clear that Mr. Hartling had a chaotic, abusive and unstable childhood marred by substance misuse. With family support and good employment, he did have a period of relative stability for about five years from 2006 to 2011 when he lived in Ontario; however, upon his return to Kamloops, he became emerged in the drug and criminal world.

[30] Mr. Hartling has a lengthy criminal record. His adult record begins in 2013. In June of that year, he was convicted of aggravated assault and sentenced to three months imprisonment followed by a period of probation of one year. This sentence was the product of a joint submission. A mandatory firearms prohibition order was imposed under s. 109 of the Code.

- [31] Later that same year, Mr. Hartling was sentenced for convictions related to breaching his probation and bail orders, a property crime, and a drug crime. In 2014, Mr. Hartling was convicted and sentenced for a number of crimes, including three convictions relating to breaching his probation and bail orders, unauthorized possession of a firearm in a motor vehicle, and possession of a firearm or ammunition contrary to prohibition order, pursuant to s. 117.01(1) of the Code. For the latter two offences, he was sentenced to 233 days imprisonment on each charge and probation for one year to follow. Another mandatory firearms and weapons prohibition was imposed under s. 109 of the Code.
- [32] 2015 saw Mr. Hartling convicted for failure to comply with a probation order. 2016 saw him convicted for assault causing bodily harm and was sentenced to 357 days incarceration, with credit given for the equivalent of 343 days in pre-sentence custody, followed by two years probation. Again, he was subject to a mandatory firearms and weapons prohibition that was imposed under s. 109 of the Code.
- [33] On June 1, 2017, Mr. Hartling was convicted of assault and sentenced to 84 days imprisonment, with credit given for the equivalent of 216 days he had spent in pre-sentence custody, followed by 12 months' probation. A discretionary firearms and weapons prohibition was imposed under s. 110 of the Code for a period of five years.
- [34] While he was in custody in the fall of 2017, Mr. Hartling graduated from high school with honours. Having previously left school in grade 8, this is a substantial accomplishment.
- [35] The offences before the court occurred on November 4, 2017, not that long after Mr. Hartling would have been released from jail. He was on probation and he was subject to four different firearms prohibition orders, only one imposed a few months earlier.
- [36] When Mr. Hartling was arrested on the offences before the court, he was held in custody for a time before securing his release on bail. While in custody during that period, he learned that his girlfriend was pregnant. He reports that everything changed for him after that. He separated himself from the negative influences around him and managed to secure himself a spot in the Right Living Unit at the Kamloops Regional Correctional Centre ("KRCC"). This is a program available to only ten inmates in the institution who are seen to be motivated to turn their lives around. Through this program, Mr. Hartling was able to access additional programs and courses.
- [37] Mr. Hartling was eventually released on bail in 2018. He attended a 45-day treatment program at Psalm 23 Transition Society ("Psalm 23"). He even stayed there an extra three months because he was scared to fail and he thought the extra time there would help him remain clean and sober. His daughter was born in June 2018. She was placed in the care of the Ministry of Children and Family Development and is now in the permanent foster care of her maternal grandparents.

- [38] After leaving Psalm 23, Mr. Hartling moved into Joshua House Recovery Ministry in Abbotsford in September 2018. Determined to continue with his recovery and earn a role in his daughter's life, he travelled back and forth to Kamloops from his treatment house in Abbotsford to visit with her and attend her medical appointments for a while. He did well at Joshua House, as evidenced by a letter written by its CEO on November 29, 2018, where that person reports that Mr. Hartling finished the methadone program, completed outside counselling sessions, completed all step work study sessions and assignments, and was actually starting down a leadership path within the organization.
- [39] Mr. Hartling left Joshua House and moved back to Kamloops to be near his daughter in the summer of 2019. Unfortunately, he relapsed and ultimately had difficulty abiding strictly to his curfew. He was arrested at the end of August and was incarcerated for three and a half months until December 2019. While in custody during this time period, he completed his Red Seal in construction. He was again accepted into the Right Living Unit at KRCC and was a model prisoner by all accounts. He pled guilty to two breach of recognizance charges in November 2019 and was released from custody again at some point in December.
- [40] Mr. Hartling was welcomed back to Joshua House and again commuted back and forth to Kamloops for a time. He became a leader in training at Joshua House, but unfortunately breached one of the house rules by giving a resident suboxone to help him with his withdrawal symptoms, contrary to house rules. He was required to leave at the end of January 2020. Three residents have provided positive letters about Mr. Hartling's character and explaining the error in judgment that forced him to leave. Mr. Hartling transferred to Beyond 12 Healing Centre in Salmon Arm to be closer to Kamloops, but on February 28, 2020, he was arrested on a breach allegation and has remained in custody since that time.
- [41] Again, Mr. Hartling availed himself of every opportunity while on remand at KRCC and was once again assigned to the Right Living Unit. The chaplain at KRCC views him positively and describes him in his June 20, 2020 letter as showing a "mature awareness and responsibility towards his past as well as future plans".
- [42] Similarly, Felix Delorme, a Native Liaison and Spiritual Support Worker at KRCC, also sees Mr. Hartling in a positive light from his dealings with him. In Mr. Delorme's June 23, 2020 letter, he writes, in part:

