
CANADA / JUDGMENT

R. v. McKnight

2021 BCSC 2542

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 2542 R. v. McKnight

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. McKnight,

2021 BCSC 2542

Date: 20211203

Docket: 110080

Registry: Kamloops

Regina

v.

Reid McKnight

Before: The Honourable Madam Justice Ker

Oral Reasons for Sentence

Counsel for the Crown:

C. Balison

Counsel for the Accused:

J. Jensen

Place and Date of Trial/Hearing:

Kamloops, B.C.

December 3, 2021

Place and Date of Judgment:

Kamloops, B.C.

December 3, 2021

- [1] These Reasons for Sentence were delivered as oral reasons. They have since been edited for distribution.

Introduction

- [2] Twenty-five months ago, in the early morning hours of November 3, 2019, four young international students at Thompson Rivers University ("TRU"), were coming home from an evening out. The 2008 Dodge Charger that they were all in was travelling south on 1st Avenue. They had the right of way.
- [3] The accused before the Court, Reid McKnight, was driving west on Battle Street, a residential street with a stop sign at 1st Avenue. The speed limit for the area was 50 kilometres an hour. Mr. McKnight was driving his 2019 Ford Ranger pickup truck at an exceedingly excessive rate of speed, approximately 110 kilometres an hour, more than double the speed limit for the area. Mr. McKnight, to put it in the vernacular, blew the stop sign and "T-boned" the Dodge Charger. The collision Mr. McKnight caused by his driving had catastrophic consequences that have caused unfathomable grief. As a result of Mr. McKnight's dangerous driving, three young men, Daniel Okocha, David Adebawale, and Kelvin Adejo - all international students from Nigeria - were killed. Mr. McKnight fled the scene on foot. He was arrested later that Sunday morning at his home.
- [4] Mr. McKnight is before the court for sentencing having entered guilty pleas to one count of dangerous driving causing death contrary to s. 320.13(3) of the Criminal Code, R.S.C. 1985, c. C-46, [Code] and one count of failing to remain at the scene of the accident contrary to s. 320.16(3) of the Code. Each offence carries a maximum sentence of life imprisonment as provided by s. 320.21 of the Code. The maximum penalty for dangerous driving causing death recently increased from 14 years to life imprisonment, indicative of Parliament's view as to the grave and serious nature of such an offence.

Position of the Crown and the Defence

- [5] At this sentencing hearing, the Crown and the defence presented a joint submission on sentence; that is, they both recommended the same sentence be imposed in these circumstances: a global sentence of three years' imprisonment. I will address the principles of joint submissions later in these reasons for sentence.

Circumstances of the Offence

- [6] I have already described in brief overview the circumstances of the offences. The more detailed description of the offences is contained in the agreed statement of facts marked Exhibit 1 on this sentencing. Counsel for the Crown read the agreed statement of facts into the record. They are as follows:

FACTS

Pursuant to Section 655 of the Criminal Code of Canada, R.S.C., 1985, Chapter C-46 and amendments thereto, the following facts are hereby admitted for the purpose of dispensing with the proof thereof at trial:

Summary

1. On Sunday, November 3, 2019, at about 1:30 A.M., Reid McKnight caused a two-vehicle collision at the intersection of 1st Ave. and Battle St. in Kamloops, BC.
2. Mr. McKnight was driving a 2019 blue Ford Ranger pickup West on Battle St., where he went through a stop sign and "T-boned" a 2008 red Dodge Charger sedan South on 1st Ave. The red Dodge Charger contained four occupants.
3. The collision caused the death of three of the occupants in the Dodge Charger, namely Daniel Okocha, David Adebawale, and Kelvin Adjejo. A fourth passenger, Olujuwon Lawal was treated for minor injuries.
4. All four of the men were from Nigeria, in Kamloops attending Thompson Rivers University.

Leading up to Collision

5. Data from Mr. McKnight's vehicle listed his GPS locations and speeds around the City of Kamloops prior to, and moments before, the collision. He had been speeding on other streets leading up to the collision.

