Citation: *R. v. Organ-Wood*, 2020 YKTC 1

Date: 20200122
Docket: 18-00350
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

HUNTER YVAN ORGAN-WOOD

Publication of information that could identify the complainant or a witness is prohibited by s. 111(1) of the *Youth Criminal Justice Act*.

Appearances:
Benjamin Eberhard — Counsel for the Crown
Amy Steele — Counsel for the Defence

REASONS FOR SENTENCE

[1] Hunter Organ-Wood was convicted after trial of having committed offences contrary to s. 346(1.1)(b) (extortion); s. 279(1.1)(b) (kidnapping); and s. 348(1)(b) (break and enter and commit assault). A conviction for a s. 264.1(1) (uttering threats) offence was conditionally stayed pursuant to the principle in ***R.*** v. ***Kienapple***, [1975] 1 S.C.R. 729.

[2] Mr. Organ-Wood was acquitted of a s. 344(1)(b) charge of robbery.

[3] I found the evidence of the complainant, K.F., to be both credible and reliable. I rejected the exculpatory evidence of Mr. Organ-Wood in concluding that he was guilty of these offences.

[4] Mr. Organ-Wood was co-accused with a youth, M.H.P. Mr. Organ-Wood's trial proceeded first. After his trial concluded and my oral Reasons for Judgment were provided, M.H.P. entered guilty pleas to offences contrary to ss. 266, 334(b) and 346(1.1)(b). A stay of proceedings was entered to each of the remaining charges.

Facts of the Offences

346(1.1)(b)

[5] I found that M.H.P. and Mr. Organ-Wood, in concert, fabricated a story about the theft of $500 worth of marijuana in an attempt to extort this amount of money from K.F. M.H.P. and Mr. Organ-Wood approached K.F. on several occasions in a demanding, intimidating, and threatening manner with respect to coming up with this money.

[6] M.H.P., who was connected with K.F. on social media, sent at least one message warning K.F. not to talk, "Stay quiet now", as well as two contemporaneous messages telling K.F. to "Come outside" and "We found buddy who snaked the weed". I note that K.F. testified that he felt that this message was referring to him as the "buddy". The latter two messages were just minutes prior to the incident resulting in the s. 348(1)(b) charge, and the warning not to talk was shortly after this incident.

[7] Mr. Organ-Wood had been in contact with K.F. through K.F.'s Snapchat account, to which Mr. Organ-Wood had been connected as a friend at an earlier date. The only

communication to K.F. that Mr. Organ-Wood made in relation to this matter was that they had found the person who stole the marijuana, which could also be viewed as inferring that it was someone other than K.F. The bulk of the communications between Mr. Organ-Wood and K.F. were in relation to locating K.F.'s roommate, T.C. There did not appear to be any threatening communications made by Mr. Organ-Wood to K.F. through social media.

[8] The subsequent incidents which resulted in the additional charges were, with an exception in respect of Mr. Organ-Wood on the assault aspect of the s. 344(1)(b) offence charged, all part of this attempt to exhort money from K.F. In this incident, the demand for money made somewhat contemporaneous in time to the events that resulted in the s. 344(1)(b) charge being laid, and which resulted in K.F. providing $80 to M.H.P. and Mr. Organ-Wood, I found to be part of the extortion offence.

348(1)(b)

[9] I found that Mr. Organ-Wood and M.H.P. went to K.F.'s residence at approximately 7:30 p.m on June 13, 2018. I note that one of M.H.P. and Mr. Organ-Wood's peer associations, T.C., lived in this residence with his mother, and both M.H.P. and Mr. Organ-Wood had been inside this residence before. K.F. was living with T.C. and T.C.'s mother in this residence.

[10] M.H.P. and Mr. Organ-Wood attempted, through social media, to have K.F. come outside of the residence. When he did not, M.H.P. and Mr. Organ-Wood approached the door of the residence.

[11] M.H.P., who was standing at the door of the residence, told K.F. to come outside. He refused to do so. M.H.P. grabbed K.F. by the shirt and tried, unsuccessfully, to pull him outside. When K.F. refused to come outside and M.H.P. could not pull him out, M.H.P. pushed K.F. into the residence, where he punched K.F. repeatedly in the head and chest. He also kicked K.F. after he fell to the ground. Mr. Organ-Wood intervened, saying that K.F. had had enough and it was time to go. M.H.P. struck K.F. a couple more times before leaving.

[12] Throughout this incident, Mr. Organ-Wood stayed outside of the residence a few metres away. He never entered the residence, physically engaged with K.F., or said anything else to anyone.

[13] I found that this incident was the result of a premeditated attempt by both M.H.P. and Mr. Organ-Wood to confront K.F. at his residence in order to intimidate him in their continued attempts to extort money from him. This said, there was not a premeditated attempt to enter the residence to do so. It was only when K.F. refused to come outside, and could not be physically forced to do so, that M.H.P. entered into the residence and assaulted K.F. I cannot say that there was any prior intent for Mr. Organ-Wood or M.H.P. to enter the residence of K.F. and, in fact, Mr. Organ-Wood did not enter the residence.

[14] I found Mr. Organ-Wood guilty as a party to the actions of M.H.P.

279(1.1)(b)

[15] I found that M.H.P., who was driving a vehicle, encountered K.F. in the street walking with T.C., and told him to "get into the fucking car". Mr. Organ-Wood vacated the front passenger seat where he had been sitting and moved to the rear passenger seat beside another individual who was already seated there. K.F. got into the front passenger seat. M.H.P. then reached across the passenger seat and locked the door.

[16] M.H.P. drove away at a high rate of speed, before allowing K.F. to leave the vehicle a number of blocks away, within the same general residential area of Whitehorse. While K.F. was in the car, M.H.P. accused him of taking the $500 worth of marijuana, told him he had two days to pay it back, and threatened to smash his head into the window.

[17] Mr. Organ-Wood did not say anything to K.F., or touch him, only smiling at him at one point.

[18] In assessing this incident in the context of the entirety of events, I convicted Mr. Organ-Wood as a party to this offence.

264.1(1)(a)

[19] I found Mr. Organ-Wood guilty as a party to the threat uttered by M.H.P. to smash K.F.'s head into the window. In my view, and with the agreement of counsel, as this threat was a factor in convicting Mr. Organ-Wood of the s. 346(1.1)(b) charge, this conviction was conditionally stayed.

344(1)(b)

[20] Although I acquitted Mr. Organ-Wood of this offence, I consider it important to set out the circumstances.

