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(Winnipeg Centre)
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING	)	Amy Wood &
	)	Vanessa Gama
	)	for the Crown
- and -	)	
	)	
THEODOROS KYRIAKAKOS	)	Evan Roitenberg
accused.	)	for the accused
	)	
	)	
	)	Judgment Delivered
	)	October 11, 2023

MARTIN J.

I. INTRODUCTION

[1] This case is another in the litany of cases involving drugs, handguns and killings between people, mostly young men, involved in the dark underbelly of Winnipeg's drug trade. Not unusually, it features random danger to innocent bystanders – this time, in broad daylight, on a Monday afternoon, in a residential neighborhood. This is the stuff that numbs Winnipeggers, making them feel scared and unsafe.

[2] In answer to a charge of first-degree murder, Mr. Kyriakakos pled guilty to manslaughter, which, given his role in the killing, was accepted by the Crown in full

satisfaction of the original charge. This decision addresses the fit and appropriate sentence for Mr. Kyriakakos for this crime.

[3] Accounting for mitigating circumstances, the Crown says he should be jailed for 15-years, less time-in-custody credit (now 39-months), for a go-forward sentence of 11-years 9-months. On the other hand, stressing the legal and factual basis of Mr. Kyriakakos' culpability, sentence precedents and redemption, the defence seeks a sentence of 8-years, or 4-years 9-months go-forward.

[4] As a bit of a roadmap, I will set out the facts, concisely outline Mr. Kyriakakos' background, the sentencing principles, followed by my analysis and conclusion.

II. FACTS

[5] Counsel jointly submitted an Agreed Statement of Facts.

[6] Succinctly, the victim in this matter, Kyle Braithwaite, aged 29, was a B-Side gang member. On June 14, 2021, at about 3:40 in the afternoon, he and his companions confronted Mr. Kyriakakos and his co-accused, Mr. Abdi, about drug dealing on so-called B-Side territory. Nothing of consequence occurred and the parties went their separate ways.

[7] Mr. Kyriakakos and Mr. Abdi returned to a Jeep rental vehicle; Mr. Kyriakakos was the driver and Mr. Abdi was the front passenger.

[8] Minutes later, at approximately 3:45 p.m., the Jeep stopped in front of an apartment building near the intersection of Balmoral Street and Young Street. Mr. Kyriakakos leaned across Mr. Abdi and called out the passenger window to

Mr. Braithwaite. He said, "Toby, let me holler at you. I got something for you." With that, Mr. Braithwaite began walking towards the Jeep.

[9] As Mr. Braithwaite approached, Mr. Abdi pulled out a 9 mm handgun and rapidly fired six shots at Mr. Braithwaite, who attempted to flee. He collapsed and died in front of the Young Street Food Mart.

[10] Mr. Kyriakakos and Mr. Abdi fled northbound on Young Street in the Jeep.

[11] Mr. Braithwaite died from two gunshot wounds, one through his front right chest and the second through his left mid-back, piercing his lung and aorta (the largest artery in the body, which carries blood from the heart).

[12] Another of the six shots went through a basement window into a residential apartment, while a fourth bullet went through the main entrance to that apartment block. A fifth bullet went through the front window of the Young Food Mart, through a potato chip display before lodging, about waist height, in the side of an ice cream freezer. As I understand it, the one remaining shot or bullet was not found.

[13] Mr. Kyriakakos was arrested on August 17, 2021.

[14] It is a stipulated fact that neither Mr. Kyriakakos nor Mr. Abdi were in a gang, nor acting on behalf of a gang, at the time of this offense.

[15] The legal basis for Mr. Kyriakakos' manslaughter plea is premised on a common intention between Mr. Kyriakakos and Mr. Abdi to call over Mr. Braithwaite and threaten him with the handgun. In doing so, Mr. Kyriakakos possessed objective foreseeability of the danger of bodily harm to Mr. Braithwaite as an essential element of manslaughter. He denies knowing that Mr. Abdi would shoot and kill Mr. Braithwaite; as such, he did not

have the subjective foreseeability of death required as an essential element for a charge of murder.

