
CANADA / JUDGMENT

R. v. Thomas

2022 BCSC 2279

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 2279 R. v. Thomas

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Thomas,

2022 BCSC 2279

Date: 20221207

Docket: 178419-2

Registry: Victoria

Rex

v.

Anthony Leslie Jonathon Thomas

Before: The Honourable Mr. Justice B. D. MacKenzie

Oral Reasons for Sentence

Counsel for the Crown:

T. P. Stokes

Counsel for the Accused:

P. A. Blokmanis

Place and Date of Trial/Hearing:

Victoria, B.C.

December 6 and 7, 2022

Place and Date of Judgment:

Victoria, B.C.

December 7, 2022

- [1] THE COURT: In March of this year, after a relatively lengthy trial, I found Mr. Thomas guilty of the following offences: impaired driving causing death; impaired driving causing bodily harm; on Counts 3 and 4, dangerous driving causing death, dangerous driving causing bodily harm respectively; and lastly on Counts 5 and 6, within two hours after causing an accident while operating a motor vehicle, having a detectable level of methamphetamine in his blood.
- [2] At the conclusion of that judgment, counsel at that time agreed that, given the guilty verdicts on the first four counts, conditional stays should be entered on Counts 5 and 6, pursuant to the Kienapple principles.
- [3] Mr. Thomas is before the court today for sentencing.
- [4] As Mr. Thomas is a 30-year-old Indigenous person, a comprehensive Gladue report along with a detailed presentence report have been prepared to assist the court in crafting a fit and proper sentence in this tragic case. Both reports are contained in the Crown book of documents and marked Exhibit 1.
- [5] The facts surrounding this particular set of offences and my reasons for judgment are reported at R. v. Thomas, 2022 BCSC 698. They are fairly lengthy and should be referenced in conjunction with today's proceeding. It is, however, important to provide a brief overview of the circumstances that led to the tragic and devastating incident, in order to put the sentence I impose today in proper perspective.
- [6] On the day in question, August 27, 2018, Mr. Thomas was operating his motor vehicle. He was involved in a modest or minor motor vehicle incident a few moments before he found himself driving a new SUV in the southbound lane on Central Saanich Road. At the same time, Kim Ward and her sister Tracy had just left their mother's residence to take their dogs for a walk. While they were walking along the opposite side of the road heading south, Mr. Thomas's vehicle suddenly crossed the centreline, proceeded diagonally across the northbound lane at a relatively high rate of speed, according to the vehicle's data recorder, and then onto the far shoulder where Kim and Tracy Ward were walking.
- [7] One of the eyewitnesses, Lucas Underwood, was walking his dog along the shoulder some distance behind the Ward sisters. He testified he saw the persons he described as "the sisters" walking in front of him. He then observed Mr. Thomas's Jeep go "zooming" past him, going "pretty fast".

- [8] I pause here to note that other witnesses who were driving behind Mr. Thomas prior to the collision noted his speed as not being, in their opinion, excessive, but be that as it may, it is clear from the recording device that it was not an insignificant rate of speed.
- [9] In any event, Mr. Underwood heard the sound of impact and saw one of the women airborne and eventually coming to rest in the middle of the road. He observed the other woman in a shallow ditch along the shoulder of the northbound lane. This was Kim Ward. Witnesses checked for a pulse and found none. Ms. Ward had died on impact.
- [10] Within minutes, witnesses and first responders attended to Tracy Ward. She was alive, but was clearly severely injured. The injuries she suffered are permanent and life changing. According to the presentence report, Ms. Ward was in the hospital for a year receiving extensive medical treatment, including brain surgery. According to Ms. Ward's mother, Ellen, Tracy has "no use of one side of her body, severe cognitive impairment, and is in receipt of intensive physical and speech therapy." All of this with a view to try and improve her greatly diminished quality of life. Tragically, it is clear she is a shell of her former self and, notwithstanding the efforts of many professionals and dedicated therapists, as Ellen Ward says, "She is never going to be Tracy."
- [11] In a poignant victim impact statement which was read by Ms. Ward in court today, she described the profound grief that she has been suffering since the day in question and that will be with her for her lifetime. It was heartbreaking to hear the devastation and loss that she has suffered as a result of this incident.
- [12] At the scene, first responders and witnesses dealt with Mr. Thomas. They described him as being very emotional, "out of it", and "stunned" and in shock. Police eventually arrived and Mr. Thomas was taken by ambulance to Victoria General Hospital.
- [13] The police attended there. Constable Craig was the officer that was with Mr. Thomas at the hospital. She was with him after he was assessed by medical personnel in the trauma room. It was clear Mr. Thomas was not suffering from physical injuries and not in need of any medical treatment.
- [14] Constable Craig dealt with Mr. Thomas in the interview room. She testified that, much like Sergeant Brailey at the scene, she was unable to ascertain any impairment on the part of Mr. Thomas at that particular point in time.
- [15] Given the lack of physical symptoms of impairment, the Crown relied on the evidence of Kimberly Young, a forensic toxicologist employed by the RCMP, in support of its submission that Mr. Thomas should be found criminally responsible for the death of Kim Ward and the bodily harm inflicted upon Tracy Ward.

