

Citation: *R. v. Chief*, 2018 YKTC 36

Date: 20180921
Docket: 16-10076
Registry: Watson Lake
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

ALFRED THOMAS JUNIOR CHIEF

Appearances:
Amy Porteous
Jennifer Cunningham

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] Alfred Junior Chief has entered a guilty plea to having committed the offence of manslaughter, contrary to s. 236(b) of the *Criminal Code*.

[2] The circumstances of the offence are set out in an Agreed Statement of Facts as follows:

1. Alfred Chief Junior spent the evening of December 22, 2016 at the Watson Lake, Yukon home where Olson Wolftail lived with his son and his son's partner Minnie Charlie. *[I note that in the Victim Impact Statements ("VIS"), Mr. Wolftail's name is spelled as Olsen]*
2. Chief is Charlie's son. He considered Wolftail his grandfather.
3. Wolftail was 87 years old and walked with a cane.

4. That night, Chief, Charlie and Wolftail were drinking together. All were highly intoxicated.
5. Shortly before 12:20 a.m. on December 23, Charlie went to her brother's house across the street, telling her nephew who came to the door that "Alfred is beating on Olson." With her sister-in-law's help, she called 911 to request an ambulance, telling the dispatcher that "Alfred took him and hurt him all over the place" and "Alfred Junior is hurting Olson in the head."
6. Police arrived at Wolftail's house approximately ten minutes later. By then Charlie had returned with a neighbor. When the police entered, she told them Alfred "beat up [her] dad."
7. An officer found Wolftail lying on his back, dead, in the storage room. Subsequent analysis of the blood and tissue spatter patterns established that Wolftail had been struck multiple times in roughly that position and that spot, with his hands lying palm-down.
8. Chief was lying on a pull-out couch in the living room, either asleep or unconscious. Some bottles lay on the floor. Chief was fully dressed and had a substance that appeared to be blood on his nose, hands, shoes, shirt and jeans. The blood, the scene, the contents of the 911 call and Charlie's brief explanation at the scene gave the police reasonable grounds to arrest him.
9. Chief had a strong smell of liquor on his breath, had bloodshot and glassy eyes, was combative, and didn't seem to understand why he was being arrested. He intermittently laughed, cried and growled during his interactions with police. At the detachment, he was put in a restraint chair because he was punching walls and banging his head on the floor.
10. One of the bottles in the living room, a 40-ounce Canadian Club Whisky bottle, was covered in blood and spattered with tissue. The dispersal of the bodily substances was consistent with the bottle having come into contact with a person contaminated with blood, and with force having been introduced to a source of blood and tissue in proximity to the bottle. Smudge marks on the bottle yielded no fingerprints suitable for analysis.
11. The pathologist who examine Wolftail found that his teeth, facial bones, hyoid bone, larynx, ribs and sternum were each fractured in several places. He had over 30 fractures to his ribs alone, and his spine and jaw were also broken. His face, neck and arms were bruised extensively, and his heart was bruised as which were on his face. One was over 10 cm long, ragged, and exposed his jaw, which

was splintered in that area. He had lost a significant volume of blood to internal and external bleeding. His blood alcohol level was 216 mg%. He died from blunt force trauma, with no contributing natural causes.

12. A police search of Wolftail's residence did not reveal any hidden objects that could have served as weapons.
13. There were at least 100 small spatter bloodstains on Chief's right shoe, and at least 15 on the left. There was some tissue on the right shoe, and transfer stains indicated that that shoe's sole and sides had come into contact with a blood source. Chief's jeans contained hundreds of small blood spatter stains, predominantly on the lower part of the right leg, as well as some transfer stains. His T-shirt bore a minimum of 30 blood spatter stains as well as some tissue and some transfer and saturated stains. The Bloodstain Pattern Analyst concluded that these patterns were consistent with the shoes, jeans and shirt "being worn by a person during the application of multiple blows to an available blood source at or near the shin level of the right leg of the jeans."
14. DNA analysis confirmed that the stains on Chief's clothing and on the bottle contained DNA consistent with Wolftail's. The probability of the DNA matching to any other person was extremely low.
15. Charlie subsequently gave statements to the police. Charlie stated that at some point in the evening she passed out. She woke up to Chief choking her. When she said she was calling the police, he threatened to kill her.
16. She stated she got away by claiming she needed to go to the bathroom, and ran out soon afterwards for help. In her second and third statements, she stated that she did not see any violence towards Wolftail by Chief.
17. Chief has no memory of the facts outlined but he does not contest that he unlawfully caused the injuries that resulted in Wolftail's death. Furthermore, he does not contest the words and actions that Charlie attributed to him noted in paragraph 15 above.
18. At all relevant times, Chief was bound by a bail condition that required him to abide by a curfew at his residence in Whitehorse.

[3] While Mr. Chief was originally charged with having committed the offence of murder, contrary to s. 235(1) of the *Criminal Code*, his guilty plea to the charge of manslaughter is based upon him, at the time of the offence, being so intoxicated by the consumption of alcohol that he was unable to form the specific intent necessary for him to have been convicted of the offence of murder. This is in accordance with well-established and accepted law. Certainly, the facts that are before the Court support the conviction of Mr. Chief on the charge of manslaughter rather than the charge of murder. I appreciate that this legal distinction may be difficult to understand and accept for the friends and family of Mr. Wolftail, but it is an established principle of Canadian law and it is not at all uncommon for offenders to be convicted of manslaughter instead of murder in similar circumstances.

[4] The sentencing hearing proceeded on June 28, 2018 and judgment was reserved to today's date.

[5] Crown Counsel submits that a jail sentence of six to eight years should be imposed, less credit for time served in custody on remand.

[6] Counsel notes the extreme force used by Mr. Chief in this brutal and sustained beating on the very vulnerable Mr. Wolftail.

[7] Counsel also notes Mr. Chief's criminal history, which includes eight prior convictions for assault, as well as one prior conviction for assault with a weapon. There are numerous other convictions. I note that it appears the longest period of custody he was sentenced to was 90 days. A copy of Mr. Chief's criminal record is attached as Appendix A to this decision.

[8] Counsel also notes that Mr. Chief was bound by bail conditions at the time he committed this offence.

[9] Counsel acknowledges the mitigating factors, which include Mr. Chief's guilty plea, disadvantaged background and diagnosis of Fetal Alcohol Spectrum Disorder ("FASD"), however submits that the protection of the public requires the lengthy custodial disposition that Crown submits is appropriate.

[10] At the sentencing hearing on June 28, 2018, counsel for Mr. Chief submitted that a custodial sentence of four years and three months be imposed, less credit for time in custody on remand, plus a probationary period of three years. The resultant sentence of two years less one day would allow Mr. Chief to serve his time in custody in the Yukon.

[11] I note that as of the June 28, 2018 date of the sentencing hearing, Mr. Chief had been in custody for a period of 553 days. As of today's date of September 21, 2018, Mr. Chief has been in custody for a total of 638 days. As is normally the case, Mr. Chief is entitled to credit at a rate of 1.5:1 for his time in custody to date, which amounts to 957 days, which is the equivalent of 31 and one half months' custody. The 1.5:1 credit for time in custody is consistent with the minimum amount of credit serving prisoners almost invariably receive for their time in custody after being sentenced, based upon the application of statutory release.

Victim Impact

[12] Victim Impact Statements (“VIS”) were provided by Mr. Wolftail’s children and grandchildren.