Mr. Hartling has been talking about historical issues within the family and community. As a child he has experienced a very dysfunctional family setting and the addictions that affected his family. Mr. Hartling stated how this affected his morals and judgment and he continued the cycle of dysfunction. Mr. Hartling has mentioned that he has a relationship with his mother today but has to maintain a distance as to her addiction is still prevalent. He knows his recovery is important, as being a father he does not want this cycle to continue with his daughter. The attitude and thoughts towards his own addiction has helped him focus on recovery and realises as a child he learned unhealthy behaviors from his immediate family. Mr. Hartling wants to attend a treatment centre to break the cycle of addictions and violence that has been part of his life. Mr. Hartling

seems very committed to change and wants that chance to prove to himself that he can succeed.

I have witnessed Mr. Hartling while attending the Aboriginal healing circle, Indigenous programs and 1-1 counselling supports he has respect to the values and cultural beliefs of his Ojibway ancestry; he has been a vocal member in the Indigenous programs about his past and how much he would like to change. He has currently applying for his status card and reached out to family members for this help. He wants to continue learning about the spiritual beliefs of his people to maintain a healthier lifestyle. It is my sense that he is very sincere about change and I support fully his opportunity for release to attend treatment and become a productive member within the community.

- [43] From December 2017 to July 9, 2020, Mr. Hartling successfully completed upwards of 40 programs while in custody, some of them more than once. I have gone through all of the certificates that he has tendered in this hearing. The programs relate to life skills, employment, substance misuse, healthy relationships, parenting, violence prevention, among other things. It is clear that Mr. Hartling has been using his time in custody to further his rehabilitation and to promote his eventual reintegration into society.
- [44] Mr. Hartling addressed me directly at the conclusion of the sentencing hearing. Reading from a letter he prepared, Mr. Hartling admitted to having committed all of these crimes and accepted complete responsibility for what he had done. He expressed remorse and empathy for the Cornies in particular, and quite eloquently expressed his desire to live a pro-social life for himself and for his daughter.
- [45] I accept his remorse and desire to rehabilitate are genuinely felt. He has shown this not only by his words, I think anyone can make speeches, but by what he has accomplished over the last while, these few years while he has been in custody.

Positions of the Parties

- [46] The Crown submits that the primary emphasis in this case, as in any case with gun violence, should be on the principles of denunciation and deterrence, although Mr. Livingston advocates for rehabilitation to still be considered. Noting the mandatory minimum sentence of four years incarceration for the offence of robbery with a firearm, the Crown advocates for a sentence of five to six years for the robbery offence, one year for the uttering threats offence, two years for pointing a firearm, and a further one-year consecutive sentence for possessing a firearm contrary to a prohibition order. All told, the Crown seeks a global sentence of seven years. This is a result, Mr. Livingston argues, that would take into account all of the aggravating and mitigating factors in this case, would be consistent with the case authorities, would not offend the totality principle, and would, overall, be a proportionate sentence. The Crown's position takes into account the mitigating factors and Mr. Hartling's disadvantaged background circumstances.

- [47] The defence submits that a global sentence of four years imprisonment is appropriate on the multi-count Indictment. Ms. Scruton acknowledges that there is a mandatory minimum four-year sentence for Count 1, and does not dispute the seriousness of these offences, but submits that imposing the mandatory minimum sentence in this case would give appropriate recognition to the positive steps Mr. Hartling has taken in the last three years toward his rehabilitation and would give real meaning to Gladue principles. She argues that with credit for pre-sentence custody, a four-year sentence would allow him to remain in the provincial jail system and allow him to carry on with the positive steps he has been taking, particularly in the Right Living Unit. Such a sentence would, she argues, also allow for a suspended sentence on the single-count indictment, the terms of which could include house arrest and other strict controls in the community. In this way, Ms. Scruton argues that Mr. Hartling would be supervised over the next several years in a creative way, responsive to Gladue principles, in a fashion that would still remain proportionate.
- [48] Whatever the custodial sentence may be, counsel agree that Mr. Hartling has been in pre-sentence custody for, prior to today, 559 days and is entitled to the usual credit toward his sentence.

Legal Parameters and Principles

- [49] The seriousness with which Parliament views all of these offences committed by Mr. Hartling is reflected in the sentencing parameters it has established. Count 1 on the multi-count Indictment carries with it a maximum sentence of life imprisonment and a minimum sentence of four years. Counts 4 and 5 each carry with them a maximum term of imprisonment not exceeding five years. They have no mandatory minimum.
- [50] The single-count Indictment offence carries with it a maximum sentence of a term of imprisonment not exceeding ten years. There is no mandatory minimum.

