

R. v. Armitage, 2015 ONCJ 64 (CanLII)

Date: 2015-02-11

Citation: R. v. Armitage, 2015 ONCJ 64 (CanLII), <<http://canlii.ca/t/gg987>> retrieved on 2015-07-08

ONTARIO COURT OF JUSTICE

DATE: February 11, 2015
COURT FILE No.: Toronto
Citation: R. v. Armitage, 2015 ONCJ 64

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

JESSE ARMITAGE

Before Justice Nakatsuru
Heard on October 30, 2014
Reasons for Judgment released on February 11, 2015

L. Fineberg counsel for the
Crown
S. Kelly counsel for the
Offender

NAKATSURU J.:

[1] This case was heard in the *Gladue* court at Old City Hall in Toronto. Jesse Armitage is a troubled man of Aboriginal heritage who was sentenced by me a number of months ago. At the time I gave my decision, I said that I would draft and release a written decision. This is that decision.

[2] Before I get to this, I would like to make two short comments. First of all, I want to say something about the style of this decision. For those who have read some of my past judgments, the reader may notice a change. For **Jesse Armitage**, I have tried to say what I wanted to say in very plain language. I believe that this is very important for judges to do in every decision. However, judges often do not do a good job of this. I would describe myself as one of the worst sinners. As lawyers first and then judges, we get used to using words that are long and complicated. This only muddies the message we are trying to say. That message is very important when it comes to passing a sentence on an offender. That the message is clear is even more important in the *Gladue* courtroom.

[3] I say this because in the *Gladue* court at Old City Hall, accused persons who share a proud history of the first people who lived in this nation, not only have a right to be heard, but they also have a right to fully understand. Their voices are heard by the judges. And they must also know that we have heard them. I believe that the accused persons who have been in this court have had good experiences in this. This is something that they have come to appreciate. This is something they have a right to expect.

[4] I know that all accused, whether they have any Aboriginal blood or not, should have this right. Judges struggle to make sure they do. However, when judges write their decisions, they are writing for different readers, different audiences. Judges write not only for the parties before them. Judges write to other readers of the law. Lawyers. Other judges. The community.

[5] In this case, I am writing for **Jesse Armitage**.

[6] The other thing I wanted to say is something about our *Gladue* court. This court was established in 2001. It was the first court of its kind in Ontario. Since then, it has matured. It is well respected. There is much cooperation between the Crown and the defence. The court applies the principles set out by our highest court, the Supreme Court of Canada, in the case of *Gladue*. We try to be faithful to those principles in every case.

[7] I admit the case of **Jesse Armitage** has been a challenge for me. The proper application of those principles has not been easy.

[8] **Jesse Armitage** is a 29 year old man and single. His Aboriginal ancestry comes from his mother's side. Valerie **Armitage** is a member of the Anishnawbe community of Dokis First Nation located southeast of Sudbury. Mr. **Armitage** has found himself in a pattern of minor criminality that he is unable to escape from.

[9] He has come forward and pleaded guilty to many criminal offences. They are mainly property crimes and breaches of court orders. Mr. Armitage committed them over a period of a few months during the end of the year of 2013 and into the spring of the following year. It is not important for my purposes to outline the facts of each offence. There is a sad and bleak repetition to what he does. Mr. Armitage has a plan that he uses. Sometimes it works. Sometimes it does not. He goes into open businesses, sometimes through an open back door, sometimes through the front door. It could be a shop or a restaurant. He heads to the back to see what he can steal. Sometimes he finds a staff change room. There he grabs whatever that is not locked up and of some value. If he is ever stopped by someone, he makes up an excuse like he was looking for a washroom. One time, he threatened someone when confronted. During these offences, he has been on probation or bail. He has been breaching these court orders by doing these crimes.

[10] Jesse Armitage has a criminal record. His offences started while he was still a youth. The crimes are usually the same. He has spent time in jail, received probation, and has been given conditional sentences to be served in the community. The sentences have not rehabilitated him. They have not helped him. They have not deterred him from committing the same offences. They have not stopped his crimes.