[21] I was satisfied that on this occasion, which was approximately one week before the s. 348(1)(b) offence was committed, M.H.P. and Mr. Organ-Wood, as part of their extortion attempts, demanded money from K.F. He gave $80 to M.H.P. and Mr. Organ-Wood, and promised to give them the rest at a later date.

[22] Based upon my acceptance of K.F.'s evidence as being credible and reliable, I am satisfied that shortly thereafter M.H.P. punched K.F. in the stomach and pushed him to the ground. M.H.P. told K.F. that he had better pay up, then slid his thumb across K.F.'s throat, telling K.F. that the next time it would be a knife.

[23] Mr. Organ-Wood was not present when this assault and threat took place and I was not satisfied that he was a party to this offence. I was satisfied that M.H.P. was acting on his own when K.F. was assaulted and threatened in this way.

Summary regarding the facts

[24] During Crown counsel submissions after trial, I noted that the principle actor in these offences appeared to be M.H.P. Crown counsel did not disagree with my assertion and, during the sentencing submissions counsel agreed that I had determined this to be the case.

[25] While my oral Reasons for Judgment in convicting Mr. Organ-Wood do not make this as clear as it could have been, I certainly was and am of the opinion that M.H.P.

was the lead actor in this play, so to speak, and Mr. Organ-Wood played more of a supporting role. I will elaborate on this later in these Reasons.

Victim Impact

[26] K.F. chose not to provide a victim impact statement.

[27] From his testimony at trial, I note that as a result of the assault that occurred within his residence, the next day K.F. could initially barely move his arm, had goosebumps on his head and a sore ribcage. He went to the hospital for examination. He sustained no significant injuries and used ice packs and over-the-counter pain medication for a few days.

[28] It was also clear from his testimony that K.F. was understandably intimidated, scared and frightened throughout the one to two weeks that these events occurred. He was a 16-year-old youth and there is no doubt in my mind that these incidents had a very significant negative impact upon him.

Submissions of Counsel

[29] Crown counsel submits that Mr. Organ-Wood should receive a penitentiary sentence of three years, stressing in particular the seriousness of the home invasion that occurred, as being an aggravating circumstance as per s. 348.1.

[30] Defence counsel submitted that a suspended sentence and probation order should be imposed, or at most, a short period of custody.

Circumstances of Mr. Organ-Wood

[31] A Pre-Sentence Report (”PSR”) was provided.

[32] Mr. Organ-Wood is 19 years of age. At the time these offences were committed he had just turned 18 years old weeks earlier.

[33] He has no prior record of criminal convictions.

[34] He is an only child. His parents were divorced in 2011 when he was 11 years old. Other than a two-year period right after the divorce when he moved between his mother and father’s homes, he has been residing with his father and his stepmother.

[35] This change in residence was at Mr. Organ-Wood’s request, as he found it difficult to live with his mother, whom he described as suffering from depression and anger issues. He has not seen his mother in several years. He has no contact with his mother’s side of the family, and very little with his father’s side, as they reside in Quebec.

[36] Mr. Organ-Wood has a very good relationship with his father, who has been an active presence in Mr. Organ-Wood’s life. His father made sure that Mr. Organ-Wood was active in sports, and that he was involved in work projects with him.

[37] Mr. Organ-Wood’s behaviour changed from being that of a somewhat normal teenager, when he was between 16 – 18 years old. During this time period he began to drink and use drugs excessively. His then “out-of-control” behaviour only changed for the better once he was charged with these offences.

[38] Mr. Organ-Wood states that, as he was smaller and tended to be very emotional when he was younger, he was bullied in elementary school. This was confirmed by collateral sources. This changed in grade 8 when he fought back against a bully. He was not bullied after that. He was involved in a lot of fights during his later school years.

[39] Mr. Organ-Wood was diagnosed when he was younger as suffering from Attention Deficit Hyperactivity Disorder ("ADHD") and prescribed medication. However, his mother was opposed to the use of medication by Mr. Organ-Wood and, as a result, his ADHD was left untreated.

[40] Mr. Organ-Wood also suffered from depression when he was younger, including a suicide attempt when he was in grade 6. He had never engaged in counselling until he completed the 12-session Substance Abuse Management Program ("SAM") in July 2019. The facilitator for the program, who was also the author of the PSR, stated that Mr. Organ-Wood was an active and respectful participant in this group program, and that he showed insight into the harm caused to himself and others by his substance use. She also noted that Mr. Organ-Wood had begun to incorporate healthy behaviours into his life that did not include drugs and hard liquor, prior to entering the SAM program.

[41] Mr. Organ-Wood dropped out of school in grade 11. By then he was using drugs and rarely attending classes. Until then he had been an average student. Collateral sources have confirmed the change in Mr. Organ-Wood's behaviour when he began his excessive drug and alcohol use.

[42] Since September 2019, Mr. Organ-Wood has been enrolled in school through the Independent Learning Centre ("ILF"). He is attempting to complete his grade 11. Following that, once he has completed 100 hours of work experience, he will receive his grade 12 certificate. These 100 hours must be completed before he turns 20, which will be April 25, 2020.

[43] Mr. Organ-Wood states that now that his substance use is under control, he has regained interest in attending school and he is doing better there.

[44] His long-term goal is to become a sheet-metal apprentice working under his father and employed in that field. He is currently working with his father at Black Iron Sheet Metal towards that goal. All collateral sources indicate that Mr. Organ-Wood has a good work ethic and is conscientious in his work. He gets along with his supervisor, peers and customers.

[45] Mr. Organ-Wood states that he has always made friends easily. However, once he began to use drugs and consume alcohol in his teenage years, his pro-social friendships were replaced by friends who were anti-social and involved in criminal behaviour.

[46] Collateral sources were divided on Mr. Organ-Wood's interactions with others once he entered middle school (grades 7-9). Some thought he was a bully who could be manipulative, while others thought he was a great kid who followed others because he wanted to be liked by them. These sources all agree that Mr. Organ-Wood's pro-social friends were not willing to associate with him when he was using drugs and getting into trouble.

[47] Mr. Organ-Wood states that since he was charged with these offences he has stopped hanging around with his negative peer associations. He now associates primarily with a long-time pro-social friend who has no criminal record. Collateral sources have confirmed Mr. Organ-Wood's change in associations and the positive influence of his friend.

[48] Mr. Organ-Wood is currently in a relationship with a young woman. This relationship is considered to be a positive influence. His girlfriend's mother was present in court during the sentencing hearing and spoke favourably in support of Mr. Organ-Wood.

