<u>PROVINCIAL COURT OF NOVA SCOTIA</u>
Citation: *R. v. Gloade*, 2022 NSPC 59

Date: 20220715
Docket: 8162521
Registry: Truro, NS

Between:

Her Majesty the Queen
v.
Perry Rolin Gloade

DECISION ON SENTENCE

Judge: The Honourable Judge Rosalind Michie

Heard: August 13, 2021 & November 22, 2021

Decision: July 15, 2022

Charges: 267(b) of the Criminal Code of Canada

Counsel: Mr. Thomas Kayter, Provincial Crown Attorney
Mr. Billy Sparks, Defence Attorney

By the Court:

[1] Perry Rolin Gloade was charged with two offences arising from events that occurred on October 27, 2017; aggravated assault contrary to s. 268 and unlawful confinement, contrary to s. 279(2) of the *Criminal Code*. The offences were committed against his wife, Lyrica Osborne-McKay at the Millbrook First Nation Community. The count of aggravated assault was later amended to assault causing bodily harm, contrary to s. 267(b) of the *Criminal Code*, and the Crown indicated that it would not offer evidence on the s. 279 unlawful confinement count.

[2] This matter has a very lengthy procedural history. Mr. Gloade was represented by six different lawyers in the intervening period between the charges and the trial. Several lawyers had a conflict and could not represent Mr. Gloade; others were discharged as a result of a breakdown in the solicitor-client relationship or withdrew because contact had been lost with Mr. Gloade.

[3] Mr. Gloade was initially released on a release order, which was later revoked when Mr. Gloade was taken into custody and charged with subsequent serious offences. He was released on another recognizance with a surety, and the surety rendered on two occasions. A warrant was issued for his arrest. Mr. Gloade was out of contact with counsel and at large from May 2019 until April 2020 when

he was located and taken back into custody. There were many Defence requested adjournments and matters were further complicated as a result of the COVID pandemic. The trial was adjourned the first time because the complainant was residing in British Columbia and was not available on the initial trial date because she was completing her nursing studies. The second trial date was adjourned because Mr. Gloade was still at large.

[4] Subsequent to his arrest in May 2020, Mr. Gloade consented to his remand on several occasions so that counsel could receive disclosure and prepare for a bail hearing. A trial date of April 22, 2021 was set. Crown made an unsuccessful application for the complainant to give evidence via videoconference pursuant to s. 714.1 of the *Criminal Code*. Subsequent to a new trial date being set, trial counsel made application to be removed as counsel of record, which was granted. A final trial date of August 13, 2021 was set, and counsel indicated they would appear on that date to cross-examine the complainant.

[5] Trial commenced August 13, 2021 and an additional date of September 16, 2021 was set for trial continuation. Due to Crown illness, the trial continuation was adjourned until November 22, 2021.

[6] Part-way through the trial Mr. Gloade changed his plea to guilty and sentence was adjourned.

[7] The frequency of Indigenous women being hurt or killed at the hands of men means, tragically, Ms. Osborne-McKay's situation is not unique. Nonetheless, it is by any measure horrible, perhaps more so because of how often Indigenous women fall victim to violence in this country. In this case, it is the fallout of a domestic relationship, set against *Gladue* circumstances including poverty, drug and alcohol abuse, and a tragic upbringing.

[8] The context of this assault starkly highlights the plight of many Indigenous families struggling with the lingering effects of Canada's historical treatment of its First Nations peoples and the seeming inability to meaningfully repair the damage. In the end, a woman was hurt, a family is broken apart, and a man has lost his freedom.

[9] This decision addresses the fit and appropriate sentence for Mr. Gloade for his crime. The Crown says that Mr. Gloade should be jailed for three and a half years, less time in custody. On the other hand, the Defence seeks a sentence of 10 months custody less time served.

[10] As a bit of a roadmap, I will set out the facts briefly as outlined in the Defence written submissions for the purposes of the record, followed by my analysis and conclusion.

Facts

[11] On October 27, 2017, Lyrica Osborne-MacKay and Perry Rolin Gloade were at Tamir Gloade's house in Millbrook, Nova Scotia.

