

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Knockwood*, 2026 NSCA 11

Date: 20260211

Docket: CAC 536578

Registry: Halifax

Between:

Nathan Knockwood

Appellant

v.

His Majesty the King

Respondent

Judges: Wood, C.J.N.S., Derrick, Gogan, JJ.A.

Appeal Heard: October 16, 2025, in Halifax, Nova Scotia

Facts: The case involves a Mi'kmaw man who pleaded guilty to manslaughter in the stabbing death of a friend. The victim had attacked the appellant after they had both consumed a considerable amount of alcohol. The victim was known to become violent when intoxicated. In the course of defending himself, the appellant disarmed the victim and then stabbed him in the rear left leg/buttock. The victim bled to death from the wound. The appellant admitted to using excessive force. At sentencing the Crown and defence agreed the range for sentence was seven to twelve years. A Gladue Report chronicled a life marred by physical and emotional violence, poverty, addiction, chronic instability and significant trauma. (paras [1](#), [13-20](#)).

Procedural History:

- *R. v. Knockwood*, 2024 NSSC 244: The Nova Scotia Supreme Court sentenced the appellant to 8.5

years in prison for manslaughter, less credit for pre-sentence custody (para [4](#)).

- Parties' Submissions:**
- Appellant: Argued that the sentencing judge made errors in principle by underemphasizing Gladue factors, rehabilitation, and parity. The appellant submitted that should the Court allow the appeal and resentence him, it was not bound by the range agreed upon before the sentencing judge. The appellant said the appropriate range in this case was five to seven years' incarceration. (paras. [10](#), [19](#), [83](#))
 - Respondent: Argued the sentence of eight and a half years fell well within the acceptable range for similar offences and offenders. The high threshold for appellate intervention had not been met and deference should be accorded to the original sentence imposed.

- Legal Issues:**
- Did the sentencing judge err in principle by not explaining how the Gladue factors impacted the appellant's moral blameworthiness for the offence? Did the sentencing judge err in principle by not assigning any credit for the mitigating circumstances of the appellant's guilty plea, acceptance of responsibility, and expression of remorse, and not taking account of the principle of rehabilitation?

- Disposition:**
- Leave to appeal granted, appeal allowed, and the sentence reduced to five years less credit for pre-sentence custody.

- Reasons:**
- Per Derrick J.A. (Gogan J.A. concurring): The sentencing judge erred by focusing on the gravity of the offence and not explaining how the appellant's Gladue factors attenuated his moral culpability. The overemphasis on gravity contributed to a flawed proportionality analysis that underemphasized the Gladue factors. The judge's proportionality analysis also lacked any consideration of the significant mitigating factors of the appellant's guilty plea and expression of remorse, and his prospects for rehabilitation. These errors

necessitated a fresh sentencing analysis, leading to a reduced sentence of five years (paras [52-100](#)).

Wood, C.J.N.S., dissenting: The sentencing judge's decision should be given deference, as they were best positioned to assess and apply the sentencing principles. The sentence fell within the agreed range and considered the Gladue factors. There was no error in principle justifying appellate intervention. The sentence was not demonstrably unfit, and the judge's application of sentencing principles was appropriate (paras [102-147](#)).

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 148 paragraphs.

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Appeal Heard: October 16, 2025, in Halifax, Nova Scotia

Held: Leave to appeal granted, appeal allowed, per reasons for judgment of Derrick, J.A.; Gogan, J.A. concurring; Wood, C.J.N.S. dissenting

Counsel: David J. Mahoney, K.C., for the appellant
Cory Roberts, for the respondent

Reasons for judgment:

Introduction

[1] Nathan Knockwood, a Mi'kmaw man, seeks leave to appeal and appeals the 8.5 year penitentiary sentence imposed by Justice Jamie Campbell of the Nova Scotia Supreme Court for manslaughter in the stabbing death of Troy Whidden. The respondent agrees leave to appeal should be granted.

[2] Originally charged with second-degree murder, the appellant pleaded guilty on July 10, 2024 to manslaughter. He had been on remand since his arrest and had not sought judicial interim release.

[3] The appellant's sentencing hearing was held on July 10, 2024. The Crown sought a prison term of 12 years. The defence argued for 7 years' imprisonment. The sentencing judge had the appellant's *Gladue* Report and his criminal record.

[4] On August 20, 2024 the judge sentenced the appellant to 8.5 years in prison less a substantial pre-sentence custody¹ credit.

[5] Mr. Knockwood says the sentencing judge made reversible errors in imposing a carceral sentence of this duration. I am persuaded he is correct. I would grant leave to appeal and allow the appeal, substituting a sentence of 5 years with credit for pre-sentencing custody as found by the sentencing judge of 1,504 days. The sentencing judge's reasons² disclose errors in principle necessitating appellate intervention and the imposition of a fresh sentence.

The Sentencing Hearing

[6] The recommendation by Crown counsel of a 12 year prison sentence for the appellant was a reflection of the Crown's position that a 14 year sentence was justified but for the *Gladue* factors. As Crown counsel expressed the proportionality assessment in his brief:

In other words, the Crown acknowledges that twelve (12) years would be a fit, fair and just sanction for this incident of unlawful act manslaughter based on Mr. Knockwood's relative degree of moral blameworthiness against his ISH [indigenous social history].

¹ I use the terms "remand" and "pre-sentence custody" interchangeably.

² *R. v. Knockwood*, 2024 NSSC 244 (Sentencing Decision).

[7] At the sentencing hearing, Crown counsel was explicit, saying: "...our position of fourteen years ought to be mitigated to twelve because of the decreased moral blameworthiness of Mr. Knockwood".

[8] In written submissions Crown counsel said the appellant's *Gladue* factors should be weighed against "the seriousness of the violence in accordance with the SCC in *Gladue* at para. 79". The Supreme Court of Canada said the following at paragraph 79 of *R. v. Gladue*:

[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. Generally, 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.³

[9] Subsequently, in *R. v. Ipeelee*⁴ the Supreme Court of Canada addressed the final sentence in the above passage. I will do so later in these reasons as it has relevance to this appeal.

[10] Defence counsel asked the judge to consider the appellant's "very good rehabilitative prospects" in determining the appropriate sentence.

[11] The sentencing judge invited the appellant to speak before he was sentenced. The appellant said the following:

First of all, I want to apologize to Mr. Whidden and the Whidden family. I did...I never wanted this to happen, and I'm, like, I'm not a killer or nothing. It's just...it's just one night things got out of hand and I...I was...no words can express how... how sorry I am. I'm going to take full responsibility for what I did, yeah. I don't know what else to say. I just hope you forgive me. That's all I have to say.

[12] No Victim Impact Statements were filed although Mr. Whidden's father attended the proceedings as did members of Mr. Knockwood's family.

Circumstances of the Offence

³ [1999] 1 S.C.R. 688 [*Gladue*].

⁴ 2012 SCC 13 [*Ipeelee*].

[13] The facts of the offence were contained in an Agreed Statement of Facts. Information about the offence was also available in the appellant's *Gladue* report and provided by counsel at the sentencing hearing.

[14] The appellant and the victim, Mr. Whidden, were friends. On November 21, 2021, Mr. Whidden was found dead at a residence in Truro, Nova Scotia. On November 23, 2021, the appellant's father contacted the Truro Police Service and reported the appellant had messaged him on Facebook to advise he had been involved in a fight and the man had died. The appellant had told his father he had acted in self-defence and planned on turning himself in to police once he had contacted his lawyer. The Agreed Facts noted that the appellant had not called for help prior to leaving Mr. Whidden's apartment.

[15] Truro police executed a search warrant for the residence where the appellant was staying and seized evidence. Advised where the appellant could be found they went and arrested him. Evidence, including DNA, tied the appellant to the homicide.

[16] The Agreed Statement of Facts provided Mr. Knockwood's description of the altercation with Mr. Whidden:

Mr. Knockwood's version is that he fell asleep on the floor (photos of makeshift bed attached)⁵ and woke up to Troy Whidden standing over him with his knee on his stomach and the bayonet in his hand. Mr. Knockwood pushes him off. Troy Whidden gets Mr. Knockwood in a headlock and a struggle ensues. Mr. Knockwood is able to get the bayonet from Troy. Mr. Knockwood ended the altercation once he had the weapon, by stabbing Troy a couple of times in the leg. After that, Mr. Knockwood then hit Troy with an elbow and then a punch. Troy goes down. Mr. Knockwood then continues punching Mr. Whidden and hits Mr. Whidden with the blunt end of the bayonet to ensure he is knocked out. At this point Mr. Knockwood laid [*sic*] down on the floor next to Mr. Whidden.

[17] The stabbing inflicted by the appellant to Mr. Whidden's rear left leg/lower buttock perforated the femoral vein and caused Mr. Whidden to bleed to death. The Agreed Statement of Facts indicated the "second sharp force wound...was administered postmortem, or very shortly before the heart had stopped, as there was no bleeding from this wound."

[18] According to the Agreed Facts "Mr. Whidden was known to become violent when he was under the influence of alcohol". Both he and the appellant had

⁵ No photos were attached to the materials provided to the Court on appeal.

consumed a considerable amount of alcohol before their altercation. In submissions at the sentencing hearing Crown counsel indicated the appellant had been “highly intoxicated”.

[19] Crown and defence disagreed on the gravity of the offence, notably where the manslaughter fell on the spectrum between near-accident and near-murder. The Crown argued the facts supported a finding of near-murder. The defence said it was a homicide “in the middle” between near-accident and near-murder. Where they agreed was on the applicable range for this manslaughter—7 to 12 years, a range they presented to the sentencing judge as a “joint recommendation”.⁶

Circumstances of the Offender

[20] The appellant’s *Gladue* Report provided a thorough chronicle of a life marred by physical and emotional violence, poverty, addiction, precarity, and significant trauma. Alcohol had fueled violence between his parents and the appellant moved back and forth to different homes. His parents separated when the appellant was 5 or 6 years old and he went to live with his mother. She drank heavily and abused prescription and non-prescription drugs. She was violent and beat the appellant and his siblings. The appellant described emotional abuse as well. Eventually his mother abandoned the family and moved to Ontario. The appellant’s older brother recalled the appellant being 7 or 8 years old when this happened.

[21] Interviewed for the *Gladue* Report, the appellant’s mother described the drinking and extreme domestic violence that characterized her family life growing up. She told the author: “[t]here was violence; I grew up in it, that’s all I knew”.

[22] After the appellant’s mother left, his father moved back in and did his best to raise the children. The appellant expressed gratitude in the *Gladue* Report toward his father, saying: “My dad never turned his back on me throughout”. However, the *Gladue* Report noted the appellant did not feel valued by his family. A family member told the author of the *Gladue* Report that “no one ever spoke proudly of Nathan, it was always just about the things he did”.