[11] When he pleaded guilty to the charges, I had little idea about who Jesse Armitage was and why he did what he did. He is a large man, boyish in his face, a face fringed by dark curly hair, and very quiet. He looks a lot younger than his age.

[12] I know his mother cares for him. His mother has attended court for him. She was supportive. She spoke one time to me in court about him. About her fears and hopes for him. She bailed him out.

[13] Closer to the date of sentence, she did not come for him. This is not surprising because her son did not change much. He continued to re-offend.

[14] Ms. Fineberg, the assistant Crown attorney, and Ms. Kelly, Mr. Armitage's defence lawyer, were incredible. They understood the problem. They worked together to try and get a solution. Although their position regarding the sentence was not the same, they cooperated to get as much information as possible on this Aboriginal offender.

[15] So, as I told Jesse Armitage on his sentencing day, we started this journey together. It was not one without its bumps along the way. It was also

long. There were a number of adjournments. There was much investigation. Throughout I tried to reach Jesse Armitage. Sometimes I felt I had some success. There was sometimes a smile of understanding on his face. Other times I just saw frustration in him. I know he did not fully agree with all the delay. I know he did not always agree with what was being done to fully be ready for the sentencing. Some days he just wanted to get on with it.

[16] What was done? The law says for Aboriginal offenders, it is the duty of the sentencing judge to get as much information about the offender. I have, with the help of the lawyers, tried to do so. A pre-sentence report was prepared by probation. A *Gladue* report was prepared by the Aboriginal Legal Services of Toronto. A psychiatric report was prepared by the Center of Addiction and Mental Health.

[17] I will try to summarize what was said in these reports. When the pre-sentence report was ordered by me, I frankly told Ms. Kelly that I expected that it would not be positive. What else could one expect in light of the numerous convictions for failing to comply with probation that Mr. Armitage has on his criminal record. That expectation turned out to be correct. The report was not positive. The probation officer writing the report has supervised Jesse Armitage on six probation orders. He remains on probation until 2015. The officer conceded that she had tried all available services for him that probation could offer. He had been encouraged, supported and provided with referrals in the areas of education, employment, mental health, substance abuse and personal counselling. To put it simply, in the probation officer's eyes, Jesse Armitage just failed to follow through with any of it. Specifically, the officer provided him with counselling options that was specialized to his Aboriginal heritage. When asked why he did not follow through with these, Jesse Armitage said "I don't know. I don't really like to do those things." In the appointments with the officer, he did not give the probation officer much insight into what he was thinking, feeling, or wanting for himself. He seemed uninterested in changing.

[18] The probation officer did raise the concern that there could be a possible underlying mental health problem that has not been diagnosed. She recommended a mental health assessment. But to date, Mr. Armitage has not been cooperative with any process suggested. At the end of the day, it is fair to say, the probation officer was at a loss as to what could be recommended for him.

[19] The pre-sentence report also outlined Jesse Armitage's background. I will now talk about this more when I turn to the *Gladue* report.

[20] The long and detailed *Gladue* report was very helpful in telling me about this. Jennifer Bolton, the *Gladue* caseworker, has written a very good

report. Such reports are very useful in telling a judge about the particular nature of the offender's Aboriginal ancestry and how being an Aboriginal person has affected his or her life circumstance. The report talks about how the offender has been influenced by his or her Aboriginal ancestry, whether specifically in his or her life, systemic factors, or historical reasons. In other words, there are many ways Aboriginal ancestry can affect an offender's life and can be telling as to why he or she committed the crime. It does not have to be a direct cause like clear discrimination. An example of direct discrimination would be the loss of work or opportunities for work because the offender is Aboriginal. It can also affect an offender if being Aboriginal has affected his or her parents or his or her parents' parents. There are many ways that sharing an Aboriginal heritage can be relevant for sentencing. Some of those ways may be unseen and hidden. It is a judge's role in a *Gladue* court to shed light on those ways.

