

SUPREME COURT OF NOVA SCOTIA
Citation: R. v. White, 2013 NSSC 323

Date: 20131017
Docket: CRH No. 372319
Registry: Halifax

Between:

Her Majesty the Queen
v.
Nicholas White

Judge: The Honourable Justice Peter P. Rosinski
Heard: September 11, 2013, in Halifax, Nova Scotia
Final Written October 8, 2013
Counsel: Cheryl Byard and Michelle James, for the Crown
Kevin Burke, Q.C., for the Defendant

By the Court:

[1] This is the sentencing in relation to Nicholas Edward White and his plea of guilty to charge of manslaughter, after being charged with second degree murder initially.

[2] I have the benefit of the materials provided, that is the Agreed Statement of Facts, the Pre-Sentence Report from 2004, Criminal Record of Mr. White, the report of Dr. Theriault respecting his psychiatric condition, as well as the cases referred to by the Crown. We have the Victim Impact Statements and now it falls to me to impose an appropriate sentence, bearing in mind that there is a Joint Recommendation here.

[3] Mr. White was arrested in a graveyard in the early morning hours of November 26, 2010. The graveyard was not a long distance from 70 Cobequid Road, Lower Sackville, Nova Scotia, where Mr. white lived at apartment #27. He was discovered by Police Services Dog Ronin who tracked his scent there. Constable Bates, his handler, observed Mr. White to be very quiet while laying on the ground after being brought down in a chase by the Police Service Dog, Ronin.

Mr. White was not responding to the dog's continued bite hold on his arm or bicep area.

[4] Mr. White's hands, pants, and sweater appeared to be covered in blood.

[5] A further search by Police Service Dog Ronin discovered an 8" bladed knife with a curved wooden handle, which together with a sharpening steel rod, had been laid in a cross like fashion on a gravestone. Both the knife and gravestone had blood on it as well.

[6] Mr. White appeared to be substantially intoxicated and remained in that condition for some hours after his arrest.

[7] Also living at 70 Cobequid Road , in apartment #7 was Joseph [Joe] Walker. It had been his 76th birthday on November 25th and a number of persons had come by to celebrate with him.

[8] Mr. White did not know Joe Walker other than, it appears, in passing perhaps in their apartment building. Yet Mr. White was also present having mistakenly knocked at Joe Walker's door and being welcomed to come in. Mr. White remained after others had left at approximately 10:30 p.m. on November 25th.

[9] To that point the mood in Joe Walker's apartment was easy-going and celebratory. Witnesses who saw Mr. White characterized him as being "really drunk ...he had a hard time standing up and talking. His eyes were barely open."; and that his eyes were "quite glazed". And, of course, we do have the characterization of one witness that he was, on a scale of 1 to 10, actually 11 on the intoxication level scale when she last saw him as she left the apartment of Mr. Walker.

[10] At about 11:00 p.m. one of the tenants heard a sustained period of smashing, crashing and banging noises coming from the area of Joe Walker's apartment. Mr. White was observed leaving Mr. Walker's apartment. Several residents, and the apartment building supervisor, saw Mr. White who appeared to be covered in blood.

[11] The supervisor described Mr. White's demeanour to be calm when, in response to her question, "Nick, what are you doing?" as he was leaving Joe Walker's apartment covered in blood, that he responded that he was "just leaving my buddy's house".

[12] Later, when police entered Joe Walker's apartment they found many items strewn about and blood everywhere. They located Joe Walker who had a noticeably large gash to the left side of his naked body lying face down.

[13] Expert analysis by blood splatter analysts, DNA analysts and toxicologists concluded that Mr. White had been moving about apartment #7 while slightly bleeding himself, but that the primary source of blood was from Joe Walker. It was Joe Walker's blood that was all over Mr. White and his clothes as well.

[14] Expert toxicology indicated that Mr. Walker himself had elevated levels of alcohol in his blood at the time he was examined.

[15] Dr. Matthew Bowes, Chief Medical Examiner determined the cause of death was from multiple sharp force injuries [consistent with a knife attack] to the head, face, neck, chest, abdomen, back, both hands and arms and both legs. He concluded there were multiple injuries; in fact, in his estimation "too many to count".