[16] Mr. Abdi has pled guilty to second degree murder but has not yet been sentenced.

III. MR. KYRIAKAKOS' BACKGROUND

[17] Mr. Kyriakakos' background was set out by counsel and in an Impact of Race and Culture Assessment Report (IRCA Report), along with letters of reference. A pre-sentence report was not completed.

[18] Mr. Kyriakakos was 21-years old at the time of the shooting. He is now 23.

[19] He was born in Eritrea and placed in an orphanage at age 10-months. At about age three, he was adopted by an Eritrean couple, who later also adopted his younger brother and sister. That couple previously adopted three other children of relatives when their mother was killed in the war. The family moved to Canada when he was about age four. Mr. Kyriakakos has never met his biological parents and does not know why he and his siblings were in an orphanage.

[20] He mainly grew up in the family home, in a middle class area of Winnipeg. In 2008, he moved to Toronto with his mother. He thought it was a good, low-income area, but gang activity was prevalent, as were police. In 2010, he returned to his father's home in Winnipeg. Unfortunately, his parents separated. After this culminated in 2012, Mr. Kyriakakos' behavior worsened and he had a falling out with his father. His father blended his family with a new woman and her family. Despite these hardships, overall, Mr. Kyriakakos reports to have had a good home life but ultimately emotionally distanced himself from his father, whom he came to believe was a horrible husband.

There was no violence in the home except for some physical discipline from his father. Mr. Kyriakakos always had a good relationship with his siblings, including now.

[21] By about 2014, he moved in with friends. He returned to Toronto after turning 18 years old and then, within about a year, he returned to Winnipeg to live with friends.

[22] Mr. Kyriakakos was schooled in Winnipeg and Toronto. Behavioral issues were present to some extent or another, but generally he did well and enjoyed school. He feels he suffered racism from teachers, but overall described his experience as good and felt generally well treated. He did not complete grade 12. He hopes to rectify that through adult education and plans to take courses in business and finance.

[23] He has deep-rooted friendships and remains in a relationship with his girlfriend. Many friendships were developed through playing soccer with other Eritreans. He has been described as a good role model. Religion has been, and remains, a factor in his life. He has expressed past difficulty with drug use. Further, he believes he may suffer from attention-deficit hyperactivity disorder (ADHD) and post-traumatic stress disorder (PTSD), as he says he has been shot at, held at knifepoint, assaulted and robbed twice. None of the context of these events were set out. Finally, he says "as a black man" he experienced challenges securing employment, thus turning to crime to financially sustain himself.

[24] Mr. Kyriakakos has a minor criminal record from 2019 and 2020. He has no convictions for violent or gun related conduct.

[25] Collateral references were surprised to learn of this offence - - they found it was out of character. Universally they see him in a wholly different light. He is described as

"the rock of the family", intelligent and kind, with great potential. They say this crime does not reflect the person he is; that his life derailed with the wrong people and this is the consequence.

[26] The IRAC Report authors stated at page 22:

> … He was exposed to structural racism in the educational system as he attempted to adjust to a new culture and learn a new language. His enthusiasm for school dwindled shortly after learning that he was not his parents' biological child. With fractured and distanced family relationships and disengagement from education, Mr. Kyriakakos began to engage with friends that introduced him to "street life". He experienced traumatic life events and victimization where he was attacked, held at knife point, robbed, and shot at. … Although Mr. Kyriakakos grew up in Canada, he seemed to have struggled with maintaining his cultural identity and/or the curation of a new identity shaped by his new community …
>
> Mr. Kyriakakos reported that he was a victim of police harassment and violence. … He observed that he is treated differently when he is with white friends and believes he is targeted and harassed because of his race. …

[27] All in, Mr. Kyriakakos committed this serious crime while supporting himself selling drugs, although he was not aligned with a criminal organization. He has a minor record. Considering his general character and community and family supports, chances for rehabilitation are good.

