Citation: R v Wood, 2022 MBCA 46
Date: 20220512
Docket: AR21-30-09570

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Madam Justice Jennifer A. Pfuetzner
Madam Justice Karen I. Simonsen

B E T W E E N:

	)	***O. G. Plotnik***
HER MAJESTY THE QUEEN	)	*for the Appellant*
	)	
Respondent	)	***R. N. Malaviya*** *and*
	)	***P. G. Benham***
- and -	)	*for the Respondent*
	)	
JONATHAN JOSEPH JAMES WOOD	)	*Appeal heard:*
	)	***December 3, 2021***
(Accused) Appellant	)	
	)	*Judgment delivered:*
	)	***May 12, 2022***

On appeal from 2021 MBQB 4

CAMERON JA

[1] The accused was convicted of manslaughter after trial by judge alone. He applies for leave to appeal and, if granted, appeals the sentence of 18 years' imprisonment less pre-sentence custody credit of four and one-half years, leaving a go-forward sentence of 13 and one-half years imposed on him by the trial judge. He argues that the trial judge erred by overemphasizing the deceased's vulnerability as an Indigenous woman, as well as the lack of resources in the community where the offence occurred. He also argues that

the sentence is inconsistent with the principle of parity. He submits that the above errors caused the trial judge to impose an unfit sentence.

[2] For the reasons below, it is my view that the trial judge did not commit either of the errors alleged by the accused. The trial judge considered all of the principles and objectives of sentencing. He was entitled to consider the vulnerable circumstances of the deceased, including that the offence involved intimate partner abuse on an Indigenous woman from an isolated community. While he recognized that the sentence was higher than the range that he had identified, his reasons clearly explain why he imposed the sentence that he did. His decision is subject to review on the standard of deference, and I am not persuaded that the sentence is demonstrably unfit. Thus, while I would grant leave to appeal, I would dismiss the appeal.

Background and Facts

[3] At the time of the offence in January 2018, the deceased was married to the accused. They were both in their mid-thirties. They had been in a relationship since 2004 and were married in 2010. They had three biological children together, as well as an older child that the deceased had from a previous relationship. The accused is Indigenous, as was the deceased. They were both from the remote northern community of St. Theresa Point First Nation in Manitoba (the First Nation).

[4] The accused had a significant prior history of assaulting the deceased. At the time of the offence, he was subject to three court orders prohibiting him from contacting her. He was also prohibited from attending the First Nation unless he was engaged in a residential treatment program, which he was not.

[5] On the day of the offence, the accused and the deceased went to his brother's (the brother) house to drink super-juice with the brother and his girlfriend (the girlfriend). The trial judge noted that super-juice is a form of homebrew alcohol that ferments quickly and is potent.

[6] When the accused and the deceased arrived at the brother's house, the deceased was not observed to be injured or suffering from any injuries.

[7] The four of them drank super-juice, snorted crushed Percocets and smoked marihuana. After some time, the brother and the girlfriend went to the bedroom. However, in response to hearing the accused and the deceased argue and the latter calling for him, the brother joined them in the living room where things calmed down and they continued to drink and smoke marihuana.

[8] While the testimony about what happened was imperfect due to the intoxication of the brother and the girlfriend at the time of the incident, as well as personal relations among the witnesses, the trial judge found that the brother went out to get cigarettes. While he was gone, the girlfriend saw the accused punching the deceased and heard stomping sounds. Later, the brother went to check on the deceased, who was lying on the floor, but the accused told him to leave her alone as she was just passed out. The trial judge stated that the brother went next door for help and that, when he returned moments later, the deceased was dead.

