

SUPREME COURT OF YUKON

Citation: *R v Morgan*
2024 YKSC 50

Date: 20240913
S.C. No. 22-01511
Registry: Whitehorse
Heard: Dawson City

BETWEEN

HIS MAJESTY THE KING

AND

KANE STEELY GRAY MORGAN

Before Chief Justice S.M. Duncan

Counsel for the Crown

Leo Lane

Counsel for the Defence

Daniel Markovitz

This decision was delivered in the form of Oral Reasons on September 13, 2024. The Reasons have since been edited for publication without changing the substance.

REASONS FOR SENTENCE

[1] DUNCAN C.J. (Oral): On March 14, 2024, a jury found Kane Morgan guilty of manslaughter for killing Kevin McGowan. Today, it is my role to impose a fit sentence on Kane Morgan for his commission of this offence.

Observations

[2] Everyone agrees that the death of Kevin McGowan on April 30, 2018, is an absolutely tragic event. It is an inadequate understatement to say that the family and friends of Kevin McGowan continue to suffer from immense grief. The shock of this unexpected and brutal loss of a father, son, brother, nephew, uncle, cousin, and friend remains raw and intense today, more than six years after the fact.

[3] What happens in this courtroom today unfortunately will not make these dark and difficult feelings of loss and grief disappear. A good man's life has been taken far too soon. The justice system cannot fix that. I wish, as we all do, that we had the ability to go back in time and prevent this tragedy from occurring.

[4] The *Criminal Code*, RSC 1985, c C-46 ("*Criminal Code*"), sets out my responsibility in the sentencing process. I must look at all the circumstances of the case, the circumstances of the offence, the impact of the offence on the family and friends of Kevin McGowan, the circumstances of Kane Morgan, and the aggravating and mitigating circumstances in all of this. It is my responsibility to review and apply the principles and objectives of sentencing set out in the *Criminal Code*, including reviewing sentences imposed in other similar cases of manslaughter and then to provide my analysis and decision.

[5] What this process and judgment cannot do is put a value on Kevin McGowan's life through the length of a sentence imposed on Kane Morgan. You, his family and friends, know Kevin's value. You know how important he was to you and what his contributions were to the world. My decision today unfortunately cannot fix the very real and deep pain that you are experiencing.

[6] What I hope this judgment can do is denounce the actions of Kane Morgan, deter him and others from committing similar offences, acknowledge and assist his ongoing rehabilitation, and acknowledge the harm he has done to Kevin McGowan, his family and friends, and the community.

[7] I also hope that this process and the decision will bring some measure of peace that may come with finality, some kind of closure to the family knowing that your pain will still exist. I hope that you will have access to and seek out care and support from each other or others to help with the additional suffering that may have been or will be triggered by this week's proceedings.

Circumstances of the Offence

[8] Although there was a trial by judge and jury in this case, because Kane Morgan admitted to manslaughter, the only issue the jury had to decide was whether Kane Morgan was guilty of second-degree murder or manslaughter. Kane Morgan admitted to causing the death of Kevin McGowan by blunt trauma. The jury found that he did not have the intent to cause harm that he knew would be likely to cause death or that he was reckless as to whether death ensued or not. He was found guilty of manslaughter.

[9] On April 29, 2018, Kane Morgan consumed drugs and alcohol, starting at noon while he was working at a moving job. The intoxicants consisted of: whiskey during the afternoon and early evening, magic mushroom pellets over the course of the evening, beer throughout the evening, and possibly an MDMA pill in the early evening. He had purchased the hallucinogenic mushroom pellets from someone in Dawson.

[10] Kane Morgan had had a very brief interaction with Kevin McGowan in a bar in Dawson before April 29th. They ran into one another again by chance in the early evening of April 29th and decided to have a drink together in a downtown bar. They enjoyed great conversations on all kinds of topics; they had an instant connection; shared similar interests and beliefs; there was mutual fascination with each other; and they became friends quickly. Kane Morgan liked Kevin McGowan and had no reason to fight or hurt him.

[11] That night the men left the bar and Kane Morgan met another friend on the street and the three of them walked to the river and continued talking and drinking. They then went to a gathering at R.J. Otterholm's house to continue drinking. Kane Morgan had had five or six hallucinogenic mushroom pellets by that time and was starting to feel weird. He took his shirt off, was feeling confined, and thought he was in the keel of a ship that was sinking and that Kevin was responsible for the sinking. He was described by others who were at R.J.'s as acting crazy and weird, spinning out, freaking out, hyped up.

[12] Kane Morgan left R.J.'s without his shirt or shoes with Kevin McGowan or shortly after him. The two men then walked around downtown Dawson for at least an hour. They alternated between being aggressive, yelling, swearing, and saying "I love you, man" to each other. At one point, Kevin McGowan was heard to say, "I don't want to fight you, man."