[16] None of the injuries were immediately fatal – Joe Walker bled to death because of them.

[17] Mr. White was initially charged with second-degree murder contrary to Section 235 of the *Criminal Code*, and in this Court on September 3rd, 2013 pled guilty to manslaughter pursuant to Section 222(5)(a) and 236 of the *Criminal Code*.

[18] The Crown agreed to accept this plea to manslaughter, instead of insisting on a trial on the charge of second-degree murder.

[19] The Crown and Defence here have proposed a jointly recommended sentence for Mr. White as the sentence I should impose. They have put a great deal of effort into this case and they are to be commended for having resolved this matter without the necessity of a trial.

[20] Now, to understand this decision of theirs, and that is specifically more so of the Crown to accept a guilty plea to manslaughter, I will briefly outline the difference between manslaughter and murder.

[21] In its simplest terms, proof of murder requires proof that an accused caused the death of a victim and that the accused specifically intended to kill that person.

[22] Proof of manslaughter, requires proof that the accused caused the death of a victim by committing an act that is likely to significantly injure a victim, in

circumstances where it was reasonably foreseeable that there was a risk of bodily harm which ultimately in fact did lead to the death of the victim. That is, the intention specifically to kill is absent.

[23] The punishment for second-degree murder is life imprisonment and a minimum of 10 years parole ineligibility.

[24] The punishment for manslaughter is life imprisonment. There is no minimum sentence or parole ineligibility aspect, however. Therefore, sentences for manslaughter theoretically could range from probation to life imprisonment.

[25] At this point it may be helpful to quote from our Court of Appeal in their decision in *R. v. Henry* 2002 NSCA 33 where Justice Roscoe at paragraphs 16 – 20 said [And of course, the Court of Appeal judgments are binding upon this Court]:

Sentences for the offence of manslaughter cover a very wide scope from suspended and conditional sentences to life imprisonment. The range of appropriate sentences is probably more extensive than for any other offence. Presumably, because the offence covers such an expansive array of methods of commission. A statement made by this Court almost 50 years ago in *R. v. Gregor* (1953) 31 MPR 99 is still valid. It may be said of manslaughter differing in that respect from other crimes that the legal limits of possible sentences is very great. There are cases of manslaughter where the line between crime and accident is narrow and where the sentence of a few months imprisonment is appropriate. On the other hand, there are cases where proper sentences approach or reach the legal limit of imprisonment for life. Different cases involve different facts, as varied as there are as the actions and thoughts of man, and it is always difficult to determine the punishment appropriate under the circumstances. No one case can be an exact guide for another.

[26] Justice Roscoe went on:

A more contemporary expression of that view is found in *R. v. Creighton*, [which I'll say here is a Supreme Court of Canada case] where Justice McLachlin, as she then was, stated at page 375:

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 degrees of moral fault of the offender. This Court acknowledged this in *Martino*, pg. 362:

The flexible sentencing scheme under a conviction for manslaughter is in accord with the principle that punishment be meted out with regard to the level of moral blameworthiness of the offender. It follows that the sentence attached to manslaughter does not require elevation to the degree of *mens rhea* for the offence.

[27] She goes on to say:

Despite the broad variety of fit sentences for manslaughter, the majority do fall within a 4 to 10 year length as Cromwell JA, [now Justice Cromwell of the Supreme Court of Canada], noted in *R. v. Lawrence* (1999) 172 NSR 2d 375 at para. 14.

[28] I won't quote his exact quote, I'll go on though with Justice Roscoe's, where she said at paragraph 19:

A significant distinguishing factor between cases where a low or non-penitentiary term is appropriate and those where a lengthy sentence is imposed for manslaughter, is the moral blameworthiness or fault of the offender, *Creighton*. The Court while of course giving due weight to all the principles of sentencing, must assess the extent of moral blameworthiness in a particular case and should consider where on the spectrum from almost accident to almost murder the particular offence falls. Obviously, the nearly equivalent to murder

offences will, in general, attract a sentence higher than the majority, for example, *Julien*, and those closer to accidental killing will generally fall below the average, for example *R. v. Owens*.