[9] In describing the deceased's injuries, the trial judge stated (at para 17):

> [The deceased's] injuries were awful. Civilian witnesses only saw bruising to her face, and bleeding from her right eye and head. The autopsy revealed the true devastation of her injuries. As the

> forensic pathologist detailed, [the deceased] suffered many injuries to her head, torso, extremities and organs. Numerous bones were broken including her jaw, left clavicle or collarbone, left wrist and all 24 ribs, 23 of which had multiple fractures. She also suffered a subarachnoid hemorrhage, full-thickness tongue laceration, contusions and lacerations of the lungs and diaphragm, and contusion of the liver. At minimum, she suffered well over a dozen blows from fists or feet, many very forceful.

[10] The accused was charged with murder. At the trial, he testified that he was black-out drunk at the time of the incident and could not remember what happened. The trial judge held that, considering the accused's degree of intoxication and other evidence of his state of mind, the accused was entitled to the benefit of a reasonable doubt as to whether he had the requisite intent to commit murder and, thus, convicted the accused of manslaughter.

The Sentencing Hearing

[11] A pre-sentence report outlining the accused's history (the PSR), as well as his *Gladue* factors (see *R v Gladue*, [1999] 1 SCR 688), was filed at the sentencing hearing. In addition, one of the family members read out a victim impact statement on behalf of the family.

[12] At the sentencing hearing, the Crown asked that a term of 20 years' imprisonment be imposed on the accused. In support of its position, it filed the accused's criminal record emphasizing his many prior convictions for offences of violence, including those against the deceased. It noted the significant effect that the offence had on the family and the community. Among other things, the Crown also spoke about how difficult it was for victims of domestic violence to escape their situation due to the isolation of

the First Nation, the prevalence of domestic violence in the community and the lack of resources.

[13] The Crown directed the trial judge's attention to section 718.04 of the *Criminal Cod*e (the *Code*), which provides that the court give primary consideration to the objectives of denunciation and deterrence when imposing a sentence for an offence that involved the abuse of a vulnerable person—including because the person is Aboriginal and female. It also referred to section 718.201 of the *Code*, which provides that, when imposing a sentence for an offence that involved the abuse of an intimate partner, the court shall consider the increased vulnerability of victims, giving particular attention to the circumstances of Aboriginal female victims.

[14] Finally, the Crown underscored what the trial judge had earlier described as the "monstrous" violence involved in the offence.

[15] Counsel for the accused submitted that the assault was short in duration. He said that the accused performed CPR on the deceased when he realized she was not responding. The accused was remorseful. Similar to the circumstances of the deceased, the circumstances of the accused included significant *Gladue* factors, including a family history of addictions and violence and an inability to access resources in his community, or elsewhere, to deal with his addictions. The trial judge noted that the accused had taken some counselling in the past and was capable of rehabilitation.

[16] Relying on a number of cases, including *R v Jamieson*, 2012 ONSC 1114, the accused submitted that the sentencing range for similar offences committed in the context of domestic violence was nine to 15 years' imprisonment. He submitted that, in consideration of the mitigating factors,

as well as the accused's prospects for rehabilitation, a sentence of 12 years, less time spent in pre-sentence custody, would be appropriate.

The Reasons of the Trial Judge

[17] In imposing the sentence of 18 years less time spent in pre-sentence custody, the trial judge considered the facts of the case, including the First Nation from which the accused and deceased came, which he described as follows (at para 6):

> Both [the accused] and [the deceased] are Indigenous persons who were raised, and lived, at [the] First Nation in northeastern Manitoba, about 600 km northeast of Winnipeg. It is an isolated First Nation with a population of about 4,000 people, accessible only by air, boat or winter ice-road. It is part of the Island Lake First Nations communities comprised of Wasagamack, St. Theresa Point, Red Sucker Lake and Garden Hill First Nations.

[18] In his consideration of the facts, the trial judge described the previous assaults that the accused had committed against the deceased, including that:

- in 2012, he grabbed her by the throat when she was seven months pregnant;
- in 2013, while on judicial interim release for the above offence, he punched her;
- in 2014, he woke up one morning and started to punch, kick and stomp on her face and arms;

- in 2015, he punched her face, head and the sides of her chest and, despite the fact that the deceased tried to defend herself, she suffered a fractured arm, an orbital fracture of the right face, a partially collapsed lung and fractured ribs.

