

YOUTH JUSTICE COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

J.V.P.

Publication of identifying information is prohibited by sections 110(1) and 111(1) of the *Youth Criminal Justice Act*.

Appearances:
David A. McWhinnie
David C. Tarnow

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] CHISHOLM J. (Oral): J.P. has pleaded guilty to having committed manslaughter, with respect to the death of B.V. on December 8, 2014 in Whitehorse, Yukon. Although initially charged with second-degree murder, with the consent of the Crown, he entered a guilty plea to manslaughter on December 7, 2015. J.P. had just turned 15 years old when he committed this crime. B.V. was 17 years old when she died.

[2] The Crown and the defence have submitted an Agreed Statement of Facts. In summary, J.P. contacted B.V. by way of social networking early in the evening of December 7, 2015, and convinced her to drink alcohol with him and one of her friends. J.P. brought a substantial quantity of hard alcohol to the residence where they were

meeting. The three youth drank most of the alcohol over several hours. J.P. was romantically interested in B.V. and attempted, at least twice, to kiss her during this period of time. B.V. made it clear that she was not interested.

[3] In the early morning hours of December 8, 2014, B.V. indicated she was going to leave the residence. She said that she intended to go to another residence in the Kwanlin Dun First Nation community before returning home to her parents' residence in the Granger subdivision. J.P. offered to walk with her. B.V. was wearing a red winter coat when she left with J.P. Both J.P. and B.V. were intoxicated when they left the residence, although B.V. decidedly more so. She was noted to have fallen, and to have stumbled as she left her friend's residence. J.P. was seen assisting B.V. as they walked down the road. They were last seen walking together near the Elijah Smith Elementary School, in the direction of the Granger subdivision, and away from the location where B.V.'s body was located.

[4] A passer-by later found B.V.'s body on a wooded trail near the residence where she and J.P. had been socializing and drinking alcohol. She was laying on her back with her elbows bent and fists clenched. A considerable amount of blood was noted on her undershirt. Both of her eyes were blackened, her jaw appeared to have been broken and her face was severely swollen and bloodied. She was without her winter coat. One of her boots was located close to her body. Her coat was found approximately half a block from her body. It contained multiple bloodstains which originated from B.V.

[5] Investigators located drag marks in the snow between where she was found and a nearby snow pile close to the beginning of the trail. They also discovered B.V.'s blood on a fence behind where she was located, on branches of nearby trees, and in the drag marks.

[6] The outside temperature around the time of her disappearance varied between zero and minus three degrees Celsius.

[7] An autopsy revealed that B.V. had suffered multiple blunt force injuries, most prominently over her face and neck; her jaw was broken in two places and she had numerous bruises to her face and arms, along with some additional bruising to her legs. Her blood alcohol level was 277 mg%. Although a precise cause of death could not be ascertained, the pathologist considered it distinctly possible that B.V.'s death was the result of a combination of factors, including intoxication, asphyxia, and/or exposure, together with the effects of the blunt force head injuries she had sustained.

[8] The police originally arrested J.P. on December 11, 2014. It was noted that the back of his right hand was swollen and bruised around the middle and ring finger knuckles. A subsequent search of his residence led to the seizure of a hoodie belonging to J.P. and a pair of his shoes. DNA analysis confirmed the blood located on both items to be that of B.V.

[9] J.P. admits to beating B.V. and leaving her on the trail. He knew that he had badly hurt, and possibly even caused her death.

[10] The Crown acknowledges that this is a difficult case in terms of the imposition of an appropriate sentence. The Crown has filed a Notice of Intention to Seek an Adult Sentence pursuant to s. 64 of the *Youth Criminal Justice Act*, S.C. 2002, c.1 (“YCJA”). It is the submission of the Crown that, due to a number of aggravating factors, the moral fault of J.P. is high. As a result, an adult sentence of between four and six years would be the appropriate response.

[11] The defence submits that an appropriate sentence, taking into account the information gleaned from the *Gladue* and court ordered reports and considering all of the relevant sentencing principles, is an intensive rehabilitative custody and supervision sentence under the *YCJA*.

[12] B.V.'s family is devastated by her death. Her grandmother, M.J.M., describes her ongoing grief and her yet unsuccessful attempts to come to grips with it and the anger that she feels. M.J.M. highlights the fact that, at the time of B.V.'s death, she was entering the prime years of her life. She had hopes and dreams, all of which will go unrealized. B.V.'s great aunt, E.V., describes her own difficulty in coming to terms with her grief.