[13] At approximately 1 a.m., on April 30, 2018, at or near the intersection of Second Avenue and King Street, Kane Morgan attacked Kevin McGowan. The two men were found by Jacob Ramer, who was finishing his shift working at the men's shelter

nearby. Kevin McGowan was lying face down on the ground near an iron storm drain gate. Kane Morgan was kneeling or crouching beside him. A large amount of blood was on the ground surrounding the drain and later a small amount of blood was identified in the middle of the street with drag marks between it and the storm drain.

[14] Kane Morgan told Jacob Ramer that he had been jumped or robbed by someone. Jacob Ramer left the scene to call 911 as Kane Morgan had told him not to do so, had seemed panicked, and, for safety reasons, Jacob Ramer needed to get away. He drove around the block and called 911. When he returned to the intersection, Kane Morgan was gone. Jacob Ramer, who was trained in first aid, assessed Kevin McGowan until the police arrived approximately three minutes later. He then turned him over and began CPR but could not find a pulse.

[15] EMS came and tried unsuccessfully to revive Kevin McGowan at the scene. They took him to the hospital where he was pronounced dead on arrival.

[16] The autopsy report revealed that Kevin McGowan sustained many blunt injuries to his head, neck, torso, and right hand. He had multiple facial lacerations (skin tears), abrasions (skin scrapes), contusions (bruises), and part of his right ear was missing. He had fractures in his jaw, left cheek bone, both eye sockets, the frontal skull, and base of his skull. There were multiple areas of bleeding in his scalp and around his brain, bleeding within his brain, bleeding within one of his ventricles, and multiple brain contusions and lacerations. There were multiple abrasions on his neck, fractures in his neck, skin scrapes and bruises on his torso and right hand, bleeding in the soft tissues of his chest, and multiple rib fractures. There were marks on his face consistent with

drag marks. The cause of death was blunt trauma. It was a brutal beating consistent with Kane Morgan using the iron storm drain gate to inflict wounds on Kevin McGowan.

[17] That night after Kane Morgan left Kevin McGowan, he returned to R.J. Otterholm's place and washed the blood from his arms and face. He began to think more rationally and tried to piece together in his mind what happened. Friends helped him find socks, shoes, and a T-shirt. He went to the bank, withdrew \$1,000, drove to his house at Henderson Corner, grabbed a bag full of random tools, and drove to Whitehorse with his friend Shane Frost in the early morning of April 30, 2018. As he left R.J.'s, he noticed RCMP vehicles down the street and, at that point, he knew that he was the reason why they were there.

[18] Kane Morgan flew to Vancouver from Whitehorse the following day. He returned to Dawson City approximately six weeks later. At that time, he knew Kevin McGowan had died and he was rumoured to have caused his death.

[19] It was not until May 18, 2021, that he was arrested and charged. He was cooperative with the police. He was in custody for 63 days before his release on bail on July 21, 2021. Kane Morgan has little to no memory, or a patchy memory, of what happened that night after he left R.J.'s the first time.

[20] Expert evidence from the trial from Dr. Shaohua Lu, an addiction and forensic psychiatrist in Vancouver and a clinical associate professor at University of British Columbia, was that based on the alcohol and drugs that Kane Morgan had consumed that night (to the extent that they could be determined, which was uncertain because there was no chemical analysis of the mushroom pellets and the possible

MDMA, and street drugs are rarely pure and unadulterated product) that he was likely in a substance-induced psychosis.

[21] Dr. Lu described psychosis as a loss of touch with reality, a perceptual disturbance. Internal thoughts override what is happening in real life and the person cannot think beyond moment to moment. Dr. Lu concluded this not only on the basis of the drugs and alcohol Kane Morgan ingested but also his shirtlessness in the April weather in Dawson, his memory issues, his observed agitation, and his disorganized state of mind. This psychosis condition substantially affected his basic cognitive and reasoning capacity, and his ability to appreciate the nature or consequences of his actions.

[22] Dr. Lu also testified that someone in a substance-induced psychosis can become grounded or have the psychosis broken in a number of ways through external events, such as looking in a mirror, walking around, seeing a police car, or having a drink because of its sedative effect.

Positions of Crown and Defence on sentencing

[23] Both Crown and defence are agreed that a term of imprisonment is warranted in this case. They differ on the appropriate number of years of imprisonment.