- [16] In this regard, Ms. Young referred to the blood samples provided by Mr. Thomas about an hour after the fatal collision, whilst at the hospital. These samples showed the presence in Mr. Thomas's blood of 297 nanograms of methamphetamine, 39 nanograms of amphetamine, and 14 nanograms of alprazolam.
- [17] In my reasons for judgment, I summarized Ms. Young's testimony as follows:
- [47] ... methamphetamine as an illicit central nervous system stimulant that initially provides "a rapid pleasurable rush", which can increase alertness, energy, and self-confidence, "a good feeling", but this "euphoria" will eventually result in a "crash phase", a condition which Ms. Young explained is "highly associated with drowsiness". She described the crash phase as "an overwhelming sense of being tired", overwhelming sedation which could affect one's ability to operate a [motor] vehicle and produce inattentive driving, such as an inability to stay within the proper lane of travel or the correct side of the road. She testified it can also cause confusion, a symptom noted by a few of the first responders.
- [48] Ms. Young agreed that 297 nanograms of methamphetamine in a person's blood is a significant amount and would suggest a person would have had to take a relatively high dose at some point in time. Amphetamine is a by-product of methamphetamine and can produce both the stimulating effects and the eventual sedative or crash stage.
- [49] In Ms. Young's February 2019 report, she writes that during a methamphetamine crash phase "the user becomes extremely fatigued and may precipitously fall asleep."
- [50] Alprazolam, on the other hand, is a central nervous system depressant in the benzodiazepine family which has well-known side effects of drowsiness, a decrease in motor skills, and confusion. Its brand name is Xanax, an antianxiety drug. It is similar to flubromazolam, two pills of which Mr. Thomas had on his person at the scene which, by his own admission, he handed off to someone before going to the hospital. ...
- [18] In cross-examination, Ms. Young agreed that the amount of alprazolam in Mr. Thomas's blood was relatively modest with 40 nanograms being the standard therapeutic dose, but she added that, as she noted in her report, "The effects of alprazolam are expected to be additive with the effects of a central nervous stimulant in the crash phase."
- [19] Ms. Young was the only expert witness called at the trial. As a result of her evidence, in combination with the totality of the remaining evidence, I concluded that the Crown had proven beyond a reasonable doubt that Mr. Thomas's ability to operate a motor vehicle was impaired by those drugs and, as I said at the beginning of this judgment, found him guilty on Counts 1, 2, 3, and 4.
- [20] Given these tragic circumstances and the guilty verdicts, the duty of the court today is to craft a fit and proper sentence that properly reflects all of the surrounding circumstances regarding the offence, the offender Mr. Thomas, the victims, and the community at large.

[21] The purpose and principles of sentencing have now been codified in ss. 718, 718.1, and 718.2 of the Criminal Code. I am cognizant of all of those particular provisions, but I will quote the fundamental principle of sentencing outlined in s. 718.1, which is:

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[22] 718.2 also sets out considerations that the court must refer to when imposing an appropriate disposition. In 718.2(b), the relevant factor is:

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

[23] Especially important with respect to today's proceeding is subsection (e) of 718.2, which states:

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances . . . should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[24] In the present case, as Mr. Thomas is a young Indigenous individual, the Supreme Court of Canada and Parliament, as I have just referenced, have clearly mandated that the court must take into account "the unique circumstances of the offender as an aboriginal person. Sentencing must proceed with sensitivity to and understanding of the difficulties aboriginal people have faced with both the criminal justice system and society at large": see para. 81 in Gladue.

