

## **COURT OF KING'S BENCH OF MANITOBA**

### **B E T W E E N:**

HIS MAJESTY THE KING,	)	<u>Mitchell E. Lavitt</u>
	)	<u>Krista D. Berkis</u>
- and -	)	for the Crown
	)	
ELIJAH MONEYAS,	)	<u>Laura C. Robinson</u>
accused.	)	for the accused
	)	
	)	
	)	Judgment Delivered:
	)	May 27, 2025

## **Reasons For Sentence**

### **INNESS J.**

#### **INTRODUCTION**

[1] On August 17, 2022, Brian Anderson was killed by Elijah Moneyas in front of a hotel in downtown Winnipeg on Higgins Avenue (the "hotel"). Mr. Moneyas stabbed Mr. Anderson three times on the neck, head and back of his body. The stab wound to the neck was fatal.

[2] Following a trial on a charge of second degree murder, I convicted Mr. Moneyas of manslaughter. This is my sentencing decision.

### **CIRCUMSTANCES OF THE OFFENCE**

[3] The circumstances of the offence and my findings are set out in my reasons for conviction (***R. v. Moneyas***, 2024 MBKB 143). While I rejected the stand-alone defences of self-defence, intoxication and provocation, I was left with a reasonable doubt whether Mr. Moneyas had the intent for murder.

[4] The events were substantially captured on video surveillance. After a dispute with some individuals in front of the hotel, Mr. Moneyas and others (collectively referred to as the “group”) walked across Higgins Avenue to the other side of the road. Mr. Anderson inserted himself into the dispute by walking out onto the road and shouting towards the group, inviting a fight “one on one”. Almost immediately thereafter, Mr. Moneyas ran towards Mr. Anderson and stabbed him in the upper area of his body, near his neck. The assault upon Mr. Anderson continued. Some of the other individuals in the group also became involved, including throwing objects at Mr. Anderson as he retreated. As Mr. Anderson backed away, Mr. Moneyas advanced towards him in an aggressive manner while holding a knife in his hand. It was apparent from the video surveillance that Mr. Anderson was bleeding and in need of medical attention. Mr. Anderson went inside the vendor area of the hotel, attempting to gain the attention of nearby individuals for help. He returned outside where he slumped down at the entrance. His death would have occurred within minutes.

### **CIRCUMSTANCES OF ELIJAH MONEYAS**

[5] A pre-sentence report with a *Gladue* component (the “PSR”) was prepared and filed at the sentencing hearing, along with a copy of Mr. Moneyas’ criminal record (Exhibit S1). Mr. Moneyas’ personal circumstances and background as an Indigenous person were thoroughly detailed in the PSR.

[6] Mr. Moneyas is a youthful, 23-year-old person. He was barely 20 years of age at the time of the offence. This is his first adult sentence. His youth court record consists of entries from a conviction date of July 5, 2018, where he received a combination of an 18-month custody and supervision order (in addition to 15 months’ pre-sentence custody), and 30 days’ supervised probation, for offences of robbery; possession of a weapon for a purpose dangerous purpose; fail to comply with an undertaking; and aggravated assault.

[7] Mr. Moneyas’ performance on his prior sentences was mixed. While in custody, he participated in programming and interventions. Also, he was motivated to attend therapy and engage with a counsellor. While in the community, however, he incurred multiple suspensions of his sentence and struggled to comply with programming and curfew conditions.

[8] Mr. Moneyas was arrested for this offence on August 24, 2022. Since August 25, 2022, he has been housed at Milner Ridge Correctional Center (the “MRCC”). Custodial records indicate multiple incidents of disobeying officers’ directions, contravening rules and possessing contraband. Notwithstanding these institutional incidents, a correctional officer familiar with Mr. Moneyas described him as “nothing but

respectful of staff and inmates” (Exhibit S1, tab 1, at p. 3). The PSR writer noted him to be “polite and respectful during the interviews” (Exhibit S1, tab 1, at p. 15).

[9] Mr. Moneyas was raised by his parents while living between Winnipeg and Hollow Water First Nation (Wanipigow Anishinaabe community). Mr. Moneyas maintains treaty status with Wanipigow, through his father’s lineage. His maternal family is from Neh gaaw saga’igan (Sandy Lake First Nation) in Northwestern Ontario. Mr. Moneyas’ family members were disconnected from their communities and culture due to colonization and experiences within the residential school system. As a result, Mr. Moneyas has no connection to his history or culture. He describes Winnipeg as his home community. While incarcerated as a youth, he was afforded opportunities to participate in Indigenous-based ceremonies. He has expressed a desire to continue to learn more about his Indigenous ancestry.