[49] Collateral sources have also confirmed the pro-active efforts Mr. Organ-Wood's father has made to support his son and to ensure that he complies with his court-ordered conditions.

[50] Mr. Organ-Wood was scored as having some problems related to alcohol abuse on the Problems Related to Drinking Scale, which looks at alcohol use over the past 12-month period. He states that he only drinks beer now and he does not drink hard liquor, which was more problematic for him. Collateral sources are divided on the issue of whether Mr. Organ-Wood still drinks too much or not; some think he still does while others disagree.

[51] He scores as having a low level of problems related to drug use on the Drug Abuse Screening Test. Again, this assesses his drug use over the 12-month period preceding the test.

[52] Mr. Organ-Wood was subject to the Yukon Supervision Inventory in order to provide a criminogenic risk assessment. He scores as a medium with respect to his dynamic risk need factors. A medium level of supervision is considered to be appropriate for him.

[53] Mr. Organ-Wood met with his bail supervisor as required. He was considered to have been honest with her and as making no attempts to cast himself in the best light or mislead her during his interviews with her.

[54] He acknowledged having made many stupid mistakes and attributed these to his associates, his heavy substance usage, and his general "I don't care" attitude. He wishes, looking back, that he had spoken up and intervened on behalf of K.F. He states that he is disappointed with himself, and he acknowledges that his actions and inactions contributed to the harm caused to K.F.

[55] Crown counsel submits that when Mr. Organ-Wood refers to his negative peer associations and substance abuse, Mr. Organ-Wood is trying to shift blame for his actions, and is therefore not fully accepting responsibility for them. As I stated to counsel at the time he made this submission, perhaps Mr. Organ-Wood is only stating the truth in this regard. I note that nowhere does Mr. Organ-Wood blame M.H.P. for what happened. He also does not blame K.F.

[56] Mr. Organ-Wood states that all he can do now is get his life back on track, get an education and work towards his journeyman ticket. He knows he needs to be more mindful of his actions, move further away from heavy substance abuse, become more interested in pro-social activities, and maintain relationships with pro-social friends.

[57] I note that Mr. Organ-Wood has been charged with having committed driving offences and breaches of recognizance. These matters, which arose on May 12, 2019, were set for trial in January 2020. I was informed that Mr. Organ-Wood is now prepared to resolve these matters. My understanding is that, apart from these May 12 matters, Mr. Organ-Wood was otherwise acting in compliance with his court-ordered conditions while on bail.

Analysis

[58] The purpose and principles of sentencing are set out in ss. 718-718.2 of the *Code*. The relevant portions for the purpose of this sentencing hearing are set out as follows:

> 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;
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> (b) to deter the offender and other persons from committing offences;
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> (c) to separate offenders from society, where necessary;
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> (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.
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> 718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary

consideration to the objectives of denunciation and deterrence of such conduct.

…

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

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,
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> …
>
> (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
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> …
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> (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;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (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.

[59] Section 348.1 states as follows:

> If a person is convicted of an offence under section 98 [break and enter during which a firearm is stolen] or 98.1 [robbery during which a firearm is stolen], subsection 279(2) [unlawful confinement] or sections 343 [robbery], 346 [extortion] or 348 [break and enter with intent] in relation to a dwelling-house, the court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence,
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> (a) knew that or was reckless as to whether the dwelling-house was occupied; and
>
> (b) used violence or threats of violence to a person or property.

[60] The fundamental principle of sentencing is proportionality. As stated in ***R.*** v. ***Swaby***, 2018 BCCA 416, in para. 69:

> …The sentence should be proportionate to the circumstances of the offence, including its gravity, and the circumstances of the offender.

[61] It is clear that the primary objectives in sentencing Mr. Organ-Wood are to denounce his crimes and to deter him and others from committing offences of this nature. These offences are, in these circumstances, criminal bullying of an extreme nature. Young teenagers are especially vulnerable, and offences of this nature take advantage of this vulnerability in a way that can be extremely destructive and damaging.

[62] Fortunately, in this case K.F. had an adult intervene by taking him to the hospital, which in turn resulted in the criminal activity stopping with the arrests of the two offenders, prior to any more serious harm ensuing.

[63] The rehabilitation of Mr. Organ-Wood nonetheless remains an important objective. The more realistic the prospects for his rehabilitation are, including his motivation, steps taken since the offence, and the opportunities for future success in this regard, the greater role rehabilitation will assume in achieving a just and fair balance in the sentencing process.

[64] This is particularly true in the case of youthful offenders, such as Mr. Organ-Wood, who are generally still considered to be at a stage in life where there is a good chance of finding and staying on a pathway of pro-social living, as compared to older offenders who are somewhat more entrenched and conditioned in their ways. Even more so when the youth has no prior criminal record or other analogous antecedents indicating a hardened degree of entrenchment in anti-social behaviour.

[65] If there is an opportunity to take such offenders and assist them through the sentencing process to choose and remain on a positive pathway, then that opportunity should be taken, so long as due and appropriate consideration and application of all the relevant sentencing purposes, objectives and principles is maintained.

[66] Sentencing an offender is a highly individualized process. The focus, of course, is on the offender because it is the offender who is being sentenced. However, the interests of the particular victim, his or her family, the community in which the offence took place, and the greater community at large, are all factors that must be appropriately considered and applied. One cannot simply take a broad brush to the process and achieve justice, as justice is meant to be done.

[67] The aggravating circumstances of the offences committed by Mr. Organ-Wood are as follows:

- the victim was a youth under the age of 18;
- the victim suffered physical harm, albeit not of a significant or lasting nature;
- the victim likely suffered an element of psychological harm through the fearful situation that he testified he was placed in throughout this ordeal;
- this was not one event, but a series of events over a relatively brief period of time; and
- the s. 348(1)(b) offence took place in a private residence and is statutorily aggravated as per s. 348.1, as is the s. 346(1.1)(b) offence.

[68] The mitigating factors are as follows:

- Mr. Organ-Wood has no prior criminal record;
- he is young, and was only weeks past his 18th birthday when the offences were committed;
- he played a somewhat lesser role in the offences against K.F. than his co-accused;
- he had a somewhat difficult upbringing and has struggled with untreated ADHD, as a result of his mother's decision not to allow him to be medicated;
- he has a positive PSR which illustrates the steps he has taken since the offences to separate himself from the lifestyle he was living at the time of the offences, and to engage in a more pro-social lifestyle;
- he is not particularly sophisticated; and
- he has expressed his remorse for his actions in acting as he did and in not taking steps to protect the victim. While I appreciate that he is not entitled to the same mitigation as a guilty plea would allow, insofar as a guilty plea can be seen as an expression of remorse, I note that he was acquitted of the robbery offence.