[29] She then goes on at paragraph 20 to say:

Example of strong mitigating factors that have influenced the courts to be lenient in the imposition of a sentence in manslaughter cases are; long term abuse of an accused by the victim; battered women syndrome; impulsive act or immediate reaction to a perceived or actual wrong by a victim; mental illness of the accused; extreme stress or provocation; concern about childcare duties of the accused; poor family background; abuse as a child; and self defence; general remorse; and youth of the accused. Similarly as to ready admission of responsibility and voluntary surrender to the police.

[30] Thus the circumstances of manslaughter may be seen as a continuum as stated. The continuum really runs from what could be called “near murder” circumstances to so-called “near accident” circumstances.

Sentencing considerations

[31] Normally, when a Court sentences an offender it will consider the circumstances of the offence, the circumstances of the offender, the maximum, and if there is a minimum, sentences available under the criminal code, and what previous cases have suggested are appropriate sentences for cases involving similar offenders in similar circumstances.

[32] Consideration is also given to the consequences of the crime, which are heart wrenchingly expressed in the Victim Impact Statements in this case.

[33] These all are then considered in light of the principles of sentencing contained in sections 718 – 719 of the *Criminal Code of Canada*.

[34] Also, in this case, special considerations apply because Mr. White has pled guilty, and both Crown and Defence counsel have jointly recommended the same sentence as appropriate here.

[35] I will now discuss each of these factors.

Circumstances of the offense

[36] Words cannot sufficiently describe the brutality of this killing. It has the hallmarks of a frenzied killing. The number of stab wounds, the lack of any significant injuries to Mr. White, and the widespread evidence of blood within Joe Walker's apartment suggest it was a horrific event.

[37] The motivation of Mr. White's brutal attack on Joe Walker remains a mystery.

[38] The circumstances of the offense also contain bizarre elements: the calm demeanor of Mr. White at the various times after the killing; his apparent irrational behaviour such as placing the knife and steel sharpening rod in a cross-like fashion in the gravestone; his drawing attention to himself by throwing a large rock through the glass front door at the apartment building just after the murder; his returning to Joe Walker's apartment which had the door open, entering it and knocking stuff about as he was heard to be saying, "Hello, hello"; he was observed getting up to slam the apartment door shut, and then open it and slam it shut again; and then his departure from 70 Cobequid Road after which he drew attention to himself by throwing rocks through a window in a nearby residential building.

[39] Moreover, the nature of the attack also suggests a certain bizarreness. Mr. White and Mr. Walker did not know each other, yet Mr. White continued a frenzied attack, stabbing Joe Walker so many times that the wounds were not able to be counted, and left Mr. Walker naked in a most undignified state.

[40] In relation to the offense, the Court also has by agreement before it the June 23, 2013 forensic psychiatric assessment of Mr. White done by P. Scott Theriault, a well-known and respected psychiatrist, who is associated with the East Coast Forensic Unit of the Nova Scotia Hospital in Dartmouth.

[41] In that report there is a version of events related by Mr. White to Dr. Theriault.

[42] He explains that he intended to visit Barbara Raftus' apartment but accidentally knocked on the door and was invited in to Joe Walker's apartment who had two visitors at the time. Mr. White indicated that "I go to walk in, and I blacked out".

[43] He indicated to Dr. Theriault that he has only a spotty recollection of the next series of events and recalls at one point that "I was covered in blood" and found himself "down the street".

[44] His next memory is being at the cemetery, and thereafter the attack by the police dog and some events at the police station.

[45] Mr. White indicated to Dr. Theriault that he was unable to recall how much alcohol he consumed on the night in question. However, Dr. Theriault concluded, from external sources and statements of witnesses and such, that he did continue to drink following the onset of his reported amnesia: "Mr. White is also unable to recall whether on the date in question he had consumed his regular anti-anxiety Clonazepam" in the prescribed dosage or a lesser or greater amount.