Collision at Battle St and 1st Avenue

6. The collision occurred where the speed limit was 50 km/h. The stop sign on Battle St. at 1st Ave was clear, visible, and posted.
7. In the 5 seconds before the impact of the collision, Mr. McKnight accelerated to a speed of 110 km/h. There was no braking recorded until 0.2 seconds before impact.
8. The Dodge Charger was travelling between 50 and 52 km/h, 0.1 seconds before impact.
9. The Dodge Charger had hit a BC Hydro pole after being hit by Mr. McKnight's pickup[.] It had catastrophic damage and it appeared an occupant had been ejected from the rear window.

10. Residents nearby, who were nurses by profession, heard the collision and were on scene within seconds to help. Two of the occupants had no vital signs when they arrived: Mr. Adebowale and Mr. Okocha.
11. Mr. Adebowale was a rear passenger in the vehicle. The collision ejected him from the vehicle, and he died of severe head trauma.
12. Mr. Okocha was the other rear passenger in the vehicle. He was pinned in the back seat and died of severe trauma to his head and upper body.
13. Mr. Adejo was the driver. At the scene he was unresponsive but did have vital signs. After one week in hospital, he died of his injuries, being a traumatic brain injury and severe internal injuries, from the collision.
14. Mr. Lawal was the front passenger in the vehicle and sustained minor injuries.

Leaving the Scene

15. Mr. McKnight immediately left the scene on foot and did not identify himself as the driver immediately after the collision. His truck sustained significant front end damage.
16. Several pieces of identification, including a credit card with his last name was found inside his vehicle along with a cellular phone.

Locating and Identifying Mr. McKnight

17. Later that morning an address was located for Mr. McKnight and he was arrested at his residence for Fail To Stop At Scene Of Accident Involving Bodily Harm or Death. He had injuries consistent with being in a motor vehicle collision and was transported to the hospital for medical treatment and later lodged in Kamloops RCMP cells after being medically cleared.
18. Mr. McKnight's DNA was located on the drivers' deployed airbag and interior drivers' door handle of the Blue Ford Ranger pickup.
19. Mr. McKnight was cooperative with police.

Impact of the Offence on the Families of the Victims

- [7] Two victim impact statements were filed as Exhibits 2 and 3. Crown counsel summarized them for the Court. I have had the benefit and sad duty of reviewing the victim impact statements. They were profoundly moving and heart-breaking to read. Rutendo Chibasa was Daniel Okocha's girlfriend. Her victim impact statement outlines in very measured fashion the cavernous sorrow and grief she experienced with Daniel's death. It haunts her to this day. She blames herself for not stopping Daniel from going out that night. She should not have to do this. She should not have to carry this burden with her. It was not her fault. She struggles with depression and anger.

- [8] Mary Adejo, the mother of Kelvin Adejo, also filed a profoundly moving victim impact statement. She has lost her only son. Her devastation and traumatization at the loss of her only son was compounded by an earlier grief, the death of her husband, almost exactly six years before the death of her son. Friends and family of Kelvin Adejo were unable to personally attend the sentence hearing, but joined from across the globe via MS Teams links. The pain and catastrophic loss for the family and friends of the three young men are fundamentally apparent.
- [9] The words of the victim impact statements that were reviewed were eloquent and heart-breaking. The devastation wrought by the horrendous nature of the facts of this case is palpable and profound. All dangerous driving causing death cases are incredibly tragic. This case is no exception. Words can never adequately capture how horrible the facts are in this case. The events are an incredibly shameful waste of life and promise. To say that unspeakable pain and sorrow have resulted from the events of this offence really does not adequately capture the gravity of it. Each young man is survived by many who mourn the loss of their lives each and every day.
- [10] I have taken the victim impact statements into account in determining the sentence to be imposed in this case. The tragedy of this case is that the lives of three promising young men who had come to this country to study at university in Kamloops have been needlessly taken by Mr. McKnight's exceedingly dangerous driving. These three young men, Daniel, David, and Kelvin, were not just students--they were brothers, sons, fiancés, boyfriends, family, and friends of numerous other individuals. The consequences of their needless deaths have had a profound and devastating impact on countless lives and, no doubt, in the community of their friends at TRU and elsewhere.
- [11] In *R. v. Sater*, 2014 BCSC 1036, in sentencing Mr. Sater for dangerous driving causing death, impaired driving causing death, and failure to remain at the scene of an accident, Justice Williams eloquently captured the dilemma that exists in sentencing for offences like this one. I paraphrase and adopt what he said in *Sater* at paras. 43-46:
- [43] In cases like this, those who have been left with the awful pain of such loss could understandably claim that anything less than the maximum sentence is inadequate. However, I say with great respect, such a view does not accord with the proper concept of the criminal sentencing process. That process is not a means of compensating such losses; it is not a mechanism of exacting vengeance. . .
- No matter what sentence this Court imposes, the lives of these three young men will not be restored:
- [44] In a case as tragic and horrific as this, where such enormous pain and loss and hurt has resulted, a pronouncement of this Court's sentence does not really make anything better. The loss is as great as ever. . .