[24] The Crown's position is seven years. They say these circumstances are closer to a "near murder" situation than a "near accident" situation on the manslaughter spectrum, and the resulting penalty should be closer to the higher end of the range. The Crown acknowledges Kane Morgan's early acceptance of responsibility by agreeing to plead to manslaughter. His remorse, his sobriety, and his exemplary compliance with his release conditions are all mitigating factors. But for these, Crown would be seeking a

higher sentence of eight to nine years because of the brutality of the beating and Kane Morgan's voluntary consumption of drugs and alcohol that he knew would put him at risk of violent acts.

[25] Defence asked the Court to impose a four-year prison term. While defence agrees that the beating was brutal, he disagrees that it was "near murder". He points to Kane Morgan's troubled upbringing with a violent, alcoholic, and brain-injured father, and his own drinking and drug-taking beginning in his teen years as not an excuse but an explanation of sorts for his reckless behaviour that night in taking drugs and drinking when he knew it would increase his tendency to be violent. Defence counsel agrees with the mitigating factors noted by the Crown and emphasizes Kane Morgan's perfect compliance with strict and difficult terms of release. He also points out Kane Morgan's sobriety, his contributions to the community, and his financial self-sufficiency. Defence counsel says Kane Morgan has come a long way and is on the right path. All of these mitigating factors should reduce the sentence.

Victim Impact Statements

[26] Thirteen people filed victim impact statements. Four were from Kevin McGowan's immediate family, three from some of his extended family, and six from friends who said they were close enough to be family. All of them were read in court by their authors, by family of the author, or by the victim services support worker.

[27] Kevin McGowan was by all accounts a loving and well-loved human being. He was described as the life of the party, a magnet for kids, quick to help others, kind, caring, funny, generous, gentle, loving, and compassionate. He loved fishing and the outdoors. He was an amazingly talented and successful chef, who was featured on

cooking shows on local media outlets. His nephew Liam McGowan wore a chef's coat at the sentencing hearing that was filled with inscribed memories of and attributes to Kevin from people who attended his celebration of life. Kevin McGowan's warm, personable, charming, creative, and positive nature was appreciated by his family, his large extended family, and many friends. Kevin McGowan had recently moved to Dawson City to work as a chef and had told his family and friends how much he loved the beauty of the surroundings and the community here.

[28] All who provided statements powerfully and emotionally described the immense and profound grief, hurt, and sorrow they have felt since Kevin McGowan's death. The passage of time has not appeared to have dulled the pain, and especially for his mother, father, brother, and daughter, time appears to have increased the feelings of loss and emptiness. Several of his family described ongoing struggles with depression and the need for medication to cope. The family spoke of how Kevin's absence has changed the family dynamic.

[29] His brother Brad wrote, "The sense of safety and normalcy we once knew is forever changed."

[30] His daughter and mother wrote that they now have trouble enjoying family dinners and events, which had always been filled with joy, laughter, stories, and fun when Kevin was alive and now, as his daughter Brogan wrote, "are marked by his empty seat and the silence that follows". Brogan further wrote:

The impact on my life has been overwhelming. My early twenties, a time when I should have been finding my way and building my future, were instead consumed by grief and trauma. I've found myself in a constant battle with the loss, needing ongoing therapy just to get through each day. The

emotional scars are deep and persistent, and the process of healing feels endless and exhausting.

This tragedy has not only robbed me of a loving father but has also fundamentally altered the course of my life. The joy and stability I once had are now overshadowed by the pain of his absence. My life has been marked by a profound sense of loss that I struggle to navigate every day.

[31] Kevin McGowan's brother wrote how the pain remains a heavy burden he carries every day. He is unable to fully engage or connect with others as he once did because of his need to protect himself from the possibility of more pain and there are days when it feels like he is just going through the motions, trying to keep it together for the sake of his family. He wrote:

... But the reality is that Kevin's death has shattered the world as I knew it, and I'm struggling to piece it back together.

The senselessness of his death haunts me. It has left me questioning so much about life and the world we live in. I've lost sleep, lost focus, and in many ways, lost the person I used to be. The person I am now is someone who is constantly grappling with grief, someone who can no longer find peace in the things that used to bring joy.

[32] Lauryn Kalina, a Registered Nurse, and the first cousin of Kevin's mother, Dianna McGowan, wrote that from her work, as a nurse on an oncology unit:

Parents never heal when their child dies ... When a child dies it is a tragedy. A life cut short is unbearable. ...

[33] His mother, Dianna, wrote:

The last 6 years and 5 months I have been emotionally wrecked. ...

The pain of losing my beautiful son will never go away. My heart aches more than ever. The longer he is gone, the more I miss him.

[34] His father wrote:

What happened to my son Kevin should not have happened to anyone. The emotional pain I feel is with me every day.

[35] Many of Kevin's family members, although they live in British Columbia, came to Dawson to attend all or part of the trial and sentencing.

