

2021 CarswellOnt 5084
Ontario Court of Justice

R. v. Madison

2021 CarswellOnt 5084, 171 W.C.B. (2d) 337

HER MAJESTY THE QUEEN v. CONNOR MADISON

M. Wong J.

Heard: March 30, 2021

Judgment: March 30, 2021

Docket: Toronto 4817-998-19-75000111-00, 4817-998-20-75001614-00, 4817-998-20-75001714-00

Counsel: A. Linds, for Crown

S. Pieters, T. King (Articling Student), for Connor Madison

Subject: Criminal

Related Abridgment Classifications

Criminal law

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Headnote

Criminal law --- Sentencing by offence — Offences against the person and reputation — Assault — Aggravated assault — Adult offenders

Accused was 23-year old man of Metis heritage who stabbed another resident of shelter and later threatened his mother and community officer while out on bail — Accused pleaded guilty to aggravated assault and two counts of threatening death — Accused was sentenced to 24 months' for aggravated assault, two months' consecutive, for threatening officer and one month consecutive for threatening his mother, less 488 days' credit for time served — Accused had 96 days of lockdown during his pre-trial custody detention and 47 days of those were full lockdown where entire institution was locked down for whole day — Accused was also made subject to DNA order and weapons prohibitions — Accused had unstable childhood with family violence, CPS involvement, frequent school changes, abuse, hunger, and early substance abuse — Aggravating factors include that aggravated assault took place in very serious circumstances which increased accused's moral blameworthiness, accused made threat while holding knife to victim's neck, and offence had serious consequences including hospitalization — Accused had lower moral blameworthiness due to multiple Gladue factors he experienced — Mitigating factors included that accused pleaded guilty particularly with regard to aggravated assault of his mother which was not shown to be strong case, expressed remorse, was young, and had goal of being good father to his daughter — Accused had no prior record and as youthful first-time offender focus had to be on specific deterrents and rehabilitation, but custodial sentence was necessary in circumstances — Accused had family support and suffered from depression which would be affected by lockdown in institutions.

Criminal law --- Sentencing by offence — Offences against the person and reputation — Uttering threats to cause death or bodily harm — Adult offenders

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Table of Authorities

Cases considered by *M. Wong J.*:

R. v. Barnett (2017), 2017 ONCA 897, 2017 CarswellOnt 18196, 42 C.R. (7th) 135, 138 O.R. (3d) 401, 356 C.C.C. (3d) 480 (Ont. C.A.) — followed

R. v. Hearns (2020), 2020 ONSC 2365, 2020 CarswellOnt 5089 (Ont. S.C.J.) — referred to

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R. v. Linklater (2004), 2004 CarswellOnt 518, [2004] 2 C.N.L.R. 204 (Ont. S.C.J.) — followed

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R. v. Power (2018), 2018 ONSC 598, 2018 CarswellOnt 1793 (Ont. S.C.J.) — referred to

R. v. Tourville (2011), 2011 ONSC 1677, 2011 CarswellOnt 1897 (Ont. S.C.J.) — referred to

Statutes considered:

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Generally — referred to

s. 2 "weapon" — referred to

s. 109 — referred to

s. 110 — referred to

s. 718(e) — considered

s. 718.04 [en. 2019, c. 25, s. 292.1] — considered

s. 719(3) — considered

s. 719(3.1) [en. 2009, c. 29, s. 3] — considered

s. 726.1 [en. 1995, c. 22, s. 6] — considered

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s. 5(2) — referred to

Mental Health Act, R.S.O. 1990, c. M.7

Generally — referred to

Forms considered:

Criminal Code, R.S.C. 1985, c. C-46

Form 10 — referred to

Words and phrases considered:

full lockdown

A full lockdown means that the entire institution is locked down for the entire day.

SENTENCING of accused for aggravated assault and two convictions for uttering threats.

M. Wong J. (Orally):

1 On October 19, 2020, Connor Madison pleaded guilty to aggravated assault and two counts of threatening death. Where the Crown had an election, the Crown elected to proceed by indictment. The matter was adjourned to today for the preparation of the *Gladue* report and as well, a pre-sentence report. For some reason, the pre-sentence report was not prepared, but by email, Mr. Madison and counsel agreed that we did not have to wait for a pre-sentence report.

2 On the previous date and on today's date there has been entered a number of exhibits marked at this hearing. Exhibit 1, an agreed statement of facts, Exhibit 2 relates to the biology report, Exhibit 3 are photographs, Exhibit 4, the medical report from Orkin, Exhibit 5, [indiscernible] *Gladue* reports, Exhibit 7 and 8 are the Crown's materials upon sentencing, Exhibit 9 is the Toronto South Detention lockdown summary and Exhibits 10 to 12 are defence counsel's materials.

3 I am getting audio feedback now, so I am going to ask Madam Clerk if you can mute Mr. Madison's microphone? Mr. Madison, can you just raise your hand to indicate you can still hear me? Thank you very much, sir.

4 So today's sentencing starts with the position of the lawyers. The Crown's position is that the court should impose a global sentence of 33 months of custody less pre-trial custody credit. Mr. Linds, for the Crown, asks the court to break it down as follows: 30 months for the aggravated assault, two months consecutive for the threatening on the Toronto Community Housing officer and an additional one-month consecutive for the threatening death on Mr. Madison's mother.