No matter the sentence imposed, it will provide "no balm to ease the pain and hurt that many are suffering": para. 44. And:

- [45] This case is a sad example of the harm and pain and destruction that life sometimes deals us. When we walk out of this courtroom today, the principal artefact left with all will be sorrow and sadness and waste.
- [46] Hopefully, in time, the wounds can heal somewhat.
- [12] I also observe that while it may seem incongruous to say this, the impact of the damage extends to Mr. McKnight's family. They, too, are among the collateral damage and victims of this offence. Their letters in Exhibit 4 establish this unequivocally. Quite simply, there are no winners in a case like this.

Circumstances of the Offender

- [13] Mr. McKnight is 33 years old. He has no criminal record. He was born in Winnipeg, Manitoba and raised near Winnipeg. At age 17, Mr. McKnight decided to enlist in the military. At age 18, he was accepted and moved to Edmonton to begin his training with the Canadian military. He has served in the military since that time, save for a brief hiatus between 2014 and 2017 when he returned home to assist and support his family in the palliative care of his grandmother. The letters of reference filed on his behalf from his mother and sisters attest to his life of service to others--support to his family and community, and dedication to the service of his country. He has served proudly and courageously with Canada's military as a member of the 1st Battalion of the Princess Patricia's Light Infantry. He served a tour of duty of about one year in Afghanistan in counter-insurgency. He has also served domestically in humanitarian operations like the flooding catastrophes experienced in Manitoba in 2009 and 2010.
- [14] The letters from the chaplain with the Rocky Mountain Rangers and from his counsellor also attest to Mr. McKnight's strong core values, his strong work ethic, his acceptance of responsibility for this tragic event, and his utter remorse for what he has done. I accept that Mr. McKnight is genuinely remorseful and horrified by what he has done to the family and friends of the deceased, his own family, and his friends and colleagues in the Canadian military. I accept what his counsel has said--that his driving and leaving the scene are the antithesis of who Mr. McKnight is and where his core values lie. He will be dealing with this for the rest of his life.

General Principles of Sentencing and the Governing Legal Framework

- [15] I turn now to the general principles of sentencing and the governing legal framework. The principles of sentencing have evolved in the Canadian common law and are now largely codified in Part XXIII of the Code. Section 718 of the Code provides that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society. As set out in s. 718, the objectives of sentencing include the

denunciation of unlawful conduct, deterrence of the offender and others from committing other offences, separation of the offender from society where necessary, rehabilitation of the offender, reparation for harm done, and promotion of a sense of responsibility in the offender, including acknowledgment of the harm done.

- [16] Section 718.1 of the Code articulates the overall animating principle of sentencing, namely, that the sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [17] Section 718.2 of the Code sets out a number of specific principles that a court must consider when imposing sentence. These include:
- (a) the principle that a sentence should be increased or reduced to take account of any mitigating or aggravating circumstances the court finds to exist in respect of the matter before it;
 - (b) the parity principle, which requires that a sentence should be similar to sentences imposed on similar offenders for similar offences in similar circumstances;
 - (c) the totality principle, which requires that where consecutive sentences are imposed, the total sentence should not be unduly long or harsh;
 - (d) the restraint principle, which requires that an offender should not be deprived of liberty if a less restrictive sanction is appropriate; and
 - (e) the principle that all available sanctions other than imprisonment should be considered if they are reasonable and consistent with the harm done with particular attention to the circumstances of Aboriginal offenders.
- [18] Section 718.2(a) of the Code enumerates a number of statutory aggravating and mitigating circumstances that will increase or decrease the length of a sentence to be imposed. None of those apply in this case. However, s. 320.22(a) of the Code makes it a statutory aggravating factor that the commission of the offence involves the death of more than one person.
- [19] In *R. v. Morgan*, 2020 BCSC 1397, Justice Giaschi succinctly summarized the principles and objectives of sentencing in cases of dangerous driving causing death:

