English translation of the judgment of the Court by SOQUIJ

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| Blacksmith c. R. | | | | | 2023 QCCA 1238 |
| COURT OF APPEAL | | | | | |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY OF | | | QUEBEC | | |
| No.: | 200-10-004056-235 | | | | |
| (614-01-004107-211) | | | | | |
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| DATE: | October 2, 2023 | | | | |
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| CORAM: | | THE HONOURABLE | | YVES-MARIE MORISSETTE, J.A.  JOCELYN F. RANCOURT, J.A.  CHRISTINE BAUDOUIN, J.A. | |
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| CHRISTOPHER BLACKSMITH | | | | | |
| APPELLANT – accused | | | | | |
| v. | | | | | |
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| HIS MAJESTY THE KING | | | | | |
| RESPONDENT - prosecution | | | | | |
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| DECISION | | | | | |
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1. The appellant, Christopher Blacksmith, appeals from a sentence imposed on September 1, 2022, by the Court of Québec, District of Abitibi (the Honourable Dominique Wilhelmy), sentencing him to five years’ imprisonment. From this sentence, 734 days of interim detention were subtracted, leaving 1,090 days to be served for the count of having intentionally discharged a firearm while being reckless as to the life or safety of another person.[[1]](#footnote-1)

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1. It is important to recall the circumstances of the event that occurred on May 1, 2021.
2. Heavily intoxicated by alcohol, the appellant exited his residence armed with a 12-gauge shotgun and a box of cartridges and discharged his weapon into the air. Alerted by panicking citizens, the police went to the scene and ordered him to put down his weapon and surrender, which he did not do.
3. The appellant then walked across the Mistissini bridge, pacing back and forth over it, and continued to shoot, all while frantically reloading his shotgun. A constable again ordered him to put down his weapon, which he ignored.
4. During the intervention, the constables observed that the appellant pointed the gun under his chin three times with the intention of committing suicide.[[2]](#footnote-2)
5. An hour later, the appellant surrendered to the police authorities by putting down his weapon and walking in their direction with his hands up. The police officers picked up approximately 75 shells between his residence and the end of the bridge.

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1. The appellant is a member of the Cree Nation of Mistissini.
2. He swiftly pleaded guilty to five counts, including that of having intentionally discharged a firearm while being reckless as to the life or safety of another person. At the time it was committed, this offence carried a mandatory minimum sentence of four years, a sentence that, since the Supreme Court judgment in *R. v. Hills*,[[3]](#footnote-3) has been deemed unconstitutional and repealed by Parliament.[[4]](#footnote-4)

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1. The life of this member of the Cree Nation of Mistissini, described in both the Gladue Report and in the pre-sentence report, is one of terrible sadness. In truth, for those who are born and grow up in such hostile conditions, it is difficult to thrive in life.
2. The appellant’s parents, who bear the scars of their time in residential schools, are alcoholics. It is suspected that the appellant was born with fetal alcohol syndrome. He is the sixth of seven siblings. He explained that his parents worked in the woods so that they could receive Income Security Program benefits, such that the children were alone in the house most of the time.
3. The appellant was sexually assaulted at age 3 by his sister. His older brother sexually assaulted him until he was 11 or 12 years old. He did not understand at the time that these acts were [translation] “bad” because, for him, it was how people loved each other. He witnessed the rape of one of his sisters during one of many “house part[ies]” held at the family home.
4. At 4 years old, he was placed in a foster family with the Matoush family, who physically and psychologically abused him numerous times. He changed foster families eight or ten times until age 14. He was then transferred to a youth centre until he was 17 years old.
5. At 9 years old, he started using cannabis and inhaling naphthalene vapours. He heard voices. To chase them away and forget the physical and sexual abuse he suffered, he started drinking alcohol profusely.
6. He attended school so sporadically that he struggles to read and write.
7. These overwhelming findings are background or systemic factors that explain why Aboriginal offenders, like the appellant, end up before the courts.