5 The defence submits that the total of the sentence ought to be that of 27 months. Defence counsel breaks that down as follows: 24 months for the aggravated assault, two months for the threatening of the TCHC officer, consecutive, followed by one-month custody, consecutive, with the threatening of his mother.

6 Both counsel agree that the principles in *R. v. Gladue* apply. Both lawyers agree that Mr. Madison has already spent 282 real days of custody prior to today. Both counsel agree that *R. v. Summers* entitles him to additional one-point-five days for every one day of pre-trial custody spent, so an additional 141 days. So both lawyers agree that the total sentence that Mr. Madison has already served is the equivalent of 432 days.

7 Where the lawyers differ is what, if any, credit the court should give Mr. Madison on the days of strict lockdown as per *R. v. Duncan* and, as well, the pandemic being COVID-19.

8 The Crown submits that for the 96 days of lockdown, of which 47 days were full lockdown. The Crown argues that Mr. Madison is entitled to one-to-one credit.

9 Mr. Pieters argues his client is entitled to one-point-five days to one credit.

10 With the remaining partial lockdown days, which is 49 days, the Crown argues Mr. Madison is entitled to point-five days credit for each day, and defence argues that he is entitled to one day for each of those 49 days.

11 Lastly, related to the COVID-19 issues of which I have heard evidence today, the Crown argues that there should be no additional pre-trial custody credit given. The defence submits that the court should grant Mr. Madison an additional 15 days pre-trial custody credit.

12 Both lawyers agree that the court should impose a period of probation. As well, both counsel agree that a DNA order and a weapons prohibition is appropriate.

13 If sentencing Mr. Madison, the court must take into account the circumstances of the offence and background circumstances of the offender together with the codified principles found in the *Criminal Code*.

14 So I will begin first with the offence. Exhibit 1 is the agreed statement of facts that outlines the following. On January 7, 2019, at 1:35 a.m., Connor Madison and the victim, Elmer Easton, were at the Maxwell Meighen men's shelter located at 135 Sherbourne Street in Toronto. Mr. Easton was using a payphone when Mr. Madison approached, and an argument ensued. Mr. Madison pulled out his folding knife, put it to the victim's neck and said, "I can kill you." The victim tried to call the police, but when he turned around, Mr. Madison stabbed him in the back with the knife.

15 The police arrived, and Mr. Madison was arrested. His clothing was seized and sent to the Centre of Forensic Sciences. As well, police seized, on scene, a knife, which was also sent for testing.

16 Mr. Easton, the victim, was transported to the hospital and treated for a large laceration, three inches in length, to the lower right side of his back. The exhibits you see are the photographs of his injury to the right — no, excuse me. I see these numbers are: Exhibit 2 is the biology report, Exhibit 3 are the photographs and Exhibit 4 are his medical records. And the victim gave to police a full audio statement, and Mr. Madison was charged with aggravated assault.

17 On January 9th, 2019, Mr. Madison was released on a \$500 recognizance of bail and his mother, Amanda Madison, was his surety.

18 On April 3rd, 2020, at 8:35 p.m., Mr. Madison and his mother were inside their apartment at 275 Bleecker Street. A neighbour heard a lot of yelling and screaming coming from that apartment. Somebody called 9-1-1. A neighbour looked into the hallway and saw Ms. Madison lying on the floor on her back and her son, Connor Madison, standing over her. The victim was calling out for help. The defendant threatened his mother saying, "Fuck you. I'm going to kill you. I'll kill myself." The neighbour saw Mr. Madison grabbing his mother's leg, pulling her back into the apartment.

19 Police arrived shortly afterward and spoke to the defendant through the closed door. He refused to open the door, and his mother also did not speak to police. Eventually, the police, with the assistance of the Toronto Community Housing special constables, were able to open the door.

20 Ms. Madison refused to give the police a statement except to say that she wanted her son to leave. The police released Mr. Madison unconditionally.

21 Later that same evening, between 12 midnight and 1:00 a.m., Mr. Madison returned to his mother's apartment door and again, kicking and yelling. Shouting, "Mom, open the door, or I'm going to break it." Neighbours again called the police. This time the police responded and tried to arrest Mr. Madison. Actually, he was not arrested until later.

22 Later, on that same day, two Toronto Community Housing officers saw Mr. Madison on one of their properties. They mistakenly believed that he was trespassing, so they began an investigation. Mr. Madison became belligerent and confrontational. Mr. Madison reached behind his back, put his hand down near his pants and stated to one of the officers, "I have a gun, and I'm going to kill you." The officers believed in his threat, deployed pepper spray to bring Mr. Madison under control. Mr. Madison was arrested for uttering a death threat. He was searched, and there was no weapon found. He was ultimately released on a [Form 10](#) with conditions not to communicate with the officer.

23 In the meantime, as there was a warrant in the first for Mr. Madison, it was not until June 29th, 2020, that at 3:30 p.m. when Mr. Madison was arrested by York Regional Police and charged with first-degree murder, that the warrant in the first came to light. As a result, he was transported to 51 Division and held for a show cause hearing. He also has remained in custody since that time.

