

**COURT OF QUEEN'S BENCH OF MANITOBA**

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

HER MAJESTY THE QUEEN,	)	<u>Counsel:</u>
	)	
- and -	)	<u>ADAM BERGEN</u>
	)	for the Crown
LAWRENCE LAQUETTE,	)	
	)	
accused.	)	<u>JEREMY KOSTIUK</u>
	)	for the accused
	)	
	)	JUDGMENT DELIVERED ORALLY:
	)	MAY 14, 2015

**SUCHE J.**

[1] Mr. Laquette has entered a plea of guilty to aggravated assault. He is before me today for sentencing.

[2] The task of a sentencing judge is to determine a fit and proper sentence having regard to the nature of the offence and the circumstances of the offender, keeping in mind the competing sentencing objectives of denunciation, specific and general deterrence, rehabilitation and public safety, and promoting responsibility in offenders. All of this must be done recognizing that proportionality is the fundamental principle of sentencing.

**FACTS**

[3] I turn to the circumstances of this offence. On August 6, 2013, Mr. Laquette and some family members – his cousin Michael Laquette and girlfriend Savannah Fobister; his cousin Corrine Sinclair; and his uncle Gus Genaille – viciously assaulted the complainant by kicking, punching, and stomping him, ending with his being stabbed with a pair of scissors. The complainant suffered a broken ankle, lacerations, and bruising. The assault occurred in broad daylight in a small park in the core area of Winnipeg, where it seems that the group, other than Mr. Laquette, had been drinking. Exactly what led to the attack is unclear, except that it seems to concern a dispute between the complainant and Genaille the previous day.

[4] Laquette, meanwhile, was at the group home where he resides. His sister phoned and told him that Sinclair had just called her to say that the complainant had been pushing her around and she wanted Laquette to come help. When he arrived at the park, Genaille explained that the day before the complainant had pushed him, called him a "skinner", and threatened to get some people to help beat him up.

[5] Fortuitously, the events were captured on video. It shows the group in the area, seemingly waiting for Mr. Laquette. Once he arrived, they approached the complainant. Sinclair was orchestrating events, which began with the group circling the complainant and pushing away some bystanders who were attempting to intervene or protect him. Mr. Laquette, who is a physically large individual – significantly bigger than any of the other four – initiated the assault and knocked the complainant down by kicking and punching him, with the help of the others who had then joined in.

[6] The group assaulted the complainant and left him lying on the ground screaming in pain. A few minutes later they returned and continued the assault. At this point Sinclair pulled a pair of scissors out of a front pocket, and lunged at the complainant who was sitting on the ground, more or less pleading with them to stop. She appeared to stab him in the eye but it turned out to be just above his left eyebrow.

### **CIRCUMSTANCES OF THE OFFENDER**

[7] Mr. Laquette is 26 years old. He has been formally assessed as FASD. The extent of his education is unclear as he left school sometime in his early teen years. He has never been employed, and likely is not employable. He and his twin sister were raised by their grandparents. Although they provided a stable home, by the time he was 15 his behaviour had become unmanageable and they were forced to place him into care with Child and Family Services.

[8] Since turning 18, Mr. Laquette has lived in a home operated by Life's Journey Inc., an agency providing comprehensive services to individuals with FASD. A report prepared by his case manager indicates that he has a Global Assessment of Functioning at 55, which puts him in the borderline mental retardation range. He suffers from significant deficits due to central nervous system damage. He has been diagnosed with schizophrenia, which appears to be well managed with medication. He sees a psychologist and psychiatrist regularly.

[9] Mr. Laquette has many limitations, including difficulty reading social cues and danger signs, severe impulsivity, and lack of cause and effect rationality. He is susceptible to financial exploitation and physical/sexual abuse, and while he can access

the community independently, his case manager suggests he should not be on his own. His neurobehavioural disabilities include memory and intentional impairment; he is easily overwhelmed by stimulation; and acts impulsively without consideration for the consequences of his actions. He is not allowed to use alcohol in the residence, but he has a history of alcohol and marihuana use while a teenager and continues to consume alcohol when visiting his sister.

[10] Of significance is the fact that Mr. Laquette is an aboriginal offender. Pursuant to s. 718(2)(e) of the *Criminal Code*, I am required to take into account the circumstances of aboriginal offenders and impose sanctions other than imprisonment where available.