[21] The other way I find these reports very useful is that the information provided by the sources is often quoted word for word. For example, when Valerie Armitage tells Ms. Bolton something, it is sometimes put in quotes. For me, this gives a real sense of what is being said. It is not being filtered or interpreted by the writer. It gives me a flavour of who the speaker is and what that speaker wants to tell me. The best way to get this is if the speaker was present in court, telling me the story. Telling me in his or her own words. In a voice spoken with feeling. Therefore, a *Gladue* report written in this way is valuable substitute to the speaker coming to court and saying it in person.

[22] I cannot do justice to the detail set out in this 23 page report. I can only highlight the main points. I note that much of this information comes from Jesse Armitage's mother. Although Mr. Armitage was interviewed two times, he had difficult focusing. Sometimes he was not sure. Sometimes he did not reveal much information even to simple questions. This caused Ms. Bolton concern about whether there may be an undiagnosed psychological problem at work.

[23] Jesse Armitage is an Aboriginal person. He is not at present recognized as a "Status Indian" under the law but he could be eligible to do so. He is the youngest of three children born to Ronald Morin and Valerie Armitage. Valerie Armitage herself was born in Sudbury but moved to Toronto when she was six with her parents and her brothers and sisters.

[24] Mr. Armitage is close to his older sister Crystal and Dustin. He also has a younger brother and sister through his mother's common-law relationship with Bob. Jesse Armitage himself has a ten year old son but his son lives with his mother. Mr. Armitage has little contact with either son or mother.

[25] I have already talked about Mr. Armitage's Aboriginal ancestry through his mother's side. His grandmother grew up on a reserve and was an Indian

Residential School Survivor. Valerie Armitage said “She went, but she didn’t speak about it. She told us stories about what she wanted me to know.” Silence is a pattern seen in many survivors. Much has been written about the experience of Aboriginal persons who were forced to go to residential schools as children. This has been said by the Aboriginal Healing Foundation:

An examination of current commentary on the Canadian residential school system highlights how destructive and damaging the system has been for Aboriginal people, past, present and future. Much of the contemporary discord in Aboriginal communities such as increased prevalence rates of substance abuse, family dysfunction and suicide, have been linked to intergenerational impacts brought about by residential schooling.

[26] The policy of such schools set up by the government was to “kill the Indian in the child”. That policy affected many children and many families for many years. That policy was recognized on June 11, 2008, by Prime Minister Stephen Harper to be wrong. He apologized for it in Parliament. He said:

It was wrong to forcibly remove children from their homes.... It was wrong to separate children from rich and vibrant cultures and traditions, that it created a void in many lives and communities...in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow...the legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.

[27] That policy and experience has affected Jesse Armitage’s family.

[28] Valerie Armitage although she hesitated to speak about it, talked about her family’s history of alcoholism:

My mom drank. My older sister saw a lot. She took a lot of responsibility being the first child. Having to see my parents drink. Fight. See them with their brothers and sisters, fighting. Partying. As a teen, mom drank here and there. Dad drank. She’d leave him under control. When I was teen, I was old enough to leave the house. I’d be able to just walk out of the house. It did affect my sister. I’m not sure why it didn’t affect me. I let it go. I loved my mom and dad no matter what.

[29] Valerie Armitage has struggled with alcohol abuse as well until recently.

[30] When Jesse Armitage was born, his mother and father separated shortly afterwards:

I left his dad when he was still young. A year and a half old. I had to tell him to leave. He was into drugs. Dustin was three. Crystal was five...He was a quiet child, then he kinda came out of it. He'd walk in the house and go upstairs. He could not look you in the face-anybody in the face. That's when I started to realize something was wrong."

[31] Valerie Armitage raised the kids more or less as a single mom. Jesse Armitage's father was in and out of custody over the years. Jesse Armitage had difficulty at school and at the age of ten he was diagnosed by the school with Attention Deficit Hyperactivity Disorder. He was given Ritalin but Valerie Armitage stopped the treatment as she did not believe in it. She contacted the Children's Aid Society around that time for assistance. He was given support by the Big Brothers of Canada and started to play hockey into his teen years.

