Court of Queen's Bench of Alberta

Citation: R v Dennehy, 2019 ABQB 912

Date: 20191129
Docket: 180266363Q1
Registry: Wetaskiwin

Between:

Her Majesty the Queen

Crown

- and -

Brandon Dennehy

Accused

Reasons for Sentence
of the
Honourable Mr. Justice N.E. Devlin

Overview

[1] Millet Liquor is a small, family-owned business on the main street of Millet, Alberta. Brandon Dennehy robbed it on February 24, 2018. At the time of the robbery, he had been awake for eight days in the throes of methamphetamine and alcohol.

[2] This case exemplifies the dynamic that brings an otherwise proud and capable Indigenous man into the criminal justice system. His background includes every feature of the post-colonial experience. This has driven his substance-abuse, which is the sole cause of criminal acts. He was ashamed and remorseful even as the crime began. He never disputed his involvement and worked to better himself while awaiting trial. I have determined that his whole-hearted desire to

be with his family and lead a normal, healthy life motivates him so deeply that he needs no further specific deterrence, and that denunciation of his crime has been served by his year in pre-trial custody.

[3] Mr. Dennehy pleaded guilty on the day of his trial. He and his family cooperated extensively in the preparation of a Gladue Report. At the conclusion of the sentencing hearing, I spoke directly to Mr. Dennehy, and sentenced him to one day in jail (in light of the equivalent of one year in pre-trial custody), followed by 18 months probation, with a focus on rehabilitation and restoration. I told counsel that written reasons explaining the departure from the ostensible starting point would follow. These are those reasons.

The offence

[4] On the day of the robbery, Stacy Tetlock was working alone at Millet liquor. Mr. Dennehy walked into the store and went over to the vodka shelf. He took a large bottle of Smirnoff and brought it to the counter. He put down the bottle and said, "I hate to do this to you, give me what's in your till, give me all your money." At the same time, he pulled out a spray can and enhanced his demand for cash by saying, "don't make me use it, all I want is the money." Ms. Tetlock complied, believing that the can was bear spray. She handed over $140 in a bag. Mr. Dennehy then announced that he was "gonna take beer too", and did so one the way out.

[5] Before he left, Mr. Dennehy asked Ms. Tetlock for a hug and apologized.

Post-offence events

[6] The store's security footage identified Mr. Dennehy as the suspect. He was arrested a week later and gave the RCMP a full confession. In a recorded statement, he told Constable Seidemann that, by the time of his arrest, he had not slept or eaten in over a week, saying:

> I just did it, did what happened on the video...To be honest, I was so drunk, I don't remember doing it....So high on crystal meth you know, high and drunk.

[7] Mr. Dennehy told the officer that, "I felt really, really bad about doing that." The officer asked him what he would want his victim to know, he said: "That I'm really sorry and um, she didn't deserve that." At the end of their conversation, once the officer had left the room, the recording captured Mr. Dennehy sobbing. Speaking to no one but himself and his creator, he is heard saying, "I'm not a bad guy, I'm not a bad guy."

Impact on the victims

[8] Two hard working members of the community were harmed by this crime. Ms. Tetlock lost both her job and her sense of safety as a result of the robbery. In her Victim Impact Statements, she wrote: "Since the event, I no longer feel safe while being out after dark, walking to my car pumping gas, I fear someone will come up behind me." This episode left her too fearful and shaken up to return to work at the store.

[9] Karen Rempel, the owner of Millet Liquor also filed a victim impact statement. It is elegant and humane and is worthy of quoting at length:

> I opened my store on a dream and a lot of borrowed money. I opened it so I could have a decent paying job close to home and my kids....I am not a big faceless corporation that "can afford to lose some money". If you would know me, I would

> have helped you out. I am one person that employs five people so that they can pay for some necessities of life.
>
> ...
>
> I have gone through a plethora of emotions....concern (for my employee), mad (how could someone do that?), guilt (for not being in my store instead of my employee), and finally perplexed, and this one has plagued me for the last almost 2 years as I have so many questions.
>
> ...
>
> You might have thought you only robbed me of a case of beer, some vodka and some money, but you robbed me of so much more, my peace of mind.