[19] The trial judge disagreed that the assault that caused the deceased's death occurred over a short period. He found that the assault happened throughout the evening, although the final blows may have followed quickly.

[20] He also carefully considered the accused's personal circumstances, as well as his significant *Gladue* factors.

[21] In considering the sentencing principles, the trial judge mentioned sections 718.04 and 718.201 of the *Code*. He noted that, while those sections were not enacted at the time that the offence was committed, the vulnerability of a victim, particularly in a domestic context, is a well-established aggravating factor. Relying on *R c LP*, 2020 QCCA 1239 at paras 80-91, he stated that "attention to Aboriginal female victims, as a sentencing factor, was well set in common law before" the enactment of those sections (at para 33).

[22] After reviewing a number of cases, he stated that he agreed with defence counsel that the high end of the range for both domestic and non-domestic manslaughter cases does not usually exceed 15 years' imprisonment. However, after considering the aggravating and mitigating factors, the *Gladue* factors, the accused's moral blameworthiness, denunciation and deterrence, and the need to separate the accused from the community, he found that 15 years was not sufficient in this case. He noted that, "[s]ometimes a specific

sentence will fall outside of the norm", but that it should only happen "cautiously and for good reason" (at para 56). He further stated (at para 57):

> Such a sentence would not adequately account for [the accused's] dangerousness and, more critically, would not place enough emphasis on the vulnerability of Indigenous women as a factor in sentencing such an offender; domestic killings remain a scourge. For example, for 2019, Statistics Canada reported that of solved cases, 73% of Indigenous female victims were killed by an intimate partner, spouse or family member [Police-Reported Crime Statistics in Canada, 2019, by Greg Moreau, Brianna Jaffray and Amelia Armstrong, Catalogue No 85-002-X (ISSN 1209-6393) (Ottawa, Statistics Canada, 29 October 2020)]. This while the number of Aboriginal women homicides per 100,000 Aboriginal women in Canada is consistently significantly higher than the rate of non-Aboriginal women homicides (over 6 times higher in 2019) [Statista 2021: rate of female homicide victims in Canada from 2001 to 2019, by [A]boriginal identity]. The reasons for this are complex and beyond the scope of this sentence decision but are anchored, both for the victim and for the offender, in Canada's historical treatment of Indigenous populations and the fallout from that. While restorative sentences are important in many situations of an Indigenous victim and abuser, that is far less so in cases of murder or manslaughter.

[23] He then concluded that a just sentence would be 18 years' imprisonment and deducted four and one-half years for the time that the accused had spent in custody since his arrest, leaving a go-forward sentence of 13 and one-half years.

Grounds of Appeal

[24] The accused lists two grounds of appeal. First, that the trial judge overemphasized the aggravating factors of the deceased's vulnerability and the lack of resources in the community where the offence occurred. Second,

he asserts that the trial judge imposed a sentence that was inconsistent with section 718.2(b) of the *Code*, otherwise known as the parity principle.

Standard of Review

[25] As recently stated by Brown and Martin JJ, writing on behalf of the majority of the Supreme Court of Canada in *R v Parranto*, 2021 SCC 46 (at para 29):

> It is trite law that appellate courts cannot interfere with sentencing decisions lightly (see *R. v. Suter*, 2018 SCC 34, [2018] 2 S.C.R. 496, at para. 23, citing *Shropshire* [*R v Shropshire*, [1995] 4 SCR 227], at para. 48; *R. v. L.F.W.*, 2000 SCC 6, [2000] 1 S.C.R. 132, at para. 25; *R. v. L.M.*, 2008 SCC 31, [2008] 2 S.C.R. 163, at para. 14; *Nasogaluak* [*R v Nasogaluak*, 2010 SCC 6], at para. 46; *Lacasse* [*R v Lacasse*, 2015 SCC 64], at para. 39; and *Friesen* [*R v Friesen*, 2020 SCC 9], at para. 25). Sentencing judges are to be afforded wide latitude, and their decisions are entitled to a high level of deference on appeal (*Lacasse*, at para. 11). It remains the case that, where a judge deviates from a sentencing range or starting point, no matter the degree of deviation, this does not in itself justify appellate intervention.
>
> [emphasis added]