[32] Valerie Armitage formed some common law relationships since Mr. Armitage's father. Two children came from one of those. Her relationships with these men were troubled. She began to drink again in her thirties. She feared she may have been neglectful of her son Jesse Armitage at the time.

[33] Mr. Armitage reported that the last time he attended school was grade 8. He believes his first contact with the criminal justice system was at 14. When asked why, replied "not sure." He left home at 15 and got welfare. He has been on social assistance since that time. Valerie Armitage placed her son in foster care at about the age of 15 when he started to get into trouble:

I actually didn't know what to do with Jesse at one point in my life [pause]. He was 15. He stole the car, in the middle of the night. Then he started getting himself in trouble and charged. I ended up placing him in foster care-not too long. I felt so guilty. I needed help.

[34] Jesse Armitage returned home from time to time. Until he got another room in a rooming house. There was trouble at home since he did not work. There was a lot of arguing.

[35] When Jesse Armitage was 18 years old, he had a relationship with a woman. At the time, he was working at a warehouse according to his mother. A son was born when he was 19. This relationship lasted for a maximum of three years. There is little contact now between them if at all. The ending of the

relationship did not go well as the courts were involved given Mr. Armitage's behaviour.

[36] Jesse Armitage when interviewed often gave answers that were not particularly informative. However, when questioned about substance abuse, he admitted he smoked marijuana since leaving school a couple of times a week. When asked about alcohol, he said he started at 15 or 16 and used it occasionally. He has not been employed. He said he had no past romantic relationships. When asked about friends, he shook his head and said no. He could not reply about how he spent his days. He did not know.

[37] Valerie Armitage also has had concerns about whether her son suffers from a hidden mental illness. She reports that schizophrenia runs in her family and believes he might be suffering from this. She told Ms. Bolton:

He would have been about 22. He lived with me. He used to come home and be very demanding. He'd be walking around, looking at mirrors, laughing. Giggling. He got very angry. He would be very aggressive with me. He'd never done that. Josh and Brittany were very young. One night, I locked him out. Finally, I called the police. He was saying something – [referring to Valerie] "I'm ugly. I looked like my brother"- I'd never seen anything like that – angry.

[38] Valerie Armitage said that her son had also seen Dr. Hamlet but she did not know for what. However, she believed he may have been given medication for a mental illness. Ms. Bolton was unable to obtain information from Dr. Hamlet. Valerie

Armitage also noted that within the last five years she took her son to the Dokis First Nation:

We took him up North, about five years ago, to our reserve, and he got so paranoid. Everyone was around, family, and he had to be driven right home. He started to feel anxious. I offered him, because I, I take a mild dosage of lorazepam- nothing could settle him down. He kept walking and moving, saying "I want to go, I want to go."

Mr. Armitage remembered the visit. But he only said three short things about it: "I visited once, a couple of years ago. It was a nice place. I don't know anybody there."

[39] Jesse Armitage's mother was also concerned her son may have been sexually abused when younger due to some things he has said. This was just a suspicion that she had. Mr. Armitage denied any type of sexual abuse.

[40] Although Jesse Armitage said he only used alcohol occasionally, his mother became concerned about his drinking:

I've been on my own for the last two years and he lived with me. He drank every day-every night. First, it was beers. He was quiet. He didn't cause problems. Then, he started to like, um, get a little bit, rude. Not listening to me. That's when I said we have to find you a room.

....

He has a hundred to a hundred and twenty five to get him through the month. That wouldn't last a week for food and alcohol. He was out there stealing. His brother said "anything you need, I'll get for you." He did that for a while. All he knows is he gets a cheque, he can eat and he can drink. When he runs out of money, his mind goes to where can he get it. He got swept up in the lifestyle again, of stealing.

....