[10] Mr. Moneyas is the youngest of four siblings. His recollection of his childhood is poor. His upbringing consisted of exposure to his parents’ substance abuse struggles and domestic violence. At seven years of age, on Christmas day, his mother left the family home and never returned. Mr. Moneyas understandably felt abandoned. After being apprehended by Child and Family Services, he and his siblings were placed into separate foster homes. Mr. Moneyas was abused at the hands of his caregivers and others in his young life, the nature of which will not be described to protect Mr. Moneyas’ dignity and privacy.

[11] When Mr. Moneyas was eight, he and his siblings were placed back into their father’s care. Shortly thereafter, and for the next three years, the children lived with

their paternal grandparents while their father sought treatment. At age 11, Mr. Moneyas went to live with his father and his father's new wife, who had two children from a prior relationship. Although he did well initially, Mr. Moneyas soon began smoking marijuana regularly.

[12] By age 15, Mr. Moneyas was drinking alcohol and acting out in serious ways. He became aggressive while intoxicated. His first offence was an aggravated assault charge, committed when he was 15 years old. The facts bear some similarity to the offence before the court. While at a drinking party, Mr. Moneyas got into an argument with the victim. He stabbed the victim multiple times in the shoulder and back. This caused the victim to suffer significant injuries, including a punctured lung. Within weeks of being released on bail for the aggravated assault charge, Mr. Moneyas became reinvolved in a robbery of a convenience store while disguised and brandishing a plastic gun that resembled a firearm. He also breached his bail conditions.

[13] Mr. Moneyas has partially completed Grade 9. He had significant struggles in school. He was unable to feel comfortable in social settings and engage with others. He frequently moved between different schools. He experienced academic and behavioural difficulties, including being expelled from two schools due to violence and outbursts. In 2018, while in custody, an intellectual and adaptive functioning assessment administered by Dr. Spevack, a psychologist, on Mr. Moneyas indicated scores in the low average to borderline range. According to Dr. Spevack, Mr. Moneyas displayed strength in perceptual reasoning skills, suggesting he will have more success in learning from hands-on and visual tasks, rather than reading. In 2007, a previous assessment

conducted by a speech and language therapist determined that Mr. Moneyas has a genetic learning disability.

[14] Mr. Moneyas has had limited employment. He previously gained work experience in the kitchen at the Manitoba Youth Centre. He has worked periodically while incarcerated at MRCC, including as a laundry trustee for the past six months. According to the PSR, Mr. Moneyas is doing an exceptional job and displays a good work ethic.

[15] Mr. Moneyas completed several programs while in custody at MRCC, including "Thinking Awareness Group (TAG), Reclaiming Our Identity (ROI), Introduction to Healthy Relationships (IHR), and End to Aggression (ETA)" (Exhibit S1, tab 1, at p. 10). He is also working on completing several self-help workbooks. Mr. Moneyas is involved in some cultural programs and is working with an Elder.

[16] While in the community prior to this offence, Mr. Moneyas spent most of his time using drugs, drinking alcohol, and maintaining a criminal lifestyle. He was associating with gang-involved individuals and committing crimes for them. Mr. Moneyas denies current affiliations and Manitoba Justice information confirms he is not an active member or associate of any known Manitoba gang.

[17] Mr. Moneyas was assessed on the Level of Service/Case Management Inventory as being a "very high risk" to reoffend (Exhibit S1, tab 1, at p. 16). The significant risk factors include substance abuse, companions, leisure/recreation, education/employment, and criminal history. Additional factors are his engagement in a high-risk lifestyle (including associating with gang-involved individuals), aggression, use of weapons, emotional well-being, anger management, and poor problem solving and coping skills.

[18] The PSR writer identified and recommended significant therapeutic interventions for Mr. Moneyas. This included the preparation of a treatment team consisting of medical and mental health professionals to address Mr. Moneyas' past traumas, anger issues and mental health issues arising from his chaotic childhood. While serving his youth sentence, Mr. Moneyas received some therapy regarding his traumatic upbringing. He expressed a desire to continue with therapy in the future as he found it helpful. Suffice it to say, there is clearly a need for the development of an individualized, comprehensive treatment plan to address Mr. Moneyas' personal needs and circumstances, particularly given his history of engaging in self-harm and suicide attempts.