24 With respect to his background, I know a lot about Mr. Madison based on the extensive *Gladue* report, and I have summarized some of that evidence.

25 Connor Madison is now 23 years old. His birthdate is [Date Omitted]. He is recognized as Métis, and he is a non-registered Indigenous person.

26 He derives his Indigenous heritage from his father, Shawn Mahar, M-A-H-A-R, now 58. And he is registered with the Métis Nation in Saskatchewan. His paternal grandmother is Métis from Manitoba. It is believed that his grandmother attended Indian Day School in Prince Albert, Saskatchewan. Her first language is Cree, although she did not teach Mr. Madison's father the language.

27 His grandmother, when she was 17, moved to Saskatchewan and married a man named David Mahar, who is not Indigenous. This is Connor Madison's paternal grandfather. His grandfather was violent and an alcoholic. All of their children, which includes Mr. Madison's father and siblings, were all placed into the care of the Children's Aid Society.

28 Mr. Madison's father met his biological mother, Amanda, who at the time was married to someone else. They stayed together for a couple of years, which was when Connor was born.

29 Mr. Madison, the defendant before me, as I said, was born in 1997. He was born in Alberta, where he lived until he was three or four years of age. He describes his early upbringing as "pretty unstable". He describes a lot of fighting in the family home, and his father was a drinker.

30 The couple's relationship ended when his mother returned to her husband. Subsequently, and in the fall of 2000, her husband committed suicide. Mr. Madison would have been about four years old. Mr. Madison's mother, Amanda, was non-Indigenous. In August of 2020, just this past year, she passed away. Mr. Madison, at this point, was in custody. He asked if he could have permission to attend her funeral but was not allowed.

31 In his testimony today, he indicated that it impacted him very negatively. He felt his depression. He was offered anti-depressant medication but has not received any grief counselling.

32 When Mr. Madison was four years old, his mother, Amanda, entered into a new relationship, which was described as "physically abusive". The family then moved from Calgary to Toronto. In 2000, Mr. Madison had been involved with the Toronto Children's Aid Society, that because his stepfather assaulted him. According to him, he and his family, or his mom, stayed in a women's shelter for two and a half years. He described his mother as being "depressed and very neglectful". The family lived, for a while, in the Sherbourne and Dundas area until he was removed by Children's Aid.

33 He reported that in Grade 1, he went to the local school, the Regent Park Public School and then subsequently he went to, he estimates, 15 elementary schools largely because he would get into trouble, he says, for fighting. Growing up, he knows that he witnessed a lot of violence, gangs, guns and drugs.

34 At page 13 of the *Gladue* report, it notes that at age 10 he witnessed somebody getting car-jacked with a shotgun and robberies were commonplace.

35 At the age of nine in 2007, according to the Toronto District School Board, they contacted the Children's Aid because they had some concerns about his behaviour. The CAS investigated, found that the family was struggling financially but overall felt the family was managing okay, so they closed their file. However, that same year, 2007, the school again would call Children's Aid because they had concerns about Mr. Madison's mother. But that also was — that file was also closed.

36 Between the ages of 10 to 15, Mr. Madison describes his home life as "unstable". He describes his mom as having many different boyfriends, some of whom were physically abusive to him. He described there often was no food in the house and he reports relying on the school food programs for nourishment.

37 According to both he and his biological father, his mother likely had an undiagnosed medical illness. It is thought that she might have suffered from bipolar or schizophrenia. His father described the mother as "weird" and not — and "just off".

38 Mr. Madison began using drugs at a very early age. At the age of 12 or 13, he says he started smoking marijuana in his mom's home without permission. Children's Aid had been contacted. He had been placed into group homes. This went on and off from 2011 to 2014. He estimates that he was placed in roughly five different group homes.

39 During this time, his health is diagnosed with ADHD and depression. He was initially prescribed Ritalin but refused to take it. It is also suspected that he suffers from FASD, Fetal Alcohol Spectrum Disorder, although he has not been formally diagnosed.

40 When he was 13, Mr. Madison discovered a birth certificate which showed a different name for his father, and he confronted his mom. This was when he learned that his biological father, Shawn Mahar, was, in fact, still alive. And he also contributed this as part of the reason he began to act out.

41 Mr. Mahar was contacted when preparation of the *Gladue* report and he offered some insight. It is noted that the Children's Aid Society, in December of 2011, tried to encourage the relationship between Mr. Madison and Mr. Mahar. In 2012, CAS organized a visit for Mr. Madison to visit his father and paternal family in Saskatchewan. Initially, things went really well. He attended his first Indigenous pow-wow. He got exposure to the native culture. He reports being very proud.

42 There was a plan to move Mr. Madison to Prince Albert to live with his dad for a five-month court order that was to be effective October of 2012. Unfortunately, Mr. Mahar had a heart attack, so the plan was changed. It was suggested to go live with an aunt in Prince Albert. That did not prove productive. Mr. Madison found his aunt very eccentric.

43 Visits with his father became more sporadic due to, in part, the weather and difficulty travelling. There were efforts to have him have a *Mental Health Act* assessment or a medical assessment in the Prince Albert Children's Aid Society, but that also did not take place. Also, there were concerns there in PA; there were Indigenous gangs.