[23] As indicated in the *Gladue* Report, many of the appellant’s family members had attended the Shubenacadie Residential School, including his maternal

⁶ As acknowledged by the respondent on appeal, this was not a true joint recommendation in accordance with *R. v. Anthony-Cook*, 2016 SCC 43 as the parties were not in agreement on all aspects of the sentence. A joint submission on sentence “covers off every aspect of the sentence proposed” (*R. v. Nahanee*, 2022 SCC 37 at para. 27).

grandparents and his paternal grandfather, Noel Knockwood. Noel Knockwood was the highly regarded Mi'kmaq spiritual leader and served as a Keptin⁷ and spiritual leader for the Mi'kmaq Grand Council. The *Gladue* Report notes he was “an outspoken critic of the residential school system and what he described as a ‘cultural genocide’”. He participated in the class action that secured reparations for residential school survivors. The *Gladue* Report referenced the Truth and Reconciliation Commission’s finding that: “[t]he damage inflicted by Residential Schools continues to this day”.

[24] Further instability for the appellant followed in the wake of his mother moving to Ontario. He described being kicked out of the house by his father and selling drugs so he could buy food. A friend’s family (with whom he had relational ties) took him in and he enjoyed a peaceful and supportive period. In 2008 with the family no longer able to support him, the appellant, aged 18, moved to Ontario to live with his mother and her boyfriend. He stayed for about three years. He attended high school and finished Grade 11. According to his mother however, during this time he was drinking and using drugs. A school friend from that time said where the appellant lived with his mother was “a rough area”. He described the racially motivated fights the appellant was subjected to in school:

Nate was a quiet guy, never came to school to bother anyone but there was a group of guys that always wanted to fight Nate...the racism 20 years ago was pretty bad in their area, and there was a lot of racial motivated fights...

[25] The *Gladue* Report noted: “Nathan Knockwood is not white presenting and is clearly an indigenous man”.

[26] While still only 18, the appellant experienced an intensely traumatic event following a house party. A car appeared to deliberately drive into a group of young people. The appellant had taken a St. John’s Ambulance First Aid course and administered CPR to two victims, both of whom died. The appellant described blood everywhere, including on him as a result of his physical contact with the dying teenagers.

[27] Upon returning to Nova Scotia, the appellant lived in various Cape Breton and mainland communities. He finally graduated from high school in his home community of We’koqma’q First Nation in 2012 at age 22. In 2015 he started a five-year relationship with a woman who became pregnant. The appellant believed

⁷ A title that signifies a member of the Grand Council with a central role in decision-making and community leadership.

he was the father and developed a deep attachment to the baby boy. When his partner eventually told him the baby was not his biological child, the appellant overdosed “because I could not deal with all that pain”. His relationship with the baby was severed. He had been looking forward to raising a child and having “somewhat of a ‘normal life’”.

[28] Additional traumas experienced by the appellant have included suicides, notably of a cousin in 2012 to whom the appellant was particularly close, and deaths of other close relatives. The appellant admitted to drinking and using non-prescription drugs to escape reality. After experiencing seizures in 2021 he was admitted to a detox facility. He told the author of the *Gladue* Report he wanted to be clean of drugs and sober but had been struggling with his addictions.

[29] The appellant attributed his criminal record to his addictions and housing insecurity. He told the author of the report:

I’ve been drinking since I was 15 years old and now, I’m 30 plus. I have to stop, having a place of my own, a room to rent would really help but it’s hard finding housing on the reserve...[M]ost of my crimes are breaches, curfew, using alcohol and address. I know it’s because of me drinking and floating around. I have no money, I can’t get welfare because I don’t have an address. I can’t get an address unless I have money, and it’s a cycle.

[30] The *Gladue* Report, quoting from a Corrections Canada demographic overview of Indigenous offenders, tied the appellant’s experiences as an Indigenous person to his involvement in the criminal justice system:

Increasing evidence points to a strong correlation between socio-economic disadvantage and involvement with the criminal justice system. A large proportion of the Aboriginal population in Canada suffers socio-economic disadvantage in comparison to non-Aboriginal Canadians. Poverty, inadequate educational opportunities, unemployment, poor living conditions, alcohol abuse and domestic violence all contribute to Aboriginal people coming into conflict with the law.

[31] At the time of his arrest in 2021, the appellant was experiencing homelessness. He told the author of the *Gladue* Report that he became homeless because he did not want to inflict his problems on his family. He was sleeping where he could and staying at the Truro homeless shelter “when there was room”.

[32] The *Gladue* Report noted the appellant has considerable support both in Ontario and Nova Scotia. His schoolfriend, now a teacher, told the author the

appellant “always has a place in Ontario and people who love and continue to support him to this day and upon his release there are still people who love and care and want to help him”. The friend indicated he wanted to be identified as a support and expressed a desire to stay in contact with the appellant while he is incarcerated.

[33] Another source of support identified by the *Gladue* Report was his employer at Roger’s Construction, a family-owned business. The business owner spoke highly of the appellant who had graduated from the Nova Scotia Community College with a plumbing qualification. He described the appellant as by far the hardest worker they had ever had and expressed his interest in re-employing the appellant once he is released from prison. He said he “would love to be a support person for Nathan when he is released. Not just with employment but living a sober lifestyle as well”. The appellant’s uncle and older brother also described the appellant as reliable and hardworking – “a work horse”.

[34] While on remand, the appellant received some trauma-informed counselling which the *Gladue* Report described as “a service that will be vital to Nathan Knockwood’s healing journey”. The Report indicated the appellant was experiencing nightmares every night about the incident that led to Mr. Whidden’s death.

[35] The *Gladue* Report concluded with the following observations and recommendations:

Nathan Knockwood accepts full responsibility for his actions and plans to make a positive change in his life, a part of which is continuing to get back in touch with native customs, spirituality and sobriety.

...

1. Nathan Knockwood to be transferred to Springhill Institution for the duration of his sentence, he has expressed interested [*sic*] in the Pathways Program designated for Indigenous people.
2. Nathan Knockwood to enroll in trauma informed counselling while incarcerated to deal with trauma from his childhood but to also deal with the night terrors he has been experiencing.
3. Nathan Knockwood participate in an addiction prevention program to help him continue his sobriety and identifies [*sic*] the triggers to learn techniques to cope with stress, Nathan recognizes that alcohol has been a leading cause in his legal troubles.

The Sentencing Judge's Decision

[36] The sentencing judge opened his decision by noting counsel for the Crown and defence had “agreed by way of joint recommendation that the appropriate range of sentencing, having regard to Mr. Knockwood’s circumstances and the nature of the offence is between 7 and 12 years of incarceration”.⁸

[37] In his reasons the judge observed the range for manslaughter sentences in Nova Scotia has tended to be between 4 to 10 years, adding, “there is no range within which sentences must fit”.⁹ He later noted a range of 6 to 10 years¹⁰ and longer periods of incarceration for extreme violence inflicted on an intimate partner and cases of near-murder.

[38] The judge provided a careful review of the facts of the offence, extracted from the Agreed Statement of Facts. He drew inferences from the Facts, noting that self-defence was not available to the appellant because he had used excessive force in responding to the threat posed by Mr. Whidden. He found:

Once Mr. Knockwood had disarmed Mr. Whidden by taking the bayonet from him, it was not reasonable for him to have stabbed him and struck him.¹¹

[39] The judge then tackled the question of where this manslaughter fell along the near-accident/near-murder continuum. Referencing the Supreme Court of Canada decision in *R. v. Creighton*¹², he recognized the sentence to be imposed must be aligned with the offender’s moral culpability. He was drawing from the passage in *Creighton* where Justice McLachlin (as she then was) said:

[86] ...the offence of manslaughter stands in sharp contrast to the offence of murder. Murder entails a mandatory life sentence; manslaughter carries with it no minimum sentence. This is appropriate. Because manslaughter can occur in a wide variety of circumstances, the penalties must be flexible. An unintentional killing while committing a minor offence, for example, properly attracts a much lighter sentence than an unintentional killing where the circumstances indicate an awareness of risk of death just short of what would be required to infer the intent required for murder. The point is, the sentence can be and is tailored to suit the degree of moral fault of the offender.

⁸ Sentencing Decision at para. 1.

⁹ Sentencing Decision at para. 15. (This correctly reflects the statement of Cromwell, J.A. from this Court in *R. v. L.(N.A.)* (1999), 172 N.S.R. (2d) 375 at para. 14.)

¹⁰ Sentencing Decision at para. 27.

¹¹ Sentencing Decision at para. 14.

¹² [1993] 3 S.C.R. 3.

[40] Despite some suggestion in the sentencing judge's decision of a template, there is no formula for determining how to locate a manslaughter on the gravity continuum. The assessment is always going to be highly fact-dependent. In reaching his conclusion this was not a "near-murder" manslaughter the sentencing judge relied on the evidence:

- Mr. Whidden was stabbed with a large weapon, a bayonet. But he was not stabbed in the neck, or chest near vital organs. "Stabbing someone in the leg is different to stabbing someone in the neck or in the heart".¹³
- Mr. Whidden was stabbed twice.
- The appellant did not instigate the violence. He woke up to find Mr. Whidden on top of him with a bayonet in his hand. "His actions were defensive though they exceeded what was reasonable".¹⁴ He stabbed Mr. Whidden after disarming him and continued to strike him after knocking him down.
- The appellant did not stab Mr. Whidden repeatedly.

[41] The judge noted factors that aggravate the offence: the use of the bayonet—a large weapon, Mr. Whidden was stabbed after being disarmed, the appellant continued to strike Mr. Whidden after he was down, and left the scene without calling for help.¹⁵

[42] The sentencing judge next looked at the sentencing principles. He recognized the fundamental principle of proportionality, that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. He saw tension in the individualized nature of sentencing and the principle of parity. He reflected on the challenges of determining a fit sentence, saying:

[24] In any sentencing several factors remain in tension with each other. They are not necessarily contradictory, but they can pull in different directions. They are not merely a checklist of factors. Courts must consider the potential for rehabilitation. That may suggest a shorter sentence of incarceration. But the

¹³ Sentencing Decision at para. 18.

¹⁴ Sentencing Decision at para. 20.

¹⁵ Sentencing Decision at paras. 18-21.

crime may be one that requires denunciation and deterrence, which cries out for a substantial punitive jail sentence. Similarly situated offenders should be treated similarly. But no two offenders commit the exact same offence, in the exact same way, with the same personal circumstances. A person may have a long criminal record, but it may be, in part, a function of the condition of that person's mental health. A person may be a member of a racialized group and the history of racism and marginalization of those groups as well as their overrepresentation in jails is a factor. Another person may not be a member of a racialized group but may come from an economically disadvantaged family. Parity in sentencing exists in tension with those considerations.

