

Date: 2026-06-01  
Docket: CR 25-01-40509  
(Winnipeg Centre)  
Indexed as: R. v. Swampy  
Cited as: 2026 MBKB 89

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

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

HIS MAJESTY THE KING,

- and -

DUSTIN CODY SWAMPY,

) Noah Globerman  
) Joel A.E. Refvik  
) for the Crown  
)  
)  
) Zachary B. Kinahan  
) Ashley S. Anderson  
) for the accused  
accused. )  
) Judgment Delivered Orally  
) and In Writing:  
) June 23, 2026

### **HARRIS J.**

#### **REASONS FOR SENTENCE**

[1] On March 25, 2026, I found Mr. Dustin Cody Swampy ("Mr. Swampy") guilty of manslaughter for causing the death of Rachel Muswagon ("Rachel") on May 17, 2024. He was originally charged with second degree murder. He now appears for sentencing.

[2] I will briefly refer to the circumstances which were set out in more detail in my reasons for convicting Mr. Swampy.

[3] Mr. Swampy's spouse, Shania, her mother, Stella Muswagon ("Stella") and Rachel were at Mr. Swampy and Shania's apartment drinking a Twisted Tea, an alcoholic beverage, and using cocaine and crack cocaine over the night of May 16, 2025, and into the day of May 17, 2025.

[4] Mr. Swampy left for work early on the 17<sup>th</sup>, returning later in the afternoon. He left again and returned with a 40-ounce bottle of vodka and a box of pizza. The bottle of vodka was about one-half empty, and it appeared that Mr. Swampy was drunk and slurring his words.

[5] An argument erupted between Mr. Swampy and Shania regarding \$20 that he had given to her. Rachel came out of the bedroom where she had been, and stepped in, offering \$20 to Mr. Swampy, in an effort to deescalate the argument. Shania testified that Rachel and Mr. Swampy were yelling at one another and Shania got between them, trying to push Mr. Swampy away. Mr. Swampy pulled a 14-centimeter kitchen knife out of his pocket, swung it over his shoulder one-time, stabbing Rachel in the neck. After briefly leaving the apartment after the stabbing, Mr. Swampy returned, provided aid to Rachel and called 911 and remained until the police arrived. Rachel died of her wound. She is survived by her spouse and young children.

[6] Mr. Swampy is another unfortunate product of the disastrous programs of colonization directed at the Indigenous people of this country. His parents grew up in their respective communities surrounded by poverty, crime and poor living conditions.

Both were part of the residential school system, and his father also attended day-school. Both his parents and grandparents had substance abuse issues.

[7] His mother's parents moved to Winnipeg in hope of providing a better life for their children. His mother has grade seven education and little work history. Child and Family Services was involved with her family, and her siblings developed substance abuse problems and were also involved in the criminal justice system.

[8] His father's parents separated when his father was young and his mother moved to Winnipeg in the hopes of providing a better life for her children. His father passed away at the age of 56, when Mr. Swampy was incarcerated for the matters now before the court.

[9] Mr. Swampy grew up in Winnipeg. His parents drank lot and he witnessed his father assaulting his mother when he had been drinking. Mr. Swampy and his siblings were in and out of foster care throughout their childhood and adolescence due to their parents' substance abuse. He experienced physical and emotional abuse in some of his foster placements. Mr. Swampy's parents and all four of his siblings have been involved in the criminal justice system. While some of his family members are involved with gangs, Mr. Swampy is not.

[10] His parents stopped drinking when he was 15 years old and their relationship improved. He and Shania moved in together when he was 21. They have been together off and on since the 7<sup>th</sup> grade. They have two children together, six and eight years of age. That relationship appears to have been positive although Mr. Swampy's sister has opined that there have been family violence issues between Mr. Swampy and Shania.

Shania was not interviewed for the PSR, apparently because of a no contact order. I do not understand why a no-contact order would prevent probation services from interviewing her, as her perspective would be very important for the court to have.

[11] Mr. Swampy has a grade eight education. Schooling was not a priority given his life circumstances. He has had employment as a manual labour, doing snow removal and working in his cousin's clothing store. At the time of his arrest, he had employment for three years as a roofer, a job which he says he can return to upon his release.

[12] Not surprisingly, substance abuse has been a problem for Mr. Swampy throughout his adult life. He has not had significant connections with his Indigenous traditions or language and has only recently begun learning about his culture. He was impacted by racism throughout his life.