44 It is also reported at page 15 of the *Gladue* report, Mr. Madison reports he was sexually abused by a male, and the assaults occurred weekly for a year.

45 So at the age of 15, in February 2013, Mr. Madison was returned from Prince Albert to Toronto and was under the care of the Children's Aid Society here.

46 It is reported that in 2013, that was his last interaction with Mr. Mahar, his biological father. By the time he was 16, he did not want to have any contact with his biological father, and he, at least back then, he had lost interest in his native culture.

47 Starting in 2014, Children's Aid began to work with Mr. Madison to try and get him to live independently. They tried to get him to attend an alternative high school. He did well. He got 13 credits, and he did some 20 hours of community service work. He also got his bronze medal for the Duke of Edinburgh award.

48 But again, the issue of drugs continued. By this age, 15 or 16, he was dabbling in cocaine, and it became a daily habit. Between the ages of 15 and 23, he began to experiment with many different drugs, including cocaine, fentanyl, Percocet, MDMA and mushrooms. He admits during this time, he would steal drugs from his mother's boyfriend.

49 Back in Toronto, he seemed to do better. He says that he was living with his mom for a while, and that they were getting along better. He also met his partner for the past four years, Taisha Ramirez, T-A-I-S-H-A, Ramirez, R-A-M-I-R-E-Z. And they have a two-year-old daughter, Katya. According to Ms. Ramirez at page 31 of the *Gladue* report and according to what Mr. Madison tells me today, he enjoys being a father. He says that the experience was changing him for the better.

50 Ms. Ramirez, on page 31 of the *Gladue* report, notes that Mr. Madison was working. He was working so hard, in fact, so much so that despite his hard hours worked, that he was bringing in little pay. He suffered from chronic insomnia. Then, in January 2019, there was an incident where he was stabbed in his head while he was buying drugs. That resulted in his work being — prevented him from work because he also injured his hand. Ms. Ramirez did note that Mr. Madison was sober for the first two or three months after their daughter was born.

51 Ms. Ramirez said that after Mr. Madison's mother was diagnosed with cancer that he began to drink more frequently. He started to drink more frequently. He became more depressed. He reports that he had a suicide attempt in 2020 and was hospitalized for two days at St. Michael's Hospital.

52 When his mother died from her cancer in August 2020, Ms. Ramirez described that as a "detrimental blow". It was noted, and as I said, he was not allowed to go to her funeral. The *Gladue* report notes that he was on a suicide watch for two days afterwards. He describes himself as, today, to be obviously depressed and, as I noted, was receiving anti-depressant medication.

53 Finally, I also heard from Mr. Madison that because of the situation that he is currently in, meaning he is in custody, he has not seen his daughter, and that due to the lockdown, he also has not been able to call her as he would previously.

54 The *Gladue* report ends at page 39, outlining a number of programs that Mr. Madison could attend for *Mental Health Act* assessments, in-patient counselling, anger management and grief counselling, as well as further programming in the community if interested. The report says that if he is sentenced to a provincial sentence, it is recommended that he attend the Algoma Correctional Institute in Sault Ste. Marie, which provide specialized intensive treatment for motivated offenders with clearly identified problems relating to substance abuse, domestic violence and anger management. I think if he is given a federal sentence, it is recommended that the *Gladue* report be sent to the correctional institutes for classification purposes. He then would be placed in the Aboriginal Pathways Unit of that institution with access to Aboriginal programming and a Native Liaison officer would be assigned to him. Because of his outstanding charge, I am not sure whether Mr. Madison will be sent to either of those institutions or whether he will remain in detention at the Toronto South.

55 So here is the law — the purpose of sentencing. The *Criminal Code* instructs the goal of any criminal sentence is to protect society, contribute to respect for the law and help maintain a just, peaceful and safe society. The sentencing judge, like me, attempts to achieve this goal by imposing just sanctions that addresses one or more of the traditional sentencing principles found in the *Criminal Code*. These include, and that is the issue, general and specific deterrence, rehabilitation, reparations to victims of crime, as well as we are to promote a sense of responsibility in offenders and acknowledgement of the harm they have caused the community and specific victims in the community.

56 The fundamental principle of sentencing is that of proportionality. The sentence must be proportionate to the gravity of the offence committed and the moral blameworthiness of the offender. And in doing so, the court looks at aggravating and mitigating factors on sentencing.

57 The court also considers the principle of restraint. [Section 718](#), in particular (e), imposes a further obligation on sentencing. The judge is to inquire into the relevant circumstances of the offender, including the types of sentencing procedures and sanctions which may be appropriate because of their particular Indigenous heritage or connection. The judge should be aware of alternatives to incarceration that exist, whether inside or outside of the Indigenous community of the particular offender. The court also has to consider the principles of parity, the principles of totality, and as it applies to every individual. If I have not already said so, the least restrictive sanctions that are consistent with the degree of harm done must be considered in all cases and, in particular, to those of Indigenous background.

58 The court, also, is mindful of another principle, another codified rule and that is in [Section 718.04](#), and that is the principle relating to vulnerable person. The Crown did not argue this extensively, but the section applies [*indiscernible*].