[36] An unexpected, sudden death by killing is always tragic. In this case, the deep connection Kevin had with his family and large extended family, to which many of his friends belonged, the tremendous positive impact he had on so many, and the incomprehensible way in which he died makes this case especially sad and difficult.

Circumstances of Kane Morgan

[37] Kane Morgan is now 33 years old and was 26 at the time of the offence. He was born and raised for the most part on the outskirts of Dawson City, Yukon. His mother left his father due, in part, to his domestic violence driven by alcohol when Kane Morgan was three. She moved to British Columbia with the children. When Kane Morgan was seven, he went to live with his father outside of Dawson. Kane Morgan suffered regular physical abuse from his father fuelled by alcohol and later exacerbated by his father's brain injury caused by a severe beating.

[38] Kane Morgan began drinking alcohol when he was 12, becoming a regular drinker by the time he was 14 or 15. He had brief periods of sobriety, usually as a condition of bail or probation.

[39] Kane Morgan has also used various drugs since his teenage years and has taken pellets of hallucinogenic mushrooms regularly. He was using cocaine regularly before 2018, but was trying to stop because it was causing paranoid thoughts which

could last for days. He used alcohol, marijuana, MDMA, and other substances to reduce his cocaine cravings.

[40] Kane Morgan has a history of aggressive behaviour resulting in criminal acts when he is intoxicated by alcohol and/or drugs. His criminal record is not extensive but there are two convictions for assault in 2016, one conviction for causing unnecessary suffering to an animal in 2019, and one assault with a weapon in 2019. The sentencing decisions for some of these convictions were included in the case of materials for the purpose of showing that, on each of the occasions in which Kane Morgan was convicted of committing violent acts, he was intoxicated. He told Dr. Lu that, on New Year's Eve, in 2015, he was hospitalized for aggressive behaviours while intoxicated on a combination of alcohol, MDMA, cocaine, and other drugs — probably hallucinogenic mushrooms.

[41] Kane Morgan is a successful, self-employed prospector for gold, copper, and zinc in the Dawson area. He writes exploration grant proposals. He has a number of mining claims. He develops placer claims into productive placer mines.

[42] Kane Morgan has had a partner, Kaitlyn Crichton, since August 2017 (although they were broken up for a time in 2018) with whom he has two children: a girl, age three; and a boy, age two. Kaitlyn looks after the children and works periodically as a front desk person and housekeeper for a local hotel. They have a solid, loving, and mutually supportive relationship. Kaitlyn had addiction issues but attended treatment in 2017/18 and has been sober since that time. She was in court every day during the trial and sentencing.

Support letters

[43] Kane Morgan submitted 14 support letters at the sentencing hearing. They are from his partner, Kaitlyn, his mother, his sister, counsellor, Alcoholic Anonymous representative, three longtime friends his own age from school days, two friends of the family his parents age, the coordinator of the Men's House shelter in Dawson, and the employment coordinator for the Tr'ondëk Hwëch'in Government who is also a friend of Kaitlyn.

[44] The supporters validate Kane Morgan's statements that he has been sober for the last few years. There is a consistent theme throughout: Kane Morgan has significantly reformed from the person he once was.

[45] The following insight from Colm Cairns, a family friend since Kane Morgan's birth with post-secondary education in developmental psychology and 20 years of employment with Learning Disabilities Association of Yukon, is instructive:

Kane grew up in a dysfunctional parenting environment that likely swung pendulum like between permissive and authoritarian. It was also an environment where drinking, substance abuse, and parental conflict were the norm. Kane was shuffled between babysitters and often he was secondary to his parents' disordered lifestyle. When he was an adolescent/young adult I recall Kane emotionally confiding in me that he only wished his father cared about and loved him. It is highly probable Kane's lifestyle and violent behaviour when he was a young adult is attributable to trauma he experienced growing up.

The events that brought Kane to your Honour for sentencing can not be excused. The impact of Kane's upbringing and his disassociated state on the fateful evening undoubtedly contributed to the violent outburst and need to be taken into consideration at sentencing.

Kane is of good character. He has admitted to me how sorry he is for the victim and family. I'm a firm believer in

redemption. Kane is redemptive. Today, he is a good and stable father, and loves his children.

[46] In a similar vein, Grant Allan, another family friend with a degree in psychology and rehabilitation who works in the mental health field wrote:

Kane, as his history shows, aside from being hardworking and helping some being victimized, has been involved in substance abuse which, in part, has resulted in endangering himself and others and sometimes specifically acting angrily against some who are abusing others.

Over the past years, Kane has devoted himself to hard work and his young family with 2 children.

As with many, having a family/children, and realizing the implications, does result in changes. To fulfill his responsibilities, and for his own benefit, Kane no longer abuses drugs or drinks alcohol.