[13] Through the VIS, it is very apparent that Mr. Wolftail’s death, and in particular the manner in which he died, has had a devastating impact on his family.

[14] The following are some of the descriptions provided:

- My dad was the glue that held our family together. My dad used to check on all members of our family and keep us connected. He did this until he was no longer able to do so, but we felt safe knowing that he was there for us. Now, our family is shattered with his loss. I feel shattered beyond repair. ...
- My dad belonged to family who adored him. He was very much needed and wanted. He wasn’t alone in this world. He was with his own family. He loved his grandkids and was very playful with them. His friends really enjoyed him and thought very highly of him. He was very helpful to other people....He was loved.
- [Our family was destroyed] because we didn’t get a chance to say goodbye to our dad. The grand-kids didn’t get a chance to say goodbye either, and what they are left with are unthinkable nightmares. Maybe they will never get over this even if they get counselling. Our lives are extremely hard to live with today.
- It feels like my life is just full of pain now.
- Still grieving while being angry all the time...it will take a long time to be fully healed from this situation.
- I feel so shattered by his death, like someone took a hammer and shattered my heart to fine little pieces. It is beyond repair...this single act...has sentenced me to a pain that is so devastating I cannot describe.
- ...we loved him very much. He shouldn’t have died like that, get killed, it really destroyed us.

- I wasn't prepared to lose my grandpa in such a violent way and to watch the chaos and grief surrounding his tragic death. I thought I had more time with him. That he was taken away from us is unbearable sometimes.
- I am also here to give my Grandpa Olsen a voice. He survived so much in life. He survived being a First Nation's man in his generation when there was so much racism. He survived watching his children being taken away to residential school. To know what he survived and for him to be killed in such a violent and traumatic way is unnatural and shocking. It is shocking to my heart and my soul.
- When he killed Dad, he gave me a life sentence of hurt and anger. I think the only peace I will have is when I die.
- My grandpa was a huge part of my life. My grandpa Olsen was a man with a heart of gold. A man of generosity and kindness. A man who was loved and cherished by his children, grandchildren, great-grandchildren and by all who knew him.....It kills me inside to know that my grandpa Olsen was killed. I'm beyond devastated and heartbroken about my grandpa Olsen's homicide and the unthinkable brutal way he died. There's an emptiness inside me that can never be filled. Every day I wake up my heart shatters more and more. This reality is a nightmare that I can never wake up from.... It's hard to accept the fact that I will never see my grandpa again. It's extremely difficult to see my family suffer with devastation and grief.

[15] Nothing in the sentence to be imposed upon Mr. Chief will repair the hurt and loss suffered by those who loved and were loved by Mr. Wolftail. The sentence in no way is intended to reflect the value or worth of Mr. Wolftail's life, nor is it capable of doing so, because his life was priceless and, as such, beyond any ability to be compensated for.

[16] What healing there can be will only be found in time and perhaps in remembering the good person Mr. Wolftail was, and the joy he brought. It is clear to me that Mr. Wolftail was a man who worked hard and overcame many obstacles in his life, a man who was loved and in turn loved by his family. It is my hope that in remembering his

greatness, that the courage of his spirit will in turn strengthen his family to overcome the pain and grief of their loss. From what I have heard of Mr. Wolftail, I believe this is what he would want his loved ones to do. He would want them to be better so that, even through his death, he would be able to provide strength and courage and compassion to his family.

[17] As is the way of sentencing proceedings, much more will be said of Mr. Chief's life and circumstances, than of Mr. Wolftail's. As Mr. Chief is the one being held accountable for committing this offence and the one being sentenced, it must of necessity be this way. This is not however, reflective in any way that the sentencing process, and those involved in it, place a higher value and worth on Mr. Chief's life than Mr. Wolftail's. As I said earlier, the value of Mr. Wolftail's life was priceless and his worth incalculable. The sentencing process is not designed to be a comparator of the offender as against the victim or a scale measuring the value and worth of the one against the other.

Circumstances of Mr. Chief

[18] Mr. Chief is a 33-year-old member of the Liard First Nations from Watson Lake, Yukon. A **Gladue** Report was provided, outlining the circumstances of both Mr. Chief and his First Nation. Also filed was an FASD Assessment Clinic Report.

[19] **Gladue** Reports generally contain much in the way of personal information, and certainly it is not my practice to reveal too many of the personal details of the offender and collateral contacts in sentencing the offender.

[20] There are cases, however, in which I believe it is important to say more of what is contained in the **Gladue** Report in order to provide the appropriate context for people to understand the particular sentence imposed, and the process involved in reaching a determination of this sentence. This is such a case.

[21] In the 1940's the Lower Post Indian Residential School was established. It was a place where many First Nations' children were subjected to physical, sexual and emotional abuse. According to the **Gladue** Report, the Lower Post Residential School was considered by some to be one of the worst in Canada. Mr. Chief's father attended this residential school from the age of five until 13. Mr. Chief's mother also attended a residential school, although it was not clear to me which one.

[22] Mr. Chief's father took on the sole responsibility for raising Mr. Chief from the time he was 16 months old. Mr. Chief's mother was never a part of his life. As Mr. Chief stated: "I don't ever remember my mother being around". He stated that: "She was more of a drinking friend than a mom". He was noted to show anger and to have a defeated attitude when talking about his mother. That being said, Mr. Chief's father also noted that Mr. Chief would go to his mother's house, chop and stack wood, and clean the house for her, her boyfriend and Mr. Wolftail.

[23] There was a considerable amount of alcohol use in Mr. Chief's home while he was growing up. He recalled an incident when he was seven where, when he and his father were in the bush, his intoxicated uncle pointed a gun at Mr. Chief's father and threatened to kill him. Mr. Chief went to the truck and got his father's gun, pointing it at his uncle, intending to shoot him if he shot Mr. Chief's father. The uncle shot, but the

bullet went between Mr. Chief and his father. On the ride back from the incident, both Mr. Chief and his father were shocked by what had occurred. Mr. Chief's father was intoxicated and Mr. Chief found some alcohol in the truck and drank it. Mr. Chief states that he continued to drink from that day forward, usually with older friends, as being the youngest of eight children he spent time with older kids. Mr. Chief said no one ever noticed he was drinking: "...because they were all so drunk themselves."

[24] According to the psychologist, Sonja Weber, who has been involved with Mr. Chief as a client of the Indian Residential Schools Resolution Health Program, this incident is traumatic and could change the whole outlook on life for an individual, and for Mr. Chief.

[25] At the age of 11, Mr. Chief consumed alcohol to the point he was hospitalized. He recalls being depressed at the time and that he drank so much in an attempt to commit suicide.

[26] He was hospitalized for a head injury when he was approximately six or seven, and suffered a further head injury not long afterwards.

[27] Mr. Chief disclosed that at the age of seven he was sexually molested by a female teenager. School reports provided information regarding concerning behaviours of Mr. Chief when he was young that may have been connected to this abuse.

[28] School reports also provided information about numerous fights with other students, a threat to shoot a bus driver with a gun, and a threat to commit suicide as an eight-year-old, accompanied by tying clothing around his neck.

[29] He was noted to struggle academically and was placed on an Individual Education Plan in Grade 4.

[30] As a young teenager, Mr. Chief had to move in with his uncle because his father had received a two-year jail sentence. This was difficult for him because his father had at least been present in his life when his mother was not. Now neither parent was there.