[12] Ms. Osborne-McKay and Mr. Gloade got into an argument about her school project; she was in a nursing program at the time. Mr. Gloade was to be a speaker for her project, but he no longer felt comfortable participating in the project which upset Ms. Osborne-MacKay, and a verbal argument ensued.

[13] Ms. Osborne-MacKay indicated that she pushed Mr. Gloade and then he pushed her. Mr. Gloade then struck her multiple times. During the altercation they went from a standing position to the floor. She was on her back and he was kneeling on top of her. Ms. Osborne-MacKay indicated that she had her hands up in an attempt to protect her face. She was not sure how many times she was punched in the face, but she did indicate "maybe five times". Ms. Osborne-MacKay believed she blacked out and was unconscious for a few seconds.

[14] There were other people in the home that day, but nobody witnessed the assault.

[15] Shortly after the incident, Ms. Osborne-MacKay left the property with her young daughter. She ended up running into Tamir Gloade outside the residence. Ms. Tamir Gloade brought her to the police station. While at the Millbrook RCMP detachment, an ambulance was called for the complainant. She was taken to the hospital for medical attention.

[16] At the hospital, she was given morphine for pain and later released on the same day. Upon her release, Ms. Osborne-MacKay was given Tylenol and Advil for pain and swelling. There was no evidence of any fractures. Ms. Osborne-MacKay had bruising to the inside of her mouth. She found it quite painful to eat or talk for a couple of weeks. Her cheekbone was swollen, and both of her eyes were bruised. Overall, it took about two to three weeks for her injuries to abate. She took Tylenol and Advil for approximately one week.

Mr. Gloade's Background

[17] A comprehensive *Gladue* report was prepared outlining Mr. Gloade's personal and cultural circumstances. Mr. Gloade is a 33-year-old status Indigenous male of Mi'kmaq ancestry. He is a registered member of the Millbrook First

Nation in Nova Scotia. Millbrook is located eight kilometres south of Truro, Nova Scotia; there are 1345 registered Millbrook band members.

[18] Mr. Gloade is the only child of Margaret Gloade who passed away in 2020. Mr. Gloade loved his mother, but the relationship was fraught with difficulties and conflict. Mr. Gloade has directly felt the harm caused by the Indian Day Schools and the long history of colonization which has oppressed Indigenous people in this province and across the country. Given the fact that traditional Aboriginal communities were structured around the family, the practice of taking children from their families to the day schools and residential schools had an immediate and devastating impact on the structure of Aboriginal communities and families. This resulted in drastic changes in the parenting practices of many Aboriginal people. Mr. Gloade has inherited these problems.

[19] He is a father of five himself and his children range in age from nine to 15 years old. He has had difficulties establishing a parental relationship due to being incarcerated over the years.

[20] As a child, Mr. Gloade suffered significant health issues and also suffered both physical and mental abuse at the hands of his mother, who was struggling

with significant substance abuse and mental health issues of her own, including suicide attempts.

[21] Mr. Gloade passed through his childhood in and out of foster care and respite care, eventually being placed into permanent foster care when he was 10 years old. The foster care experience was a very negative one for Mr. Gloade.

[22] Mr. Gloade reported that he bounced from living with a family in Truro, then to the Afton First Nation, after which time he was sent to the Waterville Youth Centre, then to Wood Street Secure Treatment Centre in Truro, along with several foster homes.

[23] When Mr. Gloade was 14 years old, he was sent to the Cinnamon Hills Youth Crisis Centre in Utah and upon his return he lived at the Robert Smart Centre in Ontario for one year. He was then sent to Bridgewater where he reported that he went through depression which included drinking and taking pills. Mr. Gloade had been living in foster care in Indian Brook and then in Cape Breton prior to living at the Cinnamon Hills Centre in Utah.

[24] After Mr. Gloade left Utah, he moved in with his father in Eskasoni, Cape Breton, but he got into trouble and he was sent back to Millbrook. It is clear from

the sad history that Mr. Gloade suffered from a lack of strong parental support, community support and housing stability when he was a young man.