Summary of Principles

- [66] The provisions of the Criminal Code, and the cases I was referred to, make clear that for dangerous driving offences, general deterrence and denunciation are important objectives in sentencing. Retribution, but not vengeance, is also an important objective.
- [67] However, I keep in mind that sentencing is a balancing process and that the sentence imposed must be proportional, which is to say it must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

- [68] The sentences imposed for dangerous driving vary widely, depending on the circumstances of the offence, the moral culpability of the offender, and the aggravating and mitigating factors.
- [69] Although there is some dicta in the case law that suggests the range of sentences for dangerous driving has been increasing and now stands at 18 months to six years, based on the cases I have been referred to, the range is from 90 days served intermittently, as in Hecimovic, to four years, as in Zinter.
- [70] The imposition of a short-duration term of imprisonment is appropriate where the dangerous driving is a momentary lapse or of short duration. Lengthier terms of imprisonment are imposed where there is a serious, wilful, or reckless disregard for the lives and safety of others over a more prolonged period of time. A lengthier term of imprisonment is also imposed where the offender has used drugs or consumed alcohol.
- [71] The specific factors to address in relation to a dangerous driving offence include:
- The age of the offender;
 - The duration of the dangerous driving;
 - Other circumstances of the accident or collision;
 - The degree of recklessness inherent in the driving and the extent to which it deviates from the expected norm;
 - The nature of the roadway, the driving conditions, and the amount of traffic, both vehicular and pedestrian; and
 - The existence or absence of a criminal record.
- [20] These principles inform my analysis as to the appropriate sentence to impose in this case. Justice Giaschi also set out in Morgan the range of sentence typically available for this type of offence. It ranges from a low of 18 months' imprisonment to six years' imprisonment. The proposed sentence is in the lower middle end of the range. It is not at the bottom of the range, nor is it below it.

Joint Submissions

- [21] As I have said, the Crown and defence have made a joint submission that Mr. McKnight be sentenced to three years' imprisonment. As this is a joint submission, the principles enumerated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, establish the analytical framework that is applied in determining whether a sentencing judge will accede to a joint submission. A joint submission is when the Crown and defence agree to recommend a particular sentence to the judge in exchange for the accused waiving their right to a trial by entering a plea of guilty to an offence. Both sides carefully weigh the risks of taking the charges to trial, as well as a host of other factors, and determine that the

certainty of resolution of a case is preferred. As Justice Moldaver (writing for the Court) noted in *Anthony-Cook*:

- [1] Resolution discussions between Crown and defence are not only commonplace in the criminal justice system, they are essential. . .
- [22] It is an accepted and entirely desirable practice for counsel to agree to a joint submission on a sentence in exchange for a guilty plea. Agreements of this nature are vitally important to the wellbeing of our criminal justice system as well as our justice system at large. They bring certainty to the proceedings for both sides. They ensure a conviction for the Crown. They eliminate the uncertainty and risk of proceeding to trial and they minimize the stress and numerous costs associated with taking matters to trial. Joint submissions also play a vital role in contributing to the smooth and efficient administration of justice. Guilty pleas on a joint submission assist in preserving the all too scarce resources of the justice system and thereby permit those resources to be deployed elsewhere to be used for other equally pressing matters: *Anthony-Cook* at paras. 1, 25, and 35-40. Indeed, as Moldaver J. noted in *Anthony-Cook* at para. 40, "our justice system would be brought to its knees, and eventually collapse under its own weight," without joint submissions.
- [23] No doubt some wish that I would override the proposed joint submission and impose a harsher sentence in this case. While such wishes are understandable in the wake of these tragic offences and, to a degree, are informative of what a segment of the public perceives as "the right thing to do", they are not what informs how the propriety of joint submissions are assessed. Judges are afforded considerable discretion when it comes to imposing sentences, but such discretion is not unfettered. Exercising that discretion does not mean a judge is free to do whatever she wants regardless of what counsel have placed before the court. Judicial discretion in imposing a sentence is informed by the consideration of a number of principles outlined both in the Code and the caselaw that interprets the provisions of the Code. The caselaw interpreting the governing sentencing principles provides a framework and guidance on how the principles must be considered when imposing a sentence in a criminal case.
- [24] Sentencing is a highly individualized and delicate balancing process that considers numerous competing principles, objectives, and factors, described by many jurists as one of the most difficult facets of the criminal law: *R. v. Suter*, 2018 SCC 34 at para. 4; *R. v. Lacasse*, 2015 SCC 64 at para. 1. More recently in *R. v. Parranto*, 2021 SCC 46 at para. 9 the majority of the Supreme Court of Canada reiterated that sentencing is "[m]ore of an art than a science, . . . [requiring] judges to consider and balance a multiplicity of factors."
- [25] When imposing a sentence in a criminal case, judges must exercise their discretion judicially. This means they must apply the governing principles set out by the Code and the caselaw, assess all the circumstances, and weigh and balance a host of competing principles and objectives, as well as consider the aggravating and mitigating factors, the range of sentence established in the case authorities, the moral blameworthiness of the offender, and