General Principles

- [51] The determination of a just and appropriate sentence is a highly-individualized exercise that goes beyond any mathematical calculation. Many courts have recognized that imposing a just and proportionate sentence in serious cases like this is among the most challenging responsibilities a judge can have. It involves a careful balancing of a variety of factors in the context of a particular set of circumstances in respect of a very particular offender. This balancing process is to occur within a legislative framework informed by common law principles, and that framework is set out in s. 718 of the Code.
- [52] Section 718 of the Code provides that the fundamental purpose of sentencing is to "protect society and to contribute to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions". This is to be achieved by imposing sentences that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
 - (b) to deter the offender and other persons from committing offences;
 - (c) to separate offenders from society, where necessary;
 - (d) to assist in rehabilitating offenders;
 - (e) to provide reparations for harm done to victims or to the community; and
 - (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.
- [53] The objectives of sentencing are given "sharper focus" in s. 718.1, which mandates that a sentence be "proportionate to the gravity of the offence and the degree of responsibility of the offender". This proportionality principle is fundamental in Canadian law. Thus, whatever weight a judge may wish to accord to the objectives listed in s. 718, the resulting sentence must respect the fundamental principle of proportionality: *R. v. Nasogaluak*, 2010 SCC 6 at para. 40.
- [54] Section 718.2 provides a non-exhaustive list of secondary sentencing principles, including the consideration of aggravating and mitigating circumstances, the principles of parity and totality, and the instruction that an offender should not be deprived of liberty if less-restrictive sanctions may be appropriate in the circumstances, and to consider all available sanctions other than imprisonment that are reasonable in the circumstances.
- [55] With respect to the principle of parity found in s. 718.2(b), a court cannot lose sight of the individualized nature of the assessment. The Court in *Nasogaluak* held:
- [43] The language in ss. 718 to 718.2 of the Code is sufficiently general to ensure that sentencing judges enjoy a broad discretion to craft a sentence that is tailored to the nature of the offence and the circumstances of the offender. The determination of a "fit" sentence is, subject to some specific statutory rules, an individualized process that requires the judge to weigh the objectives of sentencing in a manner that best reflects the circumstances of the case (*R. v. Lyons*, [1987] 2 S.C.R. 309; *M. (C.A.)*; *R. v. Hamilton* (2004), 72 O.R. (3d) 1 (C.A.)). No one sentencing objective trumps the others and it falls to the sentencing judge to determine which objective or objectives merit the greatest weight, given the particulars of the case. The relative importance of any mitigating or aggravating factors will then push the sentence up or down the scale of appropriate sentences for similar offences. The judge's discretion to decide on the particular blend of sentencing goals and the relevant aggravating or mitigating factors ensures that each case is decided on its facts, subject to the overarching guidelines and principles in the Code and in the case law.

- [56] Subsection 718.2(c) outlines what is referred to as the totality principle, which requires that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.
- [57] Subsections 718.2(d) and (e) emphasize the need for restraint in the use of imprisonment. These provisions require that an offender not be deprived of liberty if less restrictive sanctions are appropriate in the circumstances, and that all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Indigenous offenders.
- [58] In the case at bar, s. 718.2(e) does apply and I will say a brief word about that here. The Supreme Court of Canada has provided guidance with respect to the application of this provision in two well-known decisions, *R. v. Gladue*, [1999] 1 S.C.R. 688 and *R. v. Ipeelee*, 2012 SCC 13. In *Gladue*, the Court addressed the problem of over-incarceration of Indigenous offenders in Canada and the over-representation of Indigenous Canadians in penal institutions, noting at para. 64:

It is reasonable to assume that Parliament, in singling out aboriginal offenders for distinct sentencing treatment in s. 718.2(e), intended to attempt to redress this social problem to some degree.

- [59] When an offender is identified as Indigenous, it is necessary when arriving at a fit and proper sentence for the court to consider the unique systemic or background factors that brought the offender before the court, and the types of sentencing that may be appropriate because of the offender's Indigenous heritage or connection. The Court in *Gladue* outlined this approach at para. 80:
- [80] As with all sentencing decisions, the sentencing of aboriginal offenders must proceed on an individual (or a case-by-case) basis: For this offence, committed by this offender, harming this victim, in this community, what is the appropriate sanction under the Criminal Code? What understanding of criminal sanctions is held by the community? What is the nature of the relationship between the offender and his or her community? What combination of systemic or background factors contributed to this particular offender coming before the courts for this particular offence? How has the offender who is being sentenced been affected by, for example, substance abuse in the community, or poverty, or overt racism, or family or community breakdown? Would imprisonment effectively serve to deter or denounce crime in a sense that would be significant to the offender and community, or are crime prevention and other goals better achieved through healing? What sentencing options present themselves in these circumstances?