[28] Before proceeding further, I would be remiss if I did not express a few concerns about the IRCA Report. While these reports are not common in Manitoba, there is little doubt they may be a valuable sentencing tool, akin to a pre-sentence report or *Gladue* report. However, report writers must remain objective if their reports are to be relied upon. Although I have no doubt Mr. Kyriakakos has experienced racism, the report seems to stretch broader notions of anti-black discrimination to fit his specific circumstances. For example, Mr. Kyriakakos said his school experience was "good overall … but looking

back now, he recognizes that some of his teachers had racist tendencies" (pg. 14). (underling added for emphasis)

[29] Moreover, as I mentioned at the hearing, I was bothered by the stark commentary under the subheading "Snapshot of Systemic Anti-Black Racism in the Criminal Justice System" that "black people are more likely to be … murdered by Toronto police" than whites or other racialized groups (pg. 10). In checking the supporting reference as best I could, the comment seems to arise from a 2020 Toronto.com newspaper story by two of its reporters (Gillis & Rankin of the Toronto Star). They did not use the word "murdered". Rather they were reporting on an Ontario Human Rights Commission (OHRC) report on the use of force by the Toronto Police Service. The newspaper article reported, as the OHRC did, about police shootings, some resulting in killings. Nothing was said about police murdering blacks. As the IRCA authors must know, "shot and killed", especially in context of police shootings, is not equivalent to murder, yet they used that term for this report.

[30] Overall, I have the sense that this report, the first of this nature I have seen, inappropriately tilts to advocacy.

IV. SENTENCING CONSIDERATIONS

[31] A sentence imposed by a judge on an accused for a serious crime should be tailor-made in the sense that, mindful of principles of sentencing, it responds appropriately to the circumstances of the offence and the particulars of the offender. The ***Criminal Code*** articulates the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a safe, peaceful society through just sanctions that denounce

unlawful conduct; deter persons from committing offences; separate offenders from society where necessary; assist in rehabilitation; provide reparation; and, promote a sense of responsibility in offenders.

[32] Further, the ***Criminal Code*** mandates that a judge consider a number of principles, including sections:

- 718.1: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender;
- 718.2(a): a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender;
- 718.2(b): the parity principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- 718.2(e): the restraint principle.

To this statutory list are a number of common law principles that have developed over many decades of jurisprudence.

[33] As to manslaughter sentences generally, I start with the Manitoba Court of Appeal's comments in ***R. v. Csincsa (M.A.P.)***, [1993] M.J. No. 237:

> [4] ... D. A. Thomas, in his text ***Principles of Sentencing***, 2d ed. (London: Heinemann, 1979), commented at p. 74:
>
> > "Manslaughter" is a generic term for a group of offences with different definitions, linked only by the common requirement of a death."
>
> [5] In ***R. v. Cascoe***, [1970] 2 All E.R. 833 (C.A.) Salmon L.J. wrote:
>
> > "As for sentence, manslaughter is, of course, a crime which varies very, very greatly in its seriousness. It may sometimes come very close to

> inadvertence. That is one end of the scale. At the other end of the scale, it may sometimes come very close to murder." (p 837)

Freedman C.J.M., in ***R. v. Sinclair*** (1980), 3 Man. R. (2d) 257 (C.A.) made a similar observation:

> "The offence of manslaughter presents the widest possible range for sentencing among all the offences in the ***Criminal Code***. A sentence of life imprisonment may in one set of circumstances not be too much, and a suspension of sentence may in a different set of circumstances not be too little." (p. 257)

In short, the breadth of the factual circumstances in which the offence of manslaughter may be committed is equaled only by the wide discretion given to the judge on sentencing.