[13] The sentiments expressed by M.J.M. and E.V. are no doubt representative of those felt by other family members and friends. The Crown advised me that B.V.'s parents are still suffering such that neither has been able to reduce feelings to paper. It is understandable that they are experiencing such difficulty dealing with the senseless loss of B.V.'s life. Their lives will never be the same and B.V.'s potential will never be realized.

[14] It must be recognized, however, that there is little the Court can do that will repair the harm done in this case. There is no way to bring B.V. back, no way to compensate for her loss. It is difficult to put into words the limitations of the sentencing process in addressing the profound sense of loss experienced by B.V.'s family and friends.

[15] In considering this issue, I am reminded of comments of His Honour Judge Lilles in *R. v. Jones*, [1995] Y.J. 118, a case of impaired driving causing death in which he noted the following:

[7] But no term of imprisonment, no matter how lengthy, will bring back [the victim] to her family, to her community, or to her friends at work. The value of human life cannot and should not be measured by a term of imprisonment. To attempt to do so demeans the memory of the person who has been lost, and will always create frustration and anger for those left behind. So whether the Court imposes two, five or ten years imprisonment, relatives and friends will say, it is not enough, her life was worth more. And they would be right. This tragedy cannot be undone. It is not possible for this Court to impose a sentence which will repair the harm that has been done. The sentence in this kind of a case does not attempt to evaluate, assess or determine the goodness, quality or usefulness of a human life. It does not reflect the worth of a particular human being.

[16] Judge Lilles' comments are equally applicable in this case.

[17] I have reviewed three comprehensive reports: a Pre-Sentence Report dated April 29, 2016, which includes an intensive rehabilitative custody and supervision plan for J.P.; a Section 34 Psychological Report dated April 29, 2016; and a *Gladue* report dated May 20, 2016. The author of each report testified at the sentencing hearing. Each is experienced in their respective field.

[18] The various reports provide the following information with respect to J.P. He is now 16 years of age. He grew up in a dysfunctional and turbulent environment. Due to a serious hard drug addiction, his mother left the family unit when J.P. was approximately 18 months old. His father and paternal grandmother became the primary caregivers for J.P. and his older sister.

[19] His father struggled with an alcohol addiction for many of J.P.'s early years. At the age of 11, J.P. was placed in foster care. He remained there for approximately nine months until his father had sufficiently addressed his addiction issue. J.P.'s father was a strict disciplinarian. It is alleged he also, at times, physically abused his son. J.P. also reports having witnessed his father physically abuse his mother when she periodically visited.

[20] J.P. began spending more time with his mother when he was approximately 10 years of age. She ultimately attained sobriety when he was 12 years old, after suffering serious health issues directly related to her drug dependency.

[21] J.P.'s father suffered a brain aneurysm in 2013 at a time when J.P. was present. It appears his father stopped consuming alcohol for a period of approximately one year after this medical event. In May 2014, his father died. J.P. found the body.

[22] J.P. demonstrated behavioural problems at an early age. He has a history of exhibiting anger and aggression towards others. He has a demonstrated pattern of disciplinary issues at school. He has performed best after having developed a positive rapport with instructors, as well as in highly structured settings.

[23] After his father's death, J.P. moved in with his mother, at which time his behaviour further deteriorated. His encounters with the criminal justice system continued during this period of time, culminating in the crime for which he is now being sentenced.

[24] J.P. first entered the criminal justice system at the age of 12 at which time he successfully completed diversion. However, his criminal behaviour continued and he has accumulated a number of convictions since then, including convictions for violence. His most recent conviction is for an assault causing bodily harm on a youth in the Young Offenders Facility. This occurred on January 14, 2015, and resulted in a 120-day custody and supervision order.

[25] J.P. has been in custody with respect to the matter before me since April 28, 2015. Prior to this, he had been in custody since December 11, 2014, with respect to other matters.

[26] J.P. confirms that he did not initially make a sustained effort to improve himself while in custody. Over the last number of months, however, he has made a concerted effort to upgrade his education. In addition, he has been involved with individual counselling from Alcohol and Drug Services and the Youth High Risk Treatment Program, and he has accepted assistance in dealing with issues such as grief and loss and emotional management. He also meets with a psychiatrist from Alcohol and Drug Services.

[27] After a three-month gap and since February 2016, he has been taking medication for ADHD, temper, anxiety, depression, and symptoms related to trauma.

Overall, staff at the Young Offenders Facility has seen improvements in his behaviour since December 2014.