[13] While in custody, Mr. Swampy has completed several programs including Coming to Terms, End to Aggression, Introduction to Healthy Relationships, Thinking Awareness Group and Reclaiming Our Identity. He has also completed information sessions – Life Skills, Problem Solving, Understanding Feelings, Anger Management, Supportive Relationships, Managing Stress and Changing Habits. He also attends Chapel and Indigenous ceremonies when offered. In my opinion, this demonstrates Mr. Swampy's intention to break the cycle that has brought him to court.

[14] Mr. Swampy has been assessed as a high risk to offend based on leisure/recreation, companions and family/marital. Alcohol and drugs were not significant factors due to his sobriety since being incarcerated, but that is still a significant factor when he returns to the community.

[15] According to the Pre-Sentence Report ("PSR"), Mr. Swampy appears to be sincere about his desire to have a better life and avoid conflict with the justice system but needs to work on how this will be accomplished. Unfortunately, his **Gladue** factors weigh prominently in his life.

[16] The task of the court is to sentence Mr. Swampy having regard to the principles of sentencing including denunciation, general and specific deterrence and rehabilitation. Ultimately, the sentence must be proportionate to the seriousness of the crime and Mr. Swampy's level of responsibility. The Crown seeks a sentence of 10 years less time in custody. Mr. Swampy's counsel says a sentence of seven years less time in custody is appropriate.

[17] There is no doubt that taking a life is a serious offence. No sentence nor remorse of Mr. Swampy can undo the harm and suffering that he has caused. His actions were likely fuelled by his intoxication. Mr. Swampy remained at the scene and provided aid to Rachel. In my view, this is significant.

[18] While **Gladue** factors are significant, the programming that Mr. Swampy has taken while in custody suggest that he has reasonable prospects for rehabilitation

[19] His criminal record is not of great significance. In 2022, he was convicted of assault with a weapon for which he received a suspended sentence and 18 months probation and failure to comply with a recognizance for which he received one day served by pre-sentence custody.

[20] Zinchuck J. helpfully outlined the relevant sentencing principles in ***R. v. Thompson***, 2025 MBKB 37, where she said:

[32] The ***Criminal Code***, R.S.C., 1985, c. C-46 provides that the over-arching purpose in sentencing an offender is to foster respect for the law and the maintenance of a safe and 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.

[33] The ***Code*** specifically mandates that a fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (see s.718.1).

[34] Further, the ***Code*** requires that a sentencing judge take into consideration a number of other principles including but not limited to the following:

- a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender (see s. 718.2(a));
- a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (see s. 718.2(b));
- an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances and all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders (see ss. 718.2(d) and (e)).

[21] Also relevant to this sentencing is ss. 718.2(ii) which directs the court to take into consider evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family. "In a domestic context, the objectives of denunciation and deterrence gain added significance and require heightened attention to the moral blameworthiness of the offender. The sentence must reflect the individual harm to the victim and the court's response to the heinous effects of domestic violence." (***R. v. Cunningham***, 2023 ONCA 36, at paragraph 26).

[22] In ***Thompson***, the accused armed herself with a knife and stabbed her domestic partner in the chest, an act which Justice Zinchuk found objectively was likely to put the deceased at risk of life-threatening injuries. She lied about her involvement, and the victim was alive long enough to hear her lying, while she was in pain and struggling for breath. The killing was senseless and had a profound impact on the victim's family. Thompson was sentenced to 10 years incarceration.

[23] In ***R. v. James***, 2022 MBPC 15, Thompson P.J. dealt with an offender who randomly stabbed and killed a stranger on a downtown bus for no apparent reason. He was intoxicated and had significant ***Gladue*** factors. He had served multiple terms of imprisonment and at least one penitentiary sentence for violent crime and was assessed as high risk to offend. Judge Thompson reduced a 10-year sentence to nine years on account of the offender's significant ***Gladue*** factors.

[24] ***R. v. Woodford***, 2016 MBQB 72 is a decision of Greenberg J. The offender stabbed her domestic partner to death during an altercation involving the victim and her two sisters. The offender and the victim had a tumultuous relationship which resulted in numerous charges against the offender. She was also subject to several recognizances which she repeatedly breached. The Crown sought 10 years because the nature of the offence was close to murder and the offender had a history of abuse toward the victim. Greenberg J. imposed a sentence of eight years plus one year consecutive for the breaches.

[25] In ***R v Sinclair***, 2024 MBPC 4, the offender stabbed the victim one time in the upper chest during the course of a domestic dispute. After a trial, Judge Cawley found

that the offender had assaulted the victim on multiple times before inflicting the fatal stab wound. She called for assistance and provided aid and had a positive background and PSR. The court recognized the systemic factors related to the reality of being Indigenous as being fundamental to the analysis of an appropriate sentence. Judge Cawley sentenced her to seven years.