[46] Importantly, after a comprehensive analysis in consideration of the various information available to him, Dr. Theriault concluded that Mr. White appears to have a psychiatric illness – he meets the criteria for paranoid schizophrenia. Dr. Theriault found there is some evidence that this illness had been present since about the age of 17, however Mr. White had only been treated on an active basis for that since about 2010.

[47] Significantly, however, Dr. Theriault would not consider Mr. White to be a person to be considered “not criminally responsible” pursuant to section 16 of the *Criminal Code of Canada* based on his psychiatric illness of paranoid schizophrenia.

[48] To explain, a person who is not criminally responsible under the *Criminal Code* is a person who would not be found “guilty” and therefore not sentenced by a sentence in Court such as this one. But rather, those who are found not criminally responsible, which effectively means they did the act in question but were not sufficiently mentally responsible for their actions at the time by reason of a mental disorder, would be dealt with in a different or parallel system which deals with those mentally ill offenders.

[49] On the other hand, Dr. Theriault does conclude:

Given the reported level of intoxication as noted by others and given that Mr. White was on Benzodiazepine which could interact with the alcohol and enhance its effects, including the induction of amnesia, I am given to believe that Mr. White's claim of amnesia is a reasonable one. However, as a result of his amnesia I am unable to draw any conclusion as to what his mental state was at the moment of the attack on the victim or his mental state at the time immediately preceding that.

[50] He goes on to say:

His actions appear to have arisen as a result of a loss of impulse control – for reasons unknown – occurring in the context of acute severe alcohol intoxication rather than as a function of a psychosis.

Circumstances of the offender

[51] I derive these from the Agreed Statement of Facts and a Pre-sentence report prepared November 25th, 2004 as well as the report of Dr. Theriault, June 23, 2013 and the Criminal Record of Mr. White as contained in the Crown's brief herein.

[52] Mr. White was born on December 20th, 1983 and grew up in the Dartmouth area. In 2004 the Pre-sentence report indicates that he had difficulties during his probationary term at home and in school while a young person, and that during that term he had been seeing a psychiatrist who referred him to the Nova Scotia Hospital for a further assessment.

[53] The writer of the Pre-Sentence Report noted that:

It would be very important for Nicholas White to follow through on these assessments and recommendations of the doctors involved.

[54] She goes on:

The subject would appear to benefit from a condition requiring him to participate in counseling and treatment in relation to issues surrounding the physical and mental abuse and also in relation to his anxiety issues.

[55] In Dr. Theriault's report, I note thereafter a number of unusual incidents happened involving Mr. White which point to a continued underlying psychiatric disorder as outlined by Dr. Theriault.

[56] As to Mr. White's criminal record. His criminal record indicates that he was sentenced on October 5th, 2010 in Dartmouth, a month and a bit before this incident for impaired driving and given a \$1200 fine and a one year driving prohibition order.

[57] Before that, it was April 4th and 6th, 2006 in Amherst he received for two assaults [s. 266 *Criminal Code*]four months in jail consecutive to a sentence he was serving at the time. As I understand it, this may have been in relation to assaults within the institution.

[58] On June 30th, 2005 in Dartmouth, for possession of stolen property [s. 355 *Criminal Code*] and breach of probation [s. 733.1 *Criminal Code*]he received 30 days on each charge concurrent to the sentence he was serving.

[59] That sentence was imposed on May 11th, 2005 in Dartmouth where he received a 24 month Federal sentence for robbery [s. 344 *Criminal Code*]; break and enter [s. 348 *Criminal Code*]; theft under \$5000 [s. 334(b) *Criminal Code*]; and two breaches of probation.

[60] On December 6th, 2004 he received 18 months suspended sentence and probation for his first offense as an adult. Those offenses at that time included five counts of theft under \$5000 [s. 334(b) *Criminal Code*]; three breaches of Section 137 of the *Youth Criminal Justice Act*, which is comparable to the probation violations of adults; and one assault causing bodily harm contrary to Section 267b)of the *Criminal Code*.