He has cooperated with the court and conditions imposed and has really changed his life and his focus towards life and family. I have seen him help and guide others in difficulties, serving as an example of how hard work and dedication can be one's moral compass.

[47] Kane Morgan's friends in their letters wrote that they have seen a huge, positive change in him in the last few years, manifesting in his love and support for Kaitlyn and their children and his successful work as a mining prospector in the community.

[48] The coordinator of the men's shelter, Jamie Lancaster-Madden, wrote about Kane Morgan's volunteer assistance to men who access supports from the shelter in maintaining sobriety and finding meaningful employment. Through his consistent, reliable, and effective support, Kane Morgan has earned their trust. He listens, provides practical advice, and encourages the men in their recovery challenges. He has employed several men in his placer mining prospecting business and helped give them a sense of purpose and stability, which also aids in their recovery.

[49] These views are echoed by Rebekah Alderson of the Tr'ondëk Hwëch'in Government, who wrote of the service Kane Morgan provides to some of the marginalized community members, many of whom are at the men's shelter, by offering them employment and becoming a positive influence in their lives. As a friend of Kaitlyn's, Rebekah also noted his support to her through her treatment and recovery journey, and his love for her and their children.

[50] Kane Morgan's mother wrote about the profound changes in Kane Morgan as a result of his continuous sobriety over the past five and half years.

[51] Kane Morgan's sister credits him as instrumental in supporting her sobriety journey and providing a constant source of support to her and her son, especially when her son lost his father and an uncle to whom he was very close.

[52] As noted by both counsel, Kane Morgan's bail supervisor confirmed that Kane Morgan has been compliant with all conditions since his release on July 21, 2021.

Kane Morgan's apology

[53] Kane Morgan submitted a letter addressed to the Court, Yukon public, and people of Dawson City in which he expressed his remorse and attempts to make amends through his actions. He advised he wrote another letter directly to the family, which was not read in court. Kane Morgan also apologized in court at the sentencing hearing.

[54] In the letter to the Court, he acknowledged the recklessness and negligence of his behaviour in ingesting drugs and alcohol on April 29, 2018, that he says:

... led me to commit a senseless and disturbing act of violence that ultimately led to the death of Kevin McGowan, by myself, Kane Morgan.

[55] He says:

This senseless crime has had a wide impact on many people, first and foremost the family and friends of Kevin. The community of Dawson was shocked and disturbed by this event. With the amount of time that was taken for the investigation to be successful, the Yukon public was initially and then for years, affected by its trust in the RCMP and the administration of justice, prior to my arrest in 2021, when that trust was restored. The public also had to pay for the large costs of the investigation with the RCMP and the lawyers involved, the court proceedings and my incarceration, along with the bail supervision.

[56] Kane Morgan wrote of his realization that he needed to change by becoming sober. He has realized that he:

... would never truly be a 'safe' person now under the influence, no matter how many good things I did or the people I looked after at the time, as I considered myself a protector. ... more people and their families will get hurt if I cannot stop using and drinking...after years of sobriety, I finally have managed my anger so that it isn't a defining force in my life that ripples into others, influencing their lives for the worse.

[57] He continues:

... only after my first child's birth, the full gravity of it [what Kevin's' family must have felt like after everything had happened] began to sink in. The years of hard work as parents Dianna and David gave to their son, all the love, part of it hoping that they will be with you into old age and into your death. The stolen friendship and future memories. The love I stole from Brogan and her future with her father and all her dreams with him. I took what is the most precious in this world, life.

I offer my deepest condolences and regrets to the McGowan family, the friends of Kevin, Brogan and the Yukon public, namely the citizens of Dawson City.

[58] In court, Kane Morgan said similar things. Facing the family members, he lamented with agony and regret how Kevin McGowan that night of April 29th and 30th,

2018, was trying to help him in his state of psychosis when no one else would, trying to calm him down, and he wished Kevin had just left him alone in his state. He says he thinks of the loss of Kevin every day, how nice it was to be able to connect with someone who was such a good person. He knows he will never be able to make amends and does not expect the family to forgive him, although he hopes one day they will. He said he knows his scars will never be as deep as theirs. He does not want Kevin's death to be in vain, so he is committed to helping others. In the times when he is reluctant to help others, he thinks of Kevin and goes ahead and helps. He wants to give royalties from one of his mining projects to Kevin's daughter. He extended again his deepest condolences to the family and friends of Kevin.

Purposes and principles of sentencing

[59] The objectives and principles of sentencing are set out in the *Criminal Code*, and I must be guided by those principles when imposing any sentence.