[25] Given Mr. Thomas's Indigenous status, it is important to recognize the following direction from the Supreme Court of Gladue at para. 36. The court states:

[36] Section 718.2(e) directs a court, in imposing a sentence, to consider all available sanctions other than imprisonment that are reasonable in the circumstances for all offenders, "with particular attention to the circumstances of aboriginal offenders". The broad role of the provision is clear. As a general principle, s. 718.2(e) applies to all offenders, and states that imprisonment should be the penal sanction of last resort. Prison is to be used only where no other sanction or combination of sanctions is appropriate to the offence and the offender.

[26] I pause here to note that both learned defence counsel and Crown counsel acknowledge that, given the totality of the circumstances, a custodial disposition is necessary. But the court goes on to state that it is important for the court, when sentencing any individual offender, to have particular consideration given to the systematic racism and effects of colonization that have been foisted upon Indigenous persons in this country for decades. In that regard, the court has made it clear that in some circumstances, this should be considered a mitigating factor and might result in a disposition that might not otherwise be appropriate for non-Indigenous offenders.

- [27] However, at para. 78 in Gladue, the court had this to say:
- [78] In describing the effect of s. 718.2(e) in this way, we do not mean to suggest that, as a general practice, aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice, and less weight to goals such as deterrence, denunciation, and separation. It is unreasonable to assume that aboriginal peoples themselves do not believe in the importance of these latter goals, and even if they do not, that such goals must not predominate in appropriate cases. Clearly there are some serious offences and some offenders for which and for whom separation, denunciation, and deterrence are fundamentally relevant.
- [28] The court went on to state at the next paragraph the following:
- [79] Yet, even where an offence is considered serious, the length of the term of imprisonment must be considered. In some circumstances the length of the sentence of an aboriginal offender may be less and in others the same as that of any other offender. ...
- [29] Then finally 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? ...
- [Emphasis in original]
- [30] Some years later, the Supreme Court of Canada in Ipeelee revisited these principles that were enunciated in Gladue and expressed some concern with the effectiveness of s. 718.2(e) in sentencing decisions, but generally accepted and acknowledged the statements contained in Gladue.
- [31] At para. 72, the court stated the following:
- [72] ... The methodology set out by this Court in Gladue is designed to focus on those unique circumstances of an Aboriginal offender which could reasonably and justifiably impact on the sentence imposed. Gladue directs sentencing judges to consider: (1) the unique systemic and background factors which may have played a part in bringing the particular Aboriginal offender before the courts ...
- [32] At the same time, at para. 75, the Supreme Court of Canada reiterated that that particular provision does not create "a race-based discount on sentencing." It states that:
- [75] ... The provision does not ask courts to remedy the overrepresentation of Aboriginal people in prisons by artificially reducing incarceration rates. Rather, sentencing judges are required to pay particular attention to the circumstances of Aboriginal offenders in order to endeavour to achieve a truly fit and proper sentence in any particular case. This has been, and continues to be, the fundamental duty of a sentencing judge. ...

- [33] These particular principles outlined in Ipeelee and Gladue were recently commented upon by the Ontario Court of Appeal in Altman, a 2018 [sic - 2019] decision which again acknowledges the necessity to take into consideration the background and history of Indigenous persons in this particular situation; that is, before the courts facing criminal charges.
- [34] Being guided by these principles and directions, applying them to the particular circumstances in this case and the victims, and Mr. Thomas's personal circumstances, the question is what is a fit and just sentence that properly reflects all of the relevant fundamental principles of sentencing?
- [35] As I have alluded to, given the seriousness of these offences for which Mr. Thomas has been found guilty, defence counsel has advanced, in my view, a realistic position, at least as far as the type of sanction that should be imposed on Mr. Thomas. While properly emphasizing the Gladue and Ipeelee instructions and Mr. Thomas's personal circumstances as a relatively young Indigenous offender, the defence submits the authorities have established a range of sentence in these type of cases of two to three years at the low end, to eight to 10 years at the high end, a range of sentence that is endorsed by the Crown and which I accept as appropriate, given the authorities I have been provided.
- [36] In this regard, notwithstanding the fact that there were such serious and tragic consequences occasioned to the victims, the defence submits that a global disposition of two years would be a fit and proper disposition. At the same time, the defence does not advocate for a conditional sentence, even if I was to agree that a two-year sentence would make a CSO available.
- [37] The Crown obviously agrees with the defence that a term of imprisonment is required to satisfy all the principles of sentencing, but disagrees as to the length of that custodial disposition. The Crown submits that in this particular set of circumstances, given the seriousness of the offence, that a global sentence of four and a half to five years would properly reflect all of the relevant principles of sentencing, including the specific reference to Indigenous offenders contained in s. 718.2(e).
- [38] Turning to Mr. Thomas's personal circumstances, as I have noted, he is 30 years of age. He is a member of the Tsartlip First Nation in Brentwood Bay and resides in that community. He has four children. He has no contact with two of those children but, according to the reports, has regular visitation with his two other children.
- [39] As noted in the presentence report, he has been involved in a stable marriage-like relationship with a woman for the past two years. He lives with her and her two children. Even though he has been the subject of the intergenerational trauma that has afflicted all Indigenous persons due to colonialization and the residential school regime, Mr. Thomas has been able to overcome these intergenerational difficulties and has done relatively well in the community. He has also been able to achieve a Grade 9 education, which ended when he got involved in the longhouse tradition and, unfortunately, did not return to school for some