[31] Further making things difficult was the death of Mr. Chief's brother in a hit and run accident while they were living with his uncle while his father was in jail. Mr. Chief stated that he "lost it" at the time. Mr. Chief ran away from his uncle's residence and it was only several months later that his uncle found him hiding out at another uncle and aunt's place.

[32] Throughout all this time, and after Mr. Chief's father was released from jail, Mr. Chief continued to drink on an almost daily basis.

[33] Mr. Chief dropped out of school in 2003 after a cousin died. He then entered into a relationship with Charmaine Peter and they had children in 2003 and 2008. They separated, however Mr. Chief continued to be involved in the childrens' lives. Ms. Peter passed away in 2014 from complications related to alcohol use. She was found deceased by their 11-year-old daughter. Mr. Chief's father, now sober for 20 years, is helping out with raising the children.

[34] Mr. Chief stated that after Ms. Peter died: "I stopped being a father, I lost my mind I think". He states that he gave up everything, not even going to her funeral or to

visit her gravesite. Mr. Chief blames himself for Ms. Peter's death for not taking better care of her.

[35] His drinking increased substantially afterwards, including one attempt to commit suicide by drinking which required him to be transported by Medivac to Whitehorse General Hospital ("WGH") in 2015. There was a further drinking incident in 2015 in which he was brought unconscious to WGH. Mr. Chief's drinking continued until he was arrested for this offence.

[36] According to the **Gladue** Report, Mr. Chief was able to maintain employment from 2005 until 2012, primarily in the mining sector, working at the Tungsten mine from 2006 until 2012 when the mine was shutdown. He was on social assistance from that date forward. According to the FASD Assessment Report, however, Mr. Chief has only worked intermittently, with the longest period of employment being for less than one year at the Tungsten Mine. It is clear from Mr. Chief's criminal record, that any employment he had during that time period would have been significantly impacted by his involvement in the criminal justice process.

[37] Mr. Chief has been diagnosed with FASD. Mr. Chief's mother's heavy alcohol use during the time she was pregnant with him, as well as the presence of Sentinel Facial Features, has been determined to be sufficient evidence to allow this diagnosis to be made. He is noted:

- To have verbal and non-verbal reasoning abilities in the extremely low range;
- To require time to process verbal information and respond;

- To be in the extremely low range in overall performance on visual tasks; and
- To be in the extremely low range in the processing speed tasks.

[38] His overall intellectual performance reveals “that he has significant impairments in his verbal reasoning, perceptual reasoning and processing speed.”

[39] Mr. Chief showed as having significant challenges in all academic tasks, other than having a degree of relative strength in Sentence Comprehension.

[40] He has significant difficulties with inattention, impulsivity, and sustained attention.

[41] He is in the Low-Average to Extremely Low Average range in Executive Functioning.

[42] His Personality Assessment shows him as elevated across a variety of scales and suggest that he is experiencing marked distress and/or severe impairment in functioning.

[43] His substance abuse issues are significant and above-average, even when compared to others in specialized treatment for substance abuse problems.

[44] Mr. Chief also shows as having some anti-social and other problematic personality traits. His early life attachment problems have contributed to his struggles with interpersonal relationships and with trust and intimacy.

[45] His Adaptive Skills and Functioning are in the Low to Extremely Low range.

[46] Mr. Chief appears to meet the DSM-6 diagnostic criteria for Post-Traumatic Stress Disorder, largely related to the trauma he experienced throughout his life, and also including the circumstances of the offence for which he is being sentenced.

[47] While in custody he has been on medication, including anti-psychotic medication and medication for depression and anxiety.

[48] Ms. Weber, who meets with Mr. Chief regularly, notes him to be “Sincere, honest, deeply troubled and very remorseful about what happened and is in tears every time I see him”. He shows many symptoms of traumatic stress, which likely is related to both his historical life and the killing of Mr. Wolftail. She affirms that this is despite him having no recollection of the killing of Mr. Wolftail.

[49] Ms. Weber noted that as Mr. Chief has maintained a lengthy period of sobriety while in custody, his ability to feel things and recall memories is slowly increasing. There is a plan in place for Mr. Chief to continue his ongoing psychological treatment with Ms. Weber after he is sentenced in order to deal with his underlying issues. Ms. Weber provided two letters from April and June of this year. Both are supportive of Mr. Chief’s engagement with her and his efforts to address his underlying trauma and trauma-related issues, in order to make choices that will be positive for him and his children.

[50] I note that, while in custody for this offence, Mr. Chief completed the following programming:

- Positive Choices, Positive Voices three-day therapeutic workshop;
- M.E.P. (Making Empowered Decisions) Program comprised of three interactive sessions on health literacy – done twice;
- Violence Prevention Program;
- Relapse prevention Program;
- For the Sake of the Children three-hour information session (completed twice);
- Substance Abuse Management Program; and
- Wellness Recovery Action Plan.

[51] I also understand that he has been participating in Alcoholics Anonymous programming.

[52] A letter was also filed from the Fetal Alcohol Syndrome Society of the Yukon (“FASSY”) that details Mr. Chief’s involvement with them since referring himself on November 16, 2016, which, sadly, was just over one month prior to committing this offence. Mr. Chief has been supported by FASSY while at Whitehorse Correctional Centre (“WCC”) and has worked with FASSY to develop a plan that, with ongoing FASSY support, will hopefully help him live a clean and sober lifestyle.

[53] Mr. Chief’s father provided a letter of support for Mr. Chief. In this letter he refers to his own formal diagnosis of Post-Traumatic Stress Disorder and accepts responsibility for not being the best role model for Mr. Chief. He speaks of the losses Mr. Chief has suffered in his life, in particular his brother Thomas and Ms. Peter, and the negative impacts these had on Mr. Chief, as well as his belief that Mr. Chief has never dealt with these losses. He speaks of his own sobriety and of Mr. Chief’s expressed desire to be a devoted father to his two children.

[54] Mr. Chief's aunt, Sue Chief, had assisted in raising Mr. Chief when his father was in jail. She writes of the devastating impact the death of his brother had on Mr. Chief, followed by the death of a cousin and, subsequently, the death of Ms. Peter.

[55] In respect of this offence she writes:

And now there is one more tragedy in this young life; the killing of a man Alfred considered to be his grandfather. Alfred's cultural values state that he should respect his elders, and assist his family members and others when possible. He was raised this way, and lived his way to the best of his ability. He went over to Olsen Wolf tail's house many times to help him out. He split wood, washed the dishes, cooked, cleaned up, brought him moose meat; in general, did the things expected of a grandchild. The violent actions associated with Olsen's death certainly don't fit with Alfred's history of helping his 'grandfather', and I know this death sits heavily on Alfred's mind and conscience. He would undo it if he could.

A series of traumatic events, alcoholism, and a lack of treatment and/or counselling have combined to form the shell of Alfred Jr. Chief. His abiding love of his children is all that's left of the child who was full of life and eager to live it.

[56] Concerns about Mr. Chief's failure to cope with the deaths of his brother and Ms. Peter were expressed by Mr. Chief's cousin and his older brother, who also offer their support for Mr. Chief. Mr. Chief's brother also speaks of his concerns that Mr. Chief has not sought out any counselling in the past to deal with the trauma in his life.

Case Law

[57] The maximum sentence for manslaughter is life imprisonment. There is no minimum sentence for manslaughter, other than in cases in which a firearm is used. Numerous cases were provided to the Court by counsel.