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1. After summarizing the testimony of the constables and of the probation officer, the judge addressed the issue of the constitutional validity of the mandatory minimum sentence of four years contested by the appellant. As is appropriate, she first determined the fit and proportionate sentence to impose on him in light of the circumstances of the case.
2. After raising 11 aggravating factors, she accepted the guilty plea, the fact that the appellant is a member of the Cree Nation, and the *Gladue* Report as mitigating factors. She stated that she must consider that the appellant “was surrounded by violence, he was sexually abused and he had very difficult life in his childhood”.[[5]](#footnote-5)
3. She specified that the gravity of the offence is elevated, and that the moral culpability of the appellant is “total” and “complete”.[[6]](#footnote-6)
4. She went on to state that the offences committed toward the police forces must be judged severely and that “the Gladue impacts have to be evaluated differently in this context”.[[7]](#footnote-7)
5. She concluded that the proportionate term of imprisonment here is five years, which relieved her of the need to examine the constitutional validity of the mandatory minimum sentence of four years.

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1. The appellant pleads that the judge committed an error in principle by failing to apply the principles arising from the Supreme Court judgment in *R. v. Gladue*.[[8]](#footnote-8)
2. Section 718.2(e) *Cr. C*. requires the court that imposes a sentence to consider the particular circumstances of Aboriginal offenders.
3. In *Gladue*, the Supreme Court specified that the sentencing judge must take judicial notice of the background events that have affected Aboriginal communities, and of their impact, and tie these background events to the sentencing principles.[[9]](#footnote-9)
4. In *R. v. Ipeelee*, rendered 13 years later, the Supreme Court specified that background and systemic factors placing Aboriginal offenders in constrained circumstances may diminish their moral culpability.[[10]](#footnote-10) The judge must take into account these factors and make the connection between them and the offender’s moral culpability.[[11]](#footnote-11) The judge that does not perform this exercise therefore violates the principle of proportionality in sentencing, resulting in a sentence that is not fit.[[12]](#footnote-12)
5. What is the case here?
6. The judge referred to the existence of the *Gladue* Report. She failed, however, to make the connection between the background or systemic factors described therein and the appellant’s degree of moral culpability.
7. The judge’s remarks on the application of the principle of proportionality illustrate the magnitude of this omission:

… the judge has to take in consideration also the gravity of the offence and the responsibility of the accused. The gravity of the accusation in this case is high, it’s a high gravity, and the responsibility of the accused is total. The responsibility of the accused for the infraction is total. Is complete.[[13]](#footnote-13)

[Emphasis added.]

1. Ultimately, the judge limited herself to the relationship between the gravity of the offence and the degree of moral culpability without considering the Aboriginal context inherent to the systemic or background factors.[[14]](#footnote-14) It is as if she excluded these factors due to the gravity of the crime committed and the need to give priority to the principle of denunciation and deterrence. She completely failed to make the connection between them and the appellant’s moral culpability.
2. In the Court’s view, this is an overriding error in principle, justifying the review of the sentence imposed on the appellant.

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1. What precisely is the sentence to be imposed?
2. There is no denying here that the background or systemic factors that placed this member of the Cree Nation in constrained circumstances diminish his moral culpability.
3. Without trivializing the crime committed, in light of the factors identified in the *Gladue* Report, it is quite clear that his moral culpability is greatly diminished.
4. In this Report, the appellant expressed his remorse and regret for his actions. In addition, he has begun a healing process at Amos prison by participating in a program to control violence. He also participated in Alcoholics Anonymous meetings, Sharing circles, and meeting with the Elders during his interim detention.
5. We also cannot disregard the fact that the crime was committed in a context where the appellant wanted above all to end his life and was desperately seeking help.
6. The author of the *Gladue* Report related the appellant’s remarks as follows: “[i]t makes me sad that I shot and that I was under the influence. I blacked out; I don’t remember shooting. I was crying because I was afraid of how fucked up it was, I was leaving the community because I didn’t want to hurt anyone. I did not shoot a house or car or dog. That’s why I walked across the bridge”.[[15]](#footnote-15)
7. The author of the pre-sentence report in a way confirms the appellant’s remarks by writing: “[i]n our opinion, the crime committed by the accused was a desperate act to draw attention to himself and his distress. The initial intention was not to hurt others, but to provoke a situation that could either cause his death or stop him from doing so. Therefore, we believe Mr. Blacksmith was calling for help”.[[16]](#footnote-16)
8. Last, without excusing the criminal act committed, it appears that the appellant never pointed his weapon at the members of his community or the police officers, whose work, it is worth noting, at the time of the intervention is beyond reproach.
9. Certainly, there is still a long way to go on the road to the appellant’s rehabilitation. The author of the pre-sentence report did not mince words when he described the appellant’s propensity to portray himself as a victim and to minimize the efforts he needs to make to improve his situation. He hinges the success of his rehabilitation on a period of therapy in a supervised environment to vanquish the demons of his alcoholism and his anger. He wrote: “[f]or the time being, the risk of recidivism remains very high and will only be reduced if the accused begins to recover through specialized treatment”.[[17]](#footnote-17)