[69] During his submissions, Crown counsel stressed the "home invasion" aspect of the s. 348(1)(b) offence as requiring a stiff denunciatory and deterrent sentence. This was the primary focus of his argument for a three-year sentence.

[70] I agree that much of the case law involving offences of violence committed after forced entry into a home result in long penitentiary sentences. The Crown filed ***R.*** v. ***Corbett***, 2016 BCPC 132. In this case, the 24-year-old offender entered guilty pleas to offences of extortion and robbery. He and an accomplice, without invitation, entered the residence of the victims and demanded money for a vehicle that the offender felt he was owed by the victims. He and his accomplice brought a sledgehammer and a knife with them. During the altercation that ensued, one of the victims was stabbed three times with the knife. A laptop computer was stolen.

[71] Significant physical injuries resulted to the victim of the stabbing. His injuries had not resolved by the time of the sentencing hearing. There was clearly emotional harm to the victim and to his spouse. There were also negative financial consequences.

[72] Solomon J. considered this to be a home invasion for the purpose of extorting money.

[73] The aggravating and mitigating circumstances were set out in paras. 11 and 12:

> 11 The aggravating circumstances are, one, the offence occurred in the context of a home invasion; two, this was a premeditated, intrusive assault in a home for the purpose of confrontation; three, there is a prior conviction for assault causing bodily harm in 2007; four, there is a lengthy property record, and this is an escalation in offending; five, this is an extortion and robbery and included a stabbing in the presence of a common-law pregnant spouse; six, the accused brought two weapons with him, a sledgehammer and a knife, and both assailants were wearing

> gloves; seven, there was wounding and hospitalization and trauma to the victims, the victim of the assault, Mr. Grant, and his wife, and they both fear for their safety.
>
> 12 The mitigating factors are the early guilty plea and Mr. Corbett is a relatively young man, 24 years old, and still has a future ahead of him.

[74] Stressing denunciation and deterrence, and considering rehabilitation to be a secondary concern, Solomon J. sentenced Mr. Corbett to three years, 10 months and 21 days custody (in order to leave the time remaining to be served at three and one-half years).

[75] Solomon J. took note of what the Court stated in ***R.*** v. ***Tkachuk***, 2014 BCSC 1780, in which Joyce J. states:

> 52 In another decision from our Court of Appeal, *R. v. Bernier*, 2003 BCCA 134 [*Bernier*], a five-member panel of the court considered the range of sentence for home invasions because of a perceived conflict between earlier judgments of the Court. *Bernier* resulted in three sets of reasons which I reviewed and discussed in my sentencing decision in a case called *R. v. Brossault*, 2009 BCSC 464. In that decision, I concluded at para. 86:
>
> > [86] What I take from all of this is that the Court of Appeal has suggested that the majority of cases of "home invasion" will fit somewhere in the range of five to eight years, depending upon the circumstances of the particular offences said to constitute home invasion and the circumstances of the particular offender but that there will be cases that fall on either side of that general range. A case may warrant a sentence in excess of that range because of particularly egregious circumstances concerning the offence or a particularly high moral blameworthiness on the part of the offender, and the lack of any mitigating circumstances. Other cases may warrant a sentence under the usual range because the circumstances of the offence are not egregious, and/or the circumstances of the offender are exceptional, such as the lack of any significant record, the youth of the offender, aboriginal status, evidence of remorse, and a clear potential for the rehabilitation of the offender.

[76] The law is clear that every case needs to be viewed in the particular circumstances in which the offence occurred, and not every s. 348(1)(b) offence in which violence occurs after a forced entry into a residence attracts a lengthy sentence. A sentencing range is not a fixed box within which a sentence must of necessity be placed. As stated in ***R.*** v. ***Charlie***, 2015 YKCA 3 at paras. 38 and 39:

> 38 In *R. v. C.A.M.*, [1996] 1 S.C.R. 500, at para. 92, the Supreme Court of Canada explained the underlying justification for the reliance on sentencing ranges, which is to "minimiz[e] the disparity of sentences imposed by sentencing judges for similar offenders and similar offences committed..." (Emphasis added). The Supreme Court discussed the relationship between the wide discretion granted to sentencing judges and the range of sentences for particular offences in *R. v. Nasogaluak*, 2010 SCC 6 at para. 44:
>
> > [44] The wide discretion granted to sentencing judges has limits. It is fettered in part by the case law that has set down, in some circumstances, general ranges of sentences for particular offences, to encourage greater consistency between sentencing decisions in accordance with the principle of parity enshrined in the *Code*. But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.
> >
> > [Emphasis added.]
>
> 39 A sentencing judge does not commit an error in principle simply by crafting a sentence that falls outside of the typical range for a particular offence. The appropriate sentence is determined by the circumstances of the offender and the offence, whether aggravating or mitigating. It is for this reason that, as the Supreme Court explains in *C.A.M.* at para. 92, "a court of appeal should only intervene to minimize the disparity of sentences where the sentence imposed by the trial judge is in substantial and marked departure from sentences customarily imposed for similar offenders committing similar crimes..." (Emphasis added).

[77] In ***R.*** v. ***Barrons***, 2017 NSSC 216, the 24-year-old offender pleaded guilty, midway through trial, to the offence of break and enter and commit assault. Several other charges were stayed as a result of this plea.

[78] After an evening of drinking at a bar, Mr. Barrons knocked at the apartment door of B.L, a female, at approximately 1:00 a.m. When he heard a third party male inside the residence, Mr. Barrons became angry, broke open the door of the apartment, forced his way into the bedroom and began to struggle with the male. In the course of this struggle, the male was forced into a closet door with sufficient force to crack the door. B.L. was accidently struck in the arm and face.

[79] Crown counsel sought a two-year federal sentence. The Court imposed a suspended sentence attached to three years of probation.

[80] The Court considered as an aggravating circumstance s. 348.1. Also aggravating was that Mr. Barrons knew the residence was occupied when he forced his way in, and that B.L. had previously been in an intimate relationship with Mr. Barrons.

[81] Mitigating were the guilty plea, the lack of a prior record, Mr. Barrons' youthful age at the time, his role as a productive member of society at the time of the offence, his steps towards improvement since the offence, and his compliance with bail conditions.

[82] It was accepted that the benchmark for sentencing for the offence of break and enter was three years custody (paras. 18-20).

[83] In imposing a suspended sentence and probation order, Arnold J. noted the deterrent and denunciatory impact a suspended sentence could have (paras. 39-46).