[26] An appellate court may only interfere with a sentence where the sentencing judge made an error in principle that materially impacted the sentence or where a sentence is demonstrably unfit. An error in principle includes an error of law, a failure to consider a relevant factor or an erroneous consideration of an aggravating or mitigating factor (see *R v Lacasse*, 2015 SCC 64 at paras 41, 43-44, 49, 51; and *R v Friesen*, 2020 SCC 9 at para 26).

Ground 1—Did the Trial Judge Overemphasize the Aggravating Factors of the Deceased's Vulnerability and the Lack of Resources in the Community Where the Offence Occurred?

The Vulnerability of the Deceased

[27] The accused argues that, while it was not an error to consider the deceased's circumstance as an Indigenous female, this factor was well recognized in the case law prior to the enactment of sections 718.04 and 718.201 of the *Code*. He submits that many of the cases that formed the range to which the trial judge referred considered the vulnerability of Indigenous women. He argues that sections 718.04 and 718.201 do not support increased sentences for offences committed in circumstances such as this. Rather, he submits that those sections merely limit a judge's ability not to consider such factors when imposing a sentence. He maintains that the trial judge placed too much emphasis on the vulnerability of the deceased, which led to the imposition of an unfit sentence.

[28] In the same vein, the accused also argues that the trial judge erred when he stated that consideration of increased societal awareness of victim harm recognized in *Friesen* was arguably "analogous to the dynamics coloring domestic violence toward Indigenous women" (at para 45). In the accused's view, courts have long been alive to the vulnerability of both female victims of domestic violence and Indigenous female victims. In light of recent jurisprudence of this Court, I will deal with this latter argument first.

Application of the Principles in Friesen

[29] In *Friesen*, the Supreme Court held that sentences can and should depart from prior sentencing ranges when Parliament raises the maximum

sentence for an offence and when society's understanding of the severity of harm arising from the offence increases (see paras 62-67, 74).

[30] In the recent case of *R v Bunn*, 2022 MBCA 34, this Court held that this principle in *Friesen* should not be limited to cases involving sexual abuse of children, as the law has historically recognized that "sentences may be raised or lowered to bring them into harmony with prevailing social values" (at para 72).

[31] In his reasons, the trial judge referred to the Alberta Court of Appeal decision in *R v AD*, 2019 ABCA 396, in part, "to highlight the scope of violence Indigenous women suffer compared to non-Indigenous women" (at para 39). He then specifically referenced the jurisprudence establishing that sentences may be increased or decreased to bring them into harmony with prevailing social values (see para 41, quoting *R v Stone*, [1999] 2 SCR 290 at paras 239-40). Next, after quoting from *Friesen*, he stated (at para 45):

> Arguably, the sentiments, about child sexual abuse sentencing in *Friesen*, and particularly Indigenous child victims at para 70, are analogous to the dynamics coloring domestic violence toward Indigenous women. The vulnerability of Indigenous women and girls to violence, because of their race, is patently obvious from statistics, such as those summarized in *A.D.*, and more so from the history, stories and evidence detailed in the MMIWG report released in 2019 [Canada, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (Ottawa: NIMMIWG, 2019)].

[32] In my view, the trial judge did not err when he made the above statement. As I explain next, sections 718.04 and 718.201 of the *Code* exist, in part, due to recommendations in the Canada, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered*

Indigenous Women and Girls (Ottawa: NIMMIWG, 2019) (the MMIWG Report). This constitutes direct evidence of society's evolving understanding of harm caused by violence against, and the vulnerability of, victims of intimate partner violence and the circumstances of victims who are Aboriginal and female. The fact that these factors have been considered in earlier case law does not detract from our evolving knowledge.