[34] As to the ***Criminal Code***, as a firearm was used here, the statutory parameters are a minimum penalty of four years' imprisonment to a maximum penalty of life in prison. Life sentences are rare and usually reserved for the extreme cases, mostly where the future dangerousness of the offender is of substantial concern, often shown by the nature of the killing, the cumulative gravity of circumstances and the offender's background and record. That is not the case here.

[35] The Crown relies on ***R. v. Laberge***, 1995 ABCA 196, for an analytical framework to assist in determining blameworthiness in one manslaughter compared to another (paras. 6 – 17). ***Laberge*** has been cited positively by many courts since, including the Manitoba Court of Appeal. In sum, "[u]nlawful acts may be divided into three broad groups: those which are likely to put the victim at risk of, or cause" (i) bodily injury, (ii) serious bodily injury, or (iii) life-threatening injuries (para 9). Further, at para. 14:

> Despite the fact that the Crown need not prove that an offender knew or intended that his conduct would put his victim at risk of injury in order to ground a conviction for manslaughter, whether this additional level of subjective intent has been established is important in assessing the offender's blameworthiness for sentencing purposes. That is because our criminal justice system is based on the premise that, <u>all other things being equal, the more an offender's "intention" or "awareness" approaches the point that he knew or was willfully blind to the fact that his unlawful act was not only likely to put the victim at a risk of death, but</u>

> indeed to cause death, the more culpable he is. Similarly, even absent proof of subjective mens rea, the more that the offender's conduct, on an objective basis, approaches the point where it can be said that he ought to have known, had he proceeded reasonably, that his unlawful act would be likely to cause life-threatening injuries as opposed to simply putting the victim at risk of bodily injury, the more culpable he is. In other words, the offender's moral blameworthiness and in turn the gravity of the offence are functions of the degree of fault.
>
> (underlining added)

[36] More recently, in ***R. v. McLeod***, 2016 MBCA 7, the Manitoba Court of Appeal noted:

> [16] The sentence for the offence of manslaughter is the widest of any offence in the *Code*. In *R v Clemons (C)*, 2003 MBCA 51, 173 ManR (2d) 161, Monnin JA wrote (at para 7):
>
> > The sentencing options available to a sentencing court for this offence are like no other. They range from a suspended sentence to life imprisonment. A review of past sentencing decisions, whether in this jurisdiction or others, demonstrate that the breadth of those options have been exercised and it is extremely difficult to attempt to compare facts, circumstances and background of offenders in order to establish a restrictive or narrow range of fit and proper sentences. In colloquial language, the sentences are all over the map.
>
> [17] In *R v Laberge* … Fraser CJA wrote (at para 6):
>
> > All unlawful act manslaughter cases have two common requirements - conduct which has caused the death of another; and fault short of intention to kill. However, despite these common elements, the offence of unlawful act manslaughter covers a wide range of cases extending from those which may be classified as near accident at the one extreme and near murder at the other: **R. v. Cascoe** ..; **R. v. Eneas**, … . Different degrees of moral culpability attach to each along a continuum within that spectrum. It is precisely because a sentence for manslaughter can range from a suspended sentence up to life imprisonment that the court must determine for sentencing purposes what rung on the moral culpability ladder the offender reached when he committed the prohibited act. The purpose of this exercise is to ensure that the sentence imposed fits the degree of moral fault of the offender for the harm done.
> >
> > (citations omitted)

[37] Counsel provided me numerous cases referring to one principle or another, or one sentence or another, for manslaughter and other crimes. Risk of deportation, diagnosed mental health disorders and trauma through racism are all matters properly to be considered in mitigation within certain contours established by jurisprudence.

They are factors to be considered in the blending and weighing of circumstances leading to a fit and just sentence for a specific offender for his specific crime.