[84] I note that in ***R.*** v. ***Voong***, 2015 BCCA 285, in paras. 37- 43, the Court reiterated the deterrent effect a suspended sentence could have.

[85] In ***R.*** v. ***Dragani***, 2018 BCCA 225, the Court restated the principles applicable to "home invasions" as follows:

> 43 The term "home invasion" is not a term used in the *Criminal Code*. It is a shorthand expression that describes a combination of offences involving breaking and entering a dwelling-house with the intent to commit a robbery, coupled with knowledge or recklessness as to whether the dwelling is occupied: *Chudley* at para. 22; *R. v. Bernier*, 2003 BCCA 134 at paras. 37, 81.
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> 44 Since such offences occur in a wide variety of circumstances, *Bernier* cautioned that it is difficult to suggest a general range of sentences:
>
> > [82] Because the combination of crimes charged in these cases will vary to some extent, it is difficult to determine a relevant range of sentence. For this reason, the Court should exercise more caution than usual in attempting to suggest general ranges of sentence for home invasions.
>
> 45 There are, however, several sentencing principles normally engaged in home invasion cases.
>
> 46 First, deterrence and denunciation are the primary factors in sentencing for violent crimes, especially where these crimes violate the safety and security of a person's home: *R. v. Vickers*, 2007 BCCA 554 at para. 12.
>
> 47 Second, while the prospects for rehabilitation cannot be overlooked, it generally is of secondary importance in dealing with violent crimes: *Vickers* at para. 13.
>
> 48 Third, s. 348.1 of the *Criminal Code* ("Aggravating circumstances -- home invasion") creates a statutory aggravating factor for certain offences when committed with violence or threats of violence in relation to a

> dwelling-house if the house was occupied when the offence(s) occurred or the offenders were reckless as to whether the house was occupied.
>
> ….
>
> 50 Fourth, higher sentences are appropriate when serious injuries are inflicted: *R. v. A.J.C.*, 2004 BCCA 268 at para. 42.

[86] In ***Dragani***, the two offenders were convicted after trial of breaking and entering into a residence, robbery, unlawful confinement and assault causing bodily harm, contrary to ss. 348(1)(d), 344(1)(b), 279(2), and 267(b) of the *Code*.

[87] The two offenders went to the residence of the victim in order to collect a debt or retrieve some property on behalf of a third party. They thought only the intended victim would be home at the time.

[88] They grabbed the victim outside of his residence, tied his hands and covered his head. They took him into his bedroom where they tied his legs, and kicked and punched him, causing a laceration to his head, which required stitches.

[89] As it happened, the victim's parents and brother were at home at the time. His mother went downstairs where her eyes were covered from behind with gloved hands. She resisted and saw a person with a gun pointed at her head. She saw her son being kicked.

[90] The father came downstairs where a gun was also pointed at his face. He was told to go into the bedroom where the son was. Both parents had their hands tied with zip straps and their heads were covered.

[91] The offenders were screaming at the victim, demanding to know where the money was and who else was in the house.

[92] The gun was, in fact, an imitation firearm.

[93] The victim's brother heard the commotion and called 911. The offenders were arrested when they left the residence, which was approximately 10 – 15 minutes after entering it.

[94] The Crown sought custodial sentences of four to five years. Counsel for the accused sought a suspended sentence and probation. The sentencing judge imposed 90-day intermittent sentences on each offender. The Court of Appeal dismissed the Crown appeal against sentence.

[95] The 23 and 24-year-old offenders had no prior criminal records. They both expressed their remorse for their involvement in the incident. Both had turned their lives around and had positive prospects for rehabilitation.

[96] The Court of Appeal noted that:

> 34 …the judge emphasized the behaviour of the two offenders while on bail and their extraordinary attempts to get their lives back on a non-criminal track. He concluded that a more lenient sentence was warranted. However, jail time was necessary partly because he was of the view they needed to experience prison so that in the future they would ensure they never had cause to return.
>
> 35 With respect to the penalty imposed, the judge said:
>
> > [48] These men should go to jail for a short period of time. They should taste what jail feels like, but in my determination, a 90-day intermittent sentence followed by a lengthy period of probation is the appropriate sentence. It is the appropriate balancing, recognizing that deterrence and

> denunciation is the primary factor to consider, but also recognizing that there are two young men without previous history in the criminal courts who need to be protected from any further stigmatization that may come from serving a lengthy period of time in jail and the negative impact of that, which clearly outweighs the laudatory impacts and clearly outweighs any principle of sentencing. This is the least restrictive sentencing that meets all of the principles of sentence in my mind.

[97] In dismissing the Crown appeal, the Court stated:

> 97 Upon considering the authorities explicitly cited by the judge below, and the authorities the Crown emphasized on appeal, I cannot conclude the sentences imposed here were demonstrably unfit. The cited cases indicate the breadth of sentences that can be awarded for offences similar to the present ones. I am satisfied that the judge sufficiently balanced the competing principles of sentencing in crafting a sentence that was informed by the cases put to him, and the circumstances here.
>
> 98 While the sentences awarded were at the very low end of the spectrum, I am not persuaded that the sentences run afoul of the parity principle or fail to reconcile the competing principles of sentencing.
>
> 99 The fundamental purpose of sentencing is set out in s. 718 of the *Criminal Code*. Viewed in light of the purposes and principles of sentencing, in my view the interests of justice would not be served by requiring Mr. Dragani and Mr. Bakhtyari to return to incarceration, as it would undermine the strides made by the two respondents following these first-time offences. As this Court recently said in *R. v. Currie*, 2016 BCCA 404:
>
> > [55] Cases like the one at bar challenge appellate courts to resolve the tension between competing goals. On the one hand, similarly situated offenders should be treated alike, the applicable principles of sentencing must be affirmed in individual cases, and those who choose to participate in serious criminal misconduct must know that they will face the consequences of their behaviour. At the same time, in determining whether to incarcerate an accused who has received a non-custodial sentence in the trial court, an appellate court must keep in mind that protection of the public is the ultimate goal of sentencing and that care must be taken not to risk sacrificing its attainment in an individual case to the end of affirming generally applicable principles.

> 100 In any event, great deference to the sentencing judge is warranted on appeal, and I am not persuaded that the sentences given to Mr. Dragani and Mr. Bakhtyari are demonstrably unfit.

Application to Mr. Organ-Wood

[98] A jail sentence is warranted in these circumstances, to denounce these crimes, to deter others from committing such crimes, and to ensure Mr. Organ-Wood understands the need to separate himself from criminal activity in the future.