[43] The judge concluded a review of the sentencing principles with a statement that near-murder manslaughter has attracted sentences in excess of 10 years. As he noted later in his reasons, this was not a near-murder case and a sentence greater than 10 years would not be appropriate.¹⁶

[44] The sentencing judge next did a sympathetic canvass of the appellant's *Gladue* Report. He observed the appellant's "insightful comment" about the vicious cycle of alcohol, poverty and homelessness that ensnared him. The judge picked up the theme:

[38] He is right. And it is an all too common cycle. And it is one that continues to tear through Indigenous communities across Canada. The history of cultural disruption and separation of families has tragic impacts on successive generations. It has contributed to the incarceration of aboriginal people at an alarmingly disproportionate rate. Nathan Knockwood's life so far, as described in the *Gladue* Report, has many features that epitomize the experience of incarcerated aboriginal people. His family experienced the damaging effects of residential school. He saw and was the victim of violence and addiction at home from an early age. His education was disrupted. He started using drugs and alcohol at an early age to escape from the harsh reality of his life. He experienced the trauma of losing family members and friends to suicide. He experienced homelessness and was drawn into the world of addiction and crime. That sad trajectory from a 4 year old boy whose mother left him, to the homeless young man living on the steps of a church, to today, should not be seen as being inevitable. But Nathan Knockwood, like many Indigenous people, has had to confront obstacles that others do not face. It is particularly tragic bearing in mind that his grandfather, Noel Knockwood, was such a powerful and inspirational voice in the fight to change the kinds of things that have brought his grandson to this point.

¹⁶ Sentencing Decision at para. 42.

[45] The judge adopted language Crown counsel had used to find there was a “straight line”¹⁷ connecting the appellant’s experiences as a Mi’kmaq man and the offence for which he was being sentenced. His observations continued:

[39] ...The *Gladue* Report speaks powerfully to the issues that must be considered in determining Nathan Knockwood's moral culpability. It should not be seen as a "discount" because it is not. It is a recognition of who he is and the confluence of factors that have contributed to bringing him to this place. He is still a person who is capable of making decisions for himself. He should never be reduced to being a just victim of his own circumstances. But it would be impossible to deny the profoundly significant direct connection between his experience as a Mi’kmaq man in Nova Scotia and the circumstances of this case.

[46] A review of the appellant’s criminal record satisfied the judge the appellant was not “embedded in a criminal subculture”. He found there was “no indication from his criminal record that Nathan Knockwood is a person who has adopted a criminal lifestyle and a criminal value system”.¹⁸

[47] The sentencing judge then determined the sentence, pulling together the themes he had surveyed:

[42] The nature of the manslaughter and the impact of *Gladue* factors feature prominently in the determination of a proper sentence. Both speak to Mr. Knockwood's moral blameworthiness or moral culpability. The death of Troy Whidden was not a near accident. It was a stabbing in which Mr. Whidden was killed with a weapon after he was disarmed. But Mr. Knockwood was not the instigator of the violence. The case would not be one in which a sentence greater than 10 years would be appropriate. Mr. Knockwood's personal circumstances are tragic. His experiences as a child and as a young man did not directly bring him to the point that he faces sentencing for manslaughter. They certainly contributed to it. *Gladue* factors have less impact in the sentencing of serious violent offences but the report in this case speaks so compellingly about those factors that they must be given serious consideration.

[43] The appropriate sentence is 8.5 years. That is the minimum sentence that would properly reflect the seriousness of Mr. Knockwood's actions in causing the death of Troy Whidden while acknowledging the impacts of Mr. Knockwood's background and heritage on his moral culpability.

¹⁷ In *Ipeelee* at paras. 81-83, the Supreme Court of Canada made it clear an Indigenous offender does not have to establish a causal link between background factors and the commission of the offence for *Gladue* factors to be taken into account. That said, the record in the appellant’s case supports the direct connection identified by the judge.

¹⁸ Sentencing Decision at para. 41.

[48] The appellant’s “go-forward” sentence was 4 years and 138 days after the judge credited him with 1,504 days of pre-sentence custody.

Standard of Review

[49] The Supreme Court of Canada most recently in *R. v. Sheppard*¹⁹ reiterated the standard of review in sentence appeals. Sentencing is a discretionary exercise and sentencing decisions are entitled to considerable deference from appellate courts.²⁰ In appeals advanced on the basis of an error in principle, the error must be identified and the court must be satisfied it had an impact on the sentence. Errors in principle include “an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor”.²¹

[50] Where an appeal court is dealing exclusively with alleged errors in principle, it must investigate the purported errors and their impact without “passing judgment on the ultimate sentence imposed”.²² As *Sheppard* held:

[40] ... This should go without saying. Appellate courts must take great care not to allow their own assessment of the record, and what weight they would have given to various factors, to colour the lens through which they view the sentencing judge's reasoning (*R. v. V. (W.)*, 2023 ONCA 655, 169 O.R. (3d) 68, at para. 26). The integrity of appellate intervention would be compromised if a supposed error in principle could serve as a pretext for the appellate court substituting its own view of the appropriate sentence.

[51] Should a material error in principle be identified, the offender must be sentenced afresh by the appellate court applying the principles of sentencing to determine a fit sentence in the circumstances. At this stage no deference is owed to the original sentence although the sentencing judge’s findings of fact, to the extent they are untainted by error, are to be respected.

A Flawed Proportionality Analysis

[52] I have concluded the appellant’s sentence of 8.5 years was the product of a flawed proportionality analysis. I would therefore allow the appeal. Two primary grounds underpin my conclusion:

¹⁹ 2025 SCC 29 at paras. 38-42 [*Sheppard*].

²⁰ See *R. v. Lacasse*, 2015 SCC 64 at para. 41 [*Lacasse*].

²¹ *R. v. Friesen*, 2020 SCC 9 at para. 26 [*Friesen*]; See: *Lacasse* at para. 44.

²² *Sheppard* at para. 40.

- 1) The judge did not explain how the *Gladue* factors impacted the appellant's moral blameworthiness for the offence.
- 2) The judge assigned no credit for the mitigating circumstances of the appellant's guilty plea, acceptance of responsibility and expression of remorse, and did not take account of the principle of rehabilitation.

[53] I find it unnecessary to address the other issues raised by the appellant.

[54] Sections 718.1 and 718.2(e) of the *Criminal Code* provided the primary statutory context for the appellant's sentencing. Section 718.1 establishes that proportionality is the fundamental principle of sentencing. To satisfy the proportionality imperative, a sentence must ultimately reflect the gravity of the offence, the offender's moral culpability and the unique circumstances of the case.²³

[55] All sentencing principles must be considered to achieve proportionality:

In the final analysis, the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.²⁴

[56] Section 718.2(e) requires sentencing judges consider all available sanctions other than imprisonment, with special attention to be paid to the circumstances of Indigenous offenders. The provision is remedial in nature. Its purpose is to "ameliorate the serious problem of overrepresentation of aboriginal people in prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing".²⁵

[57] In *Gladue* the Supreme Court of Canada explicitly recognized the wholesale failure of the criminal justice system in relation to Indigenous people, confirmed by numerous studies and inquiries such as the Royal Commission on Aboriginal Peoples and the Aboriginal Justice Inquiry of Manitoba:

[64] These findings cry out for recognition of the magnitude and gravity of the problem, and for responses to alleviate it. The figures are stark and reflect what may fairly be termed a crisis in the Canadian criminal justice system. The drastic overrepresentation of aboriginal peoples within both the Canadian prison

²³ See: *Lacasse* at para. 58.

²⁴ *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500 at para. 82.

²⁵ *Gladue* at para. 93, point 3.

population and the criminal justice system reveals a sad and pressing social problem. 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. The provision may properly be seen as Parliament's direction to members of the judiciary to inquire into the causes of the problem and to endeavour to remedy it, to the extent that a remedy is possible through the sentencing process.

[58] The “crisis” of Indigenous over-representation in Canadian prisons had not been ameliorated by the time *Ipeelee* was decided in 2012 or when this Court decided *R. v. Cope* in 2024.²⁶ Indeed, it has been worsening. In this context the emphasis in *Gladue* on sentencing judges as “among those decision-makers who have the power to influence the treatment of aboriginal offenders in the justice system”²⁷ assumes an even greater urgency.

[59] Sentencing judges play a remedial role in sentencing Indigenous offenders. The imperatives of *Gladue* and *Ipeelee* are not limited to the methodology which sentencing judges must use in determining a fit sentence. An Indigenous offender’s *Gladue* factors must be perceptibly applied by the judge to the assessment of moral culpability.

[60] While a sentence must acknowledge the gravity of the offence—which animates the objective of denunciation—it cannot exceed what is just and appropriate given the moral blameworthiness of the offender. As *Ipeelee* held, the moral blameworthiness aspect of the proportionality analysis “serves a limiting or restraining function and ensures justice for the offender”.²⁸

[61] Secondary sentencing principles, such as rehabilitation, “complement, and are consonant with, the fundamental principle of proportionality” and give effect to it.²⁹ Rehabilitation of an offender serves the goal of reducing incarceration and the objective of protecting the public. In the appellant’s case, evidence of rehabilitative potential is found in the record: the appellant’s acceptance of responsibility for the offence, his awareness of his cycle of re-offending and of the need to address his issues, his willingness while on remand to engage in trauma-informed counselling, his earned reputation as an excellent worker, and his former employer’s interest in re-hiring him and supporting him to achieve a sober lifestyle. Furthermore, the

²⁶ *Ipeelee* at para. 62; *R. v. Cope*, 2024 NSCA 59 at paras. 92-94.

²⁷ *Gladue* at para. 65.

²⁸ *Ipeelee* at para. 37.

²⁹ *R. v. J.W.*, 2025 SCC 16 at paras. 45, 46 [*J.W.*].

appellant's remorse is "of particular significance" as it is reflective in his case of insight and a reduced likelihood of offending in the future.³⁰

[62] In terms of potential for rehabilitation, I also note the appellant's criminal record with only limited and dated convictions for violence that given the sentences imposed do not mark him as inclined to serious violence: s. 266 assault in September 2020 for which he received a suspended sentence of 15 months, a robbery in January 2013 which netted him a sentence of 9 months in a provincial correctional institution, and an assault causing bodily harm in May 2012 for which he received a suspended sentence of 12 months.

[63] At the appellant's sentencing Crown counsel told the judge the "central issue" to be determined was how to "qualify the act", in other words, how to determine the gravity of the manslaughter. The sentencing judge's reasons are suggestive of this submission having been unduly influential. He did focus on the gravity of the offence and did not explain how the *Gladue* factors attenuated the appellant's moral culpability. The overemphasis on gravity contributed to a flawed proportionality analysis that underemphasized the *Gladue* factors.