[26] In *R. v. Bell*, 2025 MBPC 60, Judge Bayly imposed a seven-year sentence on an offender who fatally stabbed a man to death while they were walking past each other on a street. The attack was unprovoked and motivated by a prior conflict between the two. After the first stab wound, there was a physical altercation followed by the fatal stabbing. The offender and his brother assisted in getting the victim to the hospital where he died. Judge Bayly found that the offender's moral culpability fell within a mid-to-high range, requiring a sentence of between six and eight years. He determined that the appropriate sentence was one of eight years, but he reduced it to seven to account for the offender's *Gladue* factors and his efforts to ensure that the victim received medical assistance.

[27] A similar sentence was imposed by McKelvey J. in *R. v. McKay*, 2010 MBQB 56. There, an alcohol fueled family dispute regarding a pair of jeans resulted in the offender inflicting a fatal stab wound to his uncle. The offender was 24 years of age and was the single father of a three-year-old. While he was Aboriginal and had a difficult upbringing, there was no PSR or *Gladue* report. The court noted his guilty pleas, his youth, supportive family, that the act was impulsive, the offender's remorse and cooperation with authorities as mitigating factors. Aggravating factors were that the killing occurred over a needless argument related to a pair of jeans, that the offender had a prior and, in

part related record, and use of alcohol and possibly drugs. Justice McKelvey imposed a sentence of seven years.

[28] In ***R. v. Menow***, 2026 MBKB 32, Justice Huberdeau sentenced a 31-year-old Indigenous offender to six year for fatally stabbing her sister to death in a fit of jealousy while at a family gathering. Alcohol was involved. When arrested, the offender admitted to the stabbing, expressed remorse. The victim died of a single stab wound. The offender's background was shaped by significant intergenerational trauma arising from colonization including family exposure to the residential school system. She also presented with multiple cognitive and mental health diagnoses. She was considered a high-risk to reoffend, which was reflected in her institutional record of 72 misconducts since incarceration. Justice Huberdeau noted her impulsiveness, limited emotional regulation, failure to appreciate the consequences of her actions, alcohol consumption and ***Gladue*** factors combined to reduce her moral culpability.

[29] In ***R. v. Moneyas***, 2025 MBKB 68, Justice Inness sentenced an offender who stabbed the deceased three times after the deceased inserted himself into a dispute that the offender had with others to eight years in prison. He had originally been charged with murder but after a trial, Justice Inness convicted him of the lesser included offence of manslaughter. Moneyas was barely 20 years old at the time of the offence and had youth court convictions for robbery, possession of a weapon for a dangerous purpose, aggravated assault and fail to comply with an undertaking. While in custody he participated in programming and interventions and attended therapy and engaged with a counsellor. When in the community, he incurred multiple suspensions of his sentence

and struggled to comply with programming and curfew conditions. He and his family were disconnected from their community and culture due to colonization and the residential school system. He was assessed as being a very high risk to reoffend. Among the aggravating factors, Justice Inness noted that there were multiple stab wounds, that the offender fled the scene and made efforts to evade detection.

[30] Turning to Mr. Swampy, I find the following to be mitigating circumstances:

- a) At the time of the offence, Mr. Swampy was gainfully employed, providing for his family;
- b) Mr. Swampy provided assistance to Rachel after the stabbing and called 911;
- c) He has engaged meaningfully in programming while in custody, demonstrating an intention to move forward in a positive way; and
- d) The impacts of colonialization are significant in Mr. Swampy's life.

[31] The aggravating circumstances are that:

- a) Mr. Swampy armed himself with a knife during a domestic dispute over \$20 and used that knife against a defenseless victim who posed no risk of harm to Mr. Swampy;
- b) His children were present and witnesses to this senseless violence; and
- c) Rachel Muswagan, an indigenous female, was a member of his spouse's family, which is statutorily aggravating.

[32] The fact that Mr. Swampy has not had significant involvement in the criminal justice system is a neutral factor. (*Thompson*, at para. 40)

[33] Having regard to all of the circumstances, I find that the appropriate sentence is one of seven years incarceration, less time served credited at 1.5 to 1. There will be a DNA order pursuant to section 487.051 of the ***Criminal Code*** and a weapons ban for 10-years after your release pursuant to s. 109(1)(c) of the ***Criminal Code***.

---

J.