any other relevant circumstances. Informed by those various factors and considerations, the sentencing judge then determines the just and appropriate sentence for the case, bearing in mind the overarching principle that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender": s. 718.1 of the Code; *R. v. Nasogaluak*, 2010 SCC 6 at paras. 43-44. The rule of law requires nothing less than operating within these parameters of principle and applying the caselaw guidelines.

- [26] Given the critical importance of joint submissions to the proper functioning of the justice system, counsel must have a high degree of confidence that they will be accepted: *Anthony-Cook* at para. 41. In light of the benefits of joint submissions and the need for certainty, a sentencing judge's ability to refuse to follow a joint submission is very circumscribed.
- [27] In the decision of *Anthony-Cook*, the Supreme Court of Canada directed that sentencing judges should only depart from joint submissions where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. As Moldaver J. wrote for the Court:
- [34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold -- and for good reason, as I shall explain.

[Emphasis added.]

- [28] Here, the parties have jointly recommended a sentence for Mr. McKnight. As explained in *R. v. Manca*, 2019 BCCA 280 at para. 29:
- [29] The principles governing joint submissions are well established. Where the Crown and defence agree to recommend a particular sentence in exchange for a guilty plea, the sentencing judge may only depart from the recommendation where the "proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest" (citations omitted).
- [29] Thus, a sentencing judge cannot simply do what she wants or accede to public sentiment. She must operate within fairly circumscribed parameters. A joint submission - arrived at through negotiations between senior and responsible counsel, who are thoroughly familiar with all the issues in the case and have considered the implications of the guilty plea and the impact of the sentencing, including its impact on the repute of the administration of justice - is entitled to considerable deference and is not to be lightly rejected: *R. v. Russell*, 2013 BCSC 697 at para. 4.

Relevant Authorities from the Jurisprudence

- [30] In support of the joint submission, counsel provided the Court with two cases. I will not detail the facts of those cases for the purpose of my reasons for sentence, or canvass the personal antecedents of the offenders that informed the length of the sentences imposed in those cases. Suffice to say, I have reviewed the authorities provided and noted the similarities and differences between those cases and the one before me. The two cases were Sater and Morgan.
- [31] In Sater, the Court imposed a global sentence of six years for two counts of impaired driving causing death and one count of impaired driving causing bodily harm, as well as similar counts for dangerous driving causing death and bodily harm. In that case, the offender had taken the matter to trial.
- [32] Morgan was a case where the offender was sentenced to two-years-less-a-day imprisonment and three years' probation for one count of dangerous driving causing death. The victim in that case was his wife.