[61] Prior to that, on September 4th, 2003 in Youth Court for a mischief, likely property damage charge contrary to Section 430(4) of the *Criminal Code*, he received one year probation.

The maximum sentence available here

[62] As earlier indicated the maximum sentence available is life imprisonment. In relation to most criminal offenses, all of which have maximum sentence ceiling, Courts have over time established guidelines for what sentences would be

appropriate for the circumstances of the offender and circumstances of the offense in question – these are often referred to as the “range” of appropriate sentences, absent exceptional circumstances.

[63] Courts have particularly struggled in establishing an appropriate range of sentence in relation to manslaughter cases because their circumstances can vary so significantly. Although they all have in common the reality that the offender caused the victim’s death, the means of causing the death can include circumstances such as providing somebody a dangerous and powerful narcotic substance which they themselves inject and which causes their death; another example is a one punch response to a confrontation which causes the victim to fall unconscious striking their head on the sidewalk and consequently dying; closer to “near murder” cases where, but for the involvement of intoxicating substances and possibly provocation or psychological disorders, an accused would be found guilty of murder, having had otherwise the specific intention to kill, which was brought into question by one or more of those factors.

[64] In relation to the circumstances here I have considered the cases put forward by the Crown regarding the kinds of sentences that have been found appropriate for similar offenders in somewhat similar circumstances, including:

1. *R. v. Nelson* [1988] NSJ No. 278 (CA);
2. *R. v. Almakari* 2010 ONCA 802;
3. *R. v. Devanney* [2006] O.J. No. 3996 (CA); and
4. *R. v. Clarke* [2003] O.J. No. 1966 (CA).

[65] Also helpful is a recent decision of the Ontario Superior Court – *R. v. Reed* 2013 ONSC 4247 per Justice Goodman, particularly his review of the sentencing authorities at paragraphs 49 – 60.

[66] Now, I will point out that as a judge in the Supreme Court of Nova Scotia, I am only bound by our Court of Appeal, but often we look to other provinces and, specifically Ontario, given its large population, to get a sense of what sentences have been imposed in those provinces.

[67] In summary, in my view these cases tend to suggest a range of sentence somewhere between 8 and 15 years in jail for such offences.

Victim Impact Statements

[68] The Victim Impact Statements here read into Court by Senior Crown Attorney, Ms. James and personally by Ms. Carr, outline the harm done and the loss suffered by the surviving family of Mr. Joe Walker.

[69] As I say, they were filed by:

1. Mary Fleet, Mr. Walker's sister. She said in part:

There isn't any words that express your feelings regarding this incident. The tears, nightmares were just unbearable along with the sleepless nights.

2. Beverly Crowell, Mr. Walker's sister who lives in Alberta and was unable to be present today:

I have had sleepless nights since this happened ... I miss the gatherings we used to have; my brother had a heart of gold ... I have dreams about Joe.

3. Jean Dorothy Warner, Mr. Walker's sister:

A few years earlier we had just reunited with our brother again. Since his murder in 2010 there has been sleepless nights. I can't imagine what are brother went through. I am on nerve pills now. My nerves have been really bad since this. I don't leave my door unlocked anymore or go out at night. I can't even stay alone anymore.

4. Ashlyn Peel, Mr. Walker's granddaughter said in part:

What hurts the most about him being gone besides feeling the pain he must have felt, is he was planning on visiting Edmonton. My husband never had a chance to meet him and he was such a delight to have in my life. He missed out on my cousins and my wedding.

[70] She goes on:

Even though I am across the country I still found ways to make me feel like I should have been there to help him.

5. Kayelyn Sawak, also Mr. Walker's granddaughter, referred to Mr. Walker as "Puppy Joe". She says:

I am suffering the loss of my only grandfather, Joseph Walker, also known as "Puppy Joe" ... Knowing that there will be no more lunch dates, bus rides, TV time, huge suppers or his incredible hugs breaks my heart more every day.

[71] She goes on:

The excitement we (my siblings and I) felt going to visit him when we were kids will never be known by any of his great grand kids.