[Emphasis in original]

- [60] With respect to more violent and serious offences, the Court in Gladue held that even taking into account the offender's Indigenous background, the more likely it is as a practical reality that the terms of imprisonment for Indigenous and non- Indigenous offenders will be close to each other or the same: para. 79.
- [61] In Ipeelee, the Court again emphasized the need to consider the unique circumstances of Indigenous persons when sentencing, and to take judicial notice of historical factors affecting them. The Court held at para. 60:
- [60] 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. Counsel have a duty to bring that individualized information before the court in every case, unless the offender expressly waives his right to have it considered. . . .

[Emphasis in original]

- [62] In Ipeelee, the Court critically analyzed the post-Gladue jurisprudence and identified several errors in its applications. The Court first made it clear that an offender does not have to establish any sort of causal link between background factors and the offence(s) before the court before he or she is entitled to have those matters considered by the sentencing judge. In this regard, the Court held:
- [82] This judgment displays an inadequate understanding of the devastating intergenerational effects of the collective experiences of Aboriginal peoples. It also imposes an evidentiary burden on offenders that was not intended by Gladue. As the Ontario Court of Appeal states in *R. v. Collins*, 2011 ONCA 182, 277 O.A.C. 88, at paras. 32-33:

There is nothing in the governing authorities that places the burden of persuasion on an Aboriginal accused to establish a causal link between the systemic and background factors and commission of the offence.

As expressed in *Gladue*, Wells and Kakekagamick, s. 718.2(e) requires the sentencing judge to "give attention to the unique background and systemic factors which may have played a part in bringing the particular offender before the courts": *Gladue* at para. 69. This is a much more modest requirement than the causal link suggested by the trial judge.

(See also *R. v. Jack*, 2008 BCCA 437, 261 B.C.A.C. 245.)

[83] As the Ontario Court of Appeal goes on to note in *Collins*, it would be extremely difficult for an Aboriginal offender to ever establish a direct causal link between his circumstances and his offending. The interconnections are simply too complex. The Aboriginal Justice Inquiry of Manitoba describes the issue, at p. 86:

Cultural oppression, social inequality, the loss of self-government and systemic discrimination, which are the legacy of the Canadian government's treatment of Aboriginal people, are intertwined and interdependent factors, and in very few cases is it possible to draw a simple and direct correlation between any one of them and the events which lead an individual Aboriginal person to commit a crime or to become incarcerated.

Furthermore, the operation of s. 718.2(e) does not logically require such a connection. Systemic and background factors do not operate as an excuse or justification for the criminal conduct. Rather, they provide the necessary context to enable a judge to determine an appropriate sentence. This is not to say that those factors need not be tied in some way to the particular offender and offence. Unless the unique circumstances of the particular offender bear on his or her culpability for the offence or indicate which sentencing objectives can and should be actualized, they will not influence the ultimate sentence.

[63] The operation of s. 718.2(e) does not logically require such a connection. Systemic and background factors do not operate as an excuse or justification for criminal conduct. Rather, they provide the necessary context to enable a judge to determine an appropriate sentence. This is not to say that those factors need not be tied in some way to the particular offender and offence. Unless the unique circumstances of the particular offender bear on his or her culpability for the offence or indicate which sentencing objectives can and should be actualized, they will not influence the ultimate sentence.

[64] The Court in *Ipeelee* also discussed the application of Gladue principles in serious or violent offences and held:

[84] The second and perhaps most significant issue in the post-Gladue jurisprudence is the irregular and uncertain application of the Gladue principles to sentencing decisions for serious or violent offences. As Professor Roach has indicated, "appellate courts have attended disproportionately to just a few paragraphs in these two Supreme Court judgments -- paragraphs that discuss the relevance of Gladue in serious cases and compare the sentencing of Aboriginal and non-Aboriginal offenders" (K. Roach, "One Step Forward, Two Steps Back: Gladue at Ten and in the Courts of Appeal" (2009), 54 *Crim. L.Q.* 470, at p. 472). The passage in *Gladue* that has received this unwarranted emphasis is the observation that "[g]enerally, the more violent and serious the offence the more likely it is as a practical reality that the terms of imprisonment for aboriginals and non-aboriginals will be close to each other or the same, even taking into account their different concepts of sentencing" (para. 79; see also *Wells*, at paras. 42-44). Numerous courts have erroneously interpreted this generalization as an indication that the Gladue principles do not apply to serious offences (see, e.g., *R. v. Carrière* (2002), 164 C.C.C. (3d) 569 (Ont. C.A.)).