[99] While, in some cases, these objectives can be met through the imposition of a suspended sentence and probation order, I do not consider these circumstances to justify such a sentence. I believe that Mr. Organ-Wood's actions require that he be imprisoned in order that these crimes are denounced, in order to deter others from committing similar crimes against similarly vulnerable victims, and in order to ensure that Mr. Organ-Wood understands the serious nature of his crimes, is deterred from committing such offences in the future, and is further motivated to stay away from future involvement in criminal behaviour.

[100] However, the jail sentence should only be as long as required to accomplish these objectives.

[101] Mr. Organ-Wood is a very young man without a criminal record. The principle of restraint is of particular importance. Allowing Mr. Organ-Wood to continue his pro-social lifestyle with the supports that he has and his present level of motivation is not only to his benefit, but also to the benefit of society.

[102] The ultimate goal in the sentencing process is the protection of the public. Putting Mr. Organ-Wood in custody, with that set of potentially negative influences, for a long period of time, and unduly interfering with his current rehabilitative track, in my opinion, does not adequately protect the public. I am satisfied that it could potentially have the opposite effect. In my opinion, such a lengthy sentence would not be in accord with the purposes, objectives and principles of sentencing.

[103] I am satisfied that Mr. Organ-Wood has considerable understanding of the consequences, and potential consequences, of the choices he has made in the past, that contributed to his substance abuse and to his involvement in committing these offences. I note that this point was perhaps especially driven home to him when a high school class of students, some of whom I expect knew Mr. Organ-Wood, were by chance present in court as part of their law class when Mr. Organ-Wood was testifying. His discomfort at the time was quite apparent.

[104] I am satisfied that Mr. Organ-Wood does not currently present a significant risk of harm to the public, and that the current track he is on will continue to reduce any risk that he currently poses.

[105] I am satisfied that a short period of custody that allows Mr. Organ-Wood to appreciate and be held accountable for his crimes, while also allowing him to continue to work, to further his education, and to maintain his connection with pro-social influences, strikes the appropriate balance within the sentencing process.

[106] The sentence for each of these offences will be 90-day sentences, concurrent to each other, to be followed by a probation order of two years.

[107] These sentences are to be served intermittently in the community as follows:

> To attend at the Whitehorse Correctional Centre, 25 College Drive, Whitehorse, Yukon on Friday, the 24th day of January, 2019 at 7:00 p.m. for release on Monday, the 27th day of January, 2019 and to attend thereafter on Fridays at 7:00 p.m. for release on Mondays at 7:00 a.m. until the sentence is served in full.

[108] While Mr. Organ-Wood is serving his intermittent sentence, he will be placed on probation on the following terms:

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 court in advance of any change of name or address, and, promptly, of any change in employment or occupation;
4. Remain within the Yukon unless you obtain written permission from the court;
5. Do not consume alcohol during the 24-hour period preceding the time you are to report to the Whitehorse Correctional Centre;
6. Have no contact directly or indirectly or communication in any way with K.F. and M.H.P. except with the prior written permission of the court;
7. Do not attend any known place of residence, employment or education of K.F. and M.H.P., except with the prior written permission of the court.

[109] Mr. Organ-Wood shall also be placed on probation for a period of two years. The probation order shall attach to each offence for which he has been convicted.

[110] The terms of the Probation Order 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 K.F. or M.H.P., except with the prior written permission of your Probation Officer;

5. Do not attend any known place of residence, employment or education of K.F. and M.H.P., except with the prior written permission of your Probation Officer;

6. Report to a Probation Officer immediately upon completion of your intermittent sentence and thereafter, when and in the manner directed by the Probation Officer;

7. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;

8. 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 any 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;

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

[111] Before leaving this matter, I feel it necessary to comment further with respect to the sentencing principle of parity and how it is applicable to this case.

[112] The principle of parity requires that similarly situated offenders committing offences in similar circumstances should be similarly sentenced.

[113] In the present case, M.H.P. was sentenced for the offences he committed against K.F. as a young offender, whereas Mr. Organ-Wood is being sentenced as an adult. As is made clear in the Declaration of Principle in s. 3(1) of the *Youth Criminal Justice Act* ("*YCJA*"), the sentencing regime for young offenders sentenced under the *YCJA* is significantly different than that of adults being sentenced under the *Criminal Code*. As stated in s. 3(1)(b) of the YCJA:

> The criminal justice system for young persons must be separate from that of adults, must be based upon the principle of diminished moral blameworthiness or culpability and must emphasize the following…

[114] There is a notable difference between the purposes, principles and objectives of the *YCJA* and the *Code*. Therefore applying the principle of parity to co-accused offenders, one sentenced under the youth regime, and the other under the adult regime cannot be done in the same way as two similarly situated offenders sentenced under the same regime.

[115] Therefore, I cannot look at M.H.P. and the sentence he received, and simply apply the principle of parity in deciding the appropriate sentence for Mr. Organ-Wood. The hard line drawn at the age of 18 exists, and the worlds on either side of it are significantly different. Mr. Organ-Wood, by weeks only, finds himself on the harsher side of this line.

[116] M.H.P. who was over 17 and one-half years old at the time of these offences and, as I understand it, a former classmate of Mr. Organ-Woods, found himself on the more rehabilitatively-focused side of this line.

[117] M.H.P. had originally set his matters for trial on April 30, 2019, the day prior to Mr. Organ-Wood's original trial date. On this date, his trial was adjourned by consent. On May 9, 2019, M.H.P.'s trial was set for July 17, 2019.

[118] My decision with respect to Mr. Organ-Wood's trial, in which I stated that I found K.F. to be a credible witness who provided reliable evidence, was pronounced on June 12, 2019.

[119] Subsequent to my decision, M.H.P. resolved the charges against him. With respect to the s. 344(1)(b) charge, he entered a guilty plea to the included offence of assault contrary to s. 266, and a guilty plea to the offence of theft contrary to s. 334(b). Both of these convictions relate only to the incident that occurred when K.F. was punched in the stomach by M.H.P. and where I found that the $80 was extorted from K.F.

[120] M.H.P. also pleaded guilty to the s. 346(1.1)(b) offence.

[121] The Crown stayed the s. 348(1)(b), 279(1.1)(b), 344(1)(b) and 264.1(1) charges against M.H.P.

[122] At M.H.P.'s sentencing hearing, Crown counsel sought a six month deferred custody sentence, to be followed by 12 months of probation. Crown counsel submitted that the offences to which M.H.P. pled guilty were, while separate incidents, all part of a continuous event.