[19] The positive news is that Mr. Moneyas acknowledges his difficulties and does not minimize them. I agree with his counsel that he appears to demonstrate some insight that bodes well for rehabilitative potential. He expresses a desire to change his ways and adopt a healthy lifestyle. He has taken part in rehabilitative programming while in custody and asserts an intention to continue maintaining sobriety, attending treatment and participating in therapy when sentenced. He wants to become a better person.

### **PURPOSES AND PRINCIPLES OF SENTENCING**

[20] The maximum available sentence for manslaughter is life imprisonment. The sentencing range is wide, reflecting the fact that manslaughter offences can be committed in circumstances ranging from near accident to near murder, or somewhere in between (*R. v. Bell (M.A.)*, 1993 CanLII 14860 (MB CA), 85 Man. R. (2d) 139, at paras. 8-9). Determining the accused's level of moral culpability in a manslaughter sentencing is necessary to arrive at a fit and appropriate sentence. In doing so, the court

considers the nature of the unlawful act and the accused's mental state at the time of the offence, including whether the unlawful act was likely to put the victim at risk of or cause (i) bodily injury, (ii) serious bodily injury, or (iii) life-threatening injuries. However, an assessment of moral culpability is not confined to an examination of the unlawful act, including its context and circumstances. The court must also consider the accused's personal circumstances (*R. v. LaBerge*, 1995 ABCA 196, at paras. 8-14, 22-23).

[21] In sentencing Mr. Moneyas, I must also consider and apply the purposes and principles of sentencing set out in the various provisions within s. 718 of the *Criminal Code* (the "*Code*"). I must consider and balance principles of general deterrence, specific deterrence, denunciation, rehabilitation and restraint. While recognizing that sentencing requires an individualized approach, I must attempt to impose a sentence that is similar to sentences imposed on similar offenders in similar circumstances. Furthermore, a sentence should be increased or decreased to account for any aggravating or mitigating circumstances relevant to the offender or the offence. In circumstances where the accused is Indigenous, such as here, s. 718.2(e) of the *Code* directs sentencing judges to pay particular attention to the background and circumstances of the Indigenous person appearing before the court. Overall, the sentence I impose must be proportionate to the gravity of the offence and the degree of responsibility of the offender. It should punish Mr. Moneyas for what he did, but no more than necessary for that purpose.

[22] Aggravating factors in the present case include the following:

- The use of a dangerous weapon on an apparently unarmed victim;



- The infliction of multiple stab wounds to vulnerable areas of the body;
- Fleeing the scene without seeking or rendering assistance;
- Efforts to evade detection (disposing of the knife and clothing and lack of forthrightness with police upon arrest);
- Mr. Anderson was alone while Mr. Moneyas was among a group; and
- Consumption of intoxicating substances.

[23] Mitigating factors in the present case include the following:

- Youthfulness;
- No prior adult criminal record;
- Rehabilitative efforts while in pre-sentence custody;
- Significant ***Gladue*** factors; and
- Remorsefulness demonstrated by the in-dock statement of Mr. Moneyas at the sentencing hearing.

[24] As previously indicated, in circumstances where the accused is Indigenous, such as here, s. 718.2(e) of the ***Code*** requires sentencing judges to pay particular attention to the background and circumstances of Indigenous persons. This was explained in ***R. v. Ipeelee***, 2012 SCC 13 (CanLII), [2012] 1 S.C.R. 433, where the Supreme Court of Canada directed sentencing judges to inquire into whether the unique circumstances of the individual before the court bear on his or her culpability for the offence, or indicate which sentencing objectives can and should be emphasized in determining the ultimate sentence (***Ipeelee***, at para. 82). As articulated by Steel J.A. in ***R v. Daniels***, 2023 MBCA 86, at para. 14:

[14] . . . *Gladue* issues, including systemic and background factors, should be considered in respect of the assessment of moral blameworthiness. As well, the presence of addiction or mental health problems in an Indigenous individual must be viewed through the lens of the residual effects of residential schools and intergenerational trauma.