[85] Whatever criticisms may be directed at the decision of this Court for any ambiguity in this respect, the judgment ultimately makes it clear that sentencing judges have a duty to apply s. 718.2(e): "There is no discretion as to whether to consider the unique situation of the aboriginal offender; the only discretion concerns the determination of a just and appropriate sentence" (Gladue, at para. 82). Similarly, in Wells, Iacobucci J. reiterated, at para. 50, that

[t]he generalization drawn in Gladue to the effect that the more violent and serious the offence, the more likely as a practical matter for similar terms of imprisonment to be imposed on aboriginal and non-aboriginal offenders, was not meant to be a principle of universal application. In each case, the sentencing judge must look to the circumstances of the aboriginal offender.

This element of duty has not completely escaped the attention of Canadian appellate courts (see, e.g., *R. v. Kakekagamick* (2006), 214 O.A.C. 127; *R. v. Jensen* (2005), 196 O.A.C. 119; *R. v. Abraham*, 2000 ABCA 159, 261 A.R. 192).

[86] In addition to being contrary to this Court's direction in Gladue, a sentencing judge's failure to apply s. 718.2(e) in the context of serious offences raises several questions. First, what offences are to be considered "serious" for this purpose? As Ms. Pelletier points out: "Statutorily speaking, there is no such thing as a 'serious' offence. The Code does not make a distinction between serious and non-serious crimes. There is also no legal test for determining what should be considered 'serious'" (*R. Pelletier, "The Nullification of Section 718.2(e): Aggravating Aboriginal Over-representation in Canadian Prisons"* (2001), 39 Osgoode Hall L.J. 469, at p. 479). Trying to carve out an exception from Gladue for serious offences would inevitably lead to inconsistency in the jurisprudence due to "the relative ease with which a sentencing judge could deem any number of offences to be 'serious'" (Pelletier, at p. 479). It would also deprive s. 718.2(e) of much of its remedial power, given its focus on reducing overreliance on incarceration. A second question arises: Who are courts sentencing if not the offender standing in front of them? If the offender is Aboriginal, then courts must consider all of the circumstances of that offender, including the unique circumstances described in Gladue. There is no sense comparing the sentence that a particular Aboriginal offender would receive to the sentence that some hypothetical non-Aboriginal offender would receive, because there is only one offender standing before the court.

[87] The sentencing judge has a statutory duty, imposed by s. 718.2(e) of the Criminal Code, to consider the unique circumstances of Aboriginal offenders. Failure to apply Gladue in any case involving an Aboriginal offender runs afoul of this statutory obligation. As these reasons have explained, such a failure would also result in a sentence that was not fit and was not consistent with the fundamental principle of proportionality. Therefore, application of the Gladue principles is required in every case involving an Aboriginal offender, including breach of an LTSO, and a failure to do so constitutes an error justifying appellate intervention.

[65] I will conclude this overview of the general legal principles with reference to the fundamental principle of proportionality. In *R. v. Pham*, 2013 SCC 15, the Supreme Court of Canada again discussed proportionality and its interplay with the sentencing objectives and other principles at paras. 7-8:

[7] LeBel J. explained proportionality as follows in . . . *Ipeelee*. . .

Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. . . . Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.

[8] In addition to proportionality, the principle of parity and the correctional imperative of sentence individualization also inform the sentencing process. This Court has repeatedly emphasized the value of individualization in sentencing: *Ipeelee*, at para. 39; *R. v. Wust*, 2000 SCC 18, [2000] 1 S.C.R. 455, at para. 21; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 92. Consequently, in determining what a fit sentence is, the sentencing judge should take into account any relevant aggravating or mitigating circumstances (s. 718.2(a) of the Criminal Code), as well as objective and subjective factors related to the offender's personal circumstances.

[66] The Court emphasized this again in *Lacasse*, instructing sentencing courts that proportionality is to be determined both on an individual basis, that is in relation to the offender himself, and to the offence committed by that person, and by comparison with sentences imposed for similar offences committed in similar circumstances. The concepts of individualization and parity of sentence must be reconciled for a sentence to be proportionate: para. 53.

Effect of Mandatory Minimum Sentence.

[67] The mandatory minimum sentence for the offence of robbery with a firearm is four years, as I have outlined. In *R. v. Guha*, 2012 BCCA 423, Madam Justice Smith discussed the effect of mandatory minimum sentences on the range of possible sentences at paras. 31-35:

[31] Parliament has responded to the growing concern over the illicit use of firearms by enacting mandatory minimum sentences for a number of such offences, thereby embedding the principles of denunciation and deterrence as the paramount considerations for the starting point of the sentencing analysis. As was observed by the Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6, mandatory minimum sentences are "a forceful expression of governmental policy in the area of criminal law" and a "clear statement of legislative intent" (para. 45). Similarly, this Court in *Jarsch* observed that the 1998 amendments

demonstrated Parliament's intent "that these offences be treated more seriously than they had been previously" (para. 5).