[25] Unfortunately, Mr. Gloade started drinking, smoking marijuana and taking non-prescription pills as a teenager. He also suffered injuries, reporting that in 2007 he was hit on the head with a hammer and retaliated by stabbing someone. This resulted in Mr. Gloade receiving a three and a half year sentence of custody at the Dorchester Penitentiary. Mr. Gloade reported that at the time he had been injecting opioids but got clean when he went to prison. Mr. Gloade further reported that he has been clean for three to four years, he is on an opioid replacement program and is taking Suboxone to combat his Dilaudid addiction.

[26] In 2020, his mother Margaret Gloade passed away while Mr. Gloade was incarcerated at the Northeast Nova Scotia Correctional Facility. Mr. Gloade has understandably been having a difficult time dealing with his mother's death.

[27] Since the passing of Mr. Gloade's mother Margaret, he also suffered a heart attack while incarcerated.

[28] Mr. Gloade's father, Dennis reported that his son got lost in the system. He questioned why his son had not been sent to live with him from the beginning. He

felt that his son lost his Indigenous identity and that he lived his life with very little family structure in Millbrook.

[29] Clearly, Mr. Gloade has had a very difficult life and he has a complicated relationship with his uncles and other family members. Unfortunately, Margaret Gloade's house, upon her death, was given to Mr. Gloade's cousin. So, when Mr. Gloade is released back into the community, he will be facing housing issues at the Millbrook Reserve. Barry Bernard, an Elder from the Eskasoni First Nation provided some background into the political hurdles that members of First Nations, communities often face when trying to access housing and employment on the reserve. It is clear that Mr. Gloade will face serious difficulties obtaining secure housing following his eventual release from custody.

[30] Mr. Gloade has a grade 10 education and has been trying to upgrade his education through the adult learning program at the Northeast Nova Scotia Correctional Facility, however those plans were interrupted by the COVID pandemic. Mr. Gloade does have stated plans to complete his education.

[31] Mr. Gloade has held various jobs over the years including fishing, carpentry, drywall installation and work as a general labourer. He describes himself as a "jack of all trades".

[32] It is clear from the *Gladue* report that the effects of Canada's colonialism continue to affect Mr. Gloade, his family and his community. His parents attended Indian Day Schools and the *Gladue* report details how the Millbrook community is significantly impacted by colonialism with high levels of unemployment, poverty, overcrowding and substance abuse. Mr. Bernard testified that although many homes in Millbrook look nice from the outside, many of them contain multiple families and generations of families living in very cramped quarters.

[33] With respect to Mr. Gloade personally, the *Gladue* report reveals that the following *Gladue* factors have been present and have had an impact on Mr. Gloade's life:

> 1. Perry Rolin Gloade is a man of Mi'kmaq ancestry;
>
> 2. Mr. Gloade has experienced the adverse effects of the toxic social environment and poor socioeconomic conditions that continue to impact the lives of Indigenous people since the time of colonization which includes the following:
>
> - substance abuse: personally, immediate family, extended family and within the general community;
> - poverty: personally, also within his family and community;
> - community breakdown in the form of high rates of divorce, children born out of wedlock or raised in single parent households;
> - loss of identity, cultural and ancestral knowledge;
> - poor socioeconomic conditions affecting the offender's home community;
> - lack of housing.

[34] These factors serve to reduce the level of moral blameworthiness of the offender.

Victim Impact Statement

[35] The victim in this matter, Lyrica Osborne-Mackay provided a Victim Impact Statement. She was seriously impacted both physically and psychologically as a result of the violence that she suffered at the hands of her husband, Mr. Gloade. The physical effects included serious bruising to her face. She reported that she believed that she was rendered unconscious on the floor as a result of being punched hard in the face as many as five times. She was unable to go out in public for weeks without feeling embarrassed and ashamed of the marks that were left on her face. These bruises lasted approximately one month. However, it is the psychological aftereffects and the collateral damage which has been so very impactful on this victim's life.

[36] Her first priority is her child. As a result of the assault, she was in danger of losing her child, so as a result, she moved across the country to satisfy Children and Family Services that she had removed her daughter from danger, that danger being Mr. Gloade.