[10] Most notably, and much to her credit, the soul-searching prompted by this event led Ms. Rempel to ask: "How can I help more people so no one has the need or desire to do this to another person?"

The offender

[11] Mr. Dennehy is a 26-year-old Cree man, born and raised in Maskwacis. He is the father of four children, ranging in age from 3 to 8. The children live with their mother, Tiana, on the Louis Bull reserve in Maskwacis. Mr. Dennehy and Tiana have been together for most of their adult lives, though it appears their relationship has fractured due to his drinking. He expressed the hope that they could re-unite as a family after his release. Mr. Dennehy's father related that, "his wife and his kids are his rock. When he was sober, they were his number one priority."

[12] Before the events of recent years, Mr. Dennehy held a variety of jobs ranging from security, to working at the Samson gas bar, and latterly air-duct cleaning. He describes himself as having a skill for duct cleaning and had found success and satisfaction in it.

[13] Mr. Dennehy's probation officer speaks highly of him, and told the Gladue writer that:

> Brandon is very polite, he's very easy to work with. When he's sober, he's very motivated, he can achieve his goals.....[he] presents as a good father and contributing community member.

Gladue factors

[14] "Gladue factors" are potently present in Mr. Dennehy's case. He has suffered the full spectrum of harm, and self-harm, which tragically typifies the post-colonial Indigenous experience in Canada. A point-form summary of the factors applying to Mr. Dennehy are enumerated in a dispiriting, page-long list in the Report. The specific details are deeply intimate and personal. I will not enumerate them in open reasons. There is increasingly little need to finely measure which offender can most effectively pathologize their Indigenous experience. Suffice to say, Mr. Dennehy has the archetypal Indigenous experience which s.718.2(e) and ***R v Gladue***, 1999 1 SCR 688 were written to acknowledge and ameliorate. He possesses the entire gamut of experiential traits that are advanced as mitigating on sentence for Indigenous and non-Indigenous offenders alike. His background is no less impactful or mitigating than those considered in recent cases where Court of Appeal has called for a robust application of ***Gladue*** principles: ***R v Swampy***, 2017 ABCA 134 at para 23.

[15] The same can be said for many of his immediate relatives and ancestors. They include two generations of residential school survivors who, together with the rest of the family, have suffered all of the personal and inter-generational damage that this history implies. Tragedy and trauma have touched Mr. Dennehy's family in many forms. This pattern is now well-familiar to this Court: see e.g. ***R v Okimaw***, 2016 ABCA 246 at para 81.

[16] Alcohol abuse has dogged the family, and has affected Mr. Dennehy closely. Consequently, home was not a stable or supportive environment for Mr. Dennehy through much of his growing-up. His school years were difficult as he was frequently bullied and also often missed classes for reasons of poverty and family dysfunction. He began using alcohol himself when he was 16, and was first exposed to methamphetamine in 2017. He was homeless in the period preceding this offence for a period, drinking and using heavily. Mr. Dennehy attributes his troubles with the law to his substance use. The record bears this out.

Family support

[17] Notwithstanding their difficult road, Mr. Dennehy's family remains strong, and a solid source of support for him. Five members of his family, including both of his biological parents, his partner, and his brother attended the sentencing. His close relations also include numerous successful role models, across the generations, who provided Mr. Dennehy with a source of pride and aspiration.

Rehabilitative efforts

[18] After being granted release on these charges in the fall of September 2018, Mr. Dennehy went to the Kainai Healing Lodge. During his time there he completed an anger management course, a circle of life course, a domestic course, and their 6-week residential treatment program. He also completed an Emotions Management Course at the Samson Community Wellness program. While on bail in 2019, he attended numerous culture events, sometimes as a helper, and volunteered with his childrens' school outings.