[64] The sentencing judge's proportionality analysis also lacked any consideration of the appellant's guilty plea and expression of remorse, and his prospects for rehabilitation. These are significant mitigating factors.³¹ It can constitute an error in principle to fail to mention an offender's guilty plea³² or give it insufficient weight.³³ Even an offer to plead guilty has been held to be a mitigating factor that if overlooked, constitutes an error in principle.³⁴ Rehabilitation of offenders is recognized as "One of the main objectives of Canadian criminal law" and [...] "one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world" and "helps the courts impose sentences that are just and appropriate".³⁵

[65] It is an error in principle to fail to "consider all relevant individual circumstances in reaching a fit sentence tailored to the offender before the court".³⁶ The mitigating factors I have referenced above were relevant quite apart from the

³⁰ *R. v. Rabbit*, 2023 ABCA 170 at para. 50 [*Rabbit*]. See also: *R. v. Wesley*, 2025 ONCA 51 at para. 117.

³¹ See: *R. v. Bertrand Marchand*, 2023 SCC 26 at para. 127; *Rabbit* at para. 50; *R. v. Roshuk-Finch*, 2025 ABCA 85 at paras. 17, 18 [*Roshuk-Finch*].

³² See: *Friesen* at para. 164.

³³ See: *R. v. Crier*, 2023 ABCA 26 at para. 16 [*Crier*].

³⁴ *R. v. Burns*, 2025 ABCA 91 at para. 19.

³⁵ *Lacasse* at para. 4.

³⁶ *R. v. Parranto*, 2021 SCC 46 at para. 46 [*Parranto*].

appellant's *Gladue* factors. Sentencing judges are expected to account for them when conducting an individualized analysis.³⁷ This is statutorily mandated by s. 718.2(a) of the *Criminal Code*.

[66] Of some discussion at the appeal hearing was the judge's statement that "*Gladue* factors have less impact in the sentencing of serious violent offences...".³⁸ The question arose whether the statement constituted an error of law. Counsel were invited to address the issue further in post-hearing written submissions.

[67] What the judge said is not a correct statement of the law. It would have been accurate to say that *Gladue* factors may have less impact in the sentencing of serious violent offences. Judges are imbued with the discretion to determine the extent of the impact of *Gladue* factors on the moral culpability of an offender. As *Gladue* directed: "[t]here 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".³⁹ That determination will be highly individualized and fact-specific. In this case I have concluded the judge's statement flowed into his proportionality analysis and his over-emphasis on the gravity of the offence.

[68] The sentencing judge made his statement immediately preceding the imposition of the 8.5 year sentence. It has the echo of what the Supreme Court of Canada in *R. v. Wells*⁴⁰ and *Ipeelee*⁴¹ found necessary to revisit and clarify in the *Gladue* decision. The *Gladue* court said: "[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..."⁴² The Supreme Court has emphasized this was not meant to be a principle of universal application.⁴³

[69] There is no exception for serious offences in the application of *Gladue* factors. Where the offender is Indigenous, a sentencing judge must apply the principles from *Gladue* and *Ipeelee*, no matter the gravity of the offence.⁴⁴ As I have discussed, the sentencing judge committed errors in principle. His statement

³⁷ See: *Parranto*, at para. 45.

³⁸ Sentencing Decision at para. 42.

³⁹ *Gladue* at para. 82.

⁴⁰ 2000 SCC 10 [*Wells*].

⁴¹ At para. 85.

⁴² At para. 79.

⁴³ See *Wells* at para. 50.

⁴⁴ See: *Friesen* at para. 92.

that *Gladue* factors have less impact in sentencing of serious violent offences is an indication his proportionality calculus was skewed toward gravity.

[70] In the appellant's case the gravity of the offence meant there was no reasonable alternative to incarceration. It was never in dispute that the appellant would be sentenced to a significant penitentiary term. As the sentencing judge found, the stabbing of Mr. Whidden did not fall at the near-accident end of the manslaughter spectrum. This did not neutralize the principle of restraint and the remedial purpose of s. 718.2(e). *Gladue* factors are relevant when considering the length of the imprisonment to be imposed.⁴⁵ And they are to be considered "when weighing denunciation and deterrence".⁴⁶

[71] While the sentencing judge provided an articulate summary of the appellant's *Gladue* Report, there is no tangible explanation of how he applied the *Gladue* factors in his proportionality analysis. He said the *Gladue* Report spoke "powerfully to the issues that must be considered in determining Nathan Knockwood's moral culpability"⁴⁷ but it is not apparent his decision was guided in a substantive and meaningful way by *Gladue* and *Ipeelee*. As I noted above, he emphasized that *Gladue* factors have less impact where an offender is being sentenced for serious violence immediately before settling on a sentence of 8.5 years for the appellant.

[72] The sentencing judge found the stabbing of Mr. Whidden was not "near-murder". He viewed a sentence of 10 years as inappropriate, noting that the appellant had not been the instigator of the violence. He accepted there were significant *Gladue* factors. He understood he was to consider them. What is missing is an indication the factors were actually applied in the moral culpability aspect of the judge's proportionality analysis. Neither did he address which sentencing objectives could or should be actualized in light of the appellant's circumstances.⁴⁸ Not according the appellant any benefit for the mitigating factors of his guilty plea and remorse, and the omission of any mention of the sentencing objective of rehabilitation, constituted further errors in principle that impacted the sentence.

⁴⁵ See: *Gladue* at para. 93 point 8; *R. v. Whitehead*, 2016 SKCA 165 at paras. 39, 85.

⁴⁶ *R. v. Charles*, 2021 SKCA 75 at para. 50.

⁴⁷ Sentencing Decision at para. 39.

⁴⁸ See: *Ipeelee* at para. 83.

[73] It is my view the sentencing judge committed the same error in principle identified by the Alberta Court of Appeal in *R. v. Phillips*:

[28] ...while the sentencing judge listed the identified *Gladue* factors, he failed to assess or explain how those factors informed Ms. Phillips' moral culpability. Meaningful mitigation in determining a fit and proper sentence requires more than listing the factors that are present. The sentencing judge was instead required to **assess and explain** how Ms. Phillips' particular *Gladue* factors impacted her moral culpability in the specific context of this offence. More specifically, ss 718.1 and 718.2(e) required the sentencing judge to consider and engage with the unique circumstances of this Indigenous offender to determine "the degree of [her] responsibility".⁴⁹

[Emphasis added]

[74] In *Roshuk-Finch*, the Alberta Court of Appeal again emphasized the need for sentencing judges to apply the Indigenous offender's *Gladue* factors in the sentencing analysis.⁵⁰ This may indeed be challenging but it must be done, discernibly and tangibly, or the remedial imperatives of s. 718.2(e), *Gladue* and *Ipeelee* are at risk of being nothing more than aspirational.

[75] The constrained circumstances of Indigenous offenders may diminish their moral culpability.⁵¹ As *Ipeelee* states: "Many Aboriginal offenders find themselves in situations of social and economic deprivation with a lack of opportunities and limited options for positive development".⁵² The appellant's life has been characterized by violence, trauma and chronic insecurity. He is burdened by the transgenerational harms inflicted by residential school. He stabbed Mr. Whidden while extremely intoxicated. Alcohol was associated with violence from the time the appellant was a child. His mother grew up in violence and was violent toward the appellant. He was subjected to racist violence at school. Since he was 15 the appellant has tried to numb painful memories and experiences through drugs and alcohol. When violently attacked by Mr. Whidden, the appellant reacted instinctively and met the threat with lethal force.

[76] The words of the Alberta Court of Appeal in *Rabbit* are apposite here:

[47] To apply s 718.2(e), sentencing judges must try to understand what influenced an Indigenous offender to act in the way he did. It also includes assessing whether one's instinctive reaction to that conduct would be the same,

⁴⁹ 2023 ABCA 210.

⁵⁰ *Roshuk-Finch* at para. 27.

⁵¹ See: *Ipeelee* at para. 73.

⁵² *Ipeelee* at para. 73.

given the circumstances, if the offender were of a different race, culture, or background. This analysis involves empathy, imagination, and introspection, among other things. It imposes on the sentencing judge the difficult task of imagining a different life, and honestly asking how a person - not the world's strongest or most resilient person - might be affected by such an experience.

[77] The burden carried by the appellant, as revealed by his *Gladue* Report, found its lethal expression in the tragic confrontation with Mr. Whidden.

Sentencing the Appellant Afresh

[78] In his factum, appellant's counsel⁵³ argued five to seven years would be a just sentence for Mr. Knockwood. Having said that however, he deferred to the range put to the sentencing judge by agreement and proposed this Court substitute a seven year sentence less the pre-sentence custody credit of 1,504 days calculated by the sentencing judge at paragraph 51 of his decision.

[79] Following the appeal hearing, the panel asked counsel to respond in writing to the following issues: (1) In the event the Court determines that a fresh sentencing analysis is required, is the Court constrained from imposing a custodial sentence below the seven-year range agreed to by trial counsel and recommended by the appellant? and (2) In the event the Court conducts a fresh analysis and determines that it is not constrained by the agreed-to range and recommendation, what further submissions do counsel wish to make respecting the appropriate sentence for Mr. Knockwood?

[80] In their responses to the questions, counsel for the parties shared the view that, as expressed by the respondent, the Court "is not legally prohibited or constrained from imposing a sentence outside the range agreed to by the parties" in the court below.⁵⁴ There is common ground that the hearing before the sentencing judge was contested and the legal constraints attaching to a joint submission on sentencing did not apply. When presented with a joint submission on sentence—a submission that represents Crown and defence having agreed on every aspect of the sentence—a sentencing judge should not reject the submission "unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest".⁵⁵ In Mr. Knockwood's case, the public interest test did not apply as the agreement on range did not represent an agreement on sentence. The stringent public interest test for judicial repudiation of a joint

⁵³ Different counsel from the appellant's counsel at sentencing.

⁵⁴ Supplemental Factum of the Respondent at para. 1.

⁵⁵ *R. v. Anthony-Cook*, 2016 SCC 43 at para. 32 [*Anthony-Cook*].

submission on sentence “does not apply to bits and pieces of a sentence upon which the parties are in agreement; it applies across the board or not at all”.⁵⁶ The submission on range before the sentencing judge was not an agreement “across the board”.