[37] This attack interrupted her nursing training. She had to take a sabbatical and complete her training the following year in British Columbia. When she moved to British Columbia, she gave up every family connection that she had in Nova Scotia – her parents, cousins, extended family, friends and a sense of belonging to her home community.

[38] The attack left her with severe trust issues. She has been involved in ongoing therapy since the offence and continues to seek counselling which she pays for on her own. She also takes medication to deal with the mental and emotional consequences of the assault. Sadly, the offence had a very negative impact on her relationship with her own family because they did not trust her judgement anymore after she entered a relationship with Mr. Gloade, and Ms. Osborne-MacKay reported that she also did not trust her own judgement.

[39] Ms. Osborne-Mackay reported that after moving past her confusion and anger through therapy she was able to control her rage against Mr. Gloade and feels nothing but sadness for him now. She has banished him from her thoughts. The lingering aftereffects of Mr. Gloade's attack on her self-confidence and sense of worth is clear from her Victim Impact Statement. She summed it up well in her last sentence wherein she stated, "I did not deserve this, no one deserves this".

Sentencing Considerations:

[40] Prior record (Prior to Offence Date of October 27, 2017)

No.	DATE	OFFENCE	SENTENCE
1.	2013	CC 268 – aggravated assault	3 years
2.	2011	CC 266 – assault	4 months
3.	2011	CC 733.1(1)- breach probation	4 months concurrent
4.	2010	CC 264.1(2) – utter threat x 2	1 month concurrent
5.	2010	CC 145(5.1)	1 month concurrent
6.	2010	CC 430(4) – mischief	1 month concurrent
7.	2010	CDSA 4(2) – possession	1 month concurrent
8.	2009	CC 266(b) – assault	19 months Conditional Sentence Order
9.	2009	CC 264.1(1) – utter threat	19 months Conditional Sentence Order
10.	2009	CC 145(4) – fail to comply	3 months
11.	2009	CC 266(b) – assault	6 months
12.	2009	CC 430(4) – mischief	6 months concurrent
13.	2009	CC 145(5) – fail to comply	6 months concurrent
14.	2009	CC 264.1(1) – utter threat	6 months concurrent
15.	2007	CDSA 4(1) – possession	Conditional Discharge
16.	2007	CC 268 – aggravated assault	6 months Deferred Custody

			and Supervision Order (youth)
17.	2006	CC 88(2) – poss. Weapon for dangerous purpose	1 year probation (youth)
18.	2006	CC 430(4)- mischief	1 year probation (youth)
19.	2006	CC 266(b) – assault	1 year probation (youth)
20.	2006	CC 145(5.1) x 2 – breach conditions	1 year probation (youth)
21.	2006	CC 175 – cause disturbance	1 year probation (youth)
22.	2006	CC 430(4) – mischief	1 year probation (youth)
23.	2003	CC 266 x 2 – assault x 2	1 year probation (youth)
24	2003	CC 430(4) – mischief	1 year probation (youth)

[41] A sentence imposed by a judge on an accused for a serious crime should be tailor-made in the sense that, mindful of principles of sentencing, it responds appropriately to the circumstances of the offence and the particulars of the offender. The *Criminal Code* sets out that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a safe, peaceful society through just sanctions that denounce unlawful conduct, deter persons from committing offences, separate offenders from society where necessary, assist in rehabilitation, provide reparations, and promote a sense of responsibility in offenders.

[42] Further, the *Criminal Code* mandates that a judge consider a number of principles including the following:

- 718.1: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender;
- 718.2(a): a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender;
- 718.2(a)(ii): spousal or common-law partner abuse is a deemed aggravating factor;
- 718.2(b): the parity principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- 718.2(e): the restraint principle. In other words, jail should be used sparingly, with particular attention to the circumstances of Aboriginal offenders (particularly as affected by *Gladue* considerations).

[43] To this statutory list are a number of common law principles that have developed over many decades of jurisprudence.