[19] During his most recent time in custody, Mr. Dennehy completed relapse prevention and addictions information courses. While at the Edmonton Remand facility, Mr. Dennehy was also part of its "Boot Camp" program. His participation was viewed so favourably that three Correctional Officers signed a letter praising his good conduct, performance, and helpful role in the unit as a worker and mentor to newly admitted inmates. This letter attested that he had completed a release planning and job preparation program, participated in Alcoholics Anonymous and Narcotics Anonymous, and attended the church group. It concluded with the following commendation:

> Mr. Dennehy's drive to grow by developing positive self awareness and active participation in the programs offered in the bootcamp, complements the great efforts he has been so far cultivating towards his behavioural personal and spiritual growth, Well done!

[20] Mr. Dennehy also came to the sentencing with a specific idea of which rehabilitative program he wishes to attend. He showed the Gladue writer[1] that he had written down in his journal that the day of their interview marked 66 days of sobriety. Promisingly, he also told the Gladue writer that he sees a lot of potential in himself. He feels he is a protector and very helpful

[1] The Report prepared by Ms. Kristen McArthur was comprehensive, well-written and very helpful to the court.

to others. He identifies as an "oskawpews" (a cultural/spiritual helper) in the community. I find that Mr. Dennehy is sincere in his motivation to escape the clutches of addiction, and turn his life around. He has a positive self-concept that could form the nucleus around which a recovery can take place.

Criminal antecedents

[21] Mr. Dennehy has a criminal record dating back to 2014. It is quintessentially the record of a person with substance abuse problems, containing mostly substantive offences of petty theft, augmented by failures to comply with conditions of release. The only similar and materially aggravating entries relate to an assault in 2017, for which he received one year's probation after 108 days of pre-sentence custody, and a robbery in 2015, for which he received 60 days in jail and 18 months probation following 90 days of pre-sentence custody (an effective sentence of five months). I infer from that sentence that this earlier robbery, which also involved a liquor store, was similar in nature and severity to the present crime.

The Crown and defence positions

[22] On behalf of the Crown, Ms. Dunn argued for a further sentence of two years, in light of Mr. Dennehy having served 242 actual days in pre-trial custody, for an effective net sentence of three years. She justified this position as balancing the offender's criminal history, and in particular the serious aggravating fact that he was on probation for a similar offense, against the mitigating factors present in this case.

[23] On the offender's behalf, Mr. Clark submitted that Mr. Dennehy had done enough time in prison. He urged the Court to impose a treatment-focussed sentence of 18 months probation.

The appropriate range of sentence

The starting point for robbery

[24] The starting point for a liquor store robbery in Alberta is three years: ***R v Johnas***. 1982 ABCA 331. ***Johnas*** comprised a series of robbery sentence appeals heard jointly by a five-judge panel of the Court of Appeal. Those hearing were convened to provide detailed guidance to lower courts sentencing for, "unsophisticated armed robberies of relatively small, unprotected, commercial outlets where there has been no physical harm to the victim": ***Johnas*** at para 19. These cases remain the leading guidance for sentencing judges cases where retail establishments have been robbed: ***R v Adam***, 2019 ABCA 225.

[25] One of the companion cases in ***Johnas*** concerned a man named Leon Cardinal. He was a 19-year-old with numerous prior convictions for break and enter. A presentence report determined that Mr. Cardinal's problem stemmed from alcohol. He is described in the reasons as unsophisticated and from a background of privation. The crime and sentence under appeal were described in the following terms: ***Johnas*** at paras 89-91.

> In September of 1981 at High Prairie, he entered a confectionary. He picked up a notebook, two rolls of sausage and a box of cookies. He went to the cashier. He put his hand in his pocket and pointed something inside his pocket at the cashier. (It was, in fact, a cigarette lighter). He said to her: "I will blow your fucking head off if you scream."