59 The Crown seeks a sentence, as noted, of 33 months less pre-trial custody, following the principles in a number of cases the Crown has submitted. And I am not going to go through them all, but the Crown highlights *R. v. Pakul*, which is the decision which emphasizes the principles of denunciation and general deterrence, applies in cases such as aggravated assault. Mr. Linds may have provided the citations. If not, I will ask him to do so later. In 2008 came to the Ontario Court of Appeal.

60 The court also has been focused on the case of *R. v. Tourville* This case is from [2011 ONSC 1677](#), a case of Justice Code, which the Crown relied upon it because His Honour divides aggravated assault into three categories. To summarize, the bottom

of the ledger where a person has Indigenous background and where there is no record, those individuals may fall into extended in reformatory time, and even a non-custody sentence such as a suspended sentence or a conditional sentence.

61 Their mid-range sentences, this relates to typically first offenders where there is some kind of element of consensual fighting. The mid-range, Justice Code says, between eighteen to two years less a day. Also, this court refers to, in *Tourville*, a higher-end range which is that between four to six years. This is generally what the person has is, a recidivist. The Crown submits that the range is that of three to five years, with Mr. Madison falling into the higher end of the *Tourville* range.

62 Mr. Linds, the Crown, also points out specifically the case of *R. v. Helpert*, H-E-L-P-E-R-T, a decision of Justice Speyers, 2013, O.J. No. 5510. For that particular case, a 63-year-old defendant with one prior finding of guilt had a machete. He struck a female bartender causing a six-inch wound to the top of her head. She received a significant injury requiring multiple stitches, and she was off work for six months. In *R. v. Helpert*, at paragraph [27], Justice Speyers notes the following:

All sentencing is case specific. In the present case, denunciation and deterrence are the most pressing of sentencing considerations. I found helpful, however, Justice Code's general analysis of sentencing for aggravated assault offences as found in *R. v. Tourville*...Because of the brutality and unprovoked nature of the attack on the victim, this case would normally fall at the high end of the range of sentencing. However, taking into account all of the mitigating factors, and the fact that Mr. Helpert has been the subject of restrictive bail terms over a long period, I am sentencing him to the functional equivalent of 3 years in the penitentiary.

And then he was given pre-trial custody credit.

63 Lastly, the Crown has pointed out the case of *R. v. Power*, 2018 O.J. No. 681 ONSC, Justice Dambrot. In that case, the Crown was asking for seven to eight years of custody. The defence was asking for two to four years. Justice Dambrot imposed a sentence of five years at the trial.

64 In that case, the individual was on trial for attempted murder, found not guilty for that charge but guilty of aggravated assault. The court described his record as both "Serious and persistent" when including a prior sentence for a four-year term of imprisonment. The court also referred to the case of *R. v. Tourville*. They ultimately found that even though the *Gladue* principles applied at paragraph [44] and support that the sanctions now should be in line with five years of custody.

65 The defence side provides a series of cases, *R. v. Lariviere*, L-A-R-I-V-I-E-R-E, 2020 ONCA, where an accused, after a guilty plea was given, the equivalent of 30 months of custody plus an additional period of time for some other charges. That case was a home invasion of where there was serious permanent physical injury. The *Gladue* principles could, of course, apply. The court, in that case, sentenced the individual, giving him pre-trial custody credit of the equivalent of 14 and a half months plus three and a half more months of *Downes* credit for a sentence in addition of 12 months custody, which adds up to about 30 months plus some extra time for other charges leading to a breach.

66 The defence also refers to *R. v. Morgan*, 2020 ONCA, whereby Justice Bhabha of this court was appealed when she imposed a sentence for an aggravated assault finding after trial, of two years less a day. That was the sentence imposed pre-COVID. And the appeal that is, in part, was based on the defendant applicant asking for a reduction in sentence if he could be granted early parole. The court found, at paragraph [11], that Her Honour's decision was:

...at the very low end of an acceptable range of sentence for the offence of aggravated assault. It was, indeed, a lenient sentence, given the injuries sustained by the victim and the fact that the appellant had a criminal record.

67 In that case, the court declined to give any further reduction in sentence because of COVID, stating, again, at paragraph [11]:

To reduce the sentence any further would result in a sentence that is unfit, one that would be disproportionate to the gravity of the offence.

68 Lastly, the defence refers to *R. v. Hearn*, 2020 ONSC 2365. Justice Pomerance received a joint position of 33 months and 11 days. In that case, the defendant pleaded guilty to using a baseball bat where it struck someone and caused serious injury to their head. There were significant long-term injuries to that 31-year-old victim.

69 There was a substantial prior criminal record. And as I noted, the court was asked to consider the pre-trial custody time, which she did and gave it on a one-point-five credit. She did not impose any further pre-trial custody time with respect to COVID, emphasizing, as in *Morgan*, a sentence must be proportionate to the gravity of the offence.

70 The defence provided a number of cases which address the issues relating to the COVID-19 and whether further pre-trial custody credit ought to be given. I am not going to go through them, but I can say that I did read them. I find that the majority of the judges found that it was not appropriate to grant additional COVID credit.

71 That being said, there were three cases, Justice Fiorucci in *R. v. Aiton-Poore*, A-I-T-O-N-P-O-O-R-E, gave a large, enhanced credit. Also, Justice Kozloff in *Abdella*, A-B-D-E-L-L-A. Also, I believe, Justice Pringle in *R. v. O. King*. All gave a large, enhanced credit in addition to *Duncan* credits for COVID-related factors.