[81] Even where there is no joint submission, in order to afford the opportunity for further submissions a sentencing court has an obligation to inform the parties it may be inclined to impose a sentence that is above or below the range being recommended. This obligation operates at the court of first instance and on appeal. While *Nahanee* endorsed the provision of notice to the parties where a harsher sentence is under consideration,⁵⁷ I agree with the Alberta Court of Appeal such notice should also be given when a court is contemplating a sentence lower than proposed by the offender.⁵⁸

[82] Beyond notice, a court imposing a sentence higher or lower than sought by the parties should provide clear and cogent reasons for doing so.⁵⁹

[83] The parties in this case have indicated they are satisfied with the notice provided by this Court and the opportunity it afforded them to make submissions. They agree this Court on a resentencing is entitled to impose the sentence it deems fit and just in the circumstances, irrespective of the sentencing range recommendation made in the court below.⁶⁰

[84] However, their positions diverge on whether the fresh sentence should fall outside the sentencing range. In his written submissions, appellant’s counsel reiterates the position he took at the appeal hearing: that the appropriate sentencing range based on the facts and circumstances of Mr. Knockwood’s case is five to seven years. He says the position of defence counsel at the original sentencing constrains what he can seek on appeal. He submits that in the event of a resentencing this Court is not so constrained and can determine what constitutes a fit and just term of incarceration.

⁵⁶ *R. v. Nahanee*, 2022 SCC 37 at para. 27 [*Nahanee*].

⁵⁷ *Nahanee* at para. 43.

⁵⁸ *R. v. Fead*, 2017 ABCA 222 at para. 5; see also: *R. v. Burbach*, 2012 ABCA 30 at para. 13.

⁵⁹ *R. v. Blake-Samuels*, 2021 ONCA 77 at para. 30.

⁶⁰ Although not relevant on the facts of this case, it should be noted the Crown will not generally be permitted to repudiate its original sentencing position and request a harsher sentence on appeal. See: *R. v. Mosquito*, 2023 SKCA 29 at paras. 33, 34; *R. v. Cromwell*, 2021 NSCA 36 at para. 68; C. Ruby, *Sentencing*, 10th ed. (LexisNexis Canada 2020) at pp. 212-214.

[85] Respondent’s counsel submits this Court should show deference to the parties’ original agreement on range and the sentencing judge’s acceptance of it in the absence of the range being tainted by any error of law or principle. The respondent otherwise declined to make any further submissions on the quantum of sentence.

[86] The respondent advances policy arguments for why appellate courts should conform to parties’ agreements on range, unless doing so would risk an injustice. The respondent urges this Court to refrain from resentencing outside the range previously agreed to here, saying:

Agreements as to range remain an important way in which criminal matters are resolved in this Province and across the country. There is a real risk that such agreements would become far less common if they can easily be overturned on appeal when sentencing afresh. This could negatively affect the efficient and timely resolution of criminal matters.⁶¹

[87] I accept that such agreements are a common feature of plea negotiations and are referenced in prosecutorial policy directives in Canada such as the “Resolution Discussions and Agreements” directive of the Nova Scotia Public Prosecution Service⁶² and the “Resolution Discussions” guidelines of the Public Prosecution Service of Canada.⁶³ As the respondent points out, they are also contemplated in the Practice Memorandum No. 7 “Resolution Conferences – Criminal Trials” of the Supreme Court of Nova Scotia which states a resolution can be reached “by joint recommendation on either a specific sentence or range of sentence”.⁶⁴

[88] However, I am not persuaded by the respondent’s arguments about the scope of jeopardy. The same incentives and pressures to resolve criminal cases will lead to Crown and defence negotiations and resolutions notwithstanding the potential an appellate court may subsequently conclude there is the basis to intervene in the sentence imposed. Fit sentences will not be “easily overturned on appeal”.

[89] The resentencing of Mr. Knockwood will have no effect on the essential role of resolution discussions in the criminal justice system. Accused persons will

⁶¹ Supplemental Factum of the Respondent at para. 4.

⁶² Nova Scotia Prosecution Service, Resolution Discussions and Agreements (DPP directive, issued September 13, 2002, revised February 3, 2021) at p. 5.

⁶³ *Public Prosecution Service of Canada Deskbook*, ch. 3.7 “Resolution Discussions” (DPP guideline, revised March 4, 2024) <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch07.html> at 3.3 “Scope of Sentencing Discussions”.

⁶⁴ Supreme Court of Nova Scotia, *Practice Memorandum No. 7: Resolution Conferences - Criminal Trials* (adopted on February 25, 2012) at para. 13.

continue to seek the benefits of pleading guilty, minimizing the stress, expense and uncertainty associated with going to trial, enabling the opportunity for the truly remorseful to begin making amends, and starting the process of accepting the consequences and moving on with their lives. Resolution of the charge by way of a guilty plea will provide certainty for the prosecution in the form of a conviction without having to take the case to trial, achieve an admission of responsibility for the victim and community, and address the gravity of the offence and the moral culpability of the offender through a fit and proper sentence handed down in a public courtroom. The vast majority of criminal cases will proceed, as they have historically, on the basis of resolution discussions that advert to these factors.

[90] The supplemental submissions by counsel have been of assistance in addressing the resentencing I have concluded should occur. I want to thank counsel for their thoughtful and considered responses.

[91] I am of the view we are not bound by the range—seven to twelve years that was before the sentencing judge by agreement.⁶⁵ Having found errors in principle that impacted the appellant’s sentence the obligation is a fresh sentencing analysis to determine a fit sentence.⁶⁶

[92] Appellant’s counsel having canvassed a number of cases in his factum, submitted that:

...a fair and informed understanding of the degree of Mr. Knockwood’s responsibility for the offence at bar would support a sentence in the range of five to seven years based upon a reasonable review of the caselaw, the aggravating and mitigating circumstances, and the impact of the *Gladue* factors.

[93] He referred to caselaw involving non-Indigenous offenders sentenced for manslaughter: *R. v. MacNeil*, 2009 NSSC 310 (7 years); *R. v. Landry*, 2021 NSSC 179 (7 years – joint submission); *R. v. Larson*, 2017 ABQB 79 (5 years and 5 months); *R. v. Corbett*, 2015 ONSC 6118 (5 years); *R. v. Gordon*, 2020 ONSC 7395 (7 years but for the collateral consequences of COVID-19); *R. v. Whynot* (1996), 147 N.S.R. (2d) 111 (NSCA) (5 years); and *R. v. Reid*, 2012 ONSC 7521 (8 years).

[94] Counsel for the appellant also discussed a number of cases of Indigenous offenders sentenced for manslaughter: *R. v. Francis*, 2007 NSSC 184 (7 years); *R.*

⁶⁵ As noted in paragraphs 6 and 7 of these reasons, Crown counsel’s position before the sentencing judge had taken the appellant’s *Gladue* factors into account.

⁶⁶ See: *Lacasse* at para. 44; *Friesen* at para. 27; *R. v. Suter*, 2018 SCC 34 at para. 24.

v. Drescher, 2022 NWTSC 15 (6 years); and *R. v. Commanda*, 2007 ABPC 51 (10 years). I view it as relevant that *Francis* and *Commanda* were decided prior to *Ipeelee*. Two more recent manslaughter sentencing decisions identified in the appellant’s factum involving Indigenous offenders are: *R. v. Whiteway*, 2023 MBKB 186 (6 years) and *R. v. Robinson*, 2025 ABKB 355 (4 years).

[95] The sentencing judge noted that reviewing other sentencing decisions is a helpful guide when determining range but regarded the exercise as “counterproductive when it is reduced to the parsing of details to find similarities and differences in those cases to find one that most closely resembles this one”.⁶⁷

[96] I agree. The principle of parity—that similar offenders who commit similar offences in similar circumstances should receive similar sentences—is “an expression of proportionality”.⁶⁸ Sentences “should be consistent with other *proportionate* sentences imposed under similar circumstances. There is no value in achieving parity with disproportionate sentences”.⁶⁹ (emphasis in the original)

[97] Many of the cases included by the appellant involved fatal stabbings found not to be near-murder. They offer support for the five to seven year range he said is supportable in this case.

[98] In a resentencing on appeal, deference is accorded to “the sentencing judge’s findings of fact or identification of aggravating and mitigating factors, to the extent they are not affected by an error in principle”.⁷⁰ Deference is not accorded to the original sentence itself.⁷¹ A fit sentence in this case defers to the sentencing judge’s finding this was not a near-murder manslaughter.

[99] I described in paragraph 75 above how the appellant’s lethal response to Mr. Whidden was shaped by the relentless trauma he had endured and the constrained circumstances of his life. A proportional sentence balances the gravity of the offence against the appellant’s attenuated moral culpability on account of his *Gladue* factors. The appellant’s experiences as an Indigenous person, detailed in his *Gladue* Report, rendered him vulnerable to coming into conflict with the law. The appellant’s sentence must also reflect the mitigating factors of his guilty plea, his acceptance of responsibility and expression of remorse, and take into account his rehabilitative prospects. The appellant admitted the wrongfulness of what he

⁶⁷ Sentencing Decision at para. 27.

⁶⁸ *Friesen* at para. 32.

⁶⁹ *Sheppard* at para. 69.

⁷⁰ *Friesen* at para. 28.

⁷¹ *Sheppard* at para. 41.

did and did not resile from or justify the facts of the offence. The appellant's criminal record reflects the effects of poverty, homelessness and limited opportunities but it does not mark him as prone to violence. Proportionality acknowledges the reductive effect of all these circumstances on the term of incarceration. A reduced prison sentence for the appellant speaks to the remedial objectives of s. 718.2(e), *Gladue* and *Ipeelee*. It also recognizes that, prior to this offence, the appellant had never been sentenced to a federal term of incarceration.

[100] I would set aside the appellant's original sentence and substitute a sentence of five years' incarceration less the pre-sentence custody credit of 1,504 days calculated by the sentencing judge at paragraph 51 of his decision.

Disposition

[101] I would grant leave to appeal, allow the appeal and resentence the appellant as indicated above.

Derrick, J.A.

Concurred in:

Gogan, J.A.

Dissenting Reasons:

[102] I have had the opportunity to review the reasons of my colleague, Justice Anne S. Derrick allowing Mr. Knockwood's appeal from sentence. We do not disagree on the legal principles but rather, their application. In my opinion, the outcome in this appeal is determined by the highly deferential standard of review from sentencing decisions consistently adopted by the Supreme Court of Canada; most recently in *R. v. Sheppard*, 2025 SCC 29.

Background

[103] On November 21, 2021, Truro Police responded to a report of a homicide. The deceased, Troy Whidden, had multiple blunt and sharp force traumas to the head and body and two sharp force injuries to his rear left leg/lower buttock area. The medical examiner's report indicated Mr. Whidden's femoral vein on his left leg/buttock had been perforated which caused him to bleed to death. Police identified a bayonet found at the scene as the weapon used in the stabbing.