[60] The fundamental purpose of sentencing is twofold: first, to protect society; and second, to contribute to respect for the law and maintenance of a just, peaceful, and safe society through the imposition of sanctions.

[61] These purposes are governed by objectives, which are also set out in the *Criminal Code*: first, denouncing unlawful conduct and the harm to victims or community caused by that unlawful conduct; second, deterring the offender and other persons from committing offences; third, separating the offender from society where necessary; fourth, assisting in rehabilitating offenders; fifth, providing reparations for harm done to victims and the community; and six, promoting a sense of responsibility in offenders and acknowledging the harm done to victims or the community.

[62] The Supreme Court of Canada in a decision in 2021, *R v Parranto*, 2021

SCC 46, summed up the goal of sentencing in each case by saying:

[10] The goal in every case is a fair, fit and principled sanction. Proportionality is the organizing principle in reaching this goal. ...

[63] What proportionality means is that the Court must ensure that the sentence imposed is proportionate to the gravity or the seriousness of the offence and the degree of responsibility or moral blameworthiness of the offender. Proportionality is “closely tied to the objective of denunciation”. It promotes justice for victims, and it seeks to ensure the public confidence in the justice system. Proportionality is also there to ensure that the enormity of the loss/tragic consequences does not overwhelm or distort the appropriate penalty (*R v Stewart*, 2005 YKTC 74 at para. 17).

[64] The sentencing judge must also consider other principles that are set out in the *Criminal Code*. These include the principles of parity, restraint, and totality.

[65] Parity means that an imposed sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (s. 718.2(b); *R v Friesen*, 2020 SCC 9).

[66] Restraint refers to an approach in the context of a sentence of imprisonment, like this one, that the length of the sentence imposed should not be more than is necessary to achieve the relevant objectives of sentencing.

[67] Totality is to ensure that the total sentence does not eliminate the rehabilitation potential of the offender. A fit sentence is always defined by the totality of the circumstances.

[68] A sentencing judge must consider increasing or reducing a sentence if there are aggravating or mitigating circumstances relating to the offence, the offender, or the victim.

[69] A sentencing judge must determine which objective deserved the greatest weight in the circumstances of the case. There is no mathematical formula to follow.

Sentencing is an individualized process. The nature of the crime and the characteristics of the offender in each individual case will inform the judge of the relative importance of each objective. From *R v Laberge*, 1995 ABCA 196:

[31] ...

The criminal law must reflect not only the concerns of the accused, but the concerns of the victim and, where the victim is killed, the concerns of society for the victim's fate.

...

Principles applicable to manslaughter and the range of sentences from other cases

[70] Although sentencing is an individualized and subjective process which reflects the unique circumstances of the specific offence and offender, other cases need to be reviewed. If you situate a case within the range of sentences for that same offence, some rationality, fairness, and even consistency can be achieved.

[71] Manslaughter means that a person has been killed through the fault of another, and this is serious, but manslaughter means that the killing is less blameworthy than murder. The degree of blameworthiness in manslaughter cases has been described by many courts as existing on a sliding scale. At the higher end of the scale, where a very severe sanction is imposed, the offender has likely committed “near murder”. At the lower end of the scale, where the offence is closer to an accident, the offender is subject to a lesser penalty.

[72] There is no minimum punishment for the offence of manslaughter and the maximum sentence for manslaughter is life in prison. The cases in the Yukon show that the range of cases for manslaughter are from four years to 12 years, with many of them in the range of penalties for manslaughter of five to nine years.

[73] I have reviewed all of the cases that have been provided to me by the lawyers. I will refer here only to those that I find to be most relevant. I note, as almost all sentencing judges do in cases of manslaughter, that the case authorities provide a very wide range of outcomes with respect to manslaughter.

[74] The Court of Appeal of Manitoba in *R v Bell (M.A.)*, 1993 CanLII 14860 (MBCA) observed that, for the most part, appellate courts have declined to develop guidelines for use by sentencing judges in manslaughter cases. This is because of the wide variety of circumstances, including the degree of culpability of accused persons that can result in convictions for manslaughter. This is not to suggest that there are no broad sentencing principles or factors that apply to manslaughter. Factors such as age, criminal record, family circumstances, use of alcohol, or other intoxicants, the kind of victim, degree of remorse, viciousness of the crime, deterrence, and public protection must all be considered.

[75] I found the following four cases useful in my analysis of this unique case and none of them was a joint submission of Crown and defence, I believe.

[76] In *R v Asp*, 2005 YKSC 58, the offender received a sentence of five years. She was an Indigenous woman with a tragic childhood. She stabbed her spouse in the chest with a 13” butcher knife. Both she and her spouse were intoxicated and there was a history of violence in the relationship. Mitigating factors were that she was immediately

remorseful and tried to help her spouse, she pled guilty early and showed willingness to engage in programming. Aggravating factors included her intoxication, the fact that the victim was her common-law partner, and she used a weapon with a high degree of force.