R. v. Bisson, 2004 CarswellOnt 2605 (S.C.)

- The offenders were sentenced to 10 years' custody for manslaughter pursuant to a joint agreement that a range of 10 to 14 years custody would be placed before the Judge. (A third co-accused plead guilty to second degree murder).
- This was a senseless, savage and brutal beating of a 40-year-old in his own home.
- The offenders were 24 and 22 years of age. Both offenders were of Aboriginal heritage. They had difficult backgrounds marked with abuse, violence and substance abuse and, in the case of one offender, possibly FASD and cognitive issues.

R. v. Dick, 2014 MBQB 187

- The 20-year-old Aboriginal offender was sentenced to seven years' custody for manslaughter.
- He delivered a single blow to the deceased in a failed drug transaction.
- The sentencing Judge had concerns about extent of the accused's remorse.
- The offender had been significantly impacted by the effects of the residential school system, which caused the Judge to reduce the sentence by one year from the eight years he otherwise would have imposed.
- The offender struggled with cognitive deficits.

R. v. Boucher, 2012 YKSC 7

- The 36-year-old Aboriginal offender, Lange, (who was co-accused with the offender Boucher), was sentenced to nine years and four months' custody for manslaughter on a joint submission.
- This had been a protracted matter with the previous murder convictions being overturned on appeal.
- It was a severe beating of the deceased in his own residence. Mr. Lange was the less involved of the two offenders.

- Mr. Lange had been placed into foster care at a young age.
- The 39-year-old Aboriginal co-accused received a sentence of 12 years' custody. He was noted to have had an abusive upbringing.

R. v. Stewart, 2005 YKTC 74

- A sentence of six years' custody for manslaughter was imposed.
- A general sentencing range of three to 12 years was considered to apply to manslaughter.
- This was a severe assault on Mr. Stewart's "drinking buddy". The violence and extent of the assault is similar to the circumstances of this case.
- The 47-year-old Aboriginal offender woke up beside the deceased and attempted CPR unsuccessfully. He was remorseful.
- He had 51 prior convictions, including 13 of violence.
- He had a very violent upbringing marked by substance abuse and attendance at residential school.

R. v. Francis, 2007 NSSC 184

- The sentencing range for manslaughter was considered and viewed generally, with exceptions, as being between four to 10 years' custody.

In para. 11 the Court notes that Roscoe J. stated in **R. v. Henry**, 2002

NSCA 33 at para. 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. 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. ...

- The 39-year-old Aboriginal offender was sentenced to seven years' custody.
- This was an unprovoked attack at a house party by Mr. Francis on the deceased with a broken beer glass.
- Mr. Francis had no criminal record, no substance abuse issues and a positive upbringing.
- He was noted to have demonstrated remorse, albeit delayed.
- The sentencing judge viewed this as being closer to murder than accident with respect to moral blameworthiness.

R. v. Peters, 2014 BCSC 1009

- The 50-year-old Aboriginal offender was sentenced to four years and five months' imprisonment for manslaughter.
- She stabbed her spouse in the heart while they were intoxicated.
- She had no memory of having committed the offence.
- She was a residential school survivor.
- She was remorseful.
- There was an extensive review of **Gladue** (*R. v. Gladue*, [1999] 1 S.C.R.688), and **Ipeelee** (*R. v. Ipeelee*, 2012 SCC 13) principles in regard to the sentencing of Aboriginal offenders.

R. v. K.E.M., 2004 BCCA 663

- A six-year sentence was imposed on Appeal to a guilty plea for manslaughter.
- The 38-year-old Aboriginal offender kicked the deceased several times in the head and face area.
- He had a lengthy criminal record, including 13 convictions for violence.

- He had a difficult upbringing and lived in numerous foster homes.

R. v. Korgak, 2013 NUCA 9

- A sentence of three years' custody was imposed for manslaughter and was upheld on appeal.
- The Aboriginal offender was engaged in a dispute with a friend, who had asked him to fight, and drove an ATV over him before going home to bed, leaving his friend there.
- He was remorseful and the diminished level of moral culpability found by the trial judge was not interfered with by the Court of Appeal.

R. v. Kappi, 2016 NUCJ 28

- A sentence of three years' custody was imposed for manslaughter.
- The 26-year-old Aboriginal offender stabbed the deceased (a friend) one time with a kitchen knife in course of a physical altercation. He was said to have "introduced a knife into a shoving match". The offender was found not to be the aggressor.
- He had had a positive home environment but struggled with bullying outside of the home.
- He demonstrated a high level of remorse.

R. v. Sayine, 2014 NWTSC 85

- The Aboriginal offender was sentenced to five and one-half years' custody after trial.
- He kicked his spouse in the head during an altercation. He helped her to bed but she later, after being medivaced to Edmonton, died from bleeding inside her skull resulting from the kick or subsequent fall to floor as a result of the kick.
- The offender grew up in an alcohol-prevalent dysfunctional home, some positive cultural influences.

R. v. Quash, 2009 YKTC 54

In this sexual assault case I, as the sentencing judge, considered the impacts of the offender's Aboriginal status and FASD when deciding a fit sentence. I made a number of comments in regard to the sentencing of Aboriginal offenders as follows:

52 The following quote from the Ontario Court of Appeal in **R. v. Whiskeyjack**, 2008 93 O.R. (3d) 743, underscores the balancing act that needs to take place when considering an appropriate sentence for a First Nations offender in the context of a serious offence of violence:

The task of the sentencing judge is to weigh the aboriginal offender's circumstances and his or her interest in rehabilitation or restorative justice with the community's interest in deterrence, denunciation and the need for social protection. In the case of serious and violent offences, even for aboriginal offenders, the balance will often tilt in favour of the latter interests. (Paragraph 31)

53 Even in very serious offences, however, the analysis set out in **R. v. Gladue**, [1999] 1 S.C.R. 688, applies in all cases where the offender is of First Nations ancestry, although the application of a different methodology for a First Nations offender will not necessarily end up with a different result than in the case of a non-First Nations offender.

...

61 In applying s. 718.2(e) to this case I must take into account the findings of the FAS Diagnostic report. I recognize that FASD is a serious problem that extends beyond the First Nations community. In the Yukon, however, it is disproportionately an issue within the First Nations peoples.

62 The problematic consumption of alcohol that has resulted in children being born suffering the permanent effects of FASD often finds its roots in the systemic

discrimination of First Nations peoples and the resultant alienation they experience from their ancestry, their culture and their families.

63 This issue must be approached within the criminal justice system, keeping in mind the sentencing principle for proportionality set out in s. 718.1 of the *Criminal Code* which states:

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

...

66 The question raised by Judge Lilles in *Harper* in considering the meaning of the degree of responsibility of the offender in s. 718.1 was put as follows:

What does this mean for an offender who, like Mr. Harper, suffers from an organic brain disorder that affects not only his ability to control his actions, but also his understanding of the consequences that flow from them?

67 In balancing the principles of proportionality to address the sentencing principles most applicable to serious offences against the moral blameworthiness of the offender, Judge Lilles concluded:

Where FASD is diagnosed, failing to take it into account during sentencing works an injustice to both the offender and society at large. The offender is failed because he is being held to a standard that he cannot possibly attain, given his impairments. As noted by Judge Barry Stuart in *R. v. Sam*, [1993] Y.J. No. 112 (T.C.), FASD takes away someone's "... ability to act within the norms expected by society," (para. 17) and it is manifestly unfair to make an individual pay for their disability with their freedom. Society is failed because a sentence calculated for a "normal" offender cannot serve the same ends when imposed on an offender with FASD; it will not contribute to respect for the law, and neither will it contribute to the maintenance of a just, peaceful and safe society.