[72] And, lastly, sixth, Ms. Lisa Carr, who read her own statement, which is fresh in my mind, but she summarized his life and reiterated, as so many of the others had, that he had a heart of gold and would give you anything you needed even if it meant he would go without. She said:

When I needed to get away I would go to puppy's house to make a cup of tea and watch his favorite show Jeopardy with him. I am unable to do that now because he has been ripped away from my life.

[73] She goes on to say:

Halifax will never have the same feel to it.

Principles of Sentencing

[74] Section 718.1 of the *Criminal Code* reads:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more the following objectives.

[75] In this case, the Crown focused on, and I agree:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and others from committing offenses;
- (c) to separate offenders from society where necessary;
- (d) to assist in rehabilitating offenders.

[76] In *R. v. CAM* [1996] 1 SCR 500, the Supreme Court of Canada stated that in relation to sentencing:

The fundamental nature of the proportionality principle arises out of the general principle in our law that criminal liability can only be imposed on persons who possess a morally culpable state of mind. A sentence that is grossly disproportionate in the sense that it is so excessive as to outrage the standards of decency will violate the prohibition against cruel and unusual punishment as contained in Section 12 of the *Canadian Charter of Rights and Freedoms*.

[77] The Court went on, more importantly, to distinguish the acceptable sentencing principle of “retribution”, as opposed to the unacceptable sentencing principle of “vengeance” when it said:

Retribution in the criminal context by contrast represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender and the normative character of the offender’s conduct.

[78] Furthermore, unlike vengeance, retribution incorporates a principle of restraint. Retribution requires the imposition of a just and appropriate punishment and nothing more.

[79] Now, in some respects that is codified in Section 718.1 of the *Criminal Code* which reads:

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

[80] Section 718.2 speaks to other sentencing principles, and generally suggests what things should be “aggravating” factors, that is those that tend to increase the severity of the sentence, and what things should be “mitigating” factors, which tend to decrease the severity of the sentence.

[81] In this case the aggravating factors are that Mr. White has a previous criminal record and, specifically, prior offenses involving violence; that the offense occurred in the victim’s home and the vulnerability of Mr. Joe Walker who was 76 years old at the time; also that a weapon was involved; and the horrific nature of the multiple injuries inflicted to the victim and general circumstances of the killing.

[82] The mitigating factors include the fact that Mr. White pled guilty and accepted responsibility, although somewhat late in the day, but nevertheless he spared witnesses from having to testify and the State from expending the resources to conduct what would have been a one-month long judge and jury trial with an uncertain outcome.

[83] Similarly he has been in custody since November 26, 2010 and is required to be given some measure of credit for that time in spent in custody pursuant to Section 719 of the *Criminal Code*.

[84] My rough count is that would come up to including 986 days in custody to date.

Joint Recommendation

[85] A joint recommendation by the lawyers in a case to a sentencing judge, simply means they have carefully considered the circumstances of the case, and determined that upon a guilty plea to a particular offence, they are satisfied that a specific jointly recommended sentence to a sentencing judge, will be in the interests of both the public and the accused person.

[86] In this case Mr. White is represented by a very senior experienced criminal defense lawyer in the person of Mr. Kevin Burke, QC. The Crown is also represented by very experienced senior Crown Attorneys in the person of Ms. Cheryl Byard and Ms. Michelle James.

[87] I have confidence in the judgment of all these persons respecting this case and its outcome.

[88] Perhaps more to the point, our Court of Appeal has as recently as 2011 in *R. v. AN* 2011 NSCA 21 had this to say about joint recommendations on sentence:

[89] In *Cromwell*, the Court addressed the deference due to a joint sentence recommendation that accompanies a guilty plea:

[18] In *R. v. McIver* [2003] NSJ No. 188 this Court approved with particular emphasis, the following comments by Fish J [who is now a Justice of the Supreme Court of Canada] writing for the Quebec Court of Appeal in *R. v. Douglas*:

The interests of justice are well served by the acceptance of a joint submission on sentence accompanied by a negotiated plea of guilty – provided of course, that the sentence is jointly proposed falls within the acceptable range and the plea is warranted by the facts admitted.