[25] While an application of s. 718.2(e) of the **Code** does not automatically result in a different or non-custodial sentence, it must be considered in every case where an Indigenous offender is being sentenced, including a determination as to the appropriate length of the sentence. (See **R. v. L.L.D.G.**, 2012 MBCA 106, at para. 45; **R. v. Park**, 2016 MBCA 107, at para. 24; and **Ipeelee**, at para. 93.)

### **CROWN POSITION AND PRECEDENTS**

[26] The Crown seeks a sentence of 10 years' incarceration. It relies upon two decisions in support for its sentencing position.

[27] In **R. v. Parisian**, 2018 MBCA 16, the accused had been drinking with the victims. One of the victims ("A.C.") uttered insults towards the accused. The other victim ("S.C.") invited the accused to fight. After using a stick to assault S.C., causing significant injuries, the accused went inside a house and grabbed a knife. He returned outside and forcefully stabbed A.C. twice on his back while he was getting into his truck. As S.C. was returning to the house, the accused went after him again, cutting him on the arm and leg. The accused fled the scene but turned himself into custody the next day. He was a youthful, Indigenous offender with a related record for violence. There were **Gladue** factors, remorse, and significant prospects for rehabilitation. The Manitoba Court of Appeal reduced the 14-year sentence to 11 years' incarceration. In doing so, it took into account

the concurrent sentence imposed on the aggravated assault conviction to ensure that the offence did not go unpunished. Therefore, it seems likely that if the accused was only being sentenced on the manslaughter conviction involving A.C., the sentence may have been lower than the 11-year sentence imposed.

[28] In ***R. v. Roulette***, Reasons for Sentence, January 22, 2025 (Crown's Book of Authorities, King's Bench Document No. 39, at tab 2) (the "Reasons for Sentence"), the accused was sentenced for a manslaughter conviction after being found not guilty of second degree murder by a jury. The accused in that case initially brandished a knife for the purpose of robbing the victim's brother of his necklace. The accused then used the weapon on the victim, stabbing him nine times. The sentencing judge found that the accused's actions "*reignited*" an altercation that appeared to be coming to an end (Reasons for Sentence, T11, line 2). He further found the accused to have inflicted "*gratuitous violence*" upon the victim (Reasons for Sentence, T11, line 5). The accused was 39 years of age at the time of sentencing and had significant ***Gladue*** factors. He had a record for crimes of violence. He was sentenced to 12 years' incarceration.

### **DEFENCE POSITION AND PRECEDENTS**

[29] The defence argues for a term of 6 years' incarceration. The defence relies upon four cases to support its position.

[30] In ***R. v. Morin***, 2020 MBQB 4, the accused pleaded guilty to a manslaughter offence in which he inflicted a significant beating on the victim, resulting in 40 discrete blunt force injuries. He was 34 years old and had a criminal record, including convictions for violence. The accused did not respond well to prior interventions and was

involved in repeated acts of institutional misconduct, including violence. The court found the accused's moral culpability to be at the higher end of the continuum. Mitigating circumstances included remorse, rehabilitative prospects and **Gladue** factors. The accused was sentenced to 7 years' incarceration.

[31] In **R. v. McKay**, 2010 MBQB 56, the accused administered a single stab wound to the victim's heart, causing death. The victim was his mother. The accused was 24 years old and under the influence of alcohol during the offence. He pled guilty. He had a prior youth criminal record, including two violent offences. Significant **Gladue** factors reduced his overall moral blameworthiness. He received a sentence of 7 years' incarceration.

[32] In **R. v. Myerion**, 2023 MBKB 117, the accused was the main perpetrator in a group attack on a stranger who was riding his bike. There was no known motive for the offence. The accused was the only one who used a weapon. He produced a knife and stabbed the victim five times. He was charged with manslaughter and pled guilty. He had significant **Gladue** factors, a non-violent criminal record, and prospects for rehabilitation. He was sentenced to 7 years' incarceration less pre-sentence credit.

[33] In **R. v. Whiteway**, 2023 MBKB 186, the accused forcefully stabbed a male stranger that she believed was following her. She pled guilty. The offence was found to be at the higher end of the moral culpability continuum. The accused had a lengthy and violent criminal record. There were significant **Gladue** factors in her background. She was sentenced to 6 years' incarceration.