He needs treatment. Definitely treatment. It's the top of my list. Treatment and diagnosis. I know that he doesn't do hard drugs. He doesn't have the money and he's afraid too. He's afraid of anything other than marijuana. It's the drinking. He's very dependent on the drinking.

[41] At the time of the report, Mr. Armitage was back in custody. He said very little about his circumstances or his offences. When asked why he was trying to take two televisions from a store, he said "To sell them." When asked what he needed the money for he said "Just for the things I need." When asked how he spent the money he took he said "I'm not sure."

[42] Ms. Bolton mentioned something that she felt important to write upon which happened on May 1, 2014, when Jesse Armitage came into contact with his father in the cells of Old City Hall. Joanna Wemigwans, the Aboriginal Criminal Courtworker had spoken with both men that day. She recalled

I felt sorry for this young man, it is easy to see Jesse struggles with mental health but will not admit anything.

I went to speak with Jesse because I knew it must have been difficult for him to see his father that way. Jesse was mad that his father was trying to lecture him about his lifestyle and making him feel uncomfortable because it was in front of all the other accused persons in the 116 bullpen.

When asked by Ms. Bolton how he felt, if he was upset or angry, when he runs into his father in jail, Mr. Armitage replied "Everything's fine."

[43] Ms. Bolton discussed a number of options, including treatment for drug and alcohol abuse, with Mr. Armitage. He showed some interest in some of them. One program run by the Native Men's Residence with a goal to provide life skills to build strong Aboriginal men was talked about with him. Mr. Armitage was willing to give it a try. But when asked about his own goals, he just said "I'll be alright. I'm okay."

[44] Ms. Bolton did come up with some recommendations despite the lack of any real long or short term goals of Mr. Armitage. She recommended if a non-jail sentence was given: 1. Mr. Armitage attend Aboriginal Legal Services to work with a Gladue Aftercare worker to complete his plan of care; 2. Mr. Armitage complete an intake with Anishnawbe Health Toronto with the ability to access a number of services including an addictions counsellor, traditional counsellor, Elders, psychologists, and psychiatrists; 3. Mr. Armitage consider applying for Sagatay and completing the Apaenmowinneen. Sagatay is a program run by the Native Men's Residence which is a 63 male bed shelter to house and serve the needs of the homeless in this city. The Sagatay's mandate is to build strong Aboriginal men through development of their skills. The first three months of the program requires completion of Apaenmowinneen [Having Confidence in Myself] where each man chooses which learning stream such as education and jobs works for him. Mr. Armitage said that he would be willing to go but became uncertain if mandatory part

was longer than three months. Sagatay does have a waiting list. However, the intake interview can be done online and an assessment appointment is done after this.

[45] Ms. Bolton, the probation officer, and Valerie Armitage all raised the question of whether Mr. Armitage was suffering from a hidden mental illness or emotional problem. This had to be looked into more. So I made an order with

everyone's consent for a psychiatric assessment by the Center for Addiction and Mental Health. This took some time to complete.

[46] Dr. MacDonald wrote a lengthy report. It is an interesting report. At the end of the day, it would be fair to say that Dr. MacDonald did not know what to say about Mr. Armitage or what to do with him. The doctor also appeared frustrated with Mr. Armitage. Although he had access to much material, he really did not have Mr. Armitage's help or cooperation. He could not in his mind decide what was true or what was not given the different stories he had about Mr. Armitage and his past. He did not uncover any previous psychiatric or psychological tests done by him although Dr. MacDonald believed they likely existed. The doctor did not feel such testing, either in the past or in the present, could really be accurately done given Mr. Armitage's indifference and lack of motivation.

[47] Dr. MacDonald admitted that his report could only be of limited help. He felt that any treatment would not likely succeed. He was not very optimistic about Mr. Armitage. Mr. Armitage did not seem to have the slightest interest in getting help, changing his life, or obeying any court orders. It led the doctor to highlight this conclusion:

Indeed his degree of indifference with respect to so many things in life is so extreme as to cause me to wonder if there might be an insidious psychiatric disorder present of which I am currently unable to find any direct evidence. Certainly, this has been speculated by numerous others who have known him. If he has any psychiatric involvement of which I am unaware, or any treatment that had any degree of success (query antipsychotic medications?), I do not as yet have any evidence of this.