The calculus of sentencing the average offender simply does not apply to an offender with FASD. Not only can traditionally calculated sentences be hopelessly ineffective when applied to FASD offenders, but the punishment itself, calibrated for a non-disabled individual, can have a substantially more severe effect on someone with the impairments associated with FASD. (Paragraphs 38 and 39)

68 Also considered in *Harper* was the decision of Judge Ruddy in *R. v. D.J.M.*, [2005] Y.J. No. 18 (T.C.), where she was sentencing an FASD offender. Judge Ruddy stated that:

In my view, Mr. Malcolm's cognitive disabilities and their impact on the executive functions of his brain does affect the degree of his moral culpability and must be considered. (*Harper*, paragraphs 40 to 41)

69 In conclusion in *Harper*, Judge Lilles stated that:

... a just sentence should result in a substantial reduction in the sanction imposed by this court. (Paragraph 42)

70 I concur with the comments in *Harper* that the role of specific deterrence in sentencing FASD offenders must be proportional to the individual offender's ability to understand the connection between the sanction imposed and the offence committed. The greater the cognitive deficits of the offender, the less role specific deterrence should play.

71 I also agree that the application of the principles of denunciation and general deterrence, although being the sentencing principles which almost invariably lead the way in sentencing offenders who have committed the type of sexual assault such as occurred in the present case, must be carefully applied in sentencing an FASD offender. There is some truth to the notion that an unfairness occurs when an individual who is the "innocent victim of the FASD visited upon him by maternal alcohol consumption during pregnancy," (*Harper*, paragraph 47) and who then commits crimes, even abhorrent ones which are, to some extent, attributable to the cognitive difficulties accompanying the FASD, is to be held up as a public example in order to deter others. Such an offender is not only held up for his or her

own failings, but also as an example of the many others, be it individuals, communities and/or governments, who have also failed.

72 That is not to say that the principles of general deterrence and denunciation have no place in sentencing FASD offenders. In certain cases there may be a role, depending on the nature of the offence and the degree of moral culpability of the offender, based upon the extent of his or her cognitive difficulties.

73 This said, it will almost invariably be the case that the role will be significantly less than when dealing with a non-cognitively affected offender who has committed the same type of offence.

74 I also agree with the notion that separation from society does not necessarily require incarceration of the FASD offender or, if incarceration is necessary in the circumstances, which may well be the case, perhaps not incarceration for as long a period. The problem, however, is that certain offenders affected by FASD commit offences of such a serious nature that they cannot simply be released into society without sufficient supports in place.

R. v. Friesen, 2016 MBCA 50

- A four-year sentence was imposed on appeal on a conviction for manslaughter (increased from one year imposed by the sentencing judge).
- The 20-year-old Aboriginal offender suffered from FASD and associated significant cognitive impairments.
- He attempted to engage in an altercation with the deceased and struck him in the head, causing his head to strike the ground and his death.

In para. 21 the Court, quoting from the decision in **R. v. Ramsay**, 2012

ABCA 257, that referred to the **Harper** and **Quash** cases:

The degree of moral blameworthiness must therefore be commensurate with the magnitude of the cognitive deficits

attributable to FASD. The more acute these are shown to be, the greater their importance as mitigating factors and the less weight is to be accorded to deterrence and demunciation, all of which will serve to “push the sentence...down the scale of appropriate sentences for similar offences” (for the careful application of this sliding scale to an especially severe case of FASD, see *R v FC*, 2012 YKTC 5 at paras 24-29, 38-43, [2012] 2 CNLR 184).

The Court further stated:

26 In summary, an offender's moral blameworthiness may be reduced if he suffers from an FASD related diagnosis and there is a connection between the condition and the offence for which he stands charged. The sentencing judge must have evidence of the diagnosis and its impact on the accused in order to draw the nexus between that diagnosis and the accused's conduct relating to the offences.

27 In this case, the sentencing judge failed to properly appreciate the effect of the accused's pFAS on his conduct on the day in question.

28 He reasoned that, with respect to the accused's intoxication, the accused was aware that alcohol had a negative impact on his ability to control his anger. Therefore, he should have known not to drink and the fact that he was intoxicated on that day was not relevant to his moral culpability. I disagree.

29 While he concluded that the accused is able to abstain because he has done so since the date of the offence, this is as a result of his being under constant supervision and under parental control, which was not the case prior to the date of the incident. In our case law, voluntary intoxication is rarely capable of supporting an argument of diminished responsibility as we ascribe to the individual the ability to stop the drinking which led him to the situation in question. In this case, however, one must recognize the diagnosis of pFAS and what that entails. Given that the accused was prone to impulsive and irrational actions and with limited ability to foresee the consequence of his actions, to suggest that his self-knowledge of the effects of alcohol should lead him not to indulge is, with respect, placing too high of an expectation on someone with his diagnosis. It is inconsistent with the medical evidence. Given his diagnosis, I am of the

view that his lack of control when intoxicated was a factor in his unprovoked attack. Such conduct stems from his condition and it should have been considered as a mitigating factor.

...

32 In my view, his conduct on the day in question and the nature of the attack that took place suggests impulsivity, lack of control and a failure to recognize the consequences of his actions. All of these factors should have led the sentencing judge to consider a diminished moral culpability. Failure to do so amounted to an error in principle.

R. v. Weasel Bear, 2016 ABPC 244

The Court addressed the issue of moral culpability, stating the following:

22 Crafting a fit sentence for an offender with the cognitive deficits associated with FASD presents at least two identifiable challenges: accurately assessing the moral blameworthiness of the offender in light of the adverse cognitive effects of FASD; and balancing protection of the public against the feasibility of reintegrating the offender into the community through a structured program under adequate supervision. These challenges must be placed within the principles and objectives of sentencing. The fundamental principle of sentencing is proportionality: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Therefore, to the extent that FASD is demonstrated to have attenuated or diminished the moral blameworthiness of the offender, it must be taken into account. Moreover, sentencing is an individualized process and courts should craft sentences for FASD-affected offenders with awareness of their unique neurological deficits and abilities: *R v Ramsay*, 2012 ABCA 257.

In para. 29, the Court reviewed some of the particular circumstances that caused the Court to be satisfied that Mr. Weasel Bear's unique

circumstances and the systemic context of the **Gladue** factors resulted in him having a lower level of moral culpability.

R. v. Ipeelee, 2012 1 S.C.R. 433

In this case, the Court provided a more recent pronouncement on how what was stated in **Gladue** is to be considered and applied when sentencing Aboriginal offenders.

59 The Court held, therefore, that s. 718.2(e) of the *Code* is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing (*Gladue*, at para. 93). It does more than affirm existing principles of sentencing; it calls upon judges to use a different method of analysis in determining a fit sentence for Aboriginal offenders. Section 718.2(e) directs sentencing judges to pay particular attention to the circumstances of Aboriginal offenders because those circumstances are unique and different from those of non-Aboriginal offenders (*Gladue*, at para. 37). When sentencing an Aboriginal offender, a judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (*Gladue*, at para. 66). Judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally, but additional case-specific information will have to come from counsel and from the pre-sentence report (*Gladue*, at paras. 83-84).