[44] Section 718.04, mandates that denunciation and deterrence be primary sentencing principles where offences are committed against vulnerable people, including Aboriginal females, and s. 718.201, which calls for additional consideration of the increased vulnerability of female victims of intimate partner abuse, "giving particular attention to the circumstances of Aboriginal female victims". These provisions were enacted after this offence occurred. As such, strictly speaking, the provisions do not apply to this sentencing. The provisions give voice to Parliament's concerns for the plight of Indigenous women, as

detailed in the Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (*Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, (Ottawa: Government of Canada, 2019)) ("the MMIWG report") and the underlying concerns are still apposite in this case.

[45] In Mr. Gloade's situation, regardless of these two enactments, the vulnerability of a victim, particularly a woman in a domestic context, are well established aggravating factors on sentencing and ones which emphasize denunciation and deterrence, both specific to the offender and generally to society as a whole, as paramount principles in setting a fit sentence. Moreover, several Courts of Appeal have commented that attention to Aboriginal female victims, as a sentencing factor, was well set out in common law before s. 718.04 and s. 718.201 were enacted (for example: ***R. c. L.P.***, **2020 QCCA 1239**, at paras 80-91).

[46] Sentencing is more art than science, and each sentence must address the unique circumstances of a particular offence and the unique personal circumstances of the offender. Consideration must also be given to parity of sentence, meaning that similar offenders should receive similar sentences. For the offence of assault causing bodily harm there is a broad sentencing range. This takes into account the unique facts of each case, whether or not the offender

possessed a prior criminal record for similar offences, the seriousness of the bodily harm inflicted, and all of the other aggravating and mitigating factors that must be taken into consideration in order to determine what a fit and appropriate sentence looks like for a particular case.

[47] Defence counsel, in their written submissions provided numerous case authorities which provided guidance as to how other offenders were sentenced in different cases. Bearing in mind that such cases are varied in their facts, and that precedents are most helpful as foundational guidance only, especially as every sentencing is an individualized process, the following cases were referenced from oldest to most recent:

> 1. ***R. v. Manning*, 2014 CanLII 5265 (NL PC)**. The accused punched his common-law partner in the face, resulting in a black eye and lacerations requiring four stitches. The accused had a lengthy record including offences of violence and he was on probation at the time of the offence. The court imposed a sentence of 270 days, or nine months custody.
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> 2. ***R. v. Poitras*, 2016 SKQB 367**. The accused engaged in a prolonged assault on his partner of seven years. The victim suffered injured ribs and bruising. The accused had a previous record which included offences of violence. The offender's aboriginal background was taken into consideration, and he received a sentence of five months custody followed by two years probation.
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> 3. ***R. v. Cleroux*, 2017 MBQB 156**. The accused assaulted his partner multiple times over. 1.5 years. Gladue factors were considered in the court imposed sentences ranging from 8 to 12 months custody for each individual offence.

4. ***R. v. Cadotte*, 2021 ABPC 207**. The accused a victim were both of indigenous heritage. As a result of the assault the victim suffered serious facial injuries and bruising to her body. The accused had a lengthy record of prior violence, with five convictions for causing bodily harm. The accused admitted to anger management problems and expressed no desire or intention to stop drinking. He was sentenced to a term of 10 months incarceration.

[48] That noted, since the type of conduct and circumstances captured by the assault provisions of the *Criminal Code* varies greatly, the range of sentence for spousal partner violence is also broad. The statutory parameters are no minimum penalty to a maximum penalty of 10 years imprisonment. Generally, though, intimate partner violence attracts a higher sentence and greater condemnation than other types of assault.

[49] I acknowledge the submissions made by counsel with respect to the appropriate range of sentence, in particular I would agree with many of the Crown's comments which served to distinguish all of the cases put forward by Defence counsel with the exception of ***R. v. Cadott [supra]***. The other cases put forward involved offenders with less serious or easily distinguishable prior records. The fact situation and prior record of the offender in ***Cadotte [supra]*** is more in line with the case before this court.

[50] The Crown did not provide caselaw in support of their position with respect to the length of sentence requested.

Sentencing Indigenous Offenders

[51] S. 718.2 (e) of the *Criminal Code* requires the sentencing judge to take into account offenders' aboriginal status. It states:

> A court that imposes a sentence shall also take into consideration… All available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[52] Courts are required to take judicial notice that Aboriginal peoples had a long-standing disadvantage in Canadian society, and the legal system in particular.