Section 718.04 of the Code

[33] Section 718.04 of the *Code* states:

> **Objectives — offence against vulnerable person**
> **718.04** When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances — including because the person is Aboriginal and female — the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

[34] In *Bunn*, this Court discussed the legislative history of section 718.04, noting that it was enacted as part of Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 1st Sess, 42nd Parl, 2019 (assented to 21 June 2019) (Bill C-75), introduced in 2018. The Court also noted that section 718.04 was not included in the first draft of Bill C-75, but was suggested during consideration of Bill C-75 at the Standing Senate Committee on Legal and Constitutional Affairs. It was introduced, in part, on the basis of the MMIWG Report (see paras 100-101, 104).

[35] After reviewing the legislative history and jurisprudence considering the section, this Court concluded (at para 110):

> In summary, section 718.04 mandates sentencing courts to give primary consideration to the objectives of denunciation and deterrence in circumstances where the victim is vulnerable because of personal circumstances—including because the person is Aboriginal and female. It is not intended to diminish *Gladue* principles. The application of *Gladue* principles will not necessarily result in a lesser sentence, but they may, depending on the circumstances. Nonetheless, the principles of denunciation and deterrence often mandate a harsher sentence in the interest of the protection of the public.
>
> [emphasis added]

[36] Thus, contrary to the argument of the accused, section 718.04 does not merely direct a sentencing judge to consider the circumstances of a vulnerable victim, including in circumstances where the victim is Aboriginal and female. Rather, it mandates primary consideration of the objectives of denunciation and deterrence, factors that often lead to a harsher sentence.

Section 718.201 of the Code

[37] Section 718.201 states:

> **Additional consideration — increased vulnerability**
> **718.201** A court that imposes a sentence in respect of an offence that involved the abuse of an intimate partner shall consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Aboriginal female victims.

[38] Like section 718.04, section 718.201 was enacted as part of Bill C-75. During the second reading of Bill C-75, former Minister of Justice and Attorney General of Canada, Hon Jody Wilson-Raybould, stated that one

area of reform in Bill C-75 was to address intimate partner violence[1]. She stated (at p 19604):

> . . .
>
> . . . [T]hose accused of repeat offences involving violence against an intimate partner would be subject to a reverse onus at the bail stage. In addition, the bill does the following: (1) proposes a higher sentencing range for repeat offences involving intimate partner violence; (2) broadens the definition of "intimate partner" to include dating partners and former partners; (3) provides that strangulation is an elevated form of assault; and (4) explicitly specifies that evidence of intimate partner abuse is an aggravating factor for sentencing purposes.
>
> Intimate partner violence is a reality for at least one in two women in Canada. Women who are [I]ndigenous, trans, elderly, new to Canada, or living with a disability are at increased risk for experiencing violence due to systemic barriers and failures. The personal and often lifelong consequences of violence against women are enormous.
>
> . . .

[39] As was the case with section 718.04, section 718.201 was not originally included in Bill C-75, but was proposed by the Standing Senate Committee on Legal and Constitutional Affairs. The amendment was suggested by former Senator the Hon Lillian Dyck, based on multiple witness speeches, to address intimate partner violence and the prevalence of victimization of Indigenous women and girls, and the need to take heightened rates of violence into consideration.[2]

---

[1] Bill C-75, *An Act to Amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 2nd reading, *House of Common Debates (Hansard)*, 42-1, vol 148, No 300 (24 May 2018) at 19602-604 (Hon Jody Wilson-Raybould)

[2] Senate, Standing Senate Committee on Legal and Constitutional Affairs, *Evidence*, 42-1, No 62 (16 May 2019)

[40] As was stated in *Bunn*, sections 718.04 and 718.201 address recommendations in the MMIWG Report, as well as concerns noted by the Supreme Court in *R v Barton*, 2019 SCC 33, regarding the criminal justice system's treatment of Indigenous women who are victims of sexual assault (see *Bunn* at paras 104-105).