time. The reports confirm, however, that he has enrolled in and successfully completed some adult education courses, such that at this point in time he is apparently only two courses short of a Grade 12 diploma.

- [40] Similarly, although Mr. Thomas is presently unemployed, he has a good work history. He has worked in the construction industry and, in due course achieved a diploma in cooking at Camosun College, which resulted in him obtaining stable employment for about five years at a restaurant and pub near the Brentwood Bay Tsartlip Band.
- [41] The reports also note that between September 2021 and May 2022, Mr. Thomas was working as a custodian at the Tribal School Board. He unfortunately was terminated for "reasons related to his criminal proceedings and its publicity," a set of circumstances pointed out quite properly by defence counsel.
- [42] He has had further work in other restaurant establishments, and I am advised for a while worked for UPS.
- [43] While the Gladue report states that Mr. Thomas enjoyed "a reasonably stable environment with positive supports," both it and the presentence report highlight the damaging and traumatic experience Mr. Thomas's family and community in general have experienced, again because of colonization and the residential school system. In this regard, the presentence report states on p. 6:

As with many First Nations communities, Tsartlip has been touched by centuries of social degradation. The people of the community have struggled against the legacy of the residential school experience which has led to many of the social problems facing the community today. Seventy to eighty percent of the people living within the Tsartlip community live in poverty and substandard housing. Substance misuse, violence, suicide and drastic unemployment are also of concern. Many of Subject's family members attended residential school [including his paternal grandparents and other members of the family] ...

- [44] The report goes on to state that Mr. Thomas's parents attended Tsartlip Indian day school. Mr. Thomas has extended family who reported extensive emotional and physical abuse related to these experiences resulting in severe intergenerational trauma. This has been repeated on p. 3 of the Gladue report.
- [45] At the same time, while Mr. Thomas is a relatively healthy young man, both reports state that for some time, Mr. Thomas has had significant struggles with depression and mental health issues, culminating apparently in three previous attempts to take his own life, most recently in 2021. As a result, the report states that he has been in receipt of trauma counselling for these issues, which most recently one can assume was precipitated by his involvement in this tragic set of circumstances.

[46] In support of a two-year sentence, defence counsel quite properly emphasizes the significant mitigating factor that Mr. Thomas has no prior criminal record. This is the first time he has ever been before the court. In addition, his motor vehicle record is extremely modest: two minor infractions and a speeding offence in 2021.

[47] In addition, while acknowledging the mitigating factor of a guilty plea is not present in this case, the defence emphasizes the following comments of the author of the Gladue report. Under the heading of "Understanding of the Index Offence(s)" the author writes:

Anthony stated that he wished he could live that day over again and he would have made different choices. He said, "The guilt, shame, remorse, regret is overwhelming at times." He added, "I am so very sorry for the life that was lost and saying sorry to the family cannot be put into enough words to express my deepest condolences."

[48] In a similar vein, the next paragraph states:

Anthony has been attending counselling to help him deal with the grief, shame, and the overwhelming emotions he feels daily for the life he took.

[49] The defence submits this is a sincere expression of remorse and a true understanding of the devastating consequences that resulted from his losing consciousness after voluntarily consuming narcotics on the day in question.

[50] I accept this submission, as does the Crown. I accept Mr. Thomas is cognizant of the extreme damage he has caused to the Ward family and accepts responsibility for his criminal conduct.