> The clerk, with considerable presence of mind asked what he wanted. He said he wanted the groceries and $20.00. The clerk gave him the $20.00. He left. The till had in it considerably more than that amount. He was arrested in the street within five minutes. He was again highly intoxicated.
>
> Cardinal was sentenced to imprisonment for two years on the robbery charge and one year to be served consecutively on the break and enter and theft charge

[26] The crown described Cardinal's crimes as "robbery with restraint." The Court of Appeal agreed, concluding that:

> ...we should treat him as the clerk did; as more of a drunk than a robber. The fact remains it was robbery and the sentence must reflect the seriousness of the offence. Had Cardinal cleaned out the till the sentence would be fit, if not low. In the particular circumstances we are of the opinion that a fit sentence is 15 months imprisonment... ***Johnas*** at para 94.

[27] I find that Cardinal's crime closely resembles the events committed here. Cardinal's offence was worse because his language was more aggressive and his implied threat more menacing. His criminal record was also materially worse than Mr. Dennehy's. On the other hand, Mr. Dennehy did clean out the till, though I am not convinced that this factor balances-out the lesser degree of threats present in the case before me. The fact that Mr. Dennehy was already severely intoxicated when he committed the crime, while not mitigating *per se*, also suggests a lower degree of moral blameworthiness compared to someone who wilfully undertook a robbery with a clearer mind.

[28] Therefore, I find that the ***Johnas*** septet of cases provides a principled bases for a sentence in this case closer to the 15 months imposed on Cardinal, rather than the generic three-year starting point for a more violent, threatening, or premeditated robbery.

Further caselaw refining the range on this specific robbery

[29] A number of subsequent cases buttress the conclusion that the sentence in this case should fall well below the three-years. In ***R v Christie***, 2004 ABCA 287, the Court of Appeal reversed the imposition of a two-year conditional sentence for a 19-year-old participant in a, "well-planned" armed robbery of a gas station that involved masks, gloves, a knife, and a threat to the employee being robbed. The three previously sentenced accomplices had received penitentiary sentences ranging up to 30 months in length. The Court of Appeal held that a conditional sentence was demonstrably unfit and substituted a jail term of two years.

[30] The robbery in ***Christie*** was manifestly worse than that committed by Mr. Dennehy, as it involved a real knives, balaclavas and gloves, a large group of robbers acting in planned concert, and a serious breach of trust (one of the co-accused was a former employee of the gas station and used that inside knowledge to assist in the execution of the robbery). ***Christie*** demonstrates that, absent any consideration of *Gladue* factors, this offence should attract a sentence in the range of two years or less.

[31] Finally, in ***R v Skani***¸ 2002 ABQB 1097, Greckol J. (as she then was) undertook a *Gladue*-informed sentencing analysis of an armed robbery at a convenience store, where the accused had wielded a six-inch knife and taken just over $147 and 55 packages of cigarettes. The crime in ***Skani*** involved a greater degree of malicious planning – as evidenced by the use of a disguise – the use of an actual dangerous weapon, and a more aggressive taking of valuable

goods from the victimized business. The Court imposed a 23-month sentence, to be served conditionally in the community. While that form of sentence is no longer available for this crime (*Safe Streets and Communities Act*, (S.C. 2012, c. 1, s.34), I accept that this case provides further support for the proposition that a sentence below two years would serve the punitive requirements in this case.

The gravity of this specific offence

[32] This event was the quintessential "robbery with restraint". Mr. Dennehy did not use a real weapon, caused no physical harm, and chose words that conveyed the minimum of threat necessary to make this a robbery. The crime was not premeditated, involved no attempt at disguise, and yielded a small, opportunistic 'take'. I find as a fact that he would not have harmed Ms. Tetlock intentionally. The fear and financial loss wrought on the victims is consistent with the inevitable impact of a crime that crosses the line from theft to robbery. It therefore falls at the low end of severity for this category of offences. None of this minimizes the harm to the victims, rather it observes that such harm is the baseline assumption in robberies, which is what makes them serious.