[48] There was one recommendation Dr. MacDonald made that I wish to point out now. I do this because it will figure back in later in my decision. It will do so for reasons apart from the sentence I imposed:

Should Mr. Armitage serve a sentence of some length, he could be referred to the St. Lawrence Valley Treatment Center for a review of his mental condition, prior to his release from custody. This is a facility with particular expertise in dealing with individuals like Mr. Armitage, and if he does have a prodromal mental disorder that is simply not sufficiently obvious to detect at this point, this might allow for its appropriate identification and open the door to consideration of treatment prospects that currently do not appear to be at all realistic.

[49] So this was some of the information I had about Mr. Armitage at sentencing.

[50] I also had the information about the crimes he committed. I gave him credit for the various time he spent in custody before he was finally sentenced. I carefully listened to the lawyers and what they said the sentence should be.

[51] Ms. Fineberg was very fair. She understands very well the approach to sentencing Aboriginal offenders. She asked for some more jail time beyond the "dead time" Mr. Armitage had done. She could have asked for even more. But she did not.

[52] Ms. Kelly was also very fair. Fair to Mr. Armitage. Fair to concerns I as a sentencing judge would have. She argued that Mr. Armitage needed help. Help that he would not necessarily get in jail. However, she understood why the Crown was asking for some more time.

[53] There are rules that any sentencing judge must follow. Even in cases where Aboriginal offenders are being sentenced. Overall, a sentence must be an individual one. It must respond to the offender. It must recognize the facts of the offences. It has to be a balanced and just sentence. It must protect the community. It must also try to rehabilitate the offender.

[54] In this case, I took account of all that I had to. It is not necessary to spell it all out. In the end, I found Mr. Armitage's case to be challenging. I found it to be different in ways from other cases I have done. I found it in some ways, sadly, very much the same as other cases.

[55] If I could describe Mr. Armitage as a tree, his roots remain hidden beneath the ground. I can see what he is now. I can see the trunk. I can see the leaves. But much of what he is and what has brought him before me, I cannot see. They are still buried. But I am sure that some of those roots involve his Aboriginal heritage and ancestry. They help define who he is. They have been a factor in his offending. They must be taken into account in his sentencing.

[56] It is also obvious that this tree is not healthy. The leaves droop and appear sickly. It does not flourish regardless of the attention paid upon it. The tree needs healing.

[57] A part of any sentencing for an Aboriginal offender is to see if there is a way to further that healing. Of the offender and of the community he lives in.

[58] One important thing I must consider is the past injustices done to the Aboriginal peoples in this country. How that has affected the present. How that

has affected Mr. Armitage. I must also consider the present problem of the over-incarceration of Aboriginal offenders.

[59] I emphasize that being Aboriginal does not mean that jail can be avoided when jail is required. It does mean that I must consider all other reasonable options before imposing it.

[60] Given the pre-trial custody, Mr. Armitage has done jail for these offences. I have concluded that further real jail is not required. I decided this not because he should be treated with mercy. I cannot give him mercy given his past criminal record and how he has behaved while out of custody. A sentence must deter Mr. Armitage. More custody is required for that although he has pleaded guilty to all these charges.

[61] I have come to this conclusion but also have come to the conclusion that this jail can be served in the community. There will be a conditional sentence order. Of course, there is a test under our law before a conditional sentence can be ordered. I have decided Mr. Armitage has met that test. I know there will be some who will say that given all the times he has failed to respect court orders, that this conditional sentence is wrong. The people who say this might well be right. However, while I cannot give this Aboriginal offender mercy or leniency, I can give Mr. Armitage a chance. Some will also criticize that Mr. Armitage has had many chances. And that he has failed each time. I agree with such criticism. But I believe what we must do in order to be a part of the solution rather than the problem, is to not stop offering a chance to an offender when it is the right thing to do. This is the best way to be a part of the solution. This is also the best way to protect the community and maintain respect for our criminal justice system.