[28] J.P.'s mother has been his closest familial support since he committed this offence. Other members of his family and community are still trying to come to terms with his admission of guilt to this crime.

[29] J.P. is registered as a member of the Champagne and Aishihik First Nation. However, his father's family is Inuit from the Northwest Territories, while his mother's family are of Saulteaux-Cree descent and originate from the Key First Nation in Saskatchewan. Some of his grandparents and great grandparents attended residential school. Each was negatively impacted by the experience. In addition to being removed from their homes and communities, physical and sexual abuse was commonplace in the residential school system. The resulting trauma, alcoholism, and loss of culture not only harmed them but negatively impacted future generations. Poverty, lack of adequate housing, high unemployment, criminality, and substance abuse continue to impact communities such as the Key First Nation. The dysfunctional upbringing to which J.P. was subject may be traced back to the residential school experiences his grandparents underwent.

[30] I now turn to the Section 34 Psychological Report.

[31] Dr. Pleydon, a registered psychologist and the author of this report, has significant experience in the area of youth forensic services, including court ordered mental health risk assessments. She was employed as a registered psychologist, clinical and forensic, in both Nova Scotia and British Columbia, and is presently

employed in the same capacity with Youth Justice, Health & Social Services in Whitehorse. Dr. Pleydon was qualified to provide expert opinion evidence with respect to assessment and treatment of young persons involved in the youth criminal justice system.

[32] As outlined in the report, J.P. "has a significant, early-onset history of school truancy and disruption, poor attendance, peer difficulties, behavioural outburst and aggression." He has achieved more success in highly structured settings. He has demonstrated better behaviour when he has developed a positive rapport with his instructor. In terms of his social functioning, collateral sources describe "an active, bright, sensitive young person" who does well in sports and in the outdoors. Despite an ability to be polite and engaging with adults, "he can also be superficial, guarded, petty, and immature with others."

[33] A 2011 psychological assessment revealed clinically significant anxiety and depression, hyperactivity, aggression and conduct disorder, "as well as attention problems, learning problems, adaptive skills and social skills difficulties, and overall poor behaviour regulation and poor problem solving."

[34] J.P.'s file was ultimately closed due to poor family follow-up. He struggled with aggression, mood management, and other negative behaviours when residing at a group home in 2011/2012. However through counselling, he significantly improved in his ability to control his aggressive behaviour. Unfortunately, his behaviour deteriorated upon his return home.

[35] While at the Youth Achievement Centre between 2012 and 2014, he displayed anti-social behaviours. Although he did well in certain areas, he was defiant to staff and peers. He wished to participate on his terms. He continued to have difficulty managing his anger.

[36] Since 2014, J.P. has accessed individual counselling with Alcohol and Drug Services and the Youth High Risk Treatment Program. It is noted that his family has a significant family history of substance abuse, including his mother, father, sister, and himself. He is also engaged with a psychiatrist from Alcohol and Drug Services. It appears that he is fully participating in such counselling.

[37] Cognitive and academic assessment results reveal that J.P. is of low-average to average intelligence. He has expressed an interest to continue individual counselling and to start family counselling. He professes a desire to remain sober and to deal with his anger management issues.

[38] Risk assessment results place J.P. in the high risk range for further delinquent and violent offending if no efforts are made to manage his risk. His risk level increases if he is under the influence of alcohol, if he is angry or frustrated, if he is with delinquent youth, as well as being in unsupervised situations in the community.

[39] J.P. has a 2015 diagnosis of Attention Deficit/Hyperactivity Disorder combined. According to Dr. Pleydon, he also meets criteria for Conduct disorder – severe – childhood onset; Alcohol and cannabis use disorders – moderate – in remission in a controlled environment; Unspecified Depressive Disorder, and other Specified Trauma and Stressor Related Disorder: Post Traumatic Stress Disorder not fully met.

[40] Dr. Pleydon is uncertain whether his improved behaviour in custody is the result of his adjustment to a highly structured environment or a reflection of internal change. She opines that it may be a combination of both, plus increased maturity. Dr. Pleydon takes a view that “lengthy adult sentences increase the potential for pro-criminal socialization and in fact, the literature indicates that adult sentences increase a young person’s risk for recidivism.” (pp.32 & 33).

[41] She sets out positive and negative factors with respect to J.P.'s amenability to treatment. In summary, she posits that because of his young age, intellectual capacities, and his willingness to participate in treatment, there is potential for positive change. Importantly, she notes that he has yet to receive intensive mental health interventions which would specifically target his issues.