[19] There are many situations in which it is in the public interest for crown and defence counsel to enter into negotiations which result in a guilty plea and a joint sentence recommendation. There may be uncertainties in evidence which induced both counsel to prefer a compromise. Avoidance of a trial may save substantial public expense and spare prosecution witnesses the trauma of testifying. ... Offenders sometimes provide the police critical information leading to the solution of other crimes. This can serve as a *quid pro quo* for a sentence somewhat reduced from what would otherwise be appropriate. ... Such resolutions are more likely to be achieved [that is between the lawyers] where it is probable that the sentencing judge will accept the recommendation of counsel.

[20] Joint sentence submissions arising from a negotiated guilty plea are generally respected by the sentencing judge. Ultimately however, the judge is the guardian of the public interest and must preserve the reputation of the administration of justice. Where the agreed resolution is contrary to the public interest, would bring the administration of justice into disrepute or is otherwise unreasonable the judge retains the discretion to reject the joint recommendation.

[90] Turning then to the circumstances of this case and the joint recommendation made by Crown and Defence counsel.

[91] The parties jointly agree the term of imprisonment in a federal penitentiary, the equivalent of 12 years in custody is appropriate. Given that Mr. White has been in custody since November 26, 2010, he should be given a pre-sentence credit, equivalent, in my view, to the three years sentence of imprisonment suggested here, reducing the remaining sentence to be imposed today to one of 9 years imprisonment which custody would commence immediately.

[92] I am completely satisfied that the jointly recommended sentence here is within the range of sentences that would be appropriate in this case, and should be adopted by me, and I will so order.

[93] The Crown and Defence also requested that the Court grant an Order pursuant to Section 109(3) of the *Criminal Code* for the remainder of the lifetime of Mr. White that he would be prohibited from possessing any firearm; crossbow; restricted weapon; ammunition and explosives substance during that time.

[94] Such orders are mandatory and I so order.

[95] The Crown and Defence also request the Court grant a so-called DNA Order pursuant to section 487.051(1)(1) of the *Criminal Code*. This order will allow the appropriate authorities to take a DNA sample by way of blood samples

from Mr. White for the purpose of retention in the DNA data bank and to be held on record their during his lifetime.

[96] I so order pursuant to the above-noted section as this is a primary designated offense under section 487.04(a) and is mandatory.

[97] In addition here, I am satisfied that given the circumstances in this case and the report of Dr. Theriault that Mr. White more likely than not has a psychiatric illness – that is paranoid schizophrenia.

[98] Moreover although the precise motivation or impulse that overtook Mr. White and can be said to have caused him to so brutally attack Joe Walker is not known, it is apparent to me that it is in the interests of public safety and vitally important that Mr. White, while incarcerated, and throughout his sentence be permitted to continue with medications that have been prescribed for him; and that he continue to see a psychiatrist inside or outside the institution for assessment and consultation; and that he be afforded an opportunity to take whatever counseling may be required or recommended in order that he may deal with his illness and substance abuse in relation to prescription and non-prescription drugs, as well as alcohol issues in an effective manner, with the hope that upon his release from

custody he will be in a position that will make the likelihood of any further criminal offenses as remote as possible.

[99] Moreover to be precise, I want to be clear that by so recommending I do not intend to preclude Correctional Services Canada from attempting to involve Mr. White in any other form of counseling or programming that would be to his benefit.

[100] Therefore, I specifically recommend to Correctional Services Canada authorities that these recommendations be followed in relation to Mr. White during his sentence.

Conclusion

[101] Mr. White is sentenced today to nine years imprisonment in a federal institution, upon which warrant of committal the above-noted recommendations will be contained as well.

[102] I will also issue orders under Section 109(3) in relation to firearms, explosives and ammunition for his lifetime and Section 487.051(1) of the *Criminal Code of Canada* regarding his DNA.

[103] Lastly, to the family of Joe Walker. By all accounts he was a kind and loving person. I am sorry for your loss, and I hope that now that these proceedings are finished, you have some measure of closure.

Rosinski, J