72 Moving forward, aggravating factors which increase the moral blameworthiness of Mr. Madison today.

73 First of all, the seriousness of the events, in particular, the aggravated assault. I believe that the aggravated assault is particularly egregious because the complainant, he was 57 years old, and was using a phone. This is not an incident that was provoked by the victim. I believe that there is no element of Mr. Madison acting in self-defence. These were injuries not inflicted by accident. Instead, it was Mr. Madison responding excessively because he was impatient because Mr. Easton was on the phone.

74 I agree with Mr. Linds that holding a knife to the victim's neck while making a threat is also a part of what has to be considered a deliberate nature of this incident. As well, ultimately the physical injury that he received, which is seen in this photograph, is a ghastly injury, is again aggravating. Obviously, the use of the knife is implicit in the fact that this was a stabbing.

75 With respect to the uttering threat charges were aggravating was his mom that she was his surety. And so she was in a position of trust. She was trying to assist him by getting him released on the aggravated assault, and again, through his anger and impatience and possibly even his being high, he threatened, in fact, his mother and subsequently, he was charged with the threatening of the TCHC officers.

76 In terms of his role of him and the principle of proportionality, consideration of *Gladue* principles does allow the court to find and reduce the degree of moral blameworthiness resulting from the effect of the intergenerational dislocation and trauma. And the court recognizes Indigenous persons are disproportionately represented in the prison population. And those cases include, of course, the *R. v. Ipeelee* and, of course, *Gladue*. So it is agreed moral blameworthiness is reduced.

77 I find, though, aggravating is a vulnerability of his mother. I have already mentioned that. I also find aggravating is the victim impact. So although we do not have a formal victim impact statement for Elmer Easton, again, I am satisfied that the photographs show a very serious injury to the individual. The medical report shows he had pre-existing medical issues, and it is only by the good grace of God that he was not more seriously injured, potentially resulting in more serious charges that are before this court. Also aggravating is that the offences relating to his mother and the TCHC officers were committed while he was on a bail for that aggravated assault.

78 Mitigating in this case, of course, are the guilty pleas. A guilty plea and the amount of credit they impact vary with each case. Sometimes a guilty plea is a demonstration of remorse and a positive first step with rehabilitation. In other cases, a guilty plea is simply a recognition of the inevitable. I find that the Crown had a strong case against Mr. Madison on the aggravated assault. He was arrested on scene. The DNA biology report was corroborating independent evidence that would have been used against him at his trial and presumably, the victim would have attended to testify, though, no doubt, reluctantly.

79 Similarly, the case against him on the TCHC officers, again, upon its face it looks very strong especially because the witnesses most likely would have attended court.

80 I am not sold on the strength of the plea of guilt relating to his mother. Clearly, his mother would have been reluctant to testify against him. Her death, of course, is another contributing factor for the case of getting less strong. Even the neighbour, I am sure, would have been reluctant to come into court. So his guilty plea on threatening, related to his mother, is, in fact, a significant demonstration of remorse and the accepting of responsibility.

81 I also take into consideration as taking his age; he is so young. He wants to be a tradesman like his father. He says he wants to be a good father to his daughter. He says that the time he has spent in custody has given him time to reflect and that he will be a changed individual. One hopes that is true for someone so young, so I urge him to continue his reflection and use the time to improve his situation while he remains in custody.

82 Also, I take into consideration that he, in fact, has no prior record. The courts have clearly stated that ordinarily, when sentencing a youthful first offender, the focus should be on specific deterrents and rehabilitation. These objectives are normally counselled against imposing a custodial sentence. However, that principle has limits. It does not apply in cases involving both very serious offences and offences involving violence which clearly this is the case here.

83 I also consider his family support, his girlfriend. They have a child. And even his biological father, who was cooperative with respect to the preparation of the *Gladue* report.

84 I also consider that he suffers from depression which becomes only worse during the lockdown period that I am going to get to momentarily.

85 I am accepting he has remorse, and he does have insight. I also accept that he has significant pre-trial custody, and when sentencing, can be considered.

86 It was discussed in the beginning whether or not Mr. Madison is detained on these charges or if he is detained on the homicide. Regardless, the court is entitled to consider the time in custody as a result of the charge for offences other than the one for which the accused is being sentenced. That is derived from Section 719(3), Section 719(3.1) and Section 726.1, and also there is supporting caselaw on [R. v. Barnett, 2017 ONCA 897](#).

87 Also, the court has discussed at great length today the addition of *Duncan* credits. *Duncan* is a case which indicates that the court is not limited to the one-point-five to one pre-trial custody credits found in *R. v. Summers*. Part pre-sentence incarceration can merit mitigation beyond that number. To attract that kind of credit, the court should consider the conditions of the pre-sentence incarceration and the impact of those conditions are with the accused.

88 The court today has heard from Sergeant Leon Watson, the security manager at Toronto South. He has outlined in writing, also by testimony, Mr. Madison experienced 96 days of lockdown during his pre-trial custody stay at the Toronto South. Forty-seven of those days were full lockdown. The remainder was partial lockdown.