The Offender's moral blameworthiness

[33] While the gravity of the offence provides the general range of appropriate sentence, it is the individual offender's level of moral blameworthiness that situates him or her within that range. Moral blameworthiness is assessed by reference to: (1) the nature and quality of the acts themselves; (2) the circumstances in which they occurred; (3) the motivation behind them; (4) the method by which they were committed; and (5) the offender's state of mind in committing the offences, namely whether they were at the lower or higher end of *mens rea* in terms of planning and deliberation as well as foresight of harm: ***R v Ominayak***, 2007 ABQB 442 at para 237, cited with approval in ***Okimaw***, at para 85.

Applying Gladue factors

[34] In the case of an Indigenous offender, the assessment of moral blameworthiness must also include consideration of whether his personal, familial, and generational experience played a part in bringing him into the criminal justice system: ***R v Gladue***, at para 82; ***R v Laboucane***, 2016 ABCA 176 at para 63.

[35] This personal history may mitigate the offender's moral blameworthiness. As the Supreme Court explained in ***Ipeelee*** at para 73:

> ...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)). 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 [as she then was] stated, at para 60 of ***R v Skani***, 2002 ABQB 1097, 331 AR 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* (emphasis in original).

[36] A direct causal connection between the offender's Indigenous experience and the crime at hand does not need to be shown for these factors to gain traction in the sentencing process: ***Ipeelee*** at para 83; ***R v Laboucane*** at para 63. However, where the connection between these and the crime at hand is compelling, the mitigating impact on the offender's level of blameworthiness will be greater: see e.g. ***R v Matchee,*** 2019 ABCA 251 at paras 36-44; ***Okimaw*** at paras 26 and 67. The mechanism by which ***Gladue*** principles operate was explained in ***Matchee*** at para 31:

> One way of understanding s 718.2(e) and *Gladue* is as a partial remedy for the systemic discrimination suffered by aboriginal people which has led to their overrepresentation in the criminal justice system. The remedy requires sentencing judges to recognize these systemic factors and that they can play a part in offending behaviour. The sentencing judge is required to consider the individual circumstances of the aboriginal offender in this context, with a view to achieving a sentence that is commensurate with the offender's moral blameworthiness. This approach ensures that systemic factors do not unconsciously lead to further discrimination in sentencing.

The Principles applied

[37] This offence took place in the context of a substance abuse binge by an Indigenous offender for whom substance-dependence is an inter-generational legacy. His motivation was to get more alcohol to continue the dissociative level of consumption. The crime was committed in a minimally threatening and risky way, and was inconsistent with the offender's character when sober. I find as a fact that, but-for the traumas and dysfunctions that have flowed from his Indigenous experience, Mr. Dennehy would most likely never have been in contact with the criminal justice system. Much like the Court of Appeal in ***Okimaw***, I find this offender's personal circumstances are:

> ... founded on the unique systemic background factors which played a part in bringing this particular aboriginal offender before the court, and these unique systemic and background factors reasonably and justifiably impact on the sentence imposed: at para 26.

[38] I find that but-for his struggles with substance abuse, he is unlikely to commit any crimes at all. Specifically, I find that Mr. Dennehy does not want to participate in criminal activity. When he does, it is an anathema to his true character and a function of his unresolved trauma: see ***Okimaw*** at paras 56.

[39] In addition, the evidence satisfies me that Mr. Dennehy is, in fact, "not a bad guy". His actions during the robbery, his rehabilitative efforts since, and the positive opinions of him provided by both correctional officers and his probation officer, convince me that this is the case. He is neither a habitual offender nor someone who disregards the well-being of others. To the contrary, even in the heavily altered state in which he committed this crime, the impact of his actions on others remained at the forefront of his mind. I find that he is hard-working, motivated, and a productive member of society when he is well.