[104] Nathan Knockwood was subsequently charged with second degree murder in relation to the death of Mr. Whidden. Following a series of resolution conferences, Mr. Knockwood entered a plea of guilty to the offence of manslaughter on July 10, 2024. On that same date, a sentencing hearing took place before Justice Jamie Campbell of the Supreme Court of Nova Scotia. On July 9th a *Gladue* report had been filed as well as sentencing briefs from counsel for the Crown and defence. An Agreed Statement of Facts was signed and filed on July 10th setting out the circumstances of Mr. Whidden's death.

[105] In their sentencing briefs, counsel indicated they were in agreement Mr. Knockwood should receive a custodial sentence between seven and twelve years. The Crown said this range took into account Mr. Knockwood's reduced moral culpability arising out of the circumstances set out in the *Gladue* report.

[106] The Crown's brief on sentence describe the circumstances of Mr. Whidden's death as being "near-murder" rather than "near-accident". They submitted the circumstances of death and Mr. Knockwood's criminal record would justify a custodial sentence of 14 years. The Crown acknowledged the importance of the information contained in the *Gladue* report with respect to Mr. Knockwood. Their sentencing brief described their position as follows:

The Gladue Report presents a deeply complex psycho-social cultural etiology and historical biography (the "Indigenous Social History" or "ISH") which the Crown will address in oral submissions and anticipates substantial legal argument from the defence. The Crown acknowledges that these factors weigh considerably against the degree of moral blameworthiness of Mr. Knockwood's actions. The extent to which they weigh, as a matter of law, will be measured against the seriousness of the violence in accordance with the SCC in *Gladue*, supra, at para. 79. The Crown recognizes that its position of fourteen (14) years custody, notwithstanding the seriousness of the offence, must be mitigated by what the Crown sees as a straight-line correlation between Mr. Knockwood's indigenous social history and the incident of violence for which he is being sentenced. While the Crown does not intend to usurp the function of the sentencing court to weigh the decrease in moral blameworthiness of the act based on his *indigenous social history* (the "ISH"), the Crown would respectfully submit that its position of fourteen (14) years could be reduced to twelve (12) to account for the diminished degree of moral blameworthiness of Mr. Knockwood for this incident. In other words, the Crown acknowledges that twelve (12) years would be a fit, fair and just sanction for this incident of unlawful act manslaughter based on Mr. Knockwood's relative degree of moral blameworthiness against his ISH.

[107] The defence brief reviewed a number of sentencing decisions in manslaughter cases, the majority of which imposed jail terms between 4 and 10 years incarceration. They argued that seven years was appropriate for Mr. Knockwood taking into account parity with other sentences, the nature of the offence, as well as the circumstances of Mr. Knockwood as reflected in the *Gladue* Report.

[108] At the sentencing hearing, both counsel confirmed their agreement that Mr. Knockwood should be incarcerated and that the appropriate period, taking into account the circumstances, would be between seven and twelve years. Crown counsel told the sentencing judge the issue to be decided was whether the killing of Mr. Whidden should be characterized as “near murder or near accident”. If the judge agreed with the defence submission it was a near accident the Crown said seven years incarceration would be fair. On the other hand, if the judge found it was near murder, the Crown said a twelve year term should be imposed.

[109] The Crown’s position on sentence and the impact of the *Gladue* factors is outlined in the following extract from their oral submissions:

Just on the *Gladue* factors, I will say that this is a joint recommendation in the range recommendation sense. In other words, we've asked through our joint recommendation to put guardrails for certainty to Mr. Knockwood and His Majesty the King of 12 and seven years so that parties bo- ... on both sides know the parameters.

In other words, we have, by implication, said to the Court if this Honourable Court qualifies this unlawful act near accident, then seven could be fair and just. Not the sentence we recommend, but we acknowledge that if the proper qualification is allocated, that seven is a fit, fair, and just sanction, and likewise, have they conversely acknowledged that if it is so qualified at the upper end of the spectrum, that 12 is a fit, fair, and just sanction, and we'll argue today for why we believe it ought to be qualified one way or the other.

But we believe that is the central issue here which ... apart from the Duncan credit issue, which is what quality must the Court attribute to this unlawful act, and for the reasons that follow, we believe that it is perhaps not the most serious act of near murder but certainly towards that end of the spectrum, My Lord, and why is that? Because we have the injuries in broad ... in broad terms, we have the injuries, and we have the post-offence conduct.

[110] Defence counsel responded to the Crown submissions as follows:

I thank my friends for their fair submissions on the *Gladue* aspects in this case in reducing, in their view, the range. My friends' submission admits at paragraph

22, in part, "Notwithstanding the seriousness of the offence, it must be mitigated by what the Crown sees as a straight line correlation between Mr. Knockwood's Indigenous social history and the incident of violence for which he is being sentenced."

The Defence takes the same position, having reviewed the *Gladue* report. Mr. Knockwood is a direct descendent of those who were themselves made to endure the horrors of the residential school system. His grandfather, Noel Knockwood, is ... has spoken about at length ... he is spoken about at length in the report who was himself an outspoken critic of the system.

[111] Following the sentencing hearing, which included testimony from Mr. Knockwood on the conditions of his remand and an expression of remorse, the sentencing judge reserved his decision. On August 20, 2024, he delivered an oral decision, which imposed a custodial sentence of eight and a half years.

[112] Mr. Knockwood appeals his sentence, alleging the sentencing judge committed an error in principle by underemphasizing the information in the *Gladue* report, underemphasizing the principles of rehabilitation and restraint and failing to consider and apply the principle of parity. Alternatively, he argues the sentence was demonstrably unfit. He requests this Court sentence him afresh, and impose a period of incarceration of seven years.

Standard of Review in Sentence Appeals

[113] Sentencing decisions are to be given a high degree of deference. This is because the sentence for an offender must be assessed taking into account the individual circumstances which exist. These include the circumstances of the offence committed, the offender, any mitigating or aggravating factors as well as the community in which the offence took place. Crafting an appropriate sentence involves weighing and balancing a wide range of considerations.

[114] The reason for deference to sentencing judges is their unique position and appreciation of the entirety of the relevant circumstances. The Supreme Court of Canada makes this point in *R. v. Parranto*, 2021 SCC 46:

[13] Appellate and sentencing courts each have distinct roles in sentencing, based on the *Code* and their respective institutional capacities. In s. 718.3(1), Parliament has “explicitly vested sentencing judges with a discretion to determine the appropriate degree and kind of punishment under the *Criminal Code*” (*R. v. M. (C.A.)*, 1996 CanLII 230 (SCC), [1996] 1 S.C.R. 500, at para. 90 (emphasis deleted)). **Sentencing courts are best-positioned to craft a fit sentence for the offenders before them. Sentencing is a “profoundly**

subjective process”, and the sentencing judge “has the advantage of having seen and heard all of the witnesses whereas the appellate court can only base itself upon a written record” (*R. v. Shropshire*, 1995 CanLII 47 (SCC), [1995] 4 S.C.R. 227, at para. 46). The sentencing judge also has **“unique qualifications of experience and judgment from having served on the front lines” and “will normally preside near or within the community which has suffered the consequences of the offender’s crime”** (*M. (C.A.)*, at para. 91).

[Emphasis added]

[115] Appellate review of a sentence must recognize and defer to the sentencing judge’s preferred position. Four years after *Parranto*, the Supreme Court re-emphasized the deferential nature of appellate sentence reviews in their unanimous decision in *R. v. Sheppard*, 2025 SCC 29:

[38] Sentencing decisions are discretionary and are owed considerable deference from appellate courts (*Lacasse*, at para. 41, citing *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at paras. 123 and 125; see also *Lacasse*, at para. 55; *R. v. Nahanee*, 2022 SCC 37, at para. 40). **The presumptive posture of deference reflects the fact that sentencing judges, having heard the evidence and submissions first-hand, enjoy an advantageous position relative to appellate courts** (*Lacasse*, at para. 48). Typically, **sentencing judges are also immersed in the jurisdiction where the offence took place and understand the needs of the community as they relate to denunciation and deterrence** (*ibid.*, citing *R. v. M.(C.A.)*, 1996 CanLII 230 (SCC), [1996] 1 S.C.R. 500, at para. 91). Finally, a deferential approach prevents the misuse of judicial resources and unnecessary delay, as Doherty J.A. noted in *R. v. Ramage*, 2010 ONCA 488, 257 C.C.C. (3d) 261:

Appellate repetition of the exercise of judicial discretion by the trial judge, without any reason to think that the second effort will improve upon the results of the first, is a misuse of judicial resources. The exercise also delays the final resolution of the criminal process, without any countervailing benefit to the process. [para. 70]

[116] There are two avenues by which a sentence might be challenged on appeal and each utilizes a different, but highly deferential, standard of review. One is where the sentencing judge made an error in principle which impacted the sentence and the other is where the sentence imposed is demonstrably unfit. The first looks at the judge’s analysis and the other the outcome. It is important for a reviewing court not to conflate these.

[117] In *R. v. Friesen*, 2020 SCC 9, the Supreme Court discussed the deference owed to the sentencing decision as well as the two basis for intervention:

[25] **Appellate courts must generally defer to sentencing judges' decisions.** The sentencing judge sees and hears all the evidence and the submissions in person (*Lacasse*, at para. 48; *R. v. Shropshire*, 1995 CanLII 47 (SCC), [1995] 4 S.C.R. 227, at para. 46). **The sentencing judge has regular front-line experience and usually has experience with the particular circumstances and needs of the community where the crime was committed** (*Lacasse*, at para. 48; *R. v. M. (C.A.)*, 1996 CanLII 230 (SCC), [1996] 1 S.C.R. 500, at para. 91). Finally, to avoid delay and the misuse of judicial resources, **an appellate court should only substitute its own decision for a sentencing judge's for good reason** (*Lacasse*, at para. 48; *R. v. Ramage*, 2010 ONCA 488, 257 C.C.C. (3d) 261, at para. 70).

[26] As this Court confirmed in *Lacasse*, **an appellate court can only intervene to vary a sentence if (1) the sentence is demonstrably unfit (para. 41), or (2) the sentencing judge made an error in principle that had an impact on the sentence** (para. 44). Errors in principle include an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor. The weighing or balancing of factors can form an error in principle “[o]nly if by emphasizing one factor or by not giving enough weight to another, the trial judge exercises his or her discretion unreasonably” (*R. v. McKnight* (1999), 1999 CanLII 3717 (ON CA), 135 C.C.C. (3d) 41 (Ont. C.A.), at para. 35, cited in *Lacasse*, at para. 49). Not every error in principle is material: an appellate court can only intervene if it is apparent from the trial judge’s reasons that the error had an impact on the sentence (*Lacasse*, at para. 44). If an error in principle had no impact on the sentence, that is the end of the error in principle analysis and appellate intervention is justified only if the sentence is demonstrably unfit.