89 A full lockdown means that the entire institution is locked down for the entire day.

90 Partial lockdown, of which he experienced 49 days, means that there is a limitation on what the inmate can do. There are limitations with his ability to meet with his lawyer. Professional visits are limited to education, chaplaincy, speaking to immigration officials, which does not apply here. He is limited by way of the kind of calls he can make. And Mr. Madison already talked about how making a call to his daughter is not as easy as he would like. A limitation can also affect ones ability to shower even though a half an hour is modest per day; sometimes that just does not happen. Exercise is limited and fresh air is limited. Medical care, if one who requires it, it is still accomplished, but again, there are limitations during partial lockdowns.

91 As far as COVID, there has been recently in newspaper reports, an outbreak at Toronto South as of March. Mr. Madison explained that he has had three periods of high — when he has been held in lockdown because of concerns about the health of other inmates on the range. And as such, counsel for him asked the court to, in recognition, give him an additional 15 days pre-trial custody credit.

92 Collateral consequences, I have already talked about those. COVID-19 is a collateral consequence. The court can clearly take judicial notice of it. In this particular case, there is evidence with respect to Mr. Madison's personal circumstances. He testified that he is in a Special Needs Unit, which is a unit for people with special mental health problems. Fortunately, he has his own cell. So this is not one of those cases where he had a problem [*indiscernible*] triple bunk. During the lockdown, he says people with mental health problems make a lot of noise and throw tantrums. As I said, between July to September 2020, and increasingly in March where he had nine days where he only was allowed 30 minutes out of his cell and felt like he was in a "trapped box".

93 Mr. Madison does not have any medical issues.

94 Lastly, I already stated what I consider are the principles of *Gladue*. *Gladue* applies to all offences, even those gravest of offences. So when sentencing an Indigenous person, the court must look at the unique systemic or background factors that played a part in his particular upbringing. And as well, the court has to consider the types of sentencing procedures and sanctions which are appropriate in the case of the offender because of his particular Indigenous heritage or connection.

95 However, as the cases note, as the more violent and serious offence, the more likely it is, as a practical reality, that the terms of imprisonment for Indigenous and non-Indigenous offenders will be close to each other or the same. That is the decision of *R. v. Linklater*, 2004 O.J. No. 384, ONSC.

96 So I am going to also — and lastly, I am going to address the principle of totality, which is a particular issue that brings parity and the sentences referred to in those other cases.

97 So in sentencing Mr. Madison today, again, the cardinal principle is that of proportionality. So the sentence Mr. Madison is going to be as follows. Counsel can follow along and Madam Clerk, please, as well, follow along.

98 I am prepared to propose a sentence of 24 months for the aggravated assault, followed by two months, consecutive, for the Toronto Community Housing Authority threat, that is to be consecutive, followed by one month jail, consecutive, for the threat on his mother. The sentence being 27 months of jail.

99 Subtracting from that the pre-trial custody time, and I will tell you how I get to this number in a moment, but the number is that of 488 days. So the sentence remaining that you will have to serve now is 332 days, which is the equivalent of 11 months. I am going to write that down, but I think you just want to hear, sooner than later, Mr. Madison, the number.

100 So you are going to serve an additional eight months on the aggravated assault, two months consecutive on the TCHC threat and one month consecutive on the threat to your mom. So that adds up to 11 months because the time served is that of 488 days. I will tell you how I got to that now.

101 I am prepared to give him pre-trial custody credit from January 7th to January 9th, three actual days. I am going to give an additional pre-trial custody credit from June 29th, 2020, to-date, for an additional 279 days. That equals 282 real days, so roughly nine and a half months.

102 *Sumner* credits on 282 is an additional 141 days. In addition, I am prepared to give him *Duncan* credits, but to this limited extent, he is going to be given *Duncan* credits for the 47 days of full lockdown on a one-point-five to one credit. So on the 47 days of full lockdown, he is given an additional credit of 23 days for a total number of days, 70 days. Actually, 70 and a half days because 47 divided by two is 23 and a half days, so 70 and a half days.

103 On the partial lockdown days of 49 days, I am going to apply one-point-five credits. He gets an additional 24 and a half days. So *Duncan* credits, he is getting 95 days.

104 So he gets, in total, 282 days of real-time already served. He gets 141 days of *Summers* credit. He gets an additional 95 days for *Duncan* credits. And I am not giving him any further additional time for COVID. I find that do so would be to disproportionately reduce his sentence.

105 Therefore, he gets pre-trial custody credits of 488 days, and the way I ultimately get to the final sentence is that 27 months is 820 days less 488 days. That equals 332 days. So that equals roughly 11 months.

106 So time served on the aggravated assault is the equivalent of 488 days. He will be given an additional eight months of custody to serve on the aggravated assault. He then will receive an additional sentence of two months on the TCHC threat to be served consecutively and an additional one month on the threat to his mother to be served consecutively.

107 He will then be placed on probation. So I am going to stop there, and I am going to see if Madam Clerk has any questions before I move on. Madam Clerk?