[41] Many of the cases that consider section 718.201 are the same as those that were reviewed with respect to sections 718.04 and 718.2(e) (often referred to as the *Gladue* provision) in *Bunn* (see paras 93-97, 106-109). However, I would make a few further observations.

[42] In *LP*, the majority of the Quebec Court of Appeal engaged in an analysis of sections 718.2(e), 718.04 and 718.201. It stated that "[s]ection 718.201 . . . adds, as a sentencing consideration, the increased vulnerability of female victims of domestic violence or violence by intimate partners, with 'particular attention to the circumstances of Aboriginal female victims'" (at para 78).

[43] In *R v McDonald*, 2021 ABCA 262, the Alberta Court of Appeal stated (at para 28):

> . . . As an Indigenous woman and an intimate partner of [the accused], ss 718.04 and 718.201 of the *Criminal Code* mandate that the court give primary consideration to the objectives of denunciation and deterrence as well as consider the complainant's increased vulnerability. As poignantly argued by the Crown, these statutory amendments serve to remind courts that acts of terror and violence should not be minimized because they occurred on the backroads of Janvier to a vulnerable Indigenous woman, rather than in an urban setting to a more privileged victim.

[44] In *R v AB*, 2021 SKCA 119, the Court emphasized (at para 45):

> . . . The fact that [the victim] was [the accused's] intimate partner is an aggravating factor pursuant to s. 718.2(a)(ii) and s. 718.201 requires that a sentencing judge that imposes a sentence in respect of an offence that involved the abuse of an intimate partner shall consider the increased vulnerability of female persons who are victims.

[45] Thus, courts have recognized that section 718.201 is a substantive direction to the courts and not merely a recitation of the common law.

Section 718.3(8) of the Code

[46] At the hearing of the appeal, this Court raised the issue of the significance of section 718.3(8) of the *Code*. That section states:

> **Maximum penalty — intimate partner**
> **718.3(8)** If an accused is convicted of an indictable offence in the commission of which violence was used, threatened or attempted against an intimate partner and the accused has been previously convicted of an offence in the commission of which violence was used, threatened or attempted against an intimate partner, the court may impose a term of imprisonment that is more than the maximum term of imprisonment provided for that offence but not more than
>
> > **(a)** five years, if the maximum term of imprisonment for the offence is two years or more but less than five years;
> >
> > **(b)** 10 years, if the maximum term of imprisonment for the offence is five years or more but less than 10 years;
> >
> > **(c)** 14 years, if the maximum term of imprisonment for the offence is 10 years or more but less than 14 years; or
> >
> > **(d)** life, if the maximum term of imprisonment for the offence is 14 years or more and up to imprisonment for life.

[47] This is a new sentencing provision that was included in the original version of Bill C-75. In my view, it is significant in that it allows the court to substantially increase sentences above the stated maximum in cases where repeated violence is perpetrated against an intimate partner, as is the case here.

[48] In *Friesen*, the Supreme Court stated (at para 108):

> Courts can and sometimes need to depart from prior precedents and sentencing ranges in order to impose a proportionate sentence. Sentencing ranges are not "straitjackets" but are instead "historical portraits" (*Lacasse*, at para. 57). Accordingly, as this Court recognized in *Lacasse*, sentences can and should depart from prior sentencing ranges when Parliament raises the maximum sentence for an offence and when society's understanding of the severity of the harm arising from that offence increases (paras. 62-64 and 74).

[49] In my view, section 718.3(8) reinforces the position that, for offences where violence is perpetrated against an intimate partner who is vulnerable because of personal circumstances—including because the person is Aboriginal and female—Parliament intended the court to consider these factors and increase sentences where appropriate.

[50] In this case, while recognizing that sections 718.04 and 718.201 were not in force at the time of this offence, the trial judge gave careful consideration to society's and the courts' increased knowledge of the harm to Indigenous females who are the victims of abuse by an intimate partner. I am not convinced that he erred by overemphasizing the vulnerability of the deceased.