[77] The Court in that case held that intoxication was an aggravating factor to the extent that:

[46] ... the killing may not have occurred had she not been so intoxicated. ... Intoxication is a two-edged sword. On the one hand, it reduces the capacity to intend certain consequences which in this case has resulted in a manslaughter conviction rather than a murder conviction. But at the same time, it decreases the level of inhibition and results in intoxicated people committing senseless violent acts which, in this case, deprived [the victim] of his life. ...

[78] The Court in that case said that were it not for the circumstances of C.M.A. and the mitigating factors, denunciation and deterrence would require a sentence of seven to eight years.

[79] In *R v MacPherson*, 2017 YKSC 19, the offender, who was not Indigenous, received seven years. He stabbed the victim five times after a consensual fight. Both had been drinking. The Court considered the mitigating factors of a guilty plea and remorse, his relatively young age at 35, that the use of the knife was impulsive and opportunistic, that there was some provocation by the victim, that he turned himself in, had a dated criminal record, and demonstrated an intention to stay sober. Aggravating factors included the use of a knife in a senseless argument, stabbing the victim who was unarmed and vulnerable five to six times 16 centimetres deep, a past criminal record with offences of violence, fleeing the scene and staying on the run for 10 days, and, finally, the fact that the death had a devastating impact on the victim's family. The

judge noted it was two-thirds of the way along the spectrum between “near accident” and “near murder”.

[80] In *R v Silverfox*, 2021 YKSC 49, the offender, who was Indigenous, received a four-year sentence. She was an Indigenous young woman who stabbed her friend twice in the chest in an argument over beer. Both women were highly intoxicated. The Court considered the mitigating circumstances of her young age of 20, her indigeneity, her previous victimization of physical and sexual abuse and her own history of alcohol and drug use, her years in foster care, her status as a child of the residential school survivors, her expressions of remorse, and her regular attendance at counselling while in custody. Aggravating circumstances were her prior convictions for violence and being on probation at the time of the offence, and the characterization of the offence as “near murder” rather than “near accident”.

[81] The Court in that case found that the offender’s intoxication was not an aggravating circumstance because the abuse of drugs and alcohol was part of this offender’s world. Acknowledging that the victim might still be alive if the offender was intoxicated, the facts were that everyone was drinking and fighting that evening. Intoxication was therefore neither an aggravating nor a mitigating factor.

[82] And finally, in *R v Stewart*, 2005 YKTC 74, the offender received a six-year sentence. He and the victim were drinking buddies. The offender beat the victim to death while both were intoxicated. The Court considered the guilty plea, the fact he was Indigenous and attended residential school, grew up in a dysfunctional home, was remorseful and tried to save the victim by performing CPR, expressed a desire to become sober, and may have been acting in self-defence as mitigating circumstances.

Aggravating circumstances were his lengthy record of violent offences, intoxication, brutal beating over a period of time as contrasted with one impulsive blow, and inflection of multiple injuries to the victim's head and body and the inability of the victim to defend himself because of his intoxicated state.

Analysis

Aggravating and mitigating factors in this case

[83] The aggravating and mitigating factors of the crime and the offender might reduce the sentence (mitigating) or increase the sentence (aggravating).

[84] The following are aggravating factors.

[85] First, the severity of the brutal beating. It brings this case closer to "near murder" than "near accident".

[86] Second, the devastating impact of Kevin's death on his family and friends. I have reviewed in some detail the enormity of the loss that they are experiencing because of Kevin's fine character and because of the shock, horror, and unexpectedness of the manner of his death.

[87] Third, Kane Morgan's intoxication, which he knew increased his risk of violence against others. I agree with the comments of the judge in *R v Asp* that intoxication in this case was a two-edged sword. It reduced Kane Morgan's culpability from murder to manslaughter because intention could not be found by the jury due to his intoxication level. However, Kevin McGowan would not be dead if Kane Morgan had not been so intoxicated.

[88] While I have taken Kane Morgan's troubled upbringing into account, namely, its influence on his drinking and taking drugs, and factored it into the proportionality

analysis, specifically reducing his moral blameworthiness, I also find that his knowledge for some years before this incident — at least since 2015 — of his propensity to violence when he was drinking and using drugs outweighs in this instance the influences of his past. This is not to dismiss his past as a mitigating factor, which I will address shortly. But it is unlike the case of *R v Silverfox* in which intoxication was neither a mitigating or aggravating factor because everyone involved in the event was intoxicated and the offender had always been surrounded by alcohol and drugs in her short life.