Analysis

Proportionality and Moral Blameworthiness

- [33] As mentioned previously, the overall animating principle of sentencing is that the sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In terms of gravity of the offence, the offences that Mr. McKnight has pled guilty to are exceedingly serious offences and the manner in which the offences occurred, in so far as the objectively dangerous nature of his risk-taking and his driving is concerned, place the offence at the upper end of the spectrum of seriousness. They are gravely serious offences.
- [34] Mr. McKnight's personal circumstances inform his degree of responsibility. However, the degree of the responsibility of the offender also requires a consideration of such factors as the intentional risk-taking of the offender, the harm caused by the conduct, and the normative character of the conduct. Under this head of the analysis, Mr. McKnight made a deliberate decision to drive in the manner he did on November 3, 2019. This was not a momentary lapse in driving as he approached the intersection. The agreed statement of facts establishes a pattern of driving at excessive speed elsewhere in the city that night. Insofar as the moments before the collision are concerned, Mr. McKnight was travelling well in excess of the posted speed limit at that time. He failed to comply with a clearly visible stop sign. Five seconds before the impact, he accelerated to 110 kilometres an hour and did not apply the brakes until 0.2 seconds before hitting the Dodge Charger. Obviously, Mr. McKnight knew what had happened and, in a general way, no doubt realized the harm he had done. Nonetheless, he left the scene.

- [35] In my view, Mr. McKnight's degree of responsibility in this offence--that is, his moral blameworthiness or moral culpability--is extremely high. The risks he took were significant. The harm he has occasioned was enormous. To paraphrase the observations of Williams J. in *Sater* at para. 65, his behaviour was strikingly at odds with what could be described as normative or reasonable conduct. It was also strikingly at odds with who Mr. McKnight, in fact, is in terms of his character.
- [36] The sentencing calculus requires an assessment of the aggravating and mitigating circumstances. Section 718.2(a) of the Code directs that when imposing a sentence, the court shall take into consideration the aggravating and mitigating circumstances that relate both to the offences and the offender. Counsel have fairly summarized the aggravating and mitigating factors in this case. I find the aggravating factors in respect of these offences to include:
- i. that Mr. McKnight was driving at an excessive rate of speed throughout the evening, and
 - ii. the offences involved more than one death.
- [37] I find the following to be mitigating factors in this case:
- i. Mr. McKnight's guilty plea, which is indicative of his acceptance of responsibility for his actions;
 - ii. Mr. McKnight's sincere, profound expression of remorse to his family, his chaplain, his counsellor, and to the Court, which is also indicative of his acceptance of responsibility as well as his accountability for this offence and his rehabilitative potential;
 - iii. Mr. McKnight's otherwise unblemished record, with no criminal record; and
 - iv. His years of service to his country in the military.
- [38] Should the Court accede to the joint submission, it falls to this Court to sentence Mr. McKnight for these offences. The proposed sentence that comes before the Court by way of a joint submission is that Mr. McKnight should be sentenced to three years' imprisonment with a sentence of two years' imprisonment on Count 1, for dangerous driving causing death, and a sentence of one-year imprisonment on Count 2, for failing to stop at the scene of the accident. The sentence on Count 2 is to be served consecutive to Count 1. Accordingly, the issue the Court must address in this case is whether it ought to accede to the joint submission and impose the proposed sentence of three years' imprisonment.
- [39] As noted earlier in these reasons, the Supreme Court of Canada's decision in *Anthony-Cook* provides clear direction to sentencing judges on the law as to how joint submissions are to be viewed; the test to be applied if the judge considers departing from the joint submission; and, if the judge decides that the joint submission cannot be endorsed, the process to be followed before rejecting the joint submission. The decision in *Anthony-Cook* establishes a high threshold for rejecting a joint submission, namely: whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to

the public interest. As summarized in Anthony-Cook at para. 34, determining that the high threshold for rejecting a joint submission has been met signifies the court is satisfied that the submission is:

- [34] . . . so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. . .
- [40] If a joint submission appears to be unduly lenient or unduly harsh, the sentencing judge is not obliged to accept it: Anthony-Cook at para. 25. However, as sentencing judges are only rarely permitted to depart from joint submissions, there is a corollary obligation upon counsel to ensure that they amply justify their positions on the facts of the case as presented in open court.
- [41] In light of the potentially contentious nature of a joint submission, at paras. 51-53 and 58-60 the decision in Anthony-Cook provides guidance for sentencing judges where the joint submission raises concern:
- i. Sentencing judges should approach the joint submission on an "as-is" basis," and the public interest test applies whether the judge is considering varying the proposed sentence or adding something to it: Anthony-Cook at para. 51;
 - ii. Sentencing judges should apply the public interest test when they are considering 'jumping' or 'undercutting' a joint submission: Anthony-Cook at para. 52;
 - iii. The greater the benefits obtained by the Crown, and the more concessions made by the accused, the more likely it is that the sentencing judge should accept the joint submission, even though it may appear unduly lenient: Anthony-Cook at para. 53;
 - iv. If the sentencing judge is not satisfied with the sentence proposed, the judge should notify counsel of her concerns and invite further submissions, including the possibility of allowing the accused to withdraw their guilty plea: Anthony-Cook at para. 58;
 - v. If the sentencing judge's concerns about the joint submission are not alleviated, the judge may allow the accused to apply to withdraw [their] guilty plea: Anthony-Cook at para. 59; and
 - vi. Finally, sentencing judges should provide clear and cogent reasons for departing from the joint submission: Anthony-Cook at para. 60.
- [42] Bearing those principles in mind, I note the following. First, I am satisfied that the cases that counsel have provided in support of the joint submission, which I have reviewed, delineate that the proposed sentence is properly within the accepted range of sentence for these offences.

- [43] Second, and of critical importance here, is the fact that the joint submission as to sentence in this case clearly represents an agreement negotiated and reached by extremely competent, senior, and experienced counsel who have considered the effect of the joint submission from all perspectives, including the impact it will have on the reputation of the administration of justice: Russell at para. 4. Counsel have outlined in brief compass the risks that they weighed in their discussions including the fact of triable issues with respect to several pieces of evidence. Moreover, Mr. McKnight's guilty plea has saved multiple weeks of court time in both the Provincial Court and this Court. Had the matter gone to trial, there would have been in excess of 100 witnesses called. This joint submission as to the sentence to be imposed represents a very carefully calibrated outcome in a case that seemingly had enormous risks for both sides.
- [44] Third, in my view, the recommended sentence appropriately balances the aggravating and mitigating factors in this case and reasonably seeks to ensure that the sentence imposed honours the overarching principle of sentencing: that the sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [45] Fourth, the proposed sentence properly reflects the principles of sentencing applicable to these offences with a primary emphasis on deterrence and denunciation as well as retribution which, I point out, is not vengeance. Rather, it is, as then Chief Justice Lamer noted in *R. v. M.*(C.A.), [1996] 1 S.C.R. 500:
- [80] However, the meaning of retribution is deserving of some clarification.

The legitimacy of retribution as a principle of sentencing has often been questioned as a result of its unfortunate association with "vengeance" in common parlance. See, e.g., *R. v. Hinch and Salanski*, supra, at pp. 43-44; *R. v. Calder* (1956), 1956 CanLII 467 (MB CA), 114 C.C.C. 155 (Man. C.A.), at p. 161. But it should be clear from my foregoing discussion that retribution bears little relation to vengeance, and I attribute much of the criticism of retribution as a principle to this confusion. As both academic and judicial commentators have noted, vengeance has no role to play in a civilized system of sentencing. See Ruby, *Sentencing*, supra, at p. 13. Vengeance, as I understand it, represents an uncalibrated act of harm upon another, frequently motivated by emotion and anger, as a reprisal for harm inflicted upon oneself by that person. Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more. As R. Cross has noted in *The English Sentencing System* (2nd ed. 1975), at p. 121: "The retributivist insists that the punishment must not be disproportionate to the offender's deserts."

[Emphasis in original.]

- [46] Mr. McKnight's rehabilitation is not insignificant. He was dedicated to his career. He served his country honourably for approximately 16 years. He has significant support in the community from his family, chaplain, counsellors, and, undoubtedly, many others.
- [47] Applying the test articulated in *Anthony-Cook*, I am not of the view that to impose the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. Further, I do not find that the sentence put forward in this joint submission is so unhinged from the circumstances of the offences and the offender that its acceptance would lead a reasonable and informed person aware of all the relevant circumstances, including certainty and resolution discussions, to believe that the proper functioning of the justice system had broken down.
- [48] I am of the view that such a reasonable and informed person would regard the present proposed disposition as one that reflects a properly functioning justice system, founded on the fundamental principles of proof beyond a reasonable doubt and the presumption of innocence, that takes into account the tough decisions required to be made by both the Crown and counsel for the accused in difficult situations such as the present one. Indeed, as the Ontario Court of Appeal noted in *R. v. Fuller*, 2020 ONCA 115:
- [16] A joint position on sentence following a guilty plea should only be rejected in rare cases because such positions are "vitally important to the well-being of our criminal justice system, as well as our justice system at large" (citation omitted).