[40] For all of these reasons, I find that Mr. Dennehy's moral blameworthiness is at the low end of the spectrum. Moreover, despite his background, I find that he has not developed any criminogenic ways of thinking or antisocial habits and beliefs. He does not wish to hurt people. To the contrary, his role in causing harm is a source of shame and remorse for which he is eager to make amends. Therefore, I find that this is not a case where a proportionate sentence needs to punish or deter the offender or persuade him to change negative ingrained ways of being.

[41] I find that Mr. Dennehy is genuinely remorseful. His guilty plea, apology to the victims, and commitment to move forward, are backed up by his actions and the words of others about him. I find that he has a very high rehabilitative potential.

[42] While Mr. Dennehy committed this defence at a time that he was on probation for a similar crime, this is part-and-parcel of the causal matrix discussed above. On the particular facts of this case, therefore, this clearly aggravating fact does not attract the significant need for specific deterrence that it often would.

Applying the purposes of sentencing to this case

[43] Beyond simply mandating an inquiry into whether systemic factors specific to Indigenous offenders attenuate their moral blameworthiness, ***Gladue*** and its progeny also ask sentencing courts to consider whether the these "unique systemic and background factors" warrant a re-prioritization of sentencing objectives. Specifically, 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*": ***Ipeelee*** at para 73.

[44] This call to carefully consider what a sentence is meant to accomplish is at the heart of the Supreme Court's decision in ***Gladue***, where Cory and Iacobucci JJ. explained that:

> 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: ***Gladue,* at para. 69** [Emphasis added]

[45] As the British Colombia Court of Appeal stated in ***R v Sellars***, 2018 BCCA 195 at para 28:

> Aboriginal offenders pose unique circumstances that must be considered for sentencing. This has long been recognized in the well-established decisions of *Gladue*, *Wells*, and *Ipeelee*, and the codification of s. 718.2(e), which directs that all available sanctions, other than imprisonment, be considered for Aboriginal

> offenders in particular where that would be reasonable and consistent with the harm done to victims or to the community.

[46] In practical terms, this will often mean that rehabilitation and restoration will be elevated over denunciation and deterrence as the key animating purposes of sentence. The fact that this offence is serious, and caused serious harm to two innocent members of the community, does not obviate these principles: ***Laboucane*** at para 63; ***Ipeelee*** at para 84.

[47] For all of the reasons discussed above, I find that this is not only a case where a traditional emphasis on protection of public safety and security through imprisonment should yield to a focus on rehabilitation and restoration, but where those laudable aims of promoting community safety are ultimately much better served through a focus on rehabilitation and restoration.

Denunciation and deterrence

[48] The classic purposes of denouncing and deterring crime are often at the forefront in sentencing for crimes of violence committed against innocent members of the community. Robbery is one of those crimes: ***Johnas*** at para 33. This robbery, however, is somewhat unusual. I have found that Mr. Dennehy did not really want to commit it.

[49] Rather, the evidence makes clear that he felt shame and regret even during the act. For all the reasons described above, he does not require any specific deterrence. His desire to live honourably as a Cree man, father, and community member, far outweigh as an incentive to a law-abiding life anything that the criminal law can impose.

[50] Moreover, our Court of Appeal has called for, and demonstrated, vigorous application of *Gladue* principles in cases of much more serious violence, committed by much less sympathetic offenders than Mr. Dennehy: see e.g. ***Matchee*** and ***Okimaw***.

[51] Equally, there is little prospect of deterring similarly situated individuals since, by definition, that class of people comprises substance abusers from traumatic backgrounds who commit crimes for reasons other than greed or malevolence.

[52] An informed understanding of who Mr. Dennehy is, and why he committed this crime, leaves little work for classic common-law deterrence to do.