60 Courts have, at times, been hesitant to take judicial notice of the systemic and background factors affecting Aboriginal people in Canadian society (see, e.g., *R. v. Laliberte*, 2000 SKCA 27, 189 Sask. R. 190). To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and

how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples. These matters, on their own, do not necessarily justify a different sentence for Aboriginal offenders. Rather, they provide the necessary *context* for understanding and evaluating the case-specific information presented by counsel. Counsel have a duty to bring that individualized information before the court in every case, unless the offender expressly waives his right to have it considered. In current practice, it appears that case-specific information is often brought before the court by way of a *Gladue* report, which is a form of pre-sentence report tailored to the specific circumstances of Aboriginal offenders. Bringing such information to the attention of the judge in a comprehensive and timely manner is helpful to all parties at a sentencing hearing for an Aboriginal offender, as it is indispensable to a judge in fulfilling his duties under s. 718.2(e) of the *Criminal Code*.

...

68 Section 718.2(e) is therefore properly seen as a "direction to members of the judiciary to inquire into the causes of the problem and to endeavour to remedy it, to the extent that a remedy is possible through the sentencing process" (*Gladue*, at para. 64 (emphasis added)). Applying the provision does not amount to "hijacking the sentencing process in the pursuit of other goals" (Stenning and Roberts, at p. 160). The purpose of sentencing is to promote a just, peaceful and safe society through the imposition of just sanctions that, among other things, deter criminality and rehabilitate offenders, all in accordance with the fundamental principle of proportionality. Just sanctions are those that do not operate in a discriminatory manner. Parliament, in enacting s. 718.2(e), evidently concluded that nothing short of a specific direction to pay particular attention to the circumstances of Aboriginal offenders would suffice to ensure that judges undertook their duties properly.

...

85 Whatever criticisms may be directed at the decision of this Court for any ambiguity in this respect, the judgment ultimately makes it clear that sentencing judges have a *duty* to apply s. 718.2(e): "There is no discretion as to whether to consider the unique situation of the aboriginal offender; the only discretion concerns the determination of a

just and appropriate sentence" (*Gladue*, at para. 82). Similarly, in *Wells*, Iacobucci J. reiterated, at para. 50, that

[t]he generalization drawn in *Gladue* to the effect that the more violent and serious the offence, the more likely as a practical matter for similar terms of imprisonment to be imposed on aboriginal and non-aboriginal offenders, was not meant to be a principle of universal application. In each case, the sentencing judge must look to the circumstances of the aboriginal offender.

R. v. C.M.A., 2005 YKSC 58

- The 27-year-old Aboriginal offender was sentenced to five years' custody for stabbing her spouse in the heart with a butcher knife during a verbal altercation.
- **Gladue** factors were apparent in her upbringing, including being the victim of sexual abuse.
- She showed immediate and genuine remorse.
- The sentencing Justice found intoxication to be an aggravating factor in this case. See also the same finding of the sentencing Judge in para. 5 in **Stewart**.

R. v. Thomas, 2016 ONSC 7944

- The 41-year-old Aboriginal offender was sentenced to four years on manslaughter, which with time served, allowed for a further three years of probation.
- She stabbed her spouse three times in the chest during a dispute.
- **Gladue** factors were present in the offender's upbringing, marked by alcohol abuse and suicide attempts.

Aggravating and Mitigating Factors

[58] With respect to whether Mr. Chief's intoxication at the time he killed Mr. Wolf tail is an aggravating factor, as was found to be the case in **C.M.A.** and **Stewart**, in considering the comments in **Friesen**, I would say that if the problematic consumption of alcohol is related to **Gladue** factors and the offender suffering from FASD, I consider that it is perhaps unfair to find intoxication to be an aggravating factor.

[59] This is particularly so when there is not an abundance of treatment options readily accessible to individuals who struggle with substance abuse in connection with FASD. It may not be that easy to just take steps to deal with an alcohol or substance abuse issue, given that such individuals are already starting at a deficit, both with respect to the FASD impacts and the grief and trauma so often associated with their Aboriginal upbringing.

[60] As I have said in **Quash** and in other cases, it is one thing to make a verbal apology to the Aboriginal Peoples of Canada for the harm caused by the residential school system and other governmental policies designed to "kill the Indian in the child". It is one thing to make promises to attempt to rectify the situation. It is one thing to set up committees and commissions to explore the harm caused and the reasons for it.

[61] It is quite another thing entirely, however, to actually spend the required monies to ensure that the infrastructure for the necessary treatment, counselling, education, employment and other restorative and forward-looking resources are in place and operational. In the end, saying sorry requires more than words, promises, committees or commissions. These are simply preparatory steps. There must be follow through. In

my opinion, the follow through is often insufficient. This is simply the reality of the situation....and at times a very sad reality.

[62] I recognize that, in Mr. Chief's case, there is concern expressed about his failure to seek out and obtain counselling. That does not mean that the necessary counselling and treatment options were necessarily available and accessible when and where required. And again, Mr. Chief's ability to recognize his problems and to seek help for them was compromised by the trauma he had suffered and the cognitive limitations he had. At times trauma and abuse can be a circular reality, with the beginning and the end difficult to ascertain, and the unfurling challenging.

[63] In the case of Mr. Chief, the aggravating features are:

- Mr. Wolftail was a vulnerable Elder killed by a prolonged and brutal attack that occurred in his own home, a place where he should have been safe.
- Mr. Chief has a criminal record which includes offences of violence.

[64] The mitigating features are:

- Mr. Chief's guilty plea and his remorse for his actions; and
- His significant efforts while incarcerated on remand for this offence to take advantage of the programming available to him and the availability of psychological counselling.

[65] Also, sometimes categorized as mitigating and/or relevant to moral blameworthiness are:

- Mr. Chief's FASD diagnosis which, in accordance with the principle in *Harper* and *Quash*, serves to reduce somewhat his moral blameworthiness; and

- His circumstances as an Aboriginal offender whose infancy, childhood and youth were marked by the negative impacts so often found in the lives and families of those impacted by the destructive forces of the residential school system and destructive governmental policies.

[66] This is not a case that falls close to the “accident” end of the manslaughter spectrum. However, due to Mr. Chief’s extreme intoxication, in the totality of the circumstances I also cannot place it close to the murder end of the spectrum. While the nature of the extreme violence would seem to dictate that this offence is closer to the “murder” end of the manslaughter spectrum, the level of intoxication, and Mr. Chief’s resulting lack of any recollection of the incident, does not allow me to place it there.

Principles of Sentencing

[67] The relevant purposes and principles of sentencing are as follows:

Purpose

718. The fundamental purpose of sentencing is to protect society and 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 of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

Fundamental principle

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

Other sentencing principles

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

...

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

...

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

...

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

Proportionality

[68] Mr. Chief, due to his cognitive issues and FASD diagnosis, and their connection to his upbringing as an Aboriginal individual, an upbringing, as is so often the case, so tragically marred by the negative impacts of the residential school system and associated governmental policies in regard to Aboriginal peoples, is to be sentenced in accordance with his diminished moral blameworthiness and culpability.

[69] As such, when I consider the need to hold Mr. Chief accountable for the offence that he has committed, and to promote a sense of responsibility in him, it must be a measured accountability, given the diminished moral blameworthiness that accompany his FASD diagnosis and the *Gladue* factors that are present in his case.

[70] Denunciation and deterrence, important as they are, are also to be applied in the same context and with the same careful degree of measurement.