[62] I find that Mr. Armitage appears before me as a dispirited man. He has really no self-esteem. He does not think of himself as important. As a result, he does not seem to care about what he does. The harm he has caused to others. The harm he has caused to himself. His spirit has fallen ill. Although I cannot say exactly how or describe it in easy to understand words, it strikes me that Mr. Armitage is a metaphor for what negative effects colonization has had on many First Nations people and communities.

[63] I have given serious thought to restorative justice principles. I had thought that Mr. Armitage may be the right case for a sentencing circle. He does not seem to understand the harm of his actions. He does not seem to care how his actions affect others or the community. He does not seem to want to connect to the Aboriginal community, the Dokis nation, that defines a part of his identity. I felt that maybe this type of circle sentencing, if done right, could reach him. Could touch him in the right way. Put him on the path to health. But here at

Old City Hall in Toronto we are just beginning discussions about having sentencing circles. For a number of practical reasons, such a process could not be put in place for Mr. Armitage in a timely way.

[64] Like everyone else, Aboriginal offenders have a right to justice in their sentence. But justice does not always have to be delivered with a hard sharp edge. Too often in the past, Aboriginal offenders have only felt the steel when something softer could achieve the goals of sentencing. It is with this in mind that I have decided to order a jail sentence but one that can be served in the community.

[65] The conditional sentence that I imposed is not the end of the journey for Mr. Armitage. I am a realist. Neither is it the beginning of the journey. Mr. Armitage has been travelling this road for some time now. Ultimately, he is responsible for the path he takes while on my court order and the path he takes in life. I have made this order so that he can take this path knowing he need not do it alone. He has the support of others if he wants it. He also has mine.

[66] The conditional sentence order was for 14 months in total. This is much longer than the actual jail time asked for by Ms. Fineberg. I will not go into the details of this order. Mr. Armitage knows them. They include house arrest with exceptions, culturally appropriate counselling, conditions to protect specified individuals and the public, to require him to follow his plan of care, to write apologies to his victims, and to make sure he attend to get into the native program. Finally, I required him to reappear in front of me in a couple of weeks. I did that not because the sentence was not given and finished on the date of my decision. I did that because I did care about how Mr. Armitage was doing.

[67] There is a post-script to my decision. Mr. Armitage did not make it to his first attendance with me after his sentence. Within days he was again arrested for doing very much the same thing he has always done.

[68] In writing this part of my decision, I first thought I would say that I was disappointed or that it was with sadness that I had to report this. However, I decided against writing this.

[69] First of all, it was not unexpected to me. How could it be? I was only surprised how quickly this happened. I asked Mr. Armitage about that. He had no money. He had little to do. I don't think he really knows why. Even before I had passed sentence I sensed that Mr. Armitage's path along this journey would not be straightforward.

[70] More importantly though is what happened when he came back before me on his conditional sentence breach. Mr. Armitage asked that 9 months of the remainder of his conditional sentence order be served in jail. He did this so that he could be sent to St. Lawrence Valley Treatment Center. He asked for this because he wanted to be sure he had enough time in custody to fully make use of the help available. This was not something that came from me or the Crown. It came from Jesse Armitage. I add that Ms. Kelly was very thoughtful and careful in her representation of him. This will be by far the longest jail term he will have done to date. To be frank, I would have considered something less.

[71] Mr. Armitage asked for this because I believe he knew that there was no other way for him to get healthy. I believe that he had come to a point in his life where he was ready. Ready for a chance to change.

[72] When an offender has come to this point, no matter how long, tortuous, or difficult the path taken to get there, there cannot be sadness or disappointment. There can only be hope.

Released: February 11, 2015

Signed: "Justice S. Nakatsuru"