[42] Dr. Pleydon opines that there is "a reasonable chance of reducing his risk with an intensive rehabilitative sentence and in the timeframe allocated under a youth sentence."

[43] Two options have been presented to me with respect to the appropriate sentence for J.P. The main issue to be decided is whether the appropriate sentence is pursuant to the ‘youth’ or ‘adult’ sentencing regime.

[44] Section 72(1) of the *YCJA* sets out the test courts are to follow. In 2012, this section, amongst others, was amended as part of *Bill C-10*. The new provisions came into effect on October 23, 2012. Section 72(1) reads:

The youth justice court shall order that an adult sentence be imposed if it is satisfied that

- (a) the presumption of diminished moral blameworthiness or culpability of the young person is rebutted; and
- (b) a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would not be of sufficient length to hold the young person accountable for his or her offending behaviour.

[45] The onus is on the Crown to establish that an adult sentence is the appropriate sentence. If the Court is not satisfied, “it shall order that the young person is not liable to an adult sentence and that a youth sentence must be imposed.” (s. 72(1.1))

[46] Sections 3 and 38 of the *YCJA* set out important principles of the legislation. The aim of the youth criminal justice system is to protect the public through various means, including by holding young persons accountable for offences, while at the same time promoting their rehabilitation and reintegration.

[47] Sentences must be proportionate to the seriousness of the offence and the degree of responsibility of the young person. There is a presumption that young persons have a diminished moral blameworthiness or culpability when compared to adults.

[48] Amendments to the *YCJA* in 2012 include the addition of the objectives of denunciation and deterrence. Section 38(2)(f) reads:

- (f) subject to paragraph (c), the sentence may have the following objectives:
 - (i) to denounce unlawful conduct, and
 - (ii) to deter the young person from committing offences.

[49] These two new sentencing objectives are nevertheless still subject to s. 38(2)(c), which mandates sentences to be proportionate to the seriousness of the offence and the degree of responsibility of the young person.

[50] With this backdrop, I return to s. 72 and the issue of an 'adult' versus a 'youth' sentence. In the decision of *R v. Joseph*, 2016 ONSC 3061 Justice Code expresses his view that "the central focus of s. 72 remains on the principle of accountability." (para.54) He finds support for this in the decision of *R. v. A.O.*, 2007 ONCA 144, where the Court states:

[46] In our view, accountability in this context is the equivalent of the adult sentencing principle of retribution as explained by Lamer C.J.C. in *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at paras. 80 and 81:

... Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more. ...

Retribution, as well, should be conceptually distinguished from its legitimate sibling, denunciation. Retribution requires that a judicial sentence properly reflect the moral blame-worthiness of that particular offender. The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. ...

[47] In our view, for a sentence to hold a young offender accountable in the sense of being meaningful it must reflect, as does a retributive sentence, "the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused

by the offender, and the normative character of the offender's conduct." (Underlining omitted) We see no other rational way for measuring accountability.

And at paragraph 49,

[49] This view of the meaning of accountability is also consistent with the other principles of sentencing to which the youth court judge is directed under s. 38, especially those set out in ss. 38(3)(a) and (b): degree of participation, harm to the victim, and whether the harm was intentional or reasonably foreseeable. These principles speak to retribution as defined by Chief Justice Lamer in *R. v. M. (C.A.)*. *supra*.

[51] Without deciding the issue, Justice Code also notes that with the addition of the objectives of denunciation and deterrence to the *YCJA*, it could be argued that the meaning of "accountability" as set out in *R. v. A.O.* is too restrictive.

[52] It is true that denunciation and deterrence may add another layer to the determination of an appropriate sentence, always however, subject to the principle that a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person.

[53] I have considered what, in my view, are the most relevant factors in this case:

- The offence to which J.P. has pleaded guilty is an extremely serious offence;
- J.P.'s moral blameworthiness is high. He convinced B.V. to consume alcohol with him and one of her friends. While alone with B.V., he severely beat her and subsequently left her injured in the snow knowing that he had caused significant harm to her;

- He has a criminal history including previous acts of violence;
- He had consumed a significant amount of alcohol before this crime;
- He had just turned 15 years of age at the time of this offence;
- His upbringing was chaotic and dysfunctional;
- His behaviour while at the Young Offenders Facility on remand has been mixed. He had behavioural problems, including an assault of another youth. On the other hand, he has willingly engaged in counselling for periods of his pre-sentence custody. His behaviour has improved over the time of his pre-sentence custody.
- He willingly and fully participated in the preparation of reports for this sentencing;
- In addition to accepting responsibility for his crime, he has expressed remorse for his actions;
- He has the support of his mother and step-father;
- There is a reasonable chance of reducing his risk of violence with intensive rehabilitative intervention.