## **ANALYSIS**

[34] In the case before me, Mr. Moneyas was convicted after trial, however he is not to be penalized for the fact that he did not plead guilty, particularly considering he was charged with murder. While the offence occurred within a short time frame and there is no suggestion of excessive or gratuitous violence, I find the nature of the assault committed by Mr. Moneyas to be very serious. He concealed a dangerous weapon, being a knife, within his pocket. While Mr. Anderson's words and actions played a role in initiating the confrontation, Mr. Anderson was alone and appeared to be unarmed. Mr. Moneyas was among a group. He used the weapon in initiating the assault. He stabbed Mr. Anderson on vulnerable parts of his body at a speed and in a manner that did not afford Mr. Anderson much opportunity to defend against the attack. This is apparent from the video. Mr. Moneyas' actions put Mr. Anderson at risk for life-threatening injuries, which is exactly what occurred. Despite the fact the events occurred quickly and were somewhat spontaneous, I find the overall moral blameworthiness of Mr. Moneyas to be towards the higher end of the continuum.

[35] Notwithstanding the fact that Mr. Anderson acted in a somewhat provocative manner by inserting himself into events that had ended and did not involve him, Mr. Moneyas' actions were an extreme and violent reaction. No doubt anger played a role in his reaction, disinhibited by his consumption of intoxicating substances. The fact that Mr. Moneyas consumed intoxicants and became violent is not at all surprising. This accords with his history, known to him at the time.

[36] When Mr. Moneyas fled the scene, Mr. Anderson was bleeding and seriously injured. The apparent indifference of people who walked away from Mr. Anderson, seemingly unconcerned, while he was bleeding profusely and trying to summon help, is shocking. His death occurred in a profoundly sad manner. The Crown was unable to provide any victim impact statements or information. Notwithstanding the lack of specific information before me, the consequences of this offence are obvious – the loss of a human life. This is acknowledged by Mr. Moneyas who personally addressed the court, expressing remorse and regret for his actions. Having had the opportunity to personally hear from Mr. Moneyas, I believe his expression to be genuine.

[37] I have considered s. 718.2(e) of the **Code** and Mr. Moneyas' experiences as an Indigenous person, which are relevant to assessing his moral culpability. These factors attenuate Mr. Moneyas' moral blameworthiness in this case as they are tied to his offending history, including this offence.

[38] I find that notwithstanding the obstacles he must overcome and his very high risk of reoffending, Mr. Moneyas has expressed a desire and demonstrated a willingness to be rehabilitated. Factors in his favour include his youthfulness, his compliance and positive attitude towards therapy, and his stated intention to change his life. However, while consideration must be given to principles of restraint and rehabilitation, the principles of specific deterrence, general deterrence and denunciation must also be afforded some emphasis in this case, particularly due to the seriousness of the offence and the nature of violence inflicted.

[39] Mr. Moneyas has struggled while in the community under supervision, whether on bail or while serving a sentence. However, while in custody he has engaged in therapy and participated in programs. I am unable to accept the recommendation of Mr. Moneyas that I impose a 6-year sentence so he can serve a go-forward sentence of 2 years' less a day, followed by 3 years' supervised probation. I have little confidence in Mr. Moneyas' ability to comply with supervised probation. However, by imposing a sentence that places Mr. Moneyas within the penitentiary, it is my hope that the authorities will implement a correctional plan that affords Mr. Moneyas timely access to programming and treatment so that his rehabilitative efforts can continue. To the extent possible and appropriate, consideration ought to be given to his placement within a healing lodge, whether in custody or while on parole.

[40] While every case can be distinguished in one way or another, I found the cases referred to by counsel particularly helpful in determining a fit and appropriate sentence. Considering the applicable principles, the case law and the aggravating and mitigating factors, I am sentencing Mr. Moneyas to 8 years' incarceration, minus credit for his pre-sentence custody at the enhanced rate of 1.5:1. This provides for a go-forward sentence of just under 4 years' incarceration.

### **CONCLUSION**

[41] Mr. Moneyas, please stand. I am sentencing you to 8 years of incarceration to be reduced by the number of days you have spent in pre-sentence custody at the enhanced rate of 1.5:1, to be calculated by the sentence administrators at the correctional institution.

[42] In addition to the period of incarceration, I also make the following orders:

1. DNA order (to be taken within the institution within 30 days);
2. Lifetime weapons prohibition; and
3. Waiver of victim/fine surcharge.

\_\_\_\_\_ J.