[38] Notably, respecting racism, a factor emphasized here by defence counsel and the IRCA Report, the Ontario Court of Appeal explained in ***R .v. Morris***, 2021 ONCA 680:

- the gravity or seriousness of an offence is determined by normative wrongfulness, not an offender's experience with anti-Black racism (para. 13);
- social context evidence can provide a basis which, "… while recognizing the seriousness of the offence, gives less weight to the specific deterrence of the offender and greater weight to the rehabilitation of the offender through a sentence that addresses the societal disadvantages caused to the offender by factors such as systemic racism." (para. 79);
- it is wrong to require "… a direct causal link between the offence and the negative effects of anti-Black racism on the offender before anti-Black racism can be seen as mitigating personal responsibility." (para. 96); and
- "[t]he *Gladue* methodology does not apply to Black offenders. However, that jurisprudence can, in some respects, inform the approach to be taken when assessing the impact of anti-Black racism on sentencing." (para. 13; as particularized at para. 123).

[39] As to a specific sentence that might fall within the scope of the parity principle, the Crown referred to the 2003 case of ***R. v. Dhak***, 2003 BCSC 595, where in somewhat analogous circumstances, Mr. Dhak was sentenced to 7½-years in jail, which the judge described as near the upper end of the usual range. The Crown asserts Mr. Kyriakakos'

blameworthiness is more serious, and further, that over the last 20 years, sentences for this type of firearm related manslaughter have increased such that their position of 15-years is justified.

[40] Defence counsel disagrees, citing in particular, ***R. v. Ndlovu***, 2018 MBCA 113. The Court of Appeal described the fact circumstances at para. 2:

> Using his influence as a high-ranking member of a local street gang, the accused caused a 16-year-old, lower-ranking member of that gang (the youth) to procure a gun. He directed the youth to give the gun to an associate of the gang for the purpose of settling a "beef" (at para 1). The associate used the gun to assault another man and, during the course of the assault, the firearm went off killing the victim, who is a bystander. The associate fired off a further five more shots at his intended victim while fleeing the scene. The shooting occurred on the street in front of a busy local night club at closing time. After the shooting, the accused took steps to destroy the gun.

The court dismissed the accused's 9-year sentence appeal, concluding it was not unfit while making an obiter comment that it was "at the higher end of the applicable range". The court did not specify a range, nor provide a more specific sentence analysis.

[41] Counsel says the circumstances in ***Ndlovu*** are worse than here and the top of the appropriate range for this kind of manslaughter is 9 – 10 years. As such, Mr. Kyriakakos should receive an 8-year sentence. Of note, counsel in ***Ndlovu***, the same counsel as here, sought a 6-year sentence for Mr. Ndlovu, while the Crown sought a 10-year sentence (***R. v. Ndlovu***, 2017 MBQB 157). The youth co-accused who actually gave the gun to the shooter, at Mr. Ndlovu's instruction, was sentenced as an adult for his role to a 6-year sentence from another judge. Mr. Ndlovu's sentencing judge applied *Gladue* factors, along with a host of other considerations, in setting the sentence at 9-years. Denunciation and general deterrence were considered but not stressed.

[42] Counsel also referred to ***R. v. Wight and Hoo-Hing***, 2022 ONSC 5137, at para. 43, for the proposition that Mr. Kyriakakos' crime and moral culpability falls between the identified lower range of 6 to 8-years for less serious manslaughters and a mid-range of 8 to 12-years for cases where there are significant aggravating factors, such as the use of a firearm.

[43] Otherwise, it is clear that the prevalence of a crime in the community, or perhaps its absence, is a factor that may be considered, and a court is not constrained by precedent or a range, provided the sentence is fit and just. The Supreme Court of Canada in ***R. v. Lacasse***, 2015 SCC 64, made these and other important comments respecting sentencing by trial judges and review by appellate courts. Specifically:

> [58] … The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside of a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offense, the offender's degree of responsibility and the specific circumstances of each case. LeBel J. commented as follows on this subject:
>
> > 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 the circumstances of the offence and the offender, and to the needs of the community in which the offense occurred.
> >
> > (*Nasogaluak*, at para 44)

and,

> [89] Even though the ***Criminal Code*** applies everywhere in the country, local characteristics in a given region may explain certain differences in the sentences imposed on offenders by the courts. The frequency of a type of offence in a particular region can certainly be a relevant factor for a sentencing judge.
>
> [90] Although the fact that a type of crime occurs frequently in a particular region is not in itself an aggravating factor, there may be circumstances in which a judge might nonetheless consider such a fact in balancing the various sentencing objectives, including the need to denounce the unlawful conduct in question in that

> place and at the same time to deter anyone else from doing the same thing. It goes without saying, however, that the consideration of this factor must not lead to a sentence that is demonstrably unfit.

[44] With all this in mind, I turn to my analysis of a fit, just and appropriate sentence for Mr. Kyriakakos.

V. ANALYSIS

[45] The aggravating factors are significant while the mitigating circumstances are nonetheless compelling.

[46] The aggravating factors include:

- the underlying dispute leading to the killing was drug trafficking, in and of itself a nefarious and dangerous activity that plagues many communities, including Winnipeg. Moreover, Mr. Kyriakakos did so for financial gain, rather than for example to support an addiction;
- Mr. Kyriakakos and Mr. Abdi, not prepared to leave the non-violent confrontation as it was, decided to escalate it by threating Mr. Braithwaite with a handgun. This was a conscious, thought-out plan to confront an adversary, either to scare him or as a form of retaliation. To do so, they had to seek out Mr. Braithwaite;
- Mr. Kyriakakos facilitated the threat by driving to where Mr. Braithwaite was, and initiated the event by calling him over to the vehicle. He was an active participant leading up to the shooting, drawing Mr. Braithwaite close to Mr. Abdi;

- the firearm was a 9 mm handgun from which it should have been plain that it was loaded. It is not logical that these men would have made such threat without knowing that the gun could be used if, for example, Mr. Braithwaite escalated the situation and pulled out a weapon when called over to the Jeep. And, possession of the handgun, a restricted weapon, is itself a serious crime, especially as a drug dealer's tool of the trade;
- even though Mr. Kyriakakos did not know Mr. Braithwaite would be shot, in the context of this situation, the danger and risk to life was highly objectively foreseeable. The plan was inherently remarkably dangerous, anything could have happened; and
- all of this took place in a very public area, on the street in a residential neighborhood, where innocent bystanders would be present. Recall that it was a Monday afternoon near apartments, stores and a school. It was sheer luck that none of the gun shots struck someone else, rather instead they struck an apartment foyer, a wall inside an apartment and ice cream freezer in a store.

[47] As to mitigating factors, Mr. Kyriakakos is a young man with no related criminal record who has entered a guilty plea and indicated sincere remorse. Rehabilitation is a real if not likely prospect. He has experienced racism, which he says informed his choice to support himself by selling drugs. While he thinks he may have ADHD and PTSD, these disorders have not been diagnosed nor linked in any way to committing crime.

[48] Of course, the impact on the victim is as bad as it gets; he is dead. Moreover, the impact on his family is very significant, as told by their victim impact statements. He leaves behind a young daughter and many loving relatives. In a twist of cruel fate, the father of his mother-in-law was also shot and killed on the same day, 35-years earlier. That Mr. Braithwaite was a street gang member, or a drug dealer, makes his death no less easy for his family nor is otherwise remotely acceptable or defensible in a civil society.

[49] In order to assess Mr. Kyriakakos' moral blameworthiness, a host of factors need to be taken into account. Critically, without repeating or belaboring it, are the aggravating factors and the nature of the common intention to threaten another drug dealer with physical harm by a firearm. Consistent with the analytical framework in ***Laberge***, and as a matter of common sense, Mr. Kryriakakos' degree of blameworthiness is very high. In making this assessment, I have also considered his relatively young age, his character as described by his references, his lack of any relevant record, and his good behavior while in remand custody, including the programs he has taken.