[53] The fact that a person is Aboriginal does not automatically warrant a reduction of sentence. The Aboriginal factor must be considered among other factors as well and its impact will vary from case to case.

[54] The Aboriginal sentencing factors as articulated in *Gladue* and *Ippelee* will play a role in all offences by Aboriginal offenders, no matter how serious they are.

[55] The factors set out in s. 718.2 (e) do not serve as an excuse or justification for the criminal conduct. They provide the necessary context to enable a judge to determine an appropriate sentence.

[56] Where imprisonment is necessary, the length may be less due to the aboriginal heritage factors, but where the offence is "more violent and serious… it

is as a practical reality that the terms of imprisonment for Aboriginals and non-Aboriginals will be close to each other…”, ***R. v. Sharma,* 2018 ONSC 1141.**

[57] The law is not static - it evolves. I recall both counsel in the closing submissions indicating that I had a tough decision to make because I had to balance the *Gladue* factors against the sobering statistics surrounding violence toward Indigenous women.

[58] When it comes to sentencing, there are many examples where due to a greater understanding of the prevalence of a certain type of crime and the consequent harm, sentences or sentence ranges have increased over time. The Supreme Court of Canada commented in ***R. v. Stone*, 1999 CanLII 688 (SCC), [1999] 2 SCR, 290** at paras. 239 and 240:

> [239] it is incumbent on the judiciary to bring the law into harmony with prevailing social values. This is also true with regard to sentencing.…
>
> This Court’s jurisprudence also indicates that the law must evolve to reflect changing social values regarding the status between men and women;…
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> [240] In *Weatherall v. Canada (Attorney General)*, 1993 CanLII 112 (SCC), [1993] 2 S.C.R. 872, this Court recognized the “historical trend of violence perpetrated by men against women” (p.877). More specifically, in *Lavallee*, *supra,* at p.872, the growing social awareness of the problem of domestic violence was recognized by this Court. In my opinion, these cases indicate that prevailing social values mandate that the moral responsibility of offenders be assessed in the context of equality between men and women in general, and spouses in particular. Clearly, spousal killings involve the breach of a socially recognized and valued trust and must be recognized as a serious aggravating factor under s.718.2(a)(ii).

[59] More recently, in ***R. v. Friesen*, 2020 SCC 9 (CanLII), [2020] 1 SCR 424**, the Supreme Court of Canada signalled greater punishment was fit and appropriate for child sexual abusers, in part because of society's greater knowledge of the harm done by such crimes and the corresponding proportionality assessment of the gravity of the crime and the offender's role in it. At para. 76 the court noted:

> Courts must impose sentences that are commensurate with the gravity of sexual offences against children. It is not sufficient for courts to simply state that sexual offences against children are serious. The sentence imposed must reflect the normative character of the offender's actions and the consequential harm to children and their families, caregivers, and communities…

[60] Further, at para 108, the court commented:

> Courts can and sometimes need to depart from prior precedents and sentencing ranges in order to impose a proportionate sentence. Sentencing ranges are not "straitjackets" but are instead "historical portraits"… Accordingly, as this Court recognized in *Lacasse*, sentences can and should depart from prior sentencing ranges when Parliament raises the maximum sentence for an offence and when society's understanding of the severity of the harm arising from that offence increases…

[61] And explained at para 110:

> … There has been considerable evolution in Canadian society's understanding of the gravity and harmfulness of these offences… Sentences should thus increase "as courts more fully appreciate the damage the sexual exploitation by adults cause to vulnerable, young victims"… Courts should accordingly be cautious about relying on precedents that may be "dated" and fail to reflect "society's current awareness of the impact of sexual abuse on children"… Even more recent precedents may be treated with caution if they simply follow more dated precedents that inadequately recognize the gravity of sexual violence against children… Courts are thus justified in departing from precedents in imposing a fit sentence; such precedents should not be seen as imposing a cap on sentences…

[62] Thus, sentencing courts may need, in the right situation, to reflect on these types of issues in a specific sentence. Judges are not constrained to a precedent or sentence ranges, provided the sentence they impose is proportionate and properly takes into account all relevant factors in effect, provided the sentence is just, (***Friesen [supra]***, at paragraph 112).