[123] Counsel for M.H.P. sought a one month deferred custody sentence.

[124] Chisholm C.J. imposed a two month deferred custody sentence.

[125] I am mindful of the fact that, as a result of the Crown's exercise of discretion in his case, M.H.P. was allowed to enter guilty pleas to fewer offences and, the s. 346(1.1) offence aside, less serious offences than Mr. Organ-Wood was tried on and, other than the s. 344(1)(b) offence, convicted of.

[126] It was certainly within the purview of the exercise of Crown discretion to have chosen to proceed in the manner that the Crown did with respect to M.H.P. I am not questioning this exercise of Crown discretion.

[127] However, in imposing a just and fair sentence on Mr. Organ-Wood, I must consider what actually occurred, the circumstances of Mr. Organ-Wood, and the circumstances in which the offences were committed. This includes the actions of not only Mr. Organ-Wood but M.H.P. as well, and the associated levels of involvement and moral culpability of each in committing these offences.

[128] With respect to the s. 348(1)(b) offence, Mr. Organ-Wood was convicted as a party to the actions of M.H.P. It was M.H.P. who actually entered into the residence and assaulted K.F.

[129] I did not find that Mr. Organ-Wood directed M.H.P. to enter into the residence and assault K.F. I also did not find that Mr. Organ-Wood had a premeditated plan for either he or M.H.P. to enter into the residence and assault K.F. I found the opposite.

[130] It was the apparently somewhat spontaneous act of M.H.P. in entering into the residence and assaulting K.F. that resulted in Mr. Organ-Wood being convicted as a party.

[131] Mr. Organ-Wood and M.H.P. were acting in concert in deciding to confront K.F., initially outside of K.F.'s residence and then at his door, in an attempt to continue their intimidation of him in order to extort money from him. In acting in concert with M.H.P.,

Mr. Organ-Wood found himself sharing criminal responsibility for the actions of M.H.P. when M.H.P. entered the residence and assaulted K.F.

[132] Mr. Organ-Wood played a lesser actual role in the totality of this incident and it was he who told M.H.P. that it was enough, which was at least a contributing factor to the assault being discontinued. I do not believe from a consideration of all the evidence that Mr. Organ-Wood did so from the position of being the directing mind for the actions of M.H.P.

[133] Unfortunately for Mr. Organ-Wood, after making the initial criminally wrong choice to confront K.F. as part of the extortion offence, he did not immediately intercede to stop M.H.P. from entering the residence or, once inside, from assaulting K.F. Had he done so, I would not have convicted Mr. Organ-Wood of the s. 348(1)(b) offence, as I would have found that M.H.P. was acting entirely on his own outside of the agreed-upon plan to extort money from K.F.

[134] This, however, is the “home invasion” offence upon which the Crown primarily relies for the imposition of the three-year sentence that he seeks for Mr. Organ-Wood. I find it somewhat disconcerting that the seriousness of this “home invasion” offence is emphasized by the Crown in seeking such a significant penitentiary sentence for Mr. Organ-Wood, when the principle player was in fact M.H.P and Mr. Organ-Wood, with his lesser role, was convicted as a party to the somewhat spontaneous actions of M.H.P.

[135] With respect to the s. 279(1.1)(b) offence, I found that, as part of the attempt to extort money from K.F., Mr. Organ-Wood was a party to the kidnapping of K.F. However, it was M.H.P. who was the driver and was in control of the vehicle and who

assumed control over the movements of K.F. It was M.H.P. who told K.F. to "get into fucking the car", reached across and locked the door, and then told K.F. that he was going to smash his head into the window. Mr. Organ-Wood did nothing more than move from the front passenger seat to the rear seat and smile at K.F. He did not speak to or threaten K.F. according to the evidence of K.F.

[136] In regard to this incident, Mr. Organ-Wood was convicted of both the offence of kidnapping and uttering threats, as a party to the actions of M.H.P. M.H.P., as a result of his plea bargain arrangement with the Crown, again legitimately within the exercise of Crown discretion, was not required to enter a guilty plea to any offences arising out of this incident.

[137] As was the case with respect to the s. 348(1)(b) offence, Mr. Organ-Wood was again a somewhat lesser player than M.H.P. was in this incident. This is a factor that I must keep in mind when determining an appropriate sentence for Mr. Organ-Wood.

[138] At M.H.P.'s sentencing hearing, as was legitimately within his exercise of discretion, Crown counsel did not seek to prove that any threats were made to K.F. by M.H.P., when counsel for M.H.P. disputed that any such threats in fact occurred. This also included the threats K.F. testified to as having been made at the residence where the s. 344(1)(b) offence was alleged to have occurred, where K.F. testified that M.H.P. slid his finger across K.F.'s throat and told him that "next time it will be a knife".

[139] As stated earlier, M.H.P. entered guilty pleas and was convicted of lesser offences related to his actions that had resulted in the s. 344(1)(b) charge being laid. Mr. Organ-Wood was acquitted of the assault, and therefore the aspect of this offence

that would have made it a robbery. He was, however, convicted of the extortion offence, in part due to the extortion of the $80 from K.F.

[140] I appreciate that it was Mr. Organ-Wood who was on trial before me, not M.H.P., and that my findings of fact are binding only with respect to Mr. Organ-Wood and not M.H.P. This said, I convicted Mr. Organ-Wood on the basis that K.F. was a credible witness who provided reliable evidence, and I accepted K.F.'s entire version of events.

[141] It does not escape me that due to the manner in which Mr. Organ-Wood and M.H.P.'s matters proceeded to trial, M.H.P. would likely have been aware, well before his scheduled trial date, of my findings in convicting Mr. Organ-Wood and my determination that K.F. was a credible witness who provided reliable evidence.

[142] This simply informs my observation that M.H.P. was in a different position to make decisions regarding how to deal with the charges against him than Mr. Organ-Wood was.

[143] I am aware that I cannot, of course, presume that the change in plea by M.H.P. was a result of how matters unfolded with respect to Mr. Organ-Wood. I also cannot presume, had the trials proceeded in the reverse order, that Mr. Organ-Wood would have perhaps ended up being sentenced for different offences on different facts put before the Court and accepted as true by Mr. Organ-Wood.

[144] As previously stated, with respect to the offences committed by Mr. Organ-Wood, his role was, to a not insignificant extent, a lesser role than that of M.H.P.

[145] The simple reality, however, is that Mr. Organ-Wood is facing sentencing for all the charges he was convicted on. He is facing receiving an adult sentence. That is the way it is.