[50] The racism he has experienced must also be factored in assessing his degree of moral blameworthiness. However, it is not clear that the racism he specifically experienced was a driving factor in his drug dealing or this specific crime. He may have had difficulty maintaining or securing employment, but despite this or however the effects of racism otherwise affected him, it is not a satisfactory answer for his actions leading up to and contributing to Mr. Braithwaite's death, or the grave risk to innocent bystanders. Only few black men turn to crime. More generally, it must be clear that there is no moral equivalency in Canada to the unconscionable treatment and discrimination Indigenous,

Inuit and Metis people suffered, and the legacy of that; Mr. Kryriakakos' personal circumstances are not comparable to Mr. Ndlovu's.

[51] As to statutory sentencing considerations, denunciation and general deterrence must be paramount and go hand in hand. As noted at the outset of this decision, anecdotally, violent gun crime in Winnipeg is profoundly alarming. Recently, in a little over a month, there were five homicides by shooting in Winnipeg; let alone statistically all homicides in Winnipeg dramatically increased to 52 in 2022 from 22 in 2018[1]. Courts and legislatures across Canada, including Parliament, consistently bemoan the seriousness of gun and handgun crime, especially where it facilitates other types of crime, like the drug trade. Here, like many such instances, the perpetrators were deliberate, using a threat of gun violence to further their criminal aims or challenge some slight. While the merit of general deterrence theory is not self-evident, or perhaps even statistically proven, it is nonetheless a principle codified into law. If ever there were the potential for general deterrence to hit home with criminals, particularly young men in the drug trade, this is such a case. As well, equally, denunciation for these types of crimes must be clear and robust.

[52] Having concluded this, I have no real concerns respecting specific deterrence. As I explained earlier, I expect that Mr. Kryiakakos is a good candidate for rehabilitation and he has accepted responsibility for his role in this crime.

[53] As to sentencing precedents, they provide guidance but not necessarily an answer. A judge's important, but limited, role is to mete out justice in the circumstances of the

[1] Statistics Canada: Table 35-10-0071-01 Number and rate of homicide victims, by Census Metropolitan Areas

particular case. I acknowledge the ***Ndlovu*** case. The nuances making that case more or less aggravating than Mr. Kyriakakos' situation are debatable. I also recognize Mr. Kyriakakos' analogy to the ***Wight and Hoo-Hing*** case. Further, the Crown has not provided any specific authority for their position. Having said that, I note the Ontario Court of Appeal in ***R. v. Warner***, 2019 ONCA 1014, imposed a 15-year sentence for a manslaughter shooting, which was more egregious than here. The Court expressed at para. 14, "[T]he jurisprudence suggests that 12 or 13 years is generally appropriate for aiders or abettors to manslaughter, where those offenders have a high degree of moral culpability." I echo those comments when guns are involved.

[54] Ultimately, I do not find that either the Crown or defence positions are just and appropriate. Notably, a sentence of 8-years, as suggested by defence counsel, is insufficient to recognize the critical factors of this case, along with sentencing principles, despite all of the good or mitigating circumstances that apply to Mr. Kyriakakos. Simply put, it is not a just sanction, but neither is 15-years which would be unduly harsh.

VI. CONCLUSION

[55] After considering all the circumstances, the gravity of this crime and this offender, and balancing all the sentencing principles and factors I must, including being as lenient as the circumstances allow for this youthful, essentially first offender, I find a just sentence is 12-years' incarceration. Mr. Kyriakakos is entitled to the normal credit for the 26-months he has spent in custody since his arrest, at the standard 1:1.5 ratio, or 39-months. Deducting this from his sentence, he will have a go-forward sentence of 8-years 9-months incarceration.

[56] There will be the usual ancillary orders of a lifetime ban from owning or possessing any weapon and he must provide a sample of his DNA to be stored on the DNA databank.

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Martin J.