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1. At the end of the hearing, the Court informed counsel of its intention to allow the appeal. It then asked them to start discussions and, if appropriate, to reach an agreement on what would constitute an appropriate sentencing scheme.
2. In the days that followed, counsel reached an agreement and made the following sentence proposal:

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| **SUBSTITUTE** an 18-month conditional sentence. Given the time spent in custody following the imposition of the sentence on September 1st, 2022, the conditional sentence will end on [8 months after the date of the decision] and will include the following terms:  • During the first four (4) months, be present at his residence 24/7 except:   * To travel to and from employment and to attend employment;   o To attend medical follow-ups;  o To attend meetings with the Cree Justice Committee;  o To attend meetings with the Cree National Native Alcohol & Drug Addiction Program;  o To attend AA meetings;  o To attend religious celebrations;  o To do his groceries on Saturdays between 10 am and 2 pm;  o To attend the Regional Healing Conference in Wemindji, Quebec from October 16, 2023 to October 20, 2023;  o For medical emergencies;  o For any other reason deemed legitimate by his supervising agent.  • During the remaining period of the conditional sentence, be present at his residence between 8 pm and 6 am except:  o To attend AA meetings;  o For medical emergencies;  o For any other reason deemed legitimate by his supervising agent.  • Within 15 days of the present decision, contact the Mistissini Health Clinic to obtain services from the Cree National Native Alcohol and Drug Addiction Program and to obtain services linked to the assessment and treatment of FASD.  **ORDER** that the conditional sentence be followed by a one-year supervised probation with the following terms in addition to the usual statutory conditions:  • Follow all recommendations of the Cree Justice Committee;  • Follow all recommendations of the Cree National Native Alcohol and Drug Addiction Program;  • Follow all recommendations of his medical practitioner. | **Y SUBSTITUE** une peine de dix-huit (18) mois d’emprisonnement avec sursis. Compte tenu du temps passé sous garde depuis le prononcé de la peine, le 1er septembre 2022, l’emprisonnement avec sursis prendra fin le [8 mois après la date de la décision] et comportera les conditions suivantes:  • Durant les quatre (4) premiers mois, demeurer dans son domicile en tout temps, sauf pour :  o travailler et effectuer le trajet aller-retour de son domicile à son lieu de travail;  o se rendre à des visites médicales de suivi;  o assister à des rencontres avec le Comité de la justice cri;  o assister à des rencontres avec le Programme national de lutte contre l’abus de l’alcool et des drogues chez les Autochtones;  o assister à des réunions des AA;  o participer à des célébrations religieuses;  o faire ses courses le samedi entre 10 h et 14 h;  o assister à la Conférence régionale de guérison qui aura lieu à Wemindji du 16 au 20 octobre 2023;  o une urgence médicale;  o toute autre raison jugée légitime par son agent de surveillance.  • Durant le reste de sa peine d’emprisonnement avec sursis, être présent à son domicile entre 20 h et 6 h, sauf pour :  o assister à des réunions des AA;  o une urgence médicale;  o toute autre raison jugée légitime par son agent de surveillance.  • Dans un délai de quinze (15) jours suivant la date de la présente décision, communiquer avec la Clinique médicale de Mistissini afin de recevoir des services du Programme national de lutte contre l’abus de l’alcool et des drogues chez les Autochtones et des services liés à l’évaluation et au traitement de l’ETCAF.  **ORDONNE** que la peine d’emprisonnement avec sursis soit suivie d’une peine de probation avec surveillance d’une durée d’un an assortie des conditions suivantes, en plus des conditions habituelles prévues par la loi :  • suivre toutes les recommandations du Comité de justice cri;  • suivre toutes les recommandations du Programme national de lutte contre l’abus de l’alcool et des drogues chez les Autochtones;  • suivre toutes les recommandations de son médecin. |