[51] In support of the position advanced by the defence, I have received several authorities. Counsel has gone through them in detail and I am cognizant of all of the principles and statements contained therein, and I have no quarrel with any of the observations in any of those decisions. All of those cases were helpful in determining what is a fit and proper sentence in this particular case.

[52] The common theme that one can gather throughout is that where death ensues from driving infractions, the emphasis should be on deterrence and denunciation, without ever losing sight of rehabilitation.

[53] In the end, whilst all of the authorities are helpful, they are only guidelines. As the Supreme Court of Canada has emphasized, sentencing is an individualized process, again what is a fit sentence for this offender in these circumstances when applying the fundamental principles of sentencing.

[54] As the Court of Appeal in Berner said at para. 11:

[11] Broadly speaking, a sentencing judge looks to the conduct and culpability of the offender and punishes the offender for that conduct through the application of the principles and objectives of deterrence, rehabilitation, denunciation and proportionality.

- [55] In the end, the defence submits that its suggestion of two years plus a three-year driving prohibition will properly reflect all of those principles of sentencing.
- [56] I pause here to note that the defence also submitted that I should adjust or reduce what would otherwise be a fit and proper sentence, because during the trial I concluded Mr. Thomas's s. 10(b) Charter right was breached when I found that Mr. Thomas was psychologically detained by Constable Craig in a small interview room at the hospital.
- [57] Having concluded there was a breach, I excluded significant evidence pursuant to the 24(2) Grant analysis. However, what is relevant on this particular point is the fact that, at the same time, I concluded Constable Craig was in no way acting inappropriately or in bad faith.
- [58] The defence on this point relies on the principles and observations of the Supreme Court of Canada in *Nasogaluak*, a case where the detainee received a significant physical assault from police officers who were attempting to arrest him for impaired driving. In that particular case, the Supreme Court of Canada also referenced the fairly dated decision of the B.C. Court of Appeal in *Pigeon* which referenced again the police violence that occurred in that particular set of circumstances. Even though that is clearly not the situation in the present case, the defence submits that pursuant to those authorities, I should find Mr. Thomas's violation of his 10(b) Charter right a mitigating factor, even though there was a remedy occasioned by way of excluding the evidence.
- [59] In these circumstances, I am unable to agree with the defence on this point. This is clearly a situation that is dramatically different from the circumstances of the two cases I have just referenced. As the court said in *Nasogaluak*, the court in *Pigeon* and the decision therein "illustrates the court's authority to address police violence within the context of ordinary sentencing principles."
- [60] While I am not suggesting that the principles in those cases apply only to police violence or mala fides, I do not find the breach of Mr. Thomas's 10(b) Charter right in this case to be so egregious that it could properly be considered a mitigating factor.
- [61] The Crown in its submission as to what is an appropriate disposition recognizes the significance of Mr. Thomas's Indigenous status in this proceeding. Nevertheless, the Crown submits that a proper balancing of all of the relevant fundamental principles of sentencing should result in a global custodial disposition in the range of four and a half to five years on Counts 1 and 2, with concurrent two to three-year sentences on Counts 3 and 4.
- [62] The Crown also submits a driving prohibition of 10 years is appropriate to reflect the seriousness of the charges for which guilty verdicts were entered.
- [63] In support of its position, the Crown points out the significant aggravating factor that, in this particular case, the consequences to the victims were devastating. The impact on victims as a result of criminal conduct is now codified in s. 718.