- [32] The impact of mandatory minimums on sentencing has received little attention in the case law. However, in *R. v. Morrisey*, 2000 SCC 39, which involved a challenge to the 4-year mandatory minimum for the offence of criminal negligence causing death with a firearm, Madam Justice Arbour, albeit for the concurring minority, described a mandatory minimum sentence as a type of "inflationary floor" that still required the application of the overriding principle of proportionality:
- [75] To the extent possible, mandatory minimum sentences must be read consistently with the general principles of sentencing expressed, in particular, in ss. 718, 718.1, and 718.2 of the Criminal Code: *Wust (S.C.C.)*, supra, at para. 22. By fixing a minimum sentence, particularly when the minimum is still just a fraction of the maximum penalty applicable to the offence, Parliament has not repudiated completely the principle of proportionality and the requirement, expressed in s. 718.2(b), that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Therefore, in my view, the mandatory minimum sentences for firearms-related offences must act as an inflationary floor, setting a new minimum punishment applicable to the so-called "best" offender whose conduct is caught by these provisions. The mandatory minimum must not become the standard sentence imposed on all but the very worst offender who has committed the offence in the very worst circumstances. The latter approach would not only defeat the intention of Parliament in enacting this particular legislation, but also offend against the general principles of sentencing designed to promote a just and fair sentencing regime and thereby advance the purposes of imposing criminal sanctions. [Emphasis added.]
- [33] This characterization of mandatory minimum sentences as a type of "inflationary floor" was not adopted by the majority, although it appears to have been referred to, if not followed, in some of the subsequent jurisprudence. The concept, however, does not in my view reflect any change in the approach to sentencing for offences with mandatory minimums, but simply narrows the range of available sentences while continuing to engage the general principles of sentence and the principle of proportionality. Further, it must be noted that Justice Arbour's comments on the inflationary effect of a mandatory minimum were made in the context of the circumstances of *Morrisey*, where Parliament had recently imposed a mandatory minimum sentence on an offence that previously had no mandatory minimum. In this case, the recent changes to s. 95 (the 2008 amendments) reflect an increase to the mandatory minimums that had already been in place since the 1998 amendments. Parliament has simply increased the starting point for s. 95 sentences; thereafter, the principles of sentence as codified in ss. 718, 718.1 and 718.2, including the overriding principle of proportionality, continue to apply.

- [34] In *R. v. B.C.M.*, 2008 BCCA 365, Madam Justice Neilson, for the Court, explained this proportionate effect of a mandatory minimum sentence, albeit in the context of a certain sexual offences against children:
- [32] . . . Thus, the least culpable offender in the least serious circumstances, who might have received a more lenient sentence prior to Bill C-2, will now be sentenced to one year in prison. It would be inconsistent with proportionality if worse offenders in more serious circumstances, who might have received a more lenient sentence prior to Bill C-2, continue to be sentenced to one year under the new regime. The principle that similar offenders should receive similar sentences requires acknowledgement that a minimum sentence has a proportionate inflationary effect on the balance of the sentencing range.
- [35] Therefore, when considering the range of possible sentences in the context of mandatory minimums and the principle of proportionality, Justice Arbour's comments in *Morrissey* at para. 76 provide some guidance:
- . . . The search for the appropriate punishment is not an abstract exercise. It is very much guided by the types of sentences that have been imposed in the past on similarly situated offenders, and because of that, it changes over time, and may come to reflect the inflationary consequences of the proper application of mandatory minimum sentences for particular types of offences.
- [68] The Court of Appeal recently endorsed this same view in *R. v. Ball*, 2014 BCCA 120 at para. 17:
- [17] In my respectful view, the judge made an error in the identification of the applicable range because he failed to recognize, as explained in *Guha* and *Borecky*, that the mandatory minimum is the starting point of the range and is not available for more serious offences. Based on the judge's findings of fact and applying his reasoning to the proper range of available sentences, a sentence somewhat in excess of the mandatory minimum should have been imposed.

The Case Authorities

- [69] Counsel provided several authorities for my consideration. They both recognize that no two cases are alike and have not, unsurprisingly, been able to find a case that is factually similar to the case at bar. However, counsel provided several cases for their guidance on some of the principles of sentencing in these types of cases and examples of how the principles were applied in those cases. I will not list the authorities here, but I have read and have considered them all.
- [70] It is with all of these principles in mind that I approach my task in this case.

Application of the Sentencing Principles

- [71] I will begin by outlining the aggravating and mitigating circumstances.