[54] Considering and balancing all of the above, I find that the presumption of diminished moral blameworthiness or culpability set out in s. 72(1)(a) of the *Act* has not been rebutted. I highlight J.P.'s young age, his background, and his lack of maturity. From what I have gleaned, he is a relatively unsophisticated individual who might be

described as immature for his age. This must be considered in assessing his degree of moral culpability, and is the very reason we treat young persons differently than adults.

[55] Regarding s. 72(1)(b) of the *Act*, I find that a maximum youth sentence would be of sufficient length to hold him accountable for his crime. In coming to this conclusion, I have considered similar cases in which young persons were sentenced for manslaughter, notably the following.

[56] In *R. v. B.T.*, 2013 NSPC 23, the offender shot and killed a gentleman who was out for a walk in his neighbourhood. He and his friends ran off, but returned to take the victim's wallet. The offender had enjoyed a good upbringing. It was not until he commenced association with a different group of friends during his later adolescence that his behaviour deteriorated. He was 17 years old when he committed the offence.

[57] His overall risk for violent recidivism was determined to be in the "moderate" range if no efforts were made to manage his risk. He was amenable to rehabilitation. While on remand, he sucker-punched another youth. He was subsequently convicted for assault. As his remand continued, his behaviour improved and he became engaged in programming.

[58] In addition to his 16 months of pre-sentence custody, the Court sentenced him to the maximum sentence of three years, 20 months of which would be served in custody.

[59] In the case of *R. v. J.D.*, 2011 YKYC 2, the young person stabbed her mother's ex-boyfriend to death, inflicting 12 wounds, one of which was fatal. Although the Crown had not proved the specific intent for murder, as the Court stated, the offence could be

described as “near murder.” There is no indication that the offender was under the influence of any substances. She was 16 years old at the time of the offence, with no prior criminal history. The attack was unprovoked and there was no explanation for it. She displayed no remorse. As a result, she represented an unknown risk to reoffend.

[60] J.D. was almost 18 years old at the time of sentencing. Before sentencing, she spent five months in custody before being released into the care of two good citizens. In their charge, she blossomed for 18 months. Unfortunately, due to government choices, no monetary assistance could be offered to the couple if they continued to house her. The placement broke down as a result.

[61] In a situation where there were no good choices, the Court concluded that a custodial sentence was warranted at the Young Offender Facility. J.D. was sentenced to three years' custody and supervision, comprised of 12 months in custody (taking into account her earlier remand and strict conditions of release) and the remainder under conditional supervision.

[62] Judge Faulkner emphasized the need to focus on rehabilitation while not losing sight of the need to hold the youth accountable through meaningful consequences. As he stated “...consequences cannot trump rehabilitation. Youth are considered less formed and more amenable to change. The sentence must also be designed to foster that change.”

[63] In *R. v. A.D.*, 2011 BCSC 501 the Court sentenced the offender and a co-accused with respect to their role in killing another man. During a confrontation between two groups, A.D.'s co-accused struck the victim in the head and knocked him

to the ground. A.D. then stomped on the head of the defenceless victim. It could not be determined which blow caused his death. A.D. was 15 years old at the time of the offence and 17 years old at the time of sentencing. He had a prior criminal record for unrelated offences, but which included a robbery conviction. He had a poor compliance with community supervision. He was remorseful. Overall, he had done well on remand.

[64] The Court sentenced A.D. to a sentence of three years - two years in custody and one in the community. The Court granted him credit for 24 months in custody and released him on a one-year supervision order.

[65] I appreciate that all of these decisions pre-date the 2012 amendments to the *Act*. However, the additional considerations of denunciation and specific deterrence do not, in my view, in the circumstances of this offence and this offender, move the sentencing into the adult range.

[66] I would additionally note that even though the Crown's proposed range for an adult sentence is numerically higher than the maximum youth sentence, the effective sentences would be quite similar. As an adult, an offender may be entitled to credit of up to 1.5 days for each day of pre-sentence custody (s. 719(3) of the *Criminal Code*).