- [64] In addition, the Crown submits that Mr. Thomas's moral blameworthiness is high, given his voluntary consumption of these highly-sedative narcotics consumed in sufficient quantity that he lost consciousness while operating his motor vehicle shortly after being involved in another minor motor vehicle accident some moments earlier.
- [65] The Crown submits that the general manner of driving, crossing a lane and entering the wrong lane of travel, is also an aggravating factor, but again it is the serious consequences as a result of Mr. Thomas losing consciousness that is at the forefront with respect to aggravating factors.
- [66] At the same time, the Crown acknowledges that Mr. Thomas's lack of any prior criminal record is a significant mitigating factor and should be given appropriate weight when determining a fit sentence. The Crown also acknowledges that he has been a contributing member of society, given his strong work history, and his strong family and community support is likewise a mitigating factor.
- [67] He is relatively youthful. He was 26 years of age at the time of these offences.
- [68] Again, as I have already noted, the Crown accepts that Mr. Thomas is remorseful and accepts responsibility for causing this devastating loss to the Ward family.
- [69] Finally, the Crown acknowledges the clear direction from Parliament and the Supreme Court of Canada that Mr. Thomas's status as an Indigenous offender has a significant role in crafting a fit and proper sentence. This is especially so given the comments of both the authors of the presentence report and the Gladue report, considering the number of family members who were subjected to the cultural destroying consequences of colonization and residential schools.
- [70] As a result, the Crown acknowledges there are Gladue factors present that must be considered, although the Crown says they can be considered relatively "modest" in these particular circumstances.
- [71] The Crown, like the defence, has provided me with many cases in support of its position. Once again, I have considered them all and I accept all the observations and principles enunciated therein. Once again, they are useful as guidelines to assist the court today in crafting a just disposition. I have considered them all and there is no necessity to refer to any of them in detail.
- [72] Before finally imposing sentence, I will deal with the defence submission that the Kienapple principle should preclude convictions being entered on Counts 3 and 4, given the guilty verdicts on Counts 1 and 2. The defence says, as a result of those guilty verdicts on 1 and 2, there should be conditional stays entered on Counts 3 and 4, just as there were conditional stays entered on Counts 5 and 6.

- [73] In support of its position, the defence relies on a dated B.C. Court of Appeal decision of Andrews and has referenced the decision the Crown provided to me from the Ontario Court of Appeal in Ramage. I am satisfied that the observations of Mr. Justice Doherty in Ramage is a complete answer to the defence submission on this point. I am not persuaded that entering convictions on Counts 3 and 4 in conjunction with the convictions on Counts 1 and 2 would offend the Kienapple principle. So as a result, there will be convictions entered on Counts 1, 2, 3, and 4.
- [74] As I have stated, my review of the many authorities I have been provided with, by both Crown and defence, establish, in my view, that in cases of impaired driving and dangerous driving causing death and bodily harm, the principles of denunciation and general deterrence require the greatest emphasis. In the determination of a fit sentence, it is fundamental that the message be sent that not only does society denounce driving while intoxicated, the sentences must act as a deterrent to any who would make such choices, intentionally risk taking, that can lead to such tragedies as occurred in this particular case.
- [75] Having considered the circumstances of these offences, Mr. Thomas's personal circumstances, the aggravating and mitigating factors, the Gladue principles, and the fundamental principle of sentencing that any sentence must be proportionate to the gravity of the offence, I am persuaded a term of imprisonment, somewhat less than suggested by the Crown, will properly reflect these factors and be a fit and proper disposition.
- [76] I impose the following sentences: on Count 1, there is a sentence of 42 months; on Count 2, there is a sentence of 36 months; Count 3, there is a sentence of 30 months; Count 4, there is a sentence of 24 months. All of those sentences will be concurrent, one to the other, for a total global disposition of 42 months. To put that in years, that equates to three and a half years, but I find it appropriate to express it in the way I have, by months.
- [77] On that particular point, I have not received any submissions from counsel with respect to classification. I will simply suggest that the federal correctional authorities acknowledge the particular circumstances of this case, and Mr. Thomas's Indigenous status when classifying Mr. Thomas.
- [78] With respect to a driving prohibition, the Crown initially asked for a 10-year prohibition from the date of sentencing. Given that a prohibition is to commence at the conclusion of a sentence, I am satisfied that, given that fact and the circumstances surrounding these offences, offset by the lack of any significant motor vehicle history and no criminal driving convictions, I am satisfied that a five-year driving prohibition to commence at the conclusion of the 42-month sentence is a reasonable prohibition.
- [79] Turning to the question of DNA, I appreciate Mr. Blokmanis's points on that particular issue but I am satisfied it would not be unreasonable to order a DNA sample, notwithstanding it being discretionary. I will make that particular order.
- [80] I will waive any victim surcharge that might be applicable in these particular circumstances.

- [81] Mr. Blokmanis, is there anything for clarification or that I have left out?
- [82] CNSL P. BLOKMANIS: No, thank you, Justice.
- [83] THE COURT: Mr. Stokes?
- [84] CNSL T. STOKES: No, Justice.
- [85] THE COURT: Okay.
- [86] CNSL T. STOKES: I suppose the warrant of committal will have the driving prohibition.
- [87] THE COURT: Yes. I would like to thank both Mr. Blokmanis and Mr. Stokes for your able submissions in this particular case. Thank you.

"B. D. MacKenzie, J."

The Honourable Mr. Justice B. D. MacKenzie

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