The case at bar is a perfect example of that observation.

- [49] THE COURT: Therefore, Mr. McKnight, would you please stand up? Thank you.
- [50] For the offence of dangerous driving causing death on Count 1, I sentence Mr. McKnight to two years' imprisonment. On Count 2, failure to remain at the scene of the accident, I sentence Mr. McKnight to one-year imprisonment. The sentence on Count 2 will be served consecutive to Count 1.
- [51] I am now going to address the ancillary orders sought by the Crown. The defence took no position on the appropriateness of the DNA order.
- [52] The first order is the weapons prohibition under s. 109(2) of the Code. The weapons prohibition is mandatory. So pursuant to s. 109(2) of the Code, Mr. McKnight is prohibited from possessing: (a) any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition, and explosive substance for a period of ten years from his release; and (b) any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- [53] Secondly, the Crown seeks a DNA order pursuant to s. 487.051(3)(b) of the Code. Failure to stop after an accident is deemed a secondary designated offence. The order in the case of a secondary designated offence is discretionary. When an application is made as here, the court is obliged to consider a number of factors and give reasons for its decision.

- [54] In *R. v. Awasis*, 2009 BCCA 134, the Court of Appeal examined the issue in detail. Two principles emerged from that discussion. The first is that the actual purposes of taking the sample are multifaceted: *Awasis* at paras. 40 and 52. The second is that an offender post-conviction has a lesser expectation of privacy: *Awasis* at paras. 42-43. With that authority in mind and in view of the circumstances of this case, including Mr. McKnight's lack of opposition to the order, after considering the factors set out in s. 487.051(3) of the Code, I am satisfied that it is in the best interests of the administration of justice to make an order in Form 5.04 authorizing the taking of samples of bodily substances from Mr. McKnight for registration in the DNA national databank.
- [55] The DNA order attaches to Count 2 and the firearms prohibition order attaches to Count 1.
- [56] The third ancillary order is a driving prohibition. Pursuant to s. 320.24(4) of the Code, Mr. McKnight is prohibited from operating a motor vehicle on any street, road, highway, or other public place anywhere in Canada during the entire period to which he is sentenced to imprisonment and for three years thereafter.
- [57] Finally, as Mr. McKnight is subject to a period of imprisonment for greater than two years, pursuant to s. 743.2 of the Code, I order that a copy of these reasons for sentence as well as a copy of the exhibits, one through four, from the sentencing hearing be forwarded to the Correctional Services of Canada.
- [58] THE COURT: You can have a seat, Mr. McKnight.
- [59] THE COURT: Mr. Jensen, are you seeking any recommendation as to placement? I know it is not binding, but I can make one.
- [60] CNSL J. JENSEN: No, I am not.
- [61] THE COURT: Okay. Mr. Balison, Indictment 110082?
- [62] CNSL C. BALISON: Crown directs a stay of proceedings.
- [63] THE COURT: Thank you. Before we adjourn, I just have a couple more things to say. Oh yes?
- [64] CNSL C. BALISON: There is one additional stay to be directed by the Crown and that is on the dash two indictment --
- [65] THE COURT: Two indictment, thank you.
- [66] CNSL C. BALISON: -- of 110080.
- [67] THE COURT: Thank you.
- [68] THE CLERK: Sorry, Madam Justice, the victim surcharges?
- [69] THE COURT: Pardon?
- [70] THE CLERK: The victim surcharge.

[71] THE COURT: The victim surcharge?

[72] CNSL C. BALISON: We have no submissions and it should be automatic.

[73] THE COURT: All right. So it is \$200 on each count.

[74] CNSL J. JENSEN: That is correct.

[75] CNSL C. BALISON: That is my understanding, yes.

[76] THE COURT: \$400 payable forthwith or in default two days concurrent to the sentence Mr. McKnight is to serve.

"Ker J."

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