1. This proposal of an 18-month conditional sentence, with the conditions mentioned, is appropriate.
2. Considering the time the appellant has spent in custody from when the judgment was rendered on September 1, 2022, to the date of his release on June 6, 2023, and his interim detention, the conditional sentence of 18 months will be completely served on June 2, 2024, that is, 8 months after the date of this judgment.
3. Taking into consideration the joint suggestion of counsel, the appellant must comply with the conditions set out below during the four months following the date of the judgment of the Court:

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| • During the first four (4) months following the judgment, be present at his residence 24/7 except:   * To travel to and from employment and to attend employment;   o To attend medical follow-ups;  o To attend meetings with the Cree Justice Committee;  o To attend meetings with the Cree National Native Alcohol & Drug Addiction Program;  o To attend AA meetings;  o To attend religious celebrations;  o To do his groceries on Saturdays between 10 am and 2 pm;  o To attend the Regional Healing Conference in Wemindji, Quebec from October 16, 2023 to October 20, 2023;  o For medical emergencies;  o For any other reason deemed legitimate by his supervising agent. | • Durant les quatre (4) premiers mois suivant l’arrêt, demeurer dans son domicile en tout temps, sauf pour :  o travailler et effectuer le trajet aller-retour de son domicile à son lieu de travail;  o se rendre à des visites médicales de suivi;  o assister à des rencontres avec le Comité de la justice cri;  o assister à des rencontres avec le Programme national de lutte contre l’abus de l’alcool et des drogues chez les Autochtones;  o assister à des réunions des AA;  o participer à des célébrations religieuses;  o faire ses courses le samedi entre 10 h et 14 h;  o assister à la Conférence régionale de guérison qui aura lieu à Wemindji du 16 au 20 octobre 2023;  o une urgence médicale;  o toute autre raison jugée légitime par son agent de surveillance. |

1. For the remaining four months, the appellant must comply with the following conditions:

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| • During the remaining period of the conditional sentence, be present at his residence between 8 pm and 6 am except:  o To attend AA meetings;  o For medical emergencies;  o For any other reason deemed legitimate by his supervising agent. | • Durant le reliquat de sa peine d’emprisonnement avec sursis, être présent à son domicile entre 20 h et 6 h, sauf pour :  o assister à des réunions des AA;  o une urgence médicale;  o toute autre raison jugée légitime par son agent de surveillance. |

1. At the end of the conditional sentence, the appellant must comply with the following probation conditions for a period of one year:

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| • Follow all recommendations of the Cree Justice Committee;  • Follow all recommendations of the Cree National Native Alcohol and Drug Addiction Program;  • Follow all recommendations of his medical practitioner. | • Suivre toutes les recommandations du Comité de justice cri;  • Suivre toutes les recommandations du Programme national de lutte contre l’abus de l’alcool et des drogues chez les Autochtones;  • Suivre toutes les recommandations de son médecin. |

**FOR THESE REASONS, THE COURT:**

1. **ALLOWS** the appeal;
2. **REVERSES** the trial judgment and, for the sentence of 5 years imposed, **SUBSTITUTES** an 18-month conditional sentence, ending 8 months after the date of this judgment, and including the following conditions:

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| • During the first four (4) months following the judgment, be present at his residence 24/7 except:   * To travel to and from employment and to attend employment;   o To attend medical follow-ups;  o To attend meetings with the Cree Justice Committee;  o To attend meetings with the Cree National Native Alcohol & Drug Addiction Program;  o To attend AA meetings;  o To attend religious celebrations;  o To do his groceries on Saturdays between 10 am and 2 pm;  o To attend the Regional Healing Conference in Wemindji, Quebec from October 16, 2023 to October 20, 2023;  o For medical emergencies;  o For any other reason deemed legitimate by his supervising agent.  • During the remaining period of the conditional sentence, be present at his residence between 8 pm and 6 am except:  o To attend AA meetings;  o For medical emergencies;  o For any other reason deemed legitimate by his supervising agent.  • Within 15 days of the present judgment, contact the Mistissini Health Clinic to obtain services from the Cree National Native Alcohol and Drug Addiction Program and to obtain services linked to the assessment and treatment of FASD.  **ORDER** that the conditional sentence be followed by a one-year supervised probation with the following terms in addition to the usual statutory conditions:  • Follow all recommendations of the Cree Justice Committee;  • Follow all recommendations of the Cree National Native Alcohol and Drug Addiction Program;  • Follow all recommendations of his medical practitioner. | • Durant les quatre (4) premiers mois suivant l’arrêt, demeurer dans son domicile en tout temps, sauf pour :  o travailler et effectuer le trajet aller-retour de son domicile à son lieu de travail;  o se rendre à des visites médicales de suivi;  o assister à des rencontres avec le Comité de la justice cri;  o assister à des rencontres avec le Programme national de lutte contre l’abus de l’alcool et des drogues chez les Autochtones;  o assister à des réunions des AA;  o participer à des célébrations religieuses;  o faire ses courses le samedi entre 10 h et 14 h;  o assister à la Conférence régionale de guérison qui aura lieu à Wemindji du 16 au 20 octobre 2023;  o une urgence médicale;  o toute autre raison jugée légitime par son agent de surveillance.  • Pour le reliquat de sa peine d’emprisonnement avec sursis, être présent à son domicile entre 20 h et 6 h, sauf pour :  o assister à des réunions des AA;  o une urgence médicale;  o toute autre raison jugée légitime par son agent de surveillance.  • Dans un délai de 15 jours suivant la date de cet arrêt, communiquer avec la Clinique médicale de Mistissini afin de recevoir des services du Programme national de lutte contre l’abus de l’alcool et des drogues chez les Autochtones et des services liés à l’évaluation et au traitement de l’ETCAF.  **ORDONNE** que la peine d’emprisonnement avec sursis soit suivie d’une peine de probation avec surveillance d’une durée d’un an assortie des conditions suivantes, en plus des conditions habituelles prévues par la loi :  • suivre toutes les recommandations du Comité de justice cri;  • suivre toutes les recommandations du Programme national de lutte contre l’abus de l’alcool et des drogues chez les Autochtones;  • suivre toutes les recommandations de son médecin. |

1. **ORDERS** the appellant to take note of the conditions of the probation order, to sign the undertaking, and comply with them.

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|  | | CHRISTINE BAUDOUIN, J.A. |
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| Mtre Elisabeth Beauchamp | | |
| desjardins, côté | | |
| For the appellant | | |
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| Mtre Julien Pelletier | | |
| director of criminal and penal prosecutions | | |
| For the respondent | | |
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| Date of hearing: | September 13, 2023 | |

1. *R. c. Blacksmith* (September 1, 2022) Abitibi, 614-01-004107-211 (CQ), Wilhelmy, J.C.Q. [Judgment under appeal]. [↑](#footnote-ref-1)
2. Regarding the appellant’s intention, in the pre-sentence report, the probation office wrote: “The initial intention was not to hurt others, but to provoke a situation that could either cause his death or stop him from doing so. Therefore, we believe Mr. Blacksmith was calling for help.”: Pre-sentencing report prepared by Kevin Beaulieu, December 6, 2021, at 12. [↑](#footnote-ref-2)
3. *R. v. Hills*, 2023 SCC 2. [↑](#footnote-ref-3)
4. *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act,* SC 2022, c 15. [↑](#footnote-ref-4)
5. Judgment under appeal at 7. [↑](#footnote-ref-5)
6. *Ibid*. at 8. [↑](#footnote-ref-6)
7. *Ibid*. at 9. [↑](#footnote-ref-7)
8. *R. v. Gladue*, [1999] 1 SCR 688. [↑](#footnote-ref-8)
9. *Ibid*. at para. 66. [↑](#footnote-ref-9)
10. *R. v. Ipeelee*, 2012 SCC 13 at para. 73. See also *Denis-Damée c. R.*, 2018 QCCA 1251 at para. 69. [↑](#footnote-ref-10)
11. *R. v. Ipeelee*, 2012 SCC 13 at para. 87. See also *Denis-Damée c. R.*, 2018 QCCA 1251 at para. 90. [↑](#footnote-ref-11)
12. *R. v. Ipeelee*, 2012 SCC 13 at para. 87. [↑](#footnote-ref-12)
13. Judgment under appeal at 8. [↑](#footnote-ref-13)
14. *Denis-Damée c. R.*, 2018 QCCA 1251 at para. 90. [↑](#footnote-ref-14)
15. *Gladue* Report, the appellant’s brief at 89–90. [↑](#footnote-ref-15)
16. Pre-sentence report at 12. [↑](#footnote-ref-16)
17. *Ibid*. at 13. [↑](#footnote-ref-17)