[146] I cannot reduce Mr. Organ-Wood's sentence from what would be a fair and just sentence simply on the basis that his sentence would be different and harsher than that of M.H.P.

[147] At the same time, I cannot, in sentencing Mr. Organ-Wood, entirely ignore the role M.H.P. and Mr. Organ-Wood assumed in the commission of these offences, and the sentence that was imposed on M.H.P., in determining a just and fair sentence for Mr. Organ-Wood.

[148] There was a prior set of sentencing decisions in the Yukon with respect to offences committed by two offenders very close in age, arising out of a single incident. These are the cases of ***R.*** v. ***Miller***, [1993] Y.J. No. 127 (Y.K.T.C.), and ***R.*** v. ***M.T.***, [1993] Y.J. No. 242 (Youth Ct.).

[149] One offender, Mr. Miller, was 18 years old, and the other, M.T., was 17 years old at the time of the commission of the offences. Both offenders, following earlier forays into criminal activity, including illegally obtaining handguns, concocted a sophisticated, carefully planned and premeditated kidnapping of the wife of a local businessman from her home.

[150] The facts were particularly disturbing and egregious. In sentencing Mr. Miller, Faulkner J. stated:

> 20 Let there be no mistake about the nature of what Miller ended up doing. It was a sophisticated crime requiring lengthy and detailed planning and the acquisition of numerous required tools like guns, disguises, walkie talkies, handcuffs and so forth. The kidnapping itself was carried out in a brutal and callous manner. The victim was abducted from her own home and confined in very difficult circumstances with no heat, no food and no water. She was left unchecked and alone despite the fact that she has a serious heart condition, while Miller and M.T. proceeded around town establishing an alibi and collecting the ransom.

[151] The impact upon the victim included "severe emotional harm", that would likely result in "irreversible scars".

[152] In para. 24, Faulkner J. stated: "I do not find that there is any basis to distinguish between the two [offenders] insofar as degree of culpability is involved". He stated further in paras. 34 and 35:

> 34 There is one additional matter which needs to be addressed. I have already said that the accused Miller and M.T. were jointly responsible for the kidnapping of Joy Karp. Normally, simple justice would strongly suggest that they be dealt with in a like fashion. That is not possible as they are, by reason of several month's difference in age, subject to being tried under different laws in different courts.
>
> 35 Though M.T., if convicted, faces a maximum custodial sentence of three years, while Miller faces a much longer term, young offender sentences are generally served in full whereas adult offenders have the opportunity to apply for parole and are, in most cases, released early by way of statutory release. On the other hand, young offenders can apply for a review of a custodial disposition, which adult offenders cannot do.
>
> 36 There is also the matter of differences in the custodial facilities, programs and conditions between adult and youth systems.
>
> 37 Factors like these make any comparison of M.T.'s and Miller's situations exceedingly difficult. I do think, however, that the potential for a gross disparity in outcomes is a factor to be considered in fixing the length of Miller's sentence. [Emphasis mine]

[153] Mr. Miller was sentenced to eight years imprisonment for the kidnapping, after being given considerable credit for the eight months of pre-trial custody.

[154] M.T. was sentenced in Youth Court approximately six weeks after Mr. Miller, as Crown counsel's application to have him sentenced as an adult had been denied.

[155] In para. 20, Barnett J. stated that he agreed entirely with Faulkner J.'s statement that there was no basis to distinguish between the two offenders "insofar as degree of moral culpability is involved".

[156] It was agreed that M.T. should receive the maximum allowable punishment of three years secure custody for the kidnapping. Barnett J. did not allow any credit for M.T.'s time in custody awaiting sentence.

[157] Barnett J. stated that, had M.T. been sentenced in the same setting as Mr. Miller, he could have anticipated a similar sentence.

[158] Unlike in the ***Miller*** and ***M.T.*** cases, I found that Mr. Organ-Wood played a somewhat lesser role than that of M.H.P. with respect to most of the offences that were committed against K.F. His involvement and moral culpability is less in this respect, leaving aside for the moment the legal considerations regarding moral culpability that come into play as a result of the fact that M.H.P. was a youth and Mr. Organ-Wood was an adult.

[159] To the extent that Faulkner J. and Barnett J. stated that there was nothing to distinguish between Mr. Miller and M.T. in regard to their respective levels of moral culpability, I am satisfied that in both decisions the respective judges were speaking of

moral culpability in the practical sense only, and not in the strictly legal sense when comparing a youth offender to an adult offender. I am satisfied that Faulkner J. and Barnett J. were simply stating that both offenders were playing an equal role in every aspect of the offences committed.

[160] Clearly, there was a legal distinction in moral culpability simply by virtue of the differential considerations that applied to M.T. under the *YCJA* as compared to Mr. Miller under the *Code*, just as there must be the same legal distinction in the case of Mr. Organ-Wood and M.H.P. with respect to moral blameworthiness or culpability.

[161] The difference between the findings of Faulkner J. and Barnett J., and my findings in the present case, is that I am satisfied that Mr. Organ-Wood was, in the context of the entirety of the circumstances, less involved, and less morally culpable in the practical, not legal, sense than M.H.P. was.

[162] I have some difficulty, based on the evidence of K.F. that I heard, and accepted as credible and reliable, in reconciling the sentence sought for and imposed on M.H.P. with the, in my opinion, harsh sentence being sought by the Crown for Mr. Organ-Wood, particularly when I found him to be the lesser-involved of the two offenders.

[163] The potential disparity in treatment raises real questions about fairness, which, in my mind, if not addressed, has the potential to undermine confidence in the administration of justice. I believe that objective and reasonable members of the public, properly informed of the law, including the different sentencing regimes under the *Criminal Code* and the *YCJA*, would have concerns about any such disparate treatment between Mr. Organ-Wood and M.H.P.

[164] The sentence that I have imposed on Mr. Organ-Wood stands on its own, separate and apart from any undue consideration of the sentence sought and imposed on M.H.P., and is based upon the circumstances of the offence, the impact on K.F., the circumstances of Mr. Organ-Wood, and a balancing of the applicable purposes, objectives and principles of sentencing.

[165] I am also satisfied that this sentence properly reflects the appropriate balancing between the sentence imposed on M.H.P., and accords with the principle of parity, taking into account the difference in its application when applied to M.H.P. as a youth sentenced under the *YCJA* and Mr. Organ-Wood, as an adult sentenced under the *Code*.

[166] Mr. Organ-Wood will be subject to a s. 109 firearms prohibition order for a period of ten years.

[167] He will also provide a sample of his DNA pursuant so s. 487.051.

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COZENS T.C.J.