Lack of Resources in the Community

[51] In order to explain the accused's argument regarding this ground of appeal, it is necessary to examine various comments made by the trial judge and the context in which they were made.

[52] When considering the aggravating and mitigating factors, the trial judge stated that the fact that the deceased was the spouse of the accused was an aggravating factor pursuant to section 718.2(a)(ii) of the *Code*. After emphasizing the breach of trust involved in such a situation and the ongoing risk of abuse of such victims, he stated that, in this case, the deceased's "Indigenous status, and living in a community so under-serviced and isolated as [the] First Nation, heightened her vulnerability to spousal violence" (at para 48).

[53] Later, when discussing the principles of denunciation and deterrence, he said, "Denunciation is critical in condemning spousal violence, particularly the chronic threat to Indigenous women, simply because they are Indigenous women, and more so for those who cannot escape their situation" (at para 53).

[54] The accused argues that he also suffered from a lack of resources. He states that the same historical circumstances and resulting lack of resources that were linked to the prevalence of domestic violence committed by offenders in the community contributed to him being brought before the court. Therefore, he submits that this factor should have been considered neutral as opposed to an aggravating circumstance or a factor in support of denunciation and deterrence.

[55] In my view, the trial judge did not err in taking into account the vulnerable circumstances of the deceased. This included that she came from an isolated community with few resources that could assist her in escaping the situation. This is a circumstance of a vulnerable Indigenous woman who is the victim of partner abuse.

[56] I do not read the trial judge's comments to state that the lack of resources in the community on its own is an aggravating factor. Rather, read in context, his comments address the sentencing principles and objectives that I have earlier discussed.

[57] Moreover, I agree with the Crown that the trial judge recognized that the deceased's vulnerability (of which a lack of resources was only one aspect) could not overtake the sentencing process. In this regard, the trial judge quoted from *AD* at para 27, which emphasizes that consideration of the circumstances of the victim "does not negate or otherwise trump the necessity of courts . . . paying particular attention to the circumstances of Aboriginal offenders" (at para 39).

[58] In this case, the trial judge gave detailed attention to all of the accused's *Gladue* factors, including that he tried to access resources to deal with his substance abuse problem, but help "was not easily available" (at para 50). The trial judge found that the accused was "not determined or resilient enough to get the help he needed" (*ibid*).

[59] While the deceased and the accused came from the same community, the way in which the lack of resources affected each of them is distinct. That is, one does not cancel or neutralize the other.

[60] Finally, in considering sentencing ranges, the trial judge noted that society does not have firm answers to reduce domestic violence and spousal homicide. He stated that, in Indigenous communities like the one in this case, it "remains a menace of bleak yet glaring proportions" (at para 56). After stating that the Federal and Provincial Governments, along with First Nation Governments, were best suited to deal with the problem, he said that courts are "at the end of the line" (*ibid*). He observed that the limited role of a judge is to "mete out justice in the circumstances of the particular case" (*ibid*).

[61] The accused argues that the above comments essentially shift the responsibility of governments to provide resources to First Nations communities for issues such as those that arise in this case to Indigenous offenders. He asserts that the comments send the message that the authorities need not concern themselves with programs or resources for abused women as increased sentences imposed on offenders by the courts would remove them from the community and thereby reduce the problem. In my view, this argument mischaracterizes the reasons of the trial judge and requires no further comment.

Ground 2—Did the Trial Judge Err in Imposing a Sentence That Was Inconsistent With the Principle of Parity?