[11] The Supreme Court of Canada stated in *R. v. Gladue*, [1999] 1 S.C.R. 688, and *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, that courts must recognize that the impact of colonization by European society has been devastating to indigenous cultures. The resulting circumstances of indigenous people have had a profoundly negative impact on their lives, and so often play a role in an offender being before the court. This is, of course, a factor in considering the moral culpability of an offender.

[12] Mr. Laquette is an obvious example of such circumstances. He is Ojibway – his father is from Brokenhead and his mother is from Pine Creek. However, he has no connection to those communities, his indigenous language, culture or traditions and has no knowledge of his heritage. He does not consider himself aboriginal. He knows little, if anything, of his father, and his mother, who suffered from alcohol and substance abuse, is deceased. In addition to his sister, he has three other siblings who were

adopted at birth. His substantial cognitive and physical limitations are the consequences of his mother drinking while she was pregnant. He is profoundly a prisoner of the actions of others.

[13] Mr. Laquette has one prior conviction for assault with a weapon arising from an incident in October 2012 where he slashed someone in the face with a knife. Apparently he was with some members of his extended family, was drinking, and became involved in a dispute. He pleaded guilty and was sentenced to three months' imprisonment followed by three years supervised probation. The sentence suggests that the court accepted there were very significant mitigating factors.

## **ANALYSIS**

[14] I turn, then, to the question of an appropriate sentence in this case.

[15] That this was a planned and prolonged attack by a group against an individual and a weapon was involved are aggravating circumstances.

[16] The others entered early guilty pleas. Sinclair and Michael Laquette were sentenced to four years' imprisonment. Fobister, who also suffers from significant cognitive challenges, was given 38 months. None had prior records. A joint recommendation of four years' imprisonment is being sought for Genaille when he appears for sentencing next month. He is considerably older and has a lengthy record including offences of violence.

[17] The Crown seeks five years in prison less pre-trial custody. This is based largely on the notion of parity. While this is a longer sentence than the others received, the Crown argues that Mr. Laquette's conduct was more egregious for several reasons.

Unlike the others, he was sober; he had no personal grievance with the complainant, but participated because someone suggested he do so. He was the primary participant, delivering 29 kicks, and 23 punches, and stomped on the complainant's leg, the last being the only action that would explain the broken ankle. In addition, Mr. Laquette was on bail at the time, facing a charge of assault with a weapon, to which he subsequently pled guilty.

[18] I find myself in disagreement with much of the Crown's assessment of Mr. Laquette's role. Some considerations apply equally to the others, as the only person who had any grievance with the complainant was Genaille. And the others clearly planned the attack – waiting until Mr. Laquette arrived before setting upon the complainant, using him, effectively as their weapon. Sinclair not only sought out Mr. Laquette and then led the attack, she also used a weapon.

[19] Both Crown and defence agree that Mr. Laquette's significant intellectual impairments reduce his moral culpability. Where they part company, however, is the impact this has on a fit sentence. The Crown argues that regardless of why, the fact is that Mr. Laquette engages in violence easily. Thus, denunciation, deterrence and protection of the public require a significant period of incarceration.

[20] The defence maintains that Mr. Laquette's diminished capacity is a significant mitigating factor, and calls for a rehabilitative sentence.

[21] Imposing a sentence on an offender who suffers from a mental disability or illness requires a careful balancing of conflicting interests. Such circumstances are *prima facie* a significant mitigating factor. This is because the fundamental principle of

sentencing is that the punishment must be proportionate to the moral blameworthiness of the offender. A person involved in criminal activity wholly or in part because of mental illness or disability is not a free actor; thus, their moral blameworthiness is necessarily less than that of one who freely chooses to act.

[22] However, where mental illness or disability creates a risk to the safety of others, these circumstances can turn into aggravating factors and may require that the individual be separated from society.

[23] Aside from this, though, notions of punishment and specific and general deterrence have little role when sentencing an individual whose involvement in criminal activity is directly related to mental illness or disability. As the Alberta Court of Appeal stated in ***R. v. Virani***, 2012 ABCA 155, absent the concern for public safety, restraint should dominate the sentencing process for such offenders.