[67] In this case, it is acknowledged by the Crown that as J.P. has never sought bail, he would be entitled, if sentenced as an adult, to pre-sentence credit in the range of at least 16 to 18 months. When subtracted from the mid-range of what the Crown proposes as an appropriate adult sentence, approximately three and one-half years would be left to serve. If sentenced as a youth, the maximum sentence is one of three years in custody. As a youth, the Court has the discretion to give reduced credit or no

credit for pre-sentence custody (see *R. v. A.A.Z.*, 2013 MBCA 33 and *R. v. R.R.J.*, 2009 BCCA 580).

[68] In addition, if sentenced as a youth, J.P. is eligible for an Intensive Rehabilitative Community Supervision (“IRCS”) sentence since all the requirements of s. 42(7) of the *YCJA* are met, specifically:

- He has been found guilty of a serious violent offence (s. 42(7)(a));
- He suffers from psychological disorders (s. 42(7)(b));
- A plan of treatment and intensive supervision has been developed and there are reasonable grounds to believe that the plan might reduce his risk of recidivism for this offence or another serious violent offence (s. 42(7)(c));
- The provincial director has indicated that an intensive rehabilitative custody and supervision plan under IRCS is available and that J.P.'s participation in it is appropriate (s. 42(7)(d)); and finally,
- J.P. has consented to all aspects of the plan, including those involving mental health treatment or care (s. 42(8)).

[69] The IRCS treatment plan offers J.P. a multi-phase model, including stabilization, intensive rehabilitation, and conditional supervision in the community. It includes a comprehensive and intensive treatment phase which targets the goals established in the stabilization phase. The treatment is individualized. The reintegration phase would see J.P. have access to the community in a supervised fashion. The community phase

would be under conditional supervision pursuant to release conditions established by the Court approximately one month prior to his release. Any breach of conditions could lead to his return to custody.

[70] The IRCS sentence permits access to funding to accomplish the goals of the treatment plan over the term of the sentence. Access to individualized and one-on-one programming in the adult system is uncertain.

[71] Considering the evidence before me, an IRCS sentence is the best possible option to hold J.P. accountable, while focusing on his rehabilitation and ultimately his reintegration into the community. It is, in my view, the best option to address his risk factors in order to protect the public.

[72] I now consider the appropriate length of sentence.

[73] As earlier stated, J.P. has committed a very serious crime. It is clear that addressing the underlying factors which led to this offence will take significant time and effort. In my view, the maximum sentence of three years is required to hold him accountable, to denounce and deter his conduct, and to allow for his rehabilitation. A lesser sentence would not be in accordance with the principles of the *YCJA*.

[74] As already indicated, there is judicial precedent for taking into account the pre-sentence custody and still applying the maximum periods of custody and supervision. Considering pre-sentence custody may result in a court deducting it from the overall sentence, giving reduced credit or giving no credit.

[75] In coming to the decision that the maximum sentence of three years is appropriate, I have taken into account his more than one year of pre-sentence custody. I am not, however, allowing any credit such as to reduce the three-year sentence. The evidence satisfies me that significant time and resources are required in the custodial phase, if J.P.'s risk level is to be reduced considerably.

[76] Pursuant to s. 42(r) of the *YCJA*, I order J.P. to serve the next 24 months in continuous intensive rehabilitative custody and the remaining 12 months under conditional supervision in the community.

[77] Pursuant to s. 51 of the *YCJA*, I prohibit J.P. from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance. Despite the fact that no such weapon was used in the commission of this offence, his propensity for violence is concerning. I order the length of this prohibition to be for a period of seven years. The prohibition commences today and ends seven years after the completion of his custodial sentence.

[78] Pursuant to s. 487.051(2) of the *Criminal Code*, I order that J.P. provide samples of his bodily substances necessary for the purpose of DNA analysis and recording.

[79] This matter will come back before me for a review in six months with a report from J.P.'s IRCS treatment team. I may direct further reviews prior to the s. 105(1) statutory review one month before the end of this custodial portion of his sentence.

[80] Having considered the factors and principles I am required to consider, I am satisfied that the sentence I have imposed is the appropriate sentence in all of the circumstances.

[81] That being said, I recognize that this sentence, indeed any sentence, fails to adequately reflect the loss of such a vibrant and promising young woman and the devastation felt by those who loved her most. There is nothing this Court can do to repair the damage done.

[82] It is my hope, however, that the conclusion of these proceedings and the sentence imposed offer some comfort to B.V.'s family and friends as they struggle to come to terms with her loss.

CHISHOLM J.