108 CLERK REGISTRAR: Can we meet, please?

109 THE COURT: Yes.

110 CLERK REGISTRAR: They're as clear as day, Your Honour. You can go ahead.

111 THE COURT: Probation to follow, two years.

112 Keep the peace, be of good behaviour.

113 Appear before the court when required to do so.

114 Notify the court or probation in advance of any change to your name, address, place of employment or occupation.

115 Report within two working days of your release from custody to a probation officer and after that, as well, times and places as directed by the probation officer or any person authorized by a probation officer to assist in your supervision.

116 You shall cooperate with your probation officer.

117 You must sign any releases necessary to permit the probation officer to monitor your compliance, and you must provide proof of compliance to any condition of this order to your probation officer on request.

118 You shall live in a place that proves a compliance by a probation officer and not change that address without obtaining the consent of the probation officer in advance.

119 You shall have no contact or communication in any way, directly or indirectly, with Elmer Easton, E-A-S-T-O-N, or Rita Moiare, R-I-T-A, M-O-I-A-R-E, or any member of her immediate family.

120 And then I am going to wait to hear from the lawyers with respect to Officer Cotton (ph).

121 I am going to also include a condition that you not be within 100 metres of any place you know Elmer Easton or Rita Moiare to live, work, go to school, frequent or any place you know those persons to be, except for required court attendances.

122 There is going to be a condition of not possessing any weapons. Do not possess any weapons defined by the *Criminal Code*. For example, a BB gun, pellet gun, firearm, imitation firearm, crossbow, prohibited or restricted weapon, ammunition or explosive substances designed for use or intended for its use to cause death or injury or threaten or intimidate any person.

123 As well, do not possess any knives outside of your residence except for the preparation and consumption of meals or for the purposes of employment.

124 There are going to be conditions, and I will leave it to Madam Clerk to tell you about *[indiscernible]* seems the first part *[indiscernible]*. Madam Clerk, tell me when you are ready.

125 CLERK REGISTRAR: Okay. I am just going to that point. Go ahead, Your Honour.

126 THE COURT: Attend and participate in all culturally appropriate assessment, counselling or rehabilitative programs as directed by the probation officer in consultation with the Aboriginal Legal Services....

127 CLERK REGISTRAR: Sorry, Your Honour, one second. Sorry. I'm just — directed by the probation officer and in....

128 THE COURT: In consultation with the Aboriginal Legal Services....

129 CLERK REGISTRAR: In consultation....

130 THE COURT: And complete them to the satisfaction of the probation officer for, included but not limited to, anger management, substance abuse, alcohol abuse, psychiatric or psychological issues, bereavement/grief issues.

131 CLERK REGISTRAR: Okay. As directed by the probation officer in consultation with Aboriginal — you said Aboriginal Legal Services?

132 THE COURT: Correct.

133 CLERK REGISTRAR: Okay. And I will take out probation officer, and then for anger management and et cetera.

134 THE COURT: Anger management, substance abuse...

135 CLERK REGISTRAR: Substance abuse.

136 THE COURT: ...alcohol abuse, psychiatric or psychological issues, bereavement/grief issues.

137 CLERK REGISTRAR: Okay.

138 THE COURT: You shall sign any release of information forms as will enable your probation officer to monitor your attendance and completion of any assessment, counselling or rehabilitative programs as were directed.

139 And you shall provide proof of your attendance and completion of any assessments, counselling or rehabilitative programs as you are directed.

140 So I am going to stop there. I am going to ask about the non-association conditions with respect to the TCHC officer, Mr. Linds. And then any *[indiscernible]* to your submissions, Mr. Linds?

141 MR. LINDS: Your Honour, at this juncture, I don't know if he's able to anything whether he's *[indiscernible]*. *[Indiscernible]*.

142 THE COURT: So I guess his future is a little unclear in terms of when he might be able to return. Secondly, he will always likely require some kind of assisted housing. It is not likely that he will be able to — maybe then he is in a Toronto Community Housing situation again. That is what I am thinking. So I believe that is unfair. I do not know what his plans are. I do not know even if there are any plans at this point. So, Mr. Pieters, the address of this incident. His mother's family is no longer living at 275 Bleecker. Does he need to go to 275 Bleecker?

143 MR. PIETERS: No, Your Honour.

144 THE COURT: So not to attend at 275 Bleecker Street in Toronto. So, Madam Clerk, that is another condition besides this general note at the end. Do not attend at 275 Bleecker Street in Toronto.

145 MR. PIETERS: No. I, I don't know what *[indiscernible]*, at that apartment, Your Honour.

146 THE COURT: It is Ms. Moiare.

147 MR. PIETERS: Oh, right, right. Okay, fine. Yes.

148 MR. LINDS: So, Your Honour, given that, I have no further suggestions for him [*indiscernible*].

149 THE COURT: Okay. So then it is his DNA. So I assume the order is to provide a sample of your DNA. Aggravated assault is the primary designated offence. On that alone, the court requires a sample of your DNA. [Section 109](#) for a period of 10 years on the aggravated assaults and if necessary, a [Section 110](#) order a concurrent weapons order is granted, but it is part of the thing, the cultivation for 10 years. So those are the terms and conditions. That is the sentence.

150 ...END OF EXCERPT AS REQUESTED

151 ...PROCEEDINGS RECORDED BUT NOT TRANSCRIBED

152 ...WHEREUPON THESE PROCEEDINGS WERE CONCLUDED

Order accordingly.