[62] At the sentencing hearing, both the Crown and defence filed a significant amount of case law supporting their respective positions. In his reasons, the trial judge reviewed a number of those cases, including: *Kane c R*, 2005 QCCA 753 (18 years for a husband who beat and stabbed his ex-wife to death); *R v Montgrand*, 2007 SKCA 102 (life sentence imposed on a husband who stabbed his wife to death and who had a serious record for

violence and a previous conviction for manslaughter); *R v Ammaklak*, 2008 NUCJ 27 (13 years for a man who pled guilty to beating his common law wife to death with a weapon and who had a record of prior violence against her); *Jamieson* (12 years for a husband who stabbed his common law wife once and left her to die—the Court noted a range of nine to 15 years for domestic manslaughter); *R v Peter*, 2014 NUCJ 28 (15 years for a husband who beat his Aboriginal wife to death and who had a prior record of violence against her); *R v Quigley*, 2016 BCSC 2184 (12 years for an Indigenous man with no record who stabbed his ex-fiancée to death); *R v MacKenzie*, 2019 NSSC 67 (15 years based on joint recommendation for a man who stabbed his intimate partner to death); and *R v Profeit*, 2020 ABQB 138 (12 years for Aboriginal man who killed his Aboriginal girlfriend by use of blunt force).

[63] After summarizing the above cases, the trial judge agreed with defence counsel that the high end of the range usually does not exceed 15 years' imprisonment.

[64] The accused argues that, having agreed on the high end of the range, the trial judge erred in imposing the sentence of 18 years' imprisonment on the basis that such a sentence offends the principle of parity. He submits that this error caused the sentence to be unfit. He states that his case was similar to *Ammaklak* and *Peter*, wherein sentences of 13 and 15 years' imprisonment were imposed respectively.

[65] The Crown argues that 18 years' imprisonment is within the range. In support of its position, it relies on a number of cases including, in the domestic context: *R v BKJL*, 2018 BCSC 379 (18 years based on joint recommendation for a husband who pled guilty to setting their house on fire

resulting in the death of his wife); and *R c Tukalak*, 2014 QCCQ 17136 (17 years on joint recommendation for an Indigenous husband who lived with his Indigenous wife in a remote northern community and who stabbed her in the heart while she slept).

[66] In *Parranto,* the majority of the Supreme Court explained that the goal in sentencing is a "fair, fit and principled sanction" and that "[p]roportionality is the organizing principle in reaching this goal (at para 10). The principles of parity and individualization are secondary to proportionality.

[67] It also explained that, because sentencing is an individualized process, and parity is secondary to proportionality, "departures from the starting point or sentences above or below the range are to be expected" (at para 38). However, recognizing that starting points and ranges reflect the gravity of the offence, where there is a significant departure from the range or starting point "the sentencing judge's reasons and the record must allow the reviewing court to understand why the sentence is proportionate" (at para 40). Exceptional circumstances are not required for a departure from the range or starting point (*ibid*).

[68] I have reviewed the reasons of the trial judge throughout this decision. To summarize, he considered the serious facts in this case, the history of abuse that the accused had perpetrated on the deceased, the background of the accused and his community, the principles of sentencing, the purpose underlying sections 718.04 and 718.201 of the *Code*, the range of sentences for manslaughter involving intimate partner abuse, the scope of violence that Indigenous women suffer, the interplay between the deceased's

status as an Indigenous woman and the *Gladue* factors of the accused and the notion that sentencing courts should ensure that sentences reflect our understanding of the harm suffered by Indigenous women. At the end of the day, after weighing the aggravating and mitigating factors, the *Gladue* factors, and considering the principles and objectives of sentencing, he imposed the 18-year sentence. In doing so, he held that a 15-year sentence would not "adequately account for [the accused's] dangerousness and, more critically, would not place enough emphasis on the vulnerability of Indigenous women as a factor in sentencing such an offender" (at para 57).

[69] In my view, the trial judge's reasons were sound and clearly demonstrate why he concluded the sentence was proportionate and is not inconsistent with the principle of parity. His decision is entitled to deference, and I am not convinced that the sentence is demonstrably unfit.

Decision

[70] For these reasons, I would grant leave to appeal, but dismiss the appeal.

Cameron JA

I agree: Pfuetzner JA

I agree: Simonsen JA