[24] A case in point is ***R. v. Ayorech***, 2012 ABCA 82. Mr. Ayorech was diagnosed as having a well-established psychiatric developmental disorder and schizophrenia, together with a severe substance abuse problem. In upholding the one-year sentence for several robberies with a weapon, the court stated:

7 The sentencing judge observed that ordinarily an appropriate global sentence for these offences would be within the range suggested by the Crown, and stated that were it not for the exceptional circumstances of the respondent, he would have given a 4-year sentence of imprisonment. He noted that although Ayorech had a record showing violence as a youth, his record disclosed no convictions for a substantial period (approximately 10 years) prior to the incidents in question. The sentencing judge further took into account that Ayorech has no memory of committing these offences, is limited intellectually, and has serious mental illness as well as severe substance abuse problems, which the judge commented could not be cured overnight. ...

[25] The Alberta Court of Appeal affirmed the correctness of the approach on the basis of reduced moral culpability:

12 The gravity of the offence is not, of course, lessened by the personal circumstances of the offender. However, the mental disorder diminishes the degree of responsibility of the offender. Impaired reasoning, delusional disorders, and like mental conditions distinguish those afflicted from the ordinary offender who is fully accountable for his or her conduct: ...

Similarly, in *R. v. Draper*, 2010 MBCA 35, the Manitoba Court of Appeal reduced a sentence for several robberies from six to three years' imprisonment on account of the offender's FASD presentation and drug addiction.

[26] Here, the presentence report reveals that Mr. Laquette has managed very well while in Headingley Correctional Centre since his arrest on this charge. He is described as easy-going, gets along with everyone, and follows the rules. His case manager from Life's Journey describes him similarly. It is true that he was residing at Life's Journey when both of the criminal offences occurred. However, it is worth noting that he was not subject to any limitations on his freedom or associations, except the standard house rules. Thus, he could go more or less where he wanted. In addition, he has lived there since he turned 18 without any other problems. The fact that members of his extended family were involved in both situations where he committed offences suggests that they are a significantly negative influence.

[27] The evidence before me suggests that the biggest factor in Mr. Laquette's risk of re-involvement is the company he keeps. Thus, he obviously needs some restrictions or controls on this if he is to live in the community. If I impose the sentence sought by the Crown, he will be in custody in a federal penitentiary for the next three and a half

years. He will return to Life's Journey with only the house rules in place. Given his lack of cause and effect rationality, memory and intentional impairment and impulsivity, he is not likely to fare any better than he did previously when negative opportunities arise. There is also no reason to think that incarceration in a federal penitentiary with no programming for vulnerable individuals like Mr. Laquette will do anything for him.

## **DECISION**

[28] I am of the view that Mr. Laquette's diminished moral culpability resulting from his mental disability is the dominant consideration in this case, and both rehabilitative objectives and public safety concerns can be properly served if Mr. Laquette is placed on the maximum period of probation with restrictions on where he goes and what he does. The report prepared by his case manager indicates that if restrictions of this kind are included in a court order the staff at the residence will be able to enforce the conditions. In addition, should Mr. Laquette fail to comply, the police would be immediately notified. This organization understands Mr. Laquette's vulnerability well and I am satisfied they will be able to offer the necessary support to him.

[29] The only issue left to be resolved is whether, in addition to a term of probation, Mr. Laquette should be sentenced to any additional period of incarceration. I do not see that this serves any purpose given that both general and individual deterrence really have no role in this determination.

[30] In the result, I am imposing a sentence of 18 months' imprisonment which is satisfied by time served, to be followed by three years' supervised probation, the terms of which include that Mr. Laquette:

- keep the peace and be of good behaviour;
- appear before the court when required to do so by the court;
- report to a probation officer within 48 hours of release, and thereafter as directed;
- reside at the Life's Journey residence at 321 Paul Boulevard, Winnipeg, or any other Life's Journey residence approved by his probation officer;
- be at the Life's Journey residence 24 hours a day unless in the company of a staff member or any other person authorized by his probation officer;
- follow all the rules and regulations of the residence;
- have no contact or communication with any of the co-accused, Michael Laquette, Savannah Fobister, Corrine Sinclair, and Gus Genaille, or the complainant, Brian Saunders;
- abstain from consumption or possession of alcohol, intoxicants, illegal drugs or prescription drugs not prescribed for him;
- attend and complete any alcohol or drug assessments or programs directed by his probation officer;
- not possess any weapons, including knives, except for the purposes of immediate consumption or preparation of food.

[31] I am ordering a lifetime weapons prohibition under s. 109 of the ***Criminal Code***.

[32] Given Mr. Laquette's circumstances, I am waiving the victim fine surcharge.

[33] As this is a mandatory designated offence, I make an order for the purpose of taking samples of a bodily substance for DNA analysis.

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