[71] The level of violence that Mr. Chief used when he killed Mr. Wolftail, and the unpredictability of that level of brutal violence, means that the protection of the public from any further acts of violence by Mr. Chief is, as the Crown submits, of paramount importance. This offence requires that Mr. Chief be separated from society in order to protect society. However, protection includes not only that period of time that Mr. Chief will be in custody but requires me to explore whether that protection can be extended to the community after Mr. Chief is released from custody. This is also in accord with the sentencing purpose of rehabilitation.

[72] When I consider the range of sentences imposed in the cases before me, the particular circumstances of the offenders and the offences committed in those cases, and the circumstances of Mr. Chief and of the offence he has committed, I consider that an appropriate sentence for Mr. Chief is in the five year custodial range.

[73] However, this presents a further consideration and choice. Do I sentence Mr. Chief to an additional two years and four and one-half months' custody, which with his two years and seven and one half months' credit for time in remand, accounts for the five years, or do I reduce the sentence to two years, or two years less one day, in order to allow for me to place him on a probation order for a period of up to three years?

[74] If I sentence him to more than two years' custody, by law I cannot place him on a probation order. There is thus no ability to monitor Mr. Chief beyond the expiration of the custodial sentence, or to require him to abide by certain conditions and programming. Therefore the ability to protect the public from further offences that could be committed by Mr. Chief is diminished. However, through the assistance and monitoring associated with a lengthy probation order, the prospects for rehabilitation are enhanced and the prospects for the greater protection of society are increased.

[75] In my opinion, reducing the sentence to that of two years, or two years less one day, in addition to the time he has already served in custody, provides much more protection for the public than the additional four and one half months' custody that I could impose, based upon a five-year custodial disposition, keeping in mind as well that with statutory release at a maximum of two-thirds of the custodial sentence imposed,

this would result in Mr. Chief serving even less than the four and one half months of additional time in custody.

[76] Further, I find that two years less one day is more appropriate than two years, as Mr. Chief has already made progress working with Ms. Weber and they have a plan moving forward for ongoing treatment after Mr. Chief has been sentenced. That, in my opinion, is preferable to having Mr. Chief serve the remainder of his sentence in a federal penitentiary and losing the ability to continue to work with Ms. Weber, and to be separated from the supports he has in the Yukon, which supports are important in his rehabilitation, and therefore also for the protection of the public.

[77] Therefore, after giving Mr. Chief credit for his two years and seven and one-half months in custody, I sentence him to an additional period of custody of two years less one day. The effective sentence, therefore, is four years, seven and one-half months.

[78] Mr. Chief will be placed on probation for a period of three years following his release from custody.

[79] The terms of the probation order, subject to submissions of counsel, are as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify the Probation Officer, in advance, of any change of name or address, and, promptly, of any change in employment or occupation;

4. Have no contact directly or indirectly or communication in any way with Maria Wolftail, Kathy Magun, Charlene Magun, Mary Wolftail, Perry Wolftail, Harry Wolftail, Shelby Magun-Porter, Keneisha Snow, Alicia Magun, Frankie Magun, John Magun, Francis Magun-Porter, Hope Magun-Porter, Waylon Wolftail or Jimmy Wolftail, except with the prior written permission of your Probation Officer and with the individual consent of any of the named individuals and in consultation with Victim Services;
5. Do not go to any known place of residence or education of Maria Wolftail, Kathy Magun, Charlene Magun, Mary Wolftail, Perry Wolftail, Harry Wolftail, Shelby Magun-Porter, Kaneisha Snow, Alicia Magun, Frankie Magun, John Magun, Francis Magun-Porter, Hope Magun-Porter, Waylon Wolftail or Jimmy Wolftail;
6. Remain within the Yukon unless you obtain written permission from your Probation Officer or the court;
7. Report to a Probation Officer immediately upon your release from custody and thereafter, when and in the manner directed by the Probation Officer;
8. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
9. For the first 12 months of this order abide by a curfew by being inside your residence between 11:00 p.m. and 6:00 a.m. daily except with the prior written permission of your Probation Officer or except in the actual presence

- of a responsible adult approved in advance by your Probation Officer. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;
10. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;
 11. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;
 12. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues: substance abuse, alcohol abuse, anger management, psychological issues, any other issues identified by your Probation Officer, and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition;
 13. Perform 120 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. This community service is to be completed by 6 months prior to the end of this probation order. Any hours up to 80 hours spent in programming may be applied to your community service at the discretion of your Probation Officer;
 14. Participate in such educational or life skills programming as directed by your Probation Officer and provide your Probation Officer with consents to release

information in relation to your participation in any programs you have been directed to do pursuant to this condition;

15. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;

16. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code* except with the prior written permission of your Probation Officer.

[80] Mr. Chief will be required to provide a sample of his DNA.

[81] He will also be subjected to a s. 109 firearms prohibition period for a period of ten years.

COZENS T.C.J.

APPENDIX "A"

RCMP-GRC/M Division

2016/12/23 10:04 by 000127480

2016/12/23 10:04

Q CR LANG:E LVL: 2
 REM: 000127480 CASWELL HOMICIDE INV

*ROYAL CANADIAN MOUNTED POLICE - IDENTIFICATION SERVICES

*RESTRICTED - INFORMATION SUPPORTED BY FINGERPRINTS SUBMITTED BY LAW
 *ENFORCE ENT AGENCIES - DISTRIBUTION TO AUTHORIZED AGENCIES ONLY.

*SENTENCING ONLY - FOR CRIMINAL RECORD UPDATE
 *SEND FPS# AND SENTENCING DATE TO CPSIC.IIS@RCMP-GRC.GC.CA

FPS: 297719E >>> DNA ON KNOWN OFFENDER DATA BANK <<<

CHIEF. ALFRED
 CHIEF. ALFRED JUNIOR
 CHIEF. ALFRED JUNIOR THOMAS
 CHIEF. ALFRED THOMAS JUNIOR

'CRIMINAL CONVICTIONS CONDITIONAL AND ABSOLUTE DISCHARGES
 *AND RELATED INFORMATION

0000-00-00 NAME CONTINUATION

CHIEF. ALFRED THOMAS

2005-08-26 WHITEHORSE YT	FAIL TO COMPLY WITH UNDERTAKING (RCMP WATSON LAKE 2005261828 ,2005319414)	15 DAYS
2005-09-13 WHITEHORSE YT	ASSAULT (RCMP WATSON LAKE 2005150914)	30 DAYS
2005-12-06 WATSON LAKE YT	ASSAULT SEC 266 CC (RCMP WATSON LAKE 2005550554)	1 DAY & PROBATION 7 MOS
2006-09-29 WHITEHORSE YT	(1) FAIL TO COMPLY WITH RECOGNIZANCE SEC 145(3) CC (2 CHGS) (2) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1(1) CC (RCMP WATSON LAKE 06-1134783 06-153803)	(1) 60 DAYS INTERMITTENT ON EACH CHG CONC (2)) 1 DAY