[53] Denunciation, however, remains an important consideration. Protecting shopkeepers from armed robberies is no less important today than when ***Johnas*** was decided. The harm done to the victims in this case is real, and demands recognition by the court through the sanction it imposes on the offender. In this case, Mr. Dennehy has spent the equivalent of a year in jail. That is real punishment. The question here is whether further incarceration is required to make the point.

[54] If I had found that Mr. Dennehy was motivated to commit this crime for calculated gain, or to enjoy the rush of violent power over others, or for any other truly intentional or malevolent reason, I would have had no hesitation in imposing a further term of imprisonment as requested by the Crown. On the specific facts of this case, however, those features are absent. Therefore, I conclude that Mr. Dennehy has been taken away from his family and community, and subjected to the punitive conditions prison, for long enough. The denunciative of purpose of the criminal law has been served.

Separation from the community

[55] The evidence satisfies me that Mr. Dennehy does not pose a danger to the community if he receives the substance-abuse treatment he needs and wants. His detention after arrest helped him dry-out from the drugs and alcohol he had been binging on, and brought him some structure and purpose through the programming he undertook. Therefore, I conclude that no further physical detention and separation of Mr. Dennehy from the community is required.

Rehabilitation

[56] Rehabilitation must be the centrepiece of the sentence. As is so frequently the case, the negative consequences of Mr. Dennehy's post-colonial experience manifest most clearly and negatively through substance abuse. The key to helping him and the community move forward in a safe and successful way is through treatment for this problem, and the traumas underlying it.

[57] The prospects for rehabilitation here are strong. Mr. Dennehy has a demonstrably good relationship with his probation officer, is self-motivated to seek and pursue treatment, has already shown a willingness to put in the work to complete programs, and enjoys strong family support.

[58] For all of these reasons, I find that rehabilitation must be the dominant purpose of the sentence, and that purpose should start to be served as soon as possible. Therefore, since no further incarceration is required, a sentence of one day (comprised of the day Mr. Dennehy was sentenced), together with 18 months probation is the appropriate sanction. Given the intensity of Mr. Dennehy's challenges, a year would be an insufficient length of time. Conversely, given his strong personal motivation, a maximum length probation order is not required.

[59] Therefore, the key term of the probation Order is for Mr. Dennehy to attend treatment as directed by his Probation Officer, including and especially for substance abuse. He is also not to attend at any place whose principal business is the sale or provision of alcohol. As Mr. Dennehy is an addict in recovery, the Crown, much to her credit, did not seek an abstinence clause.

Restoration

[60] This is also a case where restorative objectives can potentially be advanced. The first facet of restoration is between the offender and the community: ***Gladue*** at para 43. In order to advance this first restorative goal, I sentenced Mr. Dennehy to complete 75 hours of community service as part of his probation, unless he gains full-time employment. The purpose for doing so was to allow him to reconnect with his community as a productive member. The fact that Mr. Dennehy sees himself as a helper is one of the most hopeful facts in this case and presents a gateway to rehabilitation. It is the court's hope that, through service, he will gain the strength and self-respect needed to battle his inclination toward substance abuse, and will also restore his place in the eyes of the community: see ***R v Diabo***, 2018 QBCA 1631 at paras 98-99.

[61] The second dimension of restoration – namely healing the rift between Mr. Dennehy and his victim– is more challenging. Two facts in this case give rise to hope that restoration may be possible in this case. The first of these is Ms. Rempel's generous expression of a desire to help others to avoid feeling compelled to commit similar crimes. The second is Mr. Denny's ill-conceived hug during the robbery. Both of these demonstrate that the offender and victim alike share a core restorative desire. The Saskatchewan Court of Appeal described restorative justice in these terms in ***R v Laliberte***, 2000 SKCA 27 at para 48:

> Restorative justice has been defined as the creation of a positive environment for change, healing and reconciliation for offenders, victims and communities. It is a condemnation of criminal actions rather than perpetrators and an integration of offenders into the community rather than a stigmatization or marginalization of them. Within this framework the offender is encouraged to accept responsibility and to make reparations to the community.