Arguably, the sentiments about child sexual abuse sentencing in ***Friesen [supra],*** and particularly Indigenous child victims at paragraph 70, are analogous to the dynamics colouring domestic violence toward Indigenous women. The vulnerability of Indigenous women and girls to violence, because of their race, is patently obvious from statistics, such as those summarized in the case law, and more so from the history, stories and evidence detailed in the Missing and Murdered Indigenous Women and Girls (MMIWG) report released in 2019.

Analysis:

[63] Turning to my analysis, the aggravating factors are significant while the mitigating circumstances are minimal.

Aggravating Factors:

[64] The aggravating factors include:

- A substantial and related prior criminal record which includes not only crimes of violence, but prior crimes of intimate partner violence in particular a conviction for aggravated assault against an intimate partner in 2013 in the province of New Brunswick for which the accused received a federal penitentiary sentence of three years. Aside from the aggravated assault, the accused was convicted of a previous aggravated assault as a youth in 2007 for which he received a six-month deferred custody and supervision order. In addition to the two aggravated assaults, Mr. Gloade has six prior assault convictions.
- The assault causing bodily harm took place in the context of an intimate partner relationship with his wife.

Mitigating Factors:

- Mr. Gloade changed his plea to guilty midway through his trial, after the complainant testified. A guilty plea does represent an acceptance of responsibility; however, the mitigating value of this guilty plea is diminished due to the fact that the victim had already testified and had endured the stress of a court appearance and flying across Canada in the midst of COVID prior to the guilty plea be entered. I acknowledge Defence counsel's comments that his client should not be punished for any misunderstanding on his part as to which charges the Crown was proceeding with. I take that into consideration, but the timing of the guilty plea does have some impact of the value that I attribute to it with respect to sentence mitigation.

- Mr. Gloade is a man of Aboriginal Indigenous ancestry.
- He has suffered traumatic and adverse childhood circumstances and experiences.
- Mr. Gloade has been struggling with mental health and substance abuse issues for which he is currently receiving treatment.

[65] By now, for those of us who observe legal proceedings on a frequent basis, the reasons for, and the meaning of *Gladue* factors is well-known. Suffice it to say, the *Gladue* report contained a great deal of information surrounding the

historical and current living conditions at the Millbrook First Nations community, and Mr. Gloade's background, assessing his moral blameworthiness for assaulting his wife and causing bodily harm must take into account the person that he has become. He is a product of his environment. He was born into, and felt the effects of intergenerational trauma, including family and domestic violence, poverty and substance abuse. His addictions and learned behaviours toward Indigenous partners, in part shaped the man that he became, a man who acted with violence toward his wife. There is no discount, per se, to be applied to a sentence. Rather, his *Gladue* circumstances must factor into the mix when assessing his overall moral blameworthiness. To be clear, this does not excuse what he did – he alone is responsible for his choices – but it provides some perspective and explanation.

[66] In order to assess Mr. Gloade's moral blameworthiness, a host of factors need to be taken into account. First the nature of the assault, what the victim described as five hard strikes to the face which rendered her unconscious at one point, was merciless. It was a rage filled attack. I find his level of blameworthiness to be high in this case but reduced somewhat in light of the presence of significant *Gladue* factors.

[67] In terms of other sentencing considerations, denunciation and deterrence are paramount. Denunciation is critical in condemning spousal partner violence,

particularly the chronic threat to Indigenous women simply because they are Indigenous women, and more so for those who cannot escape their situation. Deterrence is critical as well. It is specific to Mr. Gloade, because at some point he will be released from jail to resume his life, and he has thus far not been able to control his violence. I hope as well that some measure of general deterrence would influence other potential offenders, particularly those men who do not know, or do not respect the sacred place of Indigenous women and the important role that they play in their communities as Mothers, Wives, Daughters and "Aunties" in their communities.