2007-12-11 WATSON LAKE YT	(1) FAIL TO COMPLY WITH RECOGNIZANCE SEC 145(3) CC	(1) 1 DAY
	(2) FAIL TO COMPLY WITH RECOGNIZANCE SEC 145(3) CC (RCMP WATSON IAK	(2) TIME SERVED (1 DAY) & \$SO
	2007-647877 2007-1247267)	
2009-07-31 WHITEHORSE YT	(1) ASSAULT SEC 266 CC (2) ASSAULT SEC 266 CC	(1) 2 MOS (2) 2 MOS (CREDIT GIVEN FOR 1 MO PRE-SENTENCE CUSTODY) & PROBATION 12 MOS
	(3) FAIL TO COMPLY WITH CONDITIONS OF UNDERTAKING GIVEN BY OFFICER IN CHARGE SEC 145(5.1) CC	(3) 30 DAYS CONC & PROBATION 12 MOS
	(4) ASSAULT SEC 266 CC ' (RCMP WATSON LAKE 2008-1455385 2009-427742 2009-184996)	(4) (2 MOS PRE-SENTENCE CUSTODY)
2009-12-09 WATSON LAKE YT	(1) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1(1) CC (RCMP WATSON LAKE 2009-1088782)	(1) 1 DAY & (30 DAYS PRE-SENTENCE CUSTODY)
	(2) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1(1) CC	(2) 1 DAY (60 DAYS PRE- SENTENCE CUSTODY)
2010 07-07 WHITEHORSE YT	(1) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1(1) CC (2 CHGS)	(1) 0 DAYS ON EACH CHG CONSEC
	(2) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1(1) CC (RCMP WATSON 2010-247404 2010-220046 2010-212672)	(2) (31 DAYS PRE-SENTENCE CUSTODY)
2011-07-13 WHITEHORSE YT	(1) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1(1) CC	(1) PROBATION 6 MOS (1 DAY PRE-SENTENCE CUSTODY)
	(2) FAIL TO APPEAR SEC 145(5) CC (RCMP WATSON LAKE 2010-1450895 2010-1306853 2010-1007375)	(2) 30 DAYS (CREDIT GIVEN FOR 14 DAYS PRE-SENTENCE CUSTODY)

2012-02-01 WHITEHORSE YT	(1) ESCAPE LAWFUL CUSTODY SEC 145 (1) (A) CC (2) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1 (1) CC (3) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1 (1) CC (3 CHGS) (4) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1 (1) CC (5) MISCHIEF UNDER \$5000 SEC 430 (4) CC (RCMP WATSON LAKE 2012-966055 2011-1039568 2011-1629552 2012-2418 2011-1127282 2012-5138)	(1-2) 30 DAYS ON EACH CHG CONC (3) 30 DAYS ON EACH CHG CONC BUT CONSEC (4) (30 DAYS PRE-SENTENCE CUSTODY) (5) 1 DAY (30 DAYS PRE-SENTENCE CUSTODY) & PROBATION 12 MOS
2012-12-05 WATSON LAKE YT	ASSAULT SEC 266 CC (RCMP WATSON LAKE 2012514643)	1 DAY & PROBATION 12 MOS (3 MOS PRE-SENTENCE CUSTODY)
2013-03-15 WHITEHORSE YT	(1) ASSAULT SEC 266 CC (2) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1 (1) CC (3) FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1 (1) CC (RCMP WATSON LAKE 2013140496 2013i8522)	(1) 1 DAY (29 DAYS PRE-SENTENCE CUSTODY) (2) 30 DAYS (11 DAYS PRE-SENTENCE CUSTODY) (3) 30 DAYS CONSEC
2013-06-05 WHITEHORSE YT	FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1 (1) CC (2 CHGS) (RCMP WATSON LAKE 201353739 2013644560)	30 DAYS ON EACH CHG
2014-02-05 WHITEHORSE YT	FAIL TO COMPLY WITH RECOGNIZANCE SEC 145 (3) CC (RCMP WATSON LAKE 2014119950)	30 DAYS (12 DAYS PRE-SENTENCE CUSTODY)
2015-04-22 WATSON LAKE YT	FAIL TO COMPLY WITH RECOGNIZANCE SEC 145 (3) CC (DCN11511212100100134107) (RCMP WATSON LAKE 201544955)	30 DAYS CONC
2015-04-22 WATSON LAKE YT	FAIL TO COMPLY WITH PROBATION ORDER SEC 733.1 CC (DCN11505912100100106106) (RCMP WATSON LAKE 2015222447)	30 DAYS

2016-10-21
WHITEHORSE YT

FAIL TO COMPLY WITH
RECOGNIZANCE
SEC 145(3) CC
(DCN11623812100110212103)
(RCMP WHITEHORSE
2016-1121258)

1 DAY (45 DAYS
PRE-SENTENCE CUSTODY)

*END OF CONVICTIONS AND DISCHARGES



Public Prosecution Service of Canada
Service des poursuites pénales du Canada

Supplementary Criminal Record

Alfred Thomas CHIEF Jr. - DOB: 1985-03-08

Conviction Date/ Community	Charge/ RCMP/ Docket	Disposition
2005-02-21 Yukon Territory	(1) s. 145(5.1) (RCMP:04-14538)	(1) 1 day jail (In addition to 10 days pre-sentence custody)
	(2) s. 145(3) (DOCKET:04-10014A)	(2) 1 day jail (In addition to 10 days pre-sentence custody)
2005-08-26 Yukon Territory	(1) s. 733.1(1) (RCMP: 05-125085)	(1) 1 day jail time served
	(2) s. 267(a) (RCMP: 05-150914)	(2) 30 days jail consecutive
2005-12-06 Yukon Territory	(1) s. 266 (RCMP: 05-550554)	<u>Correction to CPIC</u> (1) 1 day jail (credit for 69 days pre-sentence custody), 7 months Probation
2006-09-29 Whitehorse, YT	(1) s. 733.1(1) (RCMP: 06-153803)	<u>Correction to CPIC</u> (1) 1 day jail (In addition to 15 days pre-sentence custody)

2007-12-11 Yukon Territory	<u>Correction to CPIC</u> (1) s. 145(5.1) (RCMP: 07-647877)	<u>Correction to CPIC</u> (1) 1 day jail (In addition to 66 days pre-sentence custody)
	(2) s. 145(3) (RCMP: 07-1247267)	<u>Correction to CPIC</u> (2) 1 day jail (In addition to 66 days pre-sentence custody)
2014-02-15 Yukon Territory	(1) s. 733.1(1) (RCMP: 13-830856)	(1) 42 days jail
2014-09-10 Yukon Territory	(1) s. 266 (RCMP: 14-794785)	(1) 90 days jail time served, 6 months Probation

The above noted additions to the attached CPIC criminal record document arise from a review of our PPSC Yukon Regional Office internal records. The Crown intends to rely upon both the CPIC records and the above noted supplementary PPSC records for trial or sentencing purposes. Please advise Crown counsel in advance of the trial or the sentencing hearing if you have any concerns about the accuracy of the CPIC records or any of the above noted supplementary PPSC records.

Conviction Date/ Community	Charge/ RCMP/ Docket	Disposition
2016-03-02 Yukon Territory	(1) s. 175(1) (RCMP: 16-221454)	(1) 1 day jail deemed served (12 days Pre-Sentence Custody)
2017-06-23 Yukon Territory	(1) s. 145(3) (RCMP: 16-1480428)	(1) 21 days jail

Date of Verification: June 28, 2018

Initials: i|o::l,Q

Signature: _____

The above noted additions to the attached criminal record result from a review of various government files or databases. The Crown intends to rely upon these records of convictions for trial or sentencing purposes. Please advise Crown counsel in advance of the trial or sentencing hearing if you have any concerns about the accuracy of the above noted entries.