[89] Here, that night, not everyone — and particularly not Kevin McGowan — was intoxicated the way that Kane Morgan was. As a non-Indigenous person, Kane Morgan has not experienced the same kind of systemic and institutionalized disadvantages as many Indigenous people have.

[90] The following are mitigating factors in this case.

[91] First, Kane Morgan's obvious deeply felt remorse; his demonstrated commitment to sobriety; his rehabilitation by becoming a responsible and hard-working partner, father, self-employed successful prospector, and community volunteer; his acceptance of responsibility; his violent and troubled upbringing and addiction issues; and his relatively young age of 33.

[92] This case is unique because of the profundity of the grief and loss I have described of Kevin's family and friends, and the inexplicable loss of such a good man. It is also unique because of the definitive evidence of a transformation of Kane Morgan's character as a result of this incident. It has been evident throughout the legal process, since his arrest, his cooperation, the choices he made to plead to manslaughter early, to

have a jury trial and sentencing in Dawson where he had to face his peers in the community when he could have chosen a trial by jury or judge alone in Whitehorse away from the spotlight of his community, but more importantly, his pronounced commitment to sobriety, his acceptance of responsibility, his dedication to his family, and his voluntary assistance to marginalized community members.

[93] Unlike many of the other cases I have reviewed, where the offender has shown an intention to become sober, has taken some programming or education, and has shown remorse, Kane Morgan has actively demonstrated his remorse, his reform, and his transformation through his actions over the last five or so years. It has been attested to by his friends and family. His remorse in court and in his letters is sincere and heartfelt. He knows he will have to live with the horror of his actions of April 30, 2018, every day of his life. His life has changed as a result of this event, just as the lives of Kevin McGowan's family and friends have forever changed.

[94] The objectives of denunciation of unlawful conduct and the harm it has caused the victim, his family and friends, and to the community — and the need to deter others from committing similar offences — are important in this kind of case. However, the objective of assisting in rehabilitation is also relevant here, as is the objective of promoting a sense of responsibility (or in this case continuing to promote a sense of responsibility) and acknowledging the harm to the victim and community.

[95] I must give weight to the extraordinary rehabilitation of Kane Morgan to date.

[96] I find that six years' imprisonment is appropriate here. Were it not for the mitigating circumstances of Kane Morgan's transformation, this case would be on the high end of the range: eight and a half to nine years. Reducing it by three years

acknowledges the importance of Kane Morgan's continued rehabilitation. It is enough to promote the sense of ongoing responsibility and to acknowledge the harm.

[97] And as I said at the beginning, the purpose of this judgment is not to put a value on Kevin McGowan's life through a sentence — it is to fulfill the objectives, and the principles of sentencing as set out in the *Criminal Code*. I would ask the family to think about the extraordinary changes that Kane Morgan has made in his life, changes that will help others the way Kevin always tried to help people. And I ask the family to think about whether Kevin — fun-loving, kind, generous, high-on-life Kevin — would want you to remain stuck in your grief or whether he would want you to try and enjoy life again, enjoy each other, and try to find new opportunities to give to each other and to the community.

[98] Kane Morgan, you have done a lot of hard work to get where you are today. You have grieved and you have honestly admitted your mistakes and your crimes. You have overcome a difficult upbringing, and you have committed to a life of honesty, sobriety, hard work, and responsibility. You have many in your life who will support you on your journey. Prison will be hard, but, as you know, it is necessary, and it will be a chance for further reflection, further insights, and further commitment to the path that you are already on.

Conclusion and sentence

[99] Mr. Morgan, would you please stand.

[100] On the offence, s. 236, manslaughter, occurring on April 30, 2018, in Dawson City, Yukon, I sentence you to a six-year custodial sentence less credit for

pre-sentencing custody at 1.5 days to 1. You were in custody for 63 days before trial. You are therefore entitled to a deduction of 95 days from that sentencing.

[101] I will also order that DNA be provided pursuant to s. 487.051 of the *Criminal Code*, and that a firearms prohibition order of 10 years be imposed under s. 109 of the *Criminal Code*.

[102] Finally, I will order that you shall have no contact while in prison with Dianna McGowan, Dave McGowan, Brogan Tansowny, Brad McGowan, and Liam McGowan.

[DISCUSSIONS]

[103] There will be an exemption then on the s. 109 firearms prohibition order for when Mr. Morgan is in the bush because of the need for protection.

[104] MR. LANE: Your Honour, I would ask that the exemption read that he is not to possess a firearm within municipal boundaries and only directly to attendance at and — or directly to and from a remote worksite and attendance at a remote worksite, just so it's clear where he's allowed to possess them.

[105] THE COURT: Yes, the order shall reflect that.

DUNCAN C.J.