Aggravating Circumstances

- [72] I find that I am unable to determine Mr. Hartling's precise motivation for these crimes. The Crown urges me to find that he committed the offences for financial gain and to conclude that this is an aggravating circumstance, but I cannot reach that conclusion on the evidence before me.
- [73] Whatever Mr. Hartling's motivations may have been, I am, however, satisfied beyond a reasonable doubt that the effect on Mr. Haynes, one of the victims, was significant. This is an aggravating factor. Mr. Hartling not only robbed Mr. Haynes using a firearm, he used gratuitous violence against him as well. Again, I saw Mr. Haynes' reaction on the video recording as the crimes against him unfolded in real time. The gun went off right next to his head as he was struck. I also saw his reluctance to attend court to testify, his presentation on the witness stand, and his unwillingness to identify Mr. Hartling. There is no doubt he was frightened during the offences and frightened of being labelled a "rat" at trial. But for the video-recording and that an innocent bystander was injured, these crimes would quite possibly have never been solved.
- [74] Another aggravating factor is the nature of the crimes Mr. Hartling committed against Mr. Carstairs. Mr. Hartling's offences against Mr. Carstairs were committed in an attempt to silence a witness to a serious criminal offence. He threatened Mr. Carstairs and pointed the same firearm that he had just used to strike Mr. Haynes and that had just accidentally discharged.
- [75] This brings me to the next and most significant aggravating factor. An innocent bystander was shot. This is highly aggravating. I accept that Mr. Hartling did not intend to discharge the firearm he was carrying, but as the Crown submits, the fact that it accidentally discharged while he struck Mr. Haynes with it demonstrates the "tragedy in gestation" referred to by the Court of Appeal in *R. v. Kachuol*, 2017 BCCA 292. The entire Cornies family was affected by these crimes. The night of November 4, 2017 was the last night they ever spent in their home.
- [76] Mr. Hartling's criminal history is also aggravating. He has been convicted of serious crimes of violence, gun-related offences, and breaches of court orders multiple times. He has been subject to firearms prohibitions since June 2013. He had only recently been sentenced and received another firearms prohibition, a short time before he committed the crimes for which he is now to be sentenced. He was on probation at the time he committed these offences.
- [77] With respect to the possession while prohibited offence, it is aggravating that Mr. Hartling was prohibited from possessing firearms by not one but at least three separate orders of the court.

Mitigating Factors

- [78] There are a number of mitigating circumstances in this case as well.
- [79] Mr. Hartling is a young man - only 31 years old. He is capable of rehabilitation.
- [80] Mr. Hartling's background, as outlined thoroughly in the Gladue report and as I have touched on here today, is mitigating. It impacts upon his moral blameworthiness. Mr. Hartling is an Indigenous person who has suffered a number of disadvantages in his life from an early age, arising from the profound and well-recognized intergenerational effects caused by the Canadian government's prior policies of forced assimilation, policies that saw the destruction of Mr. Hartling's family, their livelihoods, their culture and their self-esteem, to name a few.
- [81] It is mitigating that Mr. Hartling has expressed remorse for these crimes.
- [82] Mr. Hartling pled guilty to the single-count Indictment, which is a further indication of remorse.
- [83] It is mitigating that Mr. Hartling has taken many positive steps toward his rehabilitation since these offences occurred and appears to be genuinely motivated to improve himself.
- [84] It is also mitigating that Mr. Hartling has support in the community, not only from extended family, but from residents and staff at Joshua House and other locations as well.

The Main Sentencing Objectives

- [85] The main sentencing objectives for all of these offences are denunciation and deterrence. The serious and inherently dangerous circumstances associated with firearms-related offences has been emphasized in many sentencing authorities, both by trial court judges and by the Court of Appeal in cases like *R. v. Ross*, 2010 BCCA 314, Guha at paras. 28-30, *R. v. Borecky*, 2013 BCCA 163, and more recently in *Kachuol*, where Madam Justice Dickson, writing for the Court, held:
- [25] In recent years, Canadian courts have become increasingly concerned by the proliferation of handguns, gun violence and the dire consequences for our society. Guns are inherently, often lethally, dangerous, all the more so when they are possessed for an illicit purpose. As a result, their possession and use is highly regulated and, if unlawful, criminalized to ensure public safety, express society's condemnation and punish offenders. To the extent possible, courts strive to achieve these goals when imposing sentences for firearms-related offences by prioritizing deterrence and denunciation, following customary sentencing ranges in all but exceptional cases and fully accounting for aggravating factors where they exist.