[62] Within the traditional, linear model of sentencing proceedings at common-law, there is usually limited opportunity for the people involved in, or affected by, a crime to communicate directly and forthrightly with one another. This is unfortunate, as the imperative of the criminal justice system playing a role in the process of restoration has only strengthened since s.718.2(e) was first enacted: ***R v Barton***, 2019 SCC 33 at para 199; ***R v Parent***, 2019 ONCJ at para 20; ***R v Sellars***, 2017 BCSC 2236 at para 45, varied 2018 BCCA 195.

[63] As we enter third decade of ***Gladue*** principles being part of the Canadian law, it may be time for courts to consider broadening our procedural repertoire to achieve restorative outcomes: see ***R v Holmes***, 2018 ABQB 916 at paras 4-5 and 8.

[64] In this case, the Court attempted a modest mechanism of restoration. During the sentencing hearing, I told Mr. Dennehy that I wanted him to write a letter to the victims of this crime six months from now, telling them what he had done to move his life forward. Interestingly, he interrupted me to say that he himself had thought about doing that. The purpose of such a letter is not to repeat his apology. That has been given. Rather, as I explained to Mr. Dennehy, the purpose is twofold: first, to demonstrate to the victims that he is on the road to becoming his better self. It may be meaningful for them to know that the person who hurt them has not just taken responsibility in words, but has actually has done things to make sure it does not happen again. This may help them feel that the seemingly senseless violation they endured has become a starting point for another person's process of healing.

[65] Second, I hoped that giving Mr. Dennehy this task would provide him an additional goal to work towards, knowing that he had both an obligation and an opportunity to do properly what his ill-conceived hug during the robbery had intended. Whether Ms. Tetlock or Ms. Rempel choose to receive and read Mr. Dennehy's letter is obviously up to them. However, Mr. Dennehy accounting to them for his recovery would be a modest but meaningful form of restoration.

Ancillary Orders

[66] Mr. Dennehy took $290 worth of alcohol and cash in the robbery. He owes restitution in that amount to Ms. Rempel. He acknowledged his debt in court and expressed an eagerness to make restitution. Therefore, $290 was ordered to be paid into court in trust to Ms. Rempel.

[67] This is a primary DNA offence and a DNA Order was made.

[68] Finally, this offence attracts a mandatory section 109 ban on the ownership of firearms and explosives for a period of ten years. Mr. Dennehy does not hunt as part of his Indigenous traditional life, so no exemption need be considered.

A final note on how this sentence should be understood

[69] These reasons should not be read as giving a one-year sentence for robbery of a liquor store. Rather, the operative sentence here is rehabilitation and restoration through a lengthy period of probation, after *enough* jail to recognize and denounce the harm done to the victims. The fact that Mr. Dennehy came before me with the equivalent of almost exactly one-year time-served was more a function of scheduling than sentence architecture. As stated in ***Gladue*** at para 77:

> [i]n appropriate cases, some of the traditional sentencing objectives will be correspondingly less relevant in determining a sentence that is reasonable in the circumstances, and the goals of restorative justice will quite properly be given greater weight. Through its reform of the purpose of sentencing in s. 718, and through its specific directive to judges who sentence aboriginal offenders, Parliament has, more than ever before, empowered sentencing judges to craft sentences in a manner which is meaningful to aboriginal peoples.

[70] These are the goals this sentence was formulated to achieve.

Heard on the 5th day of September, 2019 and the 7th day of November, 2019.

Dated at the City of Wetaskiwin, Alberta this 29th day of November, 2019.

N.E. Devlin
J.C.Q.B.A.

Appearances:

Alexandra J. Dunn
for the Crown

Rodney Clark
for the Accused