[Emphasis added]

Error in Principle

[118] An error in principle can include a failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor, however, it is not a license to engage in a re-weighing process. An appeal court must not assess whether an error in principle was made by comparing the sentence it would have imposed with the outcome in the court below. The Ontario Court of Appeal made this point in *R. v. W.V.*, 2023 ONCA 655:

[25] Sentencing determinations are owed considerable deference on appeal. Appellate intervention is justified only where (i) the sentence imposed is demonstrably unfit; or (ii) there is an error in principle, the failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor, and it appears from the trial judge’s decision that such an error had an impact on the sentence: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 44, 51; *Friesen*, at paras. 26-28.

[26] **It should also be noted that an appellate court may not intervene in a sentencing decision simply because it would have weighed the relevant factors differently.** The choice of the sentencing range, or of a category within a range, falls within the trial judge’s discretion and cannot, in itself, constitute a reversible error.

[Emphasis added]

[119] The Supreme Court of Canada adopted this principle with approval in *Sheppard*, where it said:

[40] Where an appeal is based exclusively on alleged errors in principle, the reviewing court should withhold passing judgment on the ultimate sentence imposed while investigating those alleged errors and their impact (*Lacasse*, at para. 44). This should go without saying. **Appellate courts must take great care not to allow their own assessment of the record, and what weight they would have given to various factors, to colour the lens through which they view the sentencing judge’s reasoning** (*R. v. V. (W.)*, 2023 ONCA 655, 169 O.R. (3d) 68, at para. 26). **The integrity of appellate intervention would be compromised if a supposed error in principle could serve as a pretext for the appellate court substituting its own view of the appropriate sentence.**

[Emphasis added]

Unfit Sentence

[120] Mr. Knockwood’s primary submission is there were errors in principle made by the sentencing judge which impacted his sentence. In the alternative, he argues the sentence was demonstrably unfit. This engages the sentencing principle of proportionality and requires a comparison with sentences imposed for other offenders. The standard of review for assessing the fitness of sentence was set out by the Supreme Court of Canada in *R. v. Lacasse*, 2015 SCC 64:

[51] Furthermore, the choice of sentencing range or of a category within a range falls within the trial judge’s discretion and cannot in itself constitute a reviewable error. An appellate court may not therefore intervene on the ground that it would have put the sentence in a different range or category. It may intervene only if the sentence the trial judge imposed is demonstrably unfit.

[52] It is possible for a sentence to be demonstrably unfit even if the judge has made no error in imposing it. As Laskin J.A. mentioned, writing for the Ontario Court of Appeal, the courts have used a variety of expressions to describe a sentence that is “**demonstrably unfit**”: “**clearly unreasonable**”, “**clearly or manifestly excessive**”, “**clearly excessive or inadequate**”, or representing a “**substantial and marked departure**” (*R. v. Rezaie* (1996), 1996 CanLII 1241 (ON CA), 31 O.R. (3d) 713 (C.A.), at p. 720). **All these expressions reflect the**

very high threshold that applies to appellate courts when determining whether they should intervene after reviewing the fitness of a sentence.

[53] This inquiry must be focused on the fundamental principle of proportionality stated in s. 718.1 of the *Criminal Code*, which provides that a sentence must be “proportionate to the gravity of the offence and the degree of responsibility of the offender”. A sentence will therefore be demonstrably unfit if it constitutes an unreasonable departure from this principle. Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances. Individualization and parity of sentences must be reconciled for a sentence to be proportionate: s. 718.2(a) and (b) of the *Criminal Code*.

[54] The determination of whether a sentence is fit also requires that the sentencing objectives set out in s. 718 of the *Criminal Code* and the other sentencing principles set out in s. 718.2 be taken into account. Once again, however, it is up to the trial judge to properly weigh these various principles and objectives, whose relative importance will necessarily vary with the nature of the crime and the circumstances in which it was committed. The principle of parity of sentences, on which the Court of Appeal relied, is secondary to the fundamental principle of proportionality. This Court explained this as follows in *M. (C.A.)*:

It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime. . . . Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. [para. 92]

[55] This principle of parity of sentences also means that the deference owed to the sentencing judge must be shown except in the circumstances mentioned above. The Court said the following in this regard in *L.M.*:

This exercise of ensuring that sentences are similar could not be given priority over the principle of deference to the trial judge’s exercise of discretion, since the sentence was not vitiated by an error in principle and the trial judge had not imposed a sentence that was clearly unreasonable by failing to give adequate consideration to certain factors or by improperly assessing the evidence (*M. (C.A.)*, at para. 92, quoted in *McDonnell*, at para. 16; *W. (G.)*, at para. 19; see also *Ferris*, at p. 149, and *Manson*, at p. 93). [para. 35]

[Emphasis added]

Analysis

Gladue Principles

[121] Section 718.2(e) of the *Criminal Code* requires the sentencing judge to take into consideration all available sanctions other than imprisonment that are reasonable in the circumstances with particular attention to the circumstances of aboriginal offenders.

[122] In the seminal decision of *R. v. Gladue*, [1999] 1 S.C.C. 688, the Supreme Court of Canada outlined the approach mandated by this provision. These principles were re-emphasized by the court 13 years later in *R. v. Ipeelee*, 2012 SCC 13.

[123] One way in which the *Gladue* approach will impact the sentencing of indigenous offenders is in the assessment of moral blameworthiness. In *Ipeelee*, the Supreme Court described it in this fashion:

[73] First, systemic and background factors may bear on the culpability of the offender, to the extent that they shed light on his or her level of moral blameworthiness. This is perhaps more evident in *Wells* where Iacobucci J. described these circumstances as “the unique systemic or background factors that are mitigating in nature in that they may have played a part in the aboriginal offender’s conduct” (para. 38 (emphasis added)). Canadian criminal law is based on the premise that criminal liability only follows from voluntary conduct. Many **Aboriginal offenders find themselves in situations of social and economic deprivation with a lack of opportunities and limited options for positive development. While this rarely — if ever — attains a level where one could properly say that their actions were not *voluntary* and therefore not deserving of criminal sanction, the reality is that their constrained circumstances may diminish their moral culpability.** As Greckol J. of the Alberta Court of Queen’s Bench stated, at para. 60 of *R. v. Skani*, 2002 ABQB 1097, 331 A.R. 50, after describing the background factors that lead to Mr. Skani coming before the court, “[f]ew mortals could withstand such a childhood and youth without becoming seriously troubled.” Failing to take these circumstances into account would violate the fundamental principle of sentencing — that the sentence must be proportionate to the gravity of the offence *and the degree of responsibility of the offender*. The existence of such circumstances may also indicate that a sanction that takes account of the underlying causes of the criminal conduct may be more appropriate than one only aimed at punishment *per se*. As Cory and Iacobucci JJ. state in *Gladue*, at para. 69:

In cases where such factors have played a significant role, it is incumbent upon the sentencing judge to consider these factors in evaluating whether imprisonment would actually serve to deter, or to denounce crime in a sense that would be meaningful to the community of which the offender is a member. In many instances, more restorative sentencing principles will

gain primary relevance precisely because the prevention of crime as well as individual and social healing cannot occur through other means.

[Emphasis added]

[124] Another issue addressed in *Ipeelee* was the application of the *Gladue* principles to sentencing for serious or violent offences. The court confirmed the principles applied even though, from a practical perspective, the resulting term of imprisonment may be similar for aboriginal and non-aboriginal offenders (paras. 84 to 86).

The Sentencing Decision

[125] The sentencing decision commences with confirmation of Mr. Knockwood's guilty plea to manslaughter in the death of Mr. Whidden. It also recites the agreement between counsel that the appropriate range of sentencing having regard to Mr. Knockwood's circumstances and the nature of the offence is between seven and twelve years of incarceration.

[126] After reviewing the circumstances of the offence as set out in the Agreed Statement of Facts, the judge outlined the range of sentences for manslaughter. He observed the broad spectrum of circumstances which can constitute the offence, from situations that are close to accidental in nature to those that are similar to murder. He said in Nova Scotia, sentences for manslaughter tended to fall between six and ten years; although, there is no established range. The sentencing judge concluded that the facts of Mr. Whidden's death placed it at the mid-level for manslaughter cases. It was neither akin to an accident nor murder.

[127] The sentencing judge reviewed the applicable principles including proportionality, rehabilitation, parity, moral culpability, deterrence and denunciation. With respect to moral culpability, he said:

[26] While all the principles and purposes of sentencing must be considered, in the case of manslaughter, the degree of moral culpability or moral blameworthiness is at the forefront. Moral culpability involves a consideration of the nature of the manslaughter as well as the circumstances of the offender that might lessen the level of moral responsibility. Issues of deterrence and denunciation are relevant but the extent to which they are applied must be tempered by the consideration of moral blameworthiness. Parity is always a factor. People who are convicted of committing the same crime in similar circumstances should expect similar sentences. But each person is sentenced as an individual. And they each have their own degrees of moral blameworthiness.

[128] The sentencing judge devoted a section of his decision to what he described as “*Gladue* factors”. It is clear that he found the report prepared for Mr. Knockwood compelling and relevant:

[37] Mr. Knockwood, in speaking with the writer of the *Gladue* Report offered an insightful comment on the how alcohol, drugs and poverty work together. He said, “most of my crimes are breaches, curfew, using alcohol and address. I know it’s because of me drinking and floating around. I have no money. I can’t get welfare because I don’t have an address, I can’t get an address unless I have money, and it’s a cycle.”

[38] He is right. And it is an all too common cycle. And it is one that continues to tear through Indigenous communities across Canada. The history of cultural disruption and separation of families has tragic impacts on successive generations. It has contributed to the incarceration of aboriginal people at an alarmingly disproportionate rate. Nathan Knockwood’s life so far, as described in the *Gladue* Report, has many features that epitomize the experience of incarcerated aboriginal people. His family experienced the damaging effects of residential school. He saw and was the victim of violence and addiction at home from an early age. His education was disrupted. He started using drugs and alcohol at an early age to escape from the harsh reality of his life. He experienced the trauma of losing family members and friends to suicide. He experienced homelessness and was drawn into the world of addiction and crime. That sad trajectory from a 4 year old boy whose mother left him, to the homeless young man living on the steps of a church, to today, should not be seen as being inevitable. But Nathan Knockwood, like many Indigenous people, has had to confront obstacles that others do not face. It is particularly tragic bearing in mind that his grandfather, Noel Knockwood, was such a powerful and inspirational voice in the fight to change the kinds of things that have brought his grandson to this point.