[68] As a society, we do not have firm answers to reduce domestic violence, particularly within Indigenous communities like Millbrook First Nation. It remains a menace of bleak proportions. While the Federal and Provincial governments along with First Nation governments, are best suited to proactively assist local communities and advocates to establish programs to help victims and abusers and to protect victims, courts are at the end of the line. A judge has a more limited role to mete out justice in the circumstances of any particular case.

[69] Any sentence that I impose must place emphasis on the vulnerability of Indigenous women as a factor in sentencing such an offender and restorative

sentences that also promote a sense of responsibility and incorporate denunciation and deterrence are important in such situations.

Remand Credit

[70] Time spent on remand must be considered when determining quantum of sentence and a failure to take into account remand time is an error of principle. The proper method of taking into account remand time is to first calculate the total sentence and then deduct an amount of remand credit based on the amount of time served.

[71] Normally in determining the sentence to be imposed on a person convicted of an offence, remand credit is limited to a factor of a maximum of one day for each day spent in custody which can be increased, if the circumstances justify it, to one and a half days remand credit for each day spent in custody. This is dictated by the *Truth in Sentencing Act* which was enacted in 2010.

[72] Under s. 719 (3.1) of the *Criminal Code*, the court is permitted to grant enhanced remand credit at a factor of One point five days credit for each day spent in custody.

[73] Beyond this, enhanced remand credit will be afforded where there is "particularly harsh presentence incarceration conditions". This is also called

Duncan [infra] credit which can be applied to address any "exceptionally punitive conditions" that go beyond the "normal restrictions associated with pretrial custody", see ***R. v. Duncan*, 2016 ONCA 754 (CanLII).**

[74] A ***Duncan [supra]*** credit is not a deduction from what is an otherwise appropriate sentence; it is a mitigating factor applied to the formulation of the ultimate sentence.

[75] There is some suggestion that the judicial notice taken by judges of the societal impact of the pandemic permits the inference that inmates in Provincial institutions have at times experienced harder time due to the assumed reduction in programming. Accordingly, at least some mitigation is permitted. Very restrictive conditions and COVID related health risks are examples of circumstances that give rise to ***Duncan [supra]*** credit.

[76] Circumstances in which this enhanced credit have been given include conditions present at remand facilities, such as a lack of available programming or counselling. I find such conditions to have been present in Mr. Gloade's case. This would also include a lack of culturally appropriate services and programming, frequent lockdowns over the course of the remand, lengthy periods of time spent in

solitary confinement or other circumstances, and the denial of medication or treatment or other circumstances present in the facility such as overcrowding, etc.

[77] I find that these circumstances were present over the course of the time Mr. Gloade spent in custody. He suffered from a lack of appropriate programming (cultural or otherwise), overcrowding, frequent lockdowns due to staffing and general COVID issues.

Conclusion

[78] Mr. Gloade has spent approximately 829 days on remand, during which time he was serving a sentence on other matters for a period of 181 days which is deducted from the total remand time, leaving a net total of 648 days in pretrial custody. I am granting enhanced remand credit at a factor of two for one for the reasons previously cited, which would be a total remand credit of 1296 days.

[79] After considering all the circumstances, the gravity of this crime and the circumstances of this offender, and balancing all the sentencing principles and factors, I find that a just sentence is a period of 14 months incarceration or 420 days. Mr. Gloade is credited for 1296 days of remand time served. Mr. Gloade has served the entirety of his sentence for this offence while he was on remand, awaiting trial on this and other matters.

[80] I also impose the following ancillary orders: a s.109 mandatory lifetime Firearms Prohibition pursuant to subsection 109(a.1)(i) because the violence was committed against an intimate partner. I acknowledge Mr. Kayter's comments regarding Mr. Gloade's possible cultural connections to his Indigenous traditions and his constitutionally protected Treaty rights to hunt, and the suggestion that sometimes there are provisions included within a weapons prohibition permitting hunting under the supervision of an Elder or third party for the purpose of exercising those Treaty rights. I did not hear submissions from Defence counsel on this point, but I would decline to make that order at this time.

[81] I also impose a DNA order, pursuant to s. 47.051 as this is a primary designated offence. I will waive the imposition of victim fine surcharge in this case.

Rosalind Michie, JPC