- [26] As Madam Justice Smith recognised in *Guha* at para. 30, when an offender possesses a firearm, particularly a handgun, for an illicit purpose, that purpose can only be to threaten or inflict serious bodily harm or death, if and when considered necessary. Common sense and human experience suggest no other reasonable explanation or lesser risk posed by possession of this sort. As Crown counsel aptly put it, most unlawful possession of loaded firearms represents nothing short of "tragedy in gestation". . . .
- [86] These comments are applicable to the case at bar. As Mr. Livingston argued, this robbery involved gratuitous violence. Mr. Hartling not only chose to bring a loaded handgun to rob Mr. Haynes, he also chose to pistol whip him with it. That the gun accidentally discharged is a consequence of his decision-making that day. Mr. Hartling's choices that day precisely represent that "tragedy in gestation" referred to by the Court of Appeal. It is only through sheer luck that the tragedy in this case was limited to the gunshot wound to Mr. Cornies' hand.
- [87] While denunciation and deterrence are the predominant objectives, I also see a role for rehabilitation in this case. Prior to these offences, Mr. Hartling was fairly entrenched in the criminogenic lifestyle and immersed in the drug subculture. He is a young man. Since these offences, he has taken steps that demonstrate a willingness and ability to promote his rehabilitation and assist him in eventually leading a pro-social life. I also see a role for the objective of promoting a sense of responsibility in offenders and acknowledgment of the harm done to victims or to the community in this case.
- [88] These offences are all very serious. Mr. Hartling's moral culpability in committing them is at the high end although, as I have noted, his moral culpability is attenuated somewhat by the circumstances of his upbringing.

Sentences

- [89] Mr. Hartling, your counsel has said and done everything possible in advocating for the most lenient sentences the court could possibly impose, but I find those sentences would not be proportionate in this case. Having considered all of the principles, objectives, and factors in light of all of the authorities, I find the following sentences are proportionate for this particular offender and these particular offences:
- Count 1 - robbery with a firearm - six years' imprisonment;
 - Count 4 - uttering threats - one year imprisonment;
 - Count 5 - pointing a firearm - two years' imprisonment; and
 - Count 1 - possession of a firearm while prohibited - one year imprisonment.
- [90] Were it not for the mitigating factors in this case, including your background circumstances, these sentences would have been much longer.

- [91] I must now consider whether these individual sentences should be made consecutive or concurrent. I am satisfied that the offences on the multi-count Indictment ought to be served concurrently, but that a consecutive sentence on the possession while prohibited offence is, and I am here borrowing the words of Madam Justice Ker, "necessary to ensure the proper recognition of the underlying societal problems which precipitated the enactment of [s. 117.01] and the importance of ensuring that orders of the court are obeyed and respected. It also ensures the legal relevance of s. 117.01 is maintained": *R. v. Radjenovic*, 2011 BCSC 1225 at para. 164.
- [92] Overall, I am satisfied that a global sentence of seven years incarceration is a proportionate sentence. It is a global sentence that reflects the gravity of the offences while, in my view, does not exceed what is appropriate, given Mr. Hartling's moral blameworthiness in this case. I think it is a sentence that considers all aggravating and mitigating factors and is crafted to achieve the primary objectives of denunciation and deterrence, while not losing sight of Mr. Hartling's rehabilitation and the need for restraint. Although it is an individualized sentence, I think it also satisfies the principles of parity as reflected in the case authorities before me, and does not overall offend the totality principle. It does not exceed the overall culpability of this offender or result in the imposition of a disproportionate, harsh, or crushing sentence.
- [93] Mr. Hartling, I would ask you to please stand.
- [94] In respect of Indictment 104919-6, Count 1, I sentence you to a period of imprisonment of six years.
- [95] In respect of Count 4, I sentence you to a period of imprisonment of one year.
- [96] In respect of Count 5, I sentence you to a period of imprisonment of two years.
- [97] These sentences will all be concurrent to one another.
- [98] In respect of the single count on Indictment 105183-2, I sentence you to a period of one year imprisonment. This sentence will be consecutive to the sentences you are serving on the multi-count indictment.
- [99] Therefore, I find the appropriate sentence, in the absence of presentence custody, is seven years' imprisonment.
- [100] I will give you credit for pre-sentence custody on a 1.5 to 1 basis for an effective total of 768 days.
- [101] Therefore, your actual sentence from today's date is four years, 10 months and 27 days.

Ancillary Orders

1. Pursuant to s. 109(3) of the Code, you are prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for life;
2. Robbery is a primary designated offence within the meaning of s. 487.04 of the Code. As such, pursuant to s. 487.05(1) of the Code, I make an order authorizing the taking of a sample of bodily substance from you for the purpose of forensic DNA analysis and inclusion in the National DNA Data Bank;
3. Forfeiture of exhibits. With reference to Exhibit 2 filed in the sentencing hearing, which is the Kamloops City RCMP Major Exhibit Flowchart, by consent I order that, following the expiration of any appeal period, all exhibits on the list be forfeited to the Crown, with the exceptions of #s 21 and 23 on page 11, and #s 4, 5, and 7 on page 16. Those items are to be returned to their lawful owner within 120 days of today's date. If no one claims them within that period, those items too are forfeited to the Crown.

[102] All that remains then is to thank both counsel for their thoughtful submissions. Mr. Hartling, Ms. Scruton said absolutely everything that could have been said on your behalf. I do wish you well on your road to recovery.

[103] THE ACCUSED: Thank you very much.

[104] THE COURT: Okay, thank you.

"S.A. Donegan J."

DONEGAN J.

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