[39] There is a “straight line” leading from Mr. Knockwood’s Mi’kmaq heritage and the experiences Indigenous people in Nova Scotia, to what happened in this case. The *Gladue* Report speaks powerfully to the issues that must be considered in determining Nathan Knockwood’s moral culpability. It should not be seen as a “discount” because it is not. It is a recognition of who he is and the confluence of factors that have contributed to bringing him to this place. He is still a person who is capable of making decisions for himself. He should never be reduced to being a just victim of his own circumstances. But it would be impossible to deny the profoundly significant direct connection between his experience as a Mi’kmaq man in Nova Scotia and the circumstances of this case.

[129] The sentencing judge’s rationale for the sentence he imposed is set out in the following passage:

[42] The nature of the manslaughter and the impact of *Gladue* factors feature prominently in the determination of a proper sentence. Both speak to Mr. Knockwood's moral blameworthiness or moral culpability. The death of Troy Whidden was not a near accident. It was a stabbing in which Mr. Whidden was killed with a weapon after he was disarmed. But Mr. Knockwood was not the instigator of the violence. The case would not be one in which a sentence greater than 10 years would be appropriate. Mr. Knockwood's personal circumstances are tragic. His experiences as a child and as a young man did not directly bring him to the point that he faces sentencing for manslaughter. They certainly contributed to it. *Gladue* factors have less impact in the sentencing of serious violent offences but the report in this case speaks so compellingly about those factors that they must be given serious consideration.

[43] The appropriate sentence is 8.5 years. That is the minimum sentence that would properly reflect the seriousness of Mr. Knockwood's actions in causing the death of Troy Whidden while acknowledging the impacts of Mr. Knockwood's background and heritage on his moral culpability.

Alleged Errors in Principle

[130] Mr. Knockwood says in his factum the sentencing judge committed the following errors in principle in sentencing him to eight and a half years of custody:

- Under emphasizing the impact of the *Gladue* factors on his moral blameworthiness.
- Under emphasizing the principles of rehabilitation and restraint.
- Failing to appropriately consider and apply the principle of parity.

[131] The sentencing decision discusses all of these principles, and Mr. Knockwood's argument is they were not given appropriate weight.

[132] In oral argument, counsel for Mr. Knockwood noted the sentencing judge never used the word "restraint" in his decision, suggesting this indicated this principle was ignored. I disagree. By saying he was imposing "the **minimum** sentence that would properly reflect the seriousness of Mr. Knockwood's actions" the judge is describing the application of the principle of restraint.

[133] With respect to moral blameworthiness, the Appellant factum says:

52 It is submitted that Justice Campbell's Sentencing decision shows that he considered the various *Gladue* factors relating to Mr. Knockwood, and in fact confirmed that they were relevant to his moral blameworthiness and contributed

to the fact he was now before the Court and being sentenced for committing manslaughter.⁶¹ However, his decision does not show that he applied the *Gladue* factors to his sentencing calculus in a meaningful way that had any effect on the sentence he imposed. This constitutes errors in principle by: i. failing to give effect to the remedial purpose and requirement for restraint required by s. 718.2(e), and ii. failing to incorporate his findings respecting the effect of the *Gladue* factors into his proportionality analysis, thereby failing to produce a sentence that reflects his reduced moral culpability.

53 Instead, it is submitted that the trial judge's decision demonstrates that he focussed on achieving parity with a sentencing range of six to ten years, and in the process imposed a sentence that exceeded the sentences received by non-indigenous offenders in manslaughter cases that involved more serious and aggravating facts and circumstances.

[134] The factum goes on to argue the sentencing judge should have provided further explanation about how the *Gladue* principles were factored into his sentencing decision:

89 Justice Campbell noted the “straight line” between Mr. Knockwood’s *Gladue* factors and his involvement in this offence, and that the *Gladue* factors must be given “serious consideration”. However, he did not indicate how, or if, that consideration was applied other than his general comment that the sentence of eight and a half years acknowledges “the impact of Mr. Knockwood’s background and heritage on his moral culpability”⁹⁵.

90 In particular, nowhere in his decision does he indicate the extent that the *Gladue* factors, *which he found contributed to the appellant’s involvement in the offence*, reduced his level of moral culpability and moral blameworthiness when determining a proportional sentence, and whether those factors reduced the sentence that would otherwise be imposed on a nonindigenous offender committing the same offence.

[Emphasis in original]

[135] Mr. Knockwood also says the error in principle by underemphasizing the *Gladue* principles could be established by comparing Mr. Knockwood’s sentence with those of non-indigenous offenders who committed manslaughter in similar circumstances:

97 The submission that the trial judge underemphasized the impact to the *Gladue* factors in his decision is **borne out when one considers where the sentence of eight and a half years falls when compared to cases involving non-indigenous offenders who commit manslaughter** in circumstances where the facts are similar or worse than the case at bar, yet receive sentences equal to or less than that received by Mr. Knockwood.

...

105 **A comparison of the sentences imposed in the many cases involving non-indigenous offenders** with more aggravating circumstances, coupled with a lack of clarity in the trial judge's decision of how he applied the *Gladue* factors in determining the sentence, would **suggest that he underemphasized the impact of Mr. Knockwood's *Gladue* factors in the calculation of his moral culpability, and thereby erred in principle in a manner that affected the sentence imposed.** A fresh analysis is required.

[Emphasis added]

[136] The significant deference owed to the sentencing judge precludes this Court re-weighting the various factors which were in play. In addition, we should not consider our view of an appropriate sentence in assessing whether an error in principle has been made. That would be contrary to the direction from the Supreme Court of Canada in *Sheppard* at para.40.

[137] Likewise, an error in principle cannot be established by a comparison of sentences between different offenders. That exercise can only justify intervention if it establishes the sentence is demonstrably unfit. The application of the *Gladue* principles will not necessarily result in different sentences for indigenous and non-indigenous offenders. I would adopt the reasoning of the British Columbia Court of Appeal in *R. v. R.L.W.*, 2013 BCCA 50 where the court said:

[40] In summary, the sentencing judge identified the relevant *Gladue* factors, recognized his obligation to take them into account, and said that he had taken them into account in reaching his conclusion about the appellant's moral culpability for the offence. In the absence of alternative sentencing programmes available to the appellant, the judge focused his analysis on the systemic and background factors that contributed to the appellant being before the court. It has not been demonstrated that the judge failed to take these factors properly into account. **The fact that the sentence imposed may be similar to one that would have been imposed on a non-Aboriginal offender does not, standing alone, indicate any failure to take into account Aboriginal background. As the Supreme Court of Canada has recently reconfirmed in *Ipeelee*, there is no automatic reduction of sentences simply because the offender is Aboriginal:** see para. 71.

[Emphasis added]

[138] I am satisfied from my review of the complete record that the sentencing judge considered all of the circumstances, including the *Gladue* report and its impact on Mr. Knockwood's moral blameworthiness. There was no disagreement amongst counsel that it was reduced. Any failure by the sentencing judge to

quantify the impact by way of sentence reduction is not an error in principle. I agree with the following observations by the Alberta Court of Appeal in *R. v. Spotted Eagle*, 2021 ABCA 26:

[21] For similar reasons, it is **unrealistic to think that a sentencing judge will always be able to provide a detailed narrative line of analysis between the Gladue/Ipeelee factors and the sentence being imposed**. The accused is not required to prove causation, because it would be impossible to prove, and likewise **it will often be impossible for a trial judge to articulate the connection to the accused’s blameworthiness**. The sentencing reasons do not require “a detailed chain of causative reasoning”, but rather a recognition of the effect of *Gladue/Ipeelee* factors on moral culpability “based on inferences drawn from the evidence based on the wisdom and experience of the sentencing judge”: *R. v Whitehead*, 2016 SKCA 165 at para. 63, 344 CCC (3d) 1.

[22] In his factum, the appellant notes “the historical effects of colonization, dislocation from traditional lands, and erosion of traditional activities”. He concedes that “it is impossible to quantify the effects of these factors on the appellant’s personal circumstances”. This is clearly accurate. **The sentencing judge’s reasons show he was aware of the history of the appellant’s community, his troubled family background, and his experiences of racism and discrimination. There is no reviewable error in the fact that he did not explain “whether or how” broad historical effects, such as “colonialism”, contributed to the appellant’s present persona, his offending behaviour or his moral blameworthiness.**

[Emphasis added]

[139] Even if the alleged lack of explanation were to be characterized as an error in principle the Appellant has not demonstrated it impacted the sentence imposed which is a requirement for this Court’s intervention (*R. v. Dillon* 2022 SKCA 17 at para. 30).

Fitness of the Sentence

[140] As an alternative, Mr. Knockwood argues his sentence is demonstrably unfit. As noted by the Supreme Court of Canada in *Lacasse*, this is a very high standard. Various terms have been used to describe that threshold including “clearly unreasonable”, “clearly or manifestly excessive”, “clearly excessive or inadequate”, or representing a “substantial and marked departure”.

[141] In their sentencing submissions, both counsel made reference to multiple manslaughter cases. They agreed that, for Mr. Knockwood, an appropriate sentence would fall between seven and twelve years of incarceration. The

sentencing judge reviewed all of those cases and observed that, in Nova Scotia, prison sentences for manslaughter tended to fall between six and ten years.

[142] In this case, the trial judge's decision fell within the range agreed by the parties. At eight and a half years it was much closer to the position advocated by Mr. Knockwood than that of the Crown.

[143] There is no basis to suggest that the sentence imposed was clearly excessive, unreasonable, or demonstrably unfit.

Conclusion

[144] Mr. Knockwood received a custodial sentence of eight and a half years after pleading guilty to manslaughter for the killing of Troy Whidden. Counsel agreed his moral blameworthiness was reduced because of the information in the *Gladue* report. This point was made in their written and oral submissions. The sentencing judge's decision said the report "speaks powerfully to the issues that must be considered in determining " Mr. Knockwood's moral culpability.

[145] Mr. Knockwood argues the judge erred in principle by putting insufficient weight on the *Gladue* factors in arriving at his sentence. He says this is demonstrated by examining the sentences in other manslaughter cases, particularly those involving non-indigenous accused. This is a flawed analysis for two reasons. First, it invites this Court to reweigh the sentencing factors and, secondly, because an error in principle cannot be proven by looking at other sentences. Such a comparison is used when the complaint is the imposition of a manifestly unfit sentence, not an error in principle.

[146] The sentence imposed on Mr. Knockwood does not meet the high threshold for appellate intervention established in *Lacasse* for an unfit sentence. It was within the range agreed to by counsel and only eighteen months more than what was proposed by defence counsel.

[147] The sentencing judge was best positioned to consider all of the circumstances and arrive at a sentence reflecting the applicable principles which were set out in his decision. The resulting sentence is due significant deference and the Appellant has not satisfied me this Court should interfere.

Disposition

[148] I would dismiss the appeal.

Wood, C.J.N.S.