THE PROVINCIAL COURT OF MANITOBA

BETWEEN:	)	Mr. M. Minuk
	)	for the Crown
HER MAJESTY THE QUEEN,	)	
	)	R. Wolson, Q.C.
- and -	)	for the Accused
	)	
DEREK GRANT HARVEYMORDENZENK,	)	
	)	Sentence delivered
Accused.	)	October 29, 2007

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WYANT, C.P.J. (Orally)

At the outset, I want to address the family of Crystal Taman. I have spent countless hours since August the 22nd thinking about this case and during that time I have read and re-read and played over in my memory the words that you had to say to me in your victim impact statements and the emotion that those words were presented with. I have struggled to find something that I could say to you that would adequately express my feelings and heartfelt sympathy to you on your loss. But as you well know, there are no words that can do that. Unless someone has experienced the kind of loss and pain you have, no one could possibly imagine how devastating that would be; in an intellectual way, maybe; but in reality, we're all incapable of understanding and feeling the depth of emotion and the loss that you feel. In an instant, a lifetime of memories was lost; a future of what could have been was replaced with a memory of what has been and an eternal nightmare of what-ifs and whys. I recognize the enormous pain you still endure and the devastating impact on you individually and on

your family as a whole. It is so, so sad.

Like so many other people, I wish I could wave a magic wand and turn back time, but as you know, life is not like that. You have no second chances here. Instead of a life of hope and happiness and laughter, you live a life of pain and anguish, of emptiness and grief. It is a tragedy of enormous proportions to you and one that no sentence of this court can ever heal.

In the end, I hope you will accept a very simple and heartfelt "I'm sorry" from me for your loss of Crystal. It is clear that she was deeply loved by so many and I hope that those wonderful memories of her life and her generosity and gentle spirit will sustain you and give you comfort in the years to come.

I can say that this has been, as you can tell, a difficult case for me to separate the emotional aspects from the legal ones, but something that, I hope you appreciate is what I must do, of course.

I also want to say to you that I recognize that these legal proceedings have not been kind to any of you, and for that I also apologize. It has been over two and a half years since Crystal died and yet here we are still dealing with the legal aftermath. By any standard, that is a horrible length of time.

In saying this, I am attributing no blame to anyone for that delay because I do not possess all the facts to make a judgment on whether it is unreasonable or not in a legal sense. I recognize that in the litigation of cases sometimes exigencies prevent a speedy resolution, but I think no one could argue that this delay is exceptionally regrettable. I do now understand that part of the delay resulted in Mr. Minuk having to request a re-investigation by the Royal Canadian Mounted Police.

As well, I want to say to you that I recognize

that the manner in which this case has proceeded before me for sentencing has created its own anguish for you. I intend to comment on aspects of that in my decision this afternoon.

I will now turn to comment on what I would describe as “A Tale of Two Cases”.

On August the 22nd, 2007, submissions were made before me. In essence, Mr. Minuk and Mr. Wolson, both respected members of the bar and very experienced counsel, presented a factual basis for the plea by Mr. Zenk to one count of dangerous driving that caused the death of Crystal Taman and jointly recommended a disposition by way of a conditional sentence.

In support of the joint position, I was given a presentation of facts and justification that I thought appeared to be carefully orchestrated. In saying that, I do not mean to imply that orchestrating a presentation is necessarily a bad thing to do, but rather, I comment that way because it was clear to me, at that time anyway, that the factual basis of the plea and the joint recommendation had been carefully agreed to by both counsel. There was, in reality, a paucity of facts given to the court surrounding the circumstances of what happened on the morning of February 25th, 2005. Words were carefully chosen.

For example, Mr. Minuk, in describing the hours prior to the accident and the activities of the accused with his police comrades, used the phrase that there was, "anecdotal historical evidence" of the consumption of alcohol by Mr. Zenk. That phrase was carefully articulated.

Counsel presented a joint list of authorities and a joint recommendation for sentence. Both Mr. Minuk and Mr. Wolson clearly stated that, based on their reading of the case law and based on precedent, on these facts, a conditional sentence of two years less one day should be

imposed. I was left with the clear evidentiary factual basis that the guilty plea by Mr. Zenk to this charge was based on a combination between the consumption of some alcohol by the accused - that was the anecdotal historical evidence of consumption that I referred to - along with an accident which appears to be unexplained, where there was no evidence of excessive speed or erratic driving, but an accident where the accused, in the light of day, ignored yellow warning lights and the red light at the intersection where Crystal Taman's stationary car was situated and the brake lights on her car and ploughed into her without braking or slowing down at any point.

I confirmed that position with Mr. Minuk on August 22nd and there was no submission from Mr. Wolson to the contrary other than Mr. Wolson pointed out that impairment of the accused was not a factor and that the dangerous driving of the accused was due to inadvertence. I accepted the fact that impairment was not an issue as the accused had not pled guilty to an offence involving impaired driving and no evidence of that was presented before me. There was no direct comment from the defence that disputed the Crown's set of facts that talked about the historical and anecdotal evidence of the consumption of alcohol. Mr. Wolson, in passing, simply said this was a case where there was mention of alcohol consumption by the Crown but no proof of it.

In all respects, this case was presented wrapped up in a tight package with no dispute on the facts or the sentence from either counsel, right down to the conditions to be imposed. In fact, of significant note, was the fact that one of the conditions counsel had agreed ought to be imposed was that the accused attend, participate in and complete a substance abuse assessment and treatment. Mr. Minuk said that in both the Bazylewski case and the Duchominsky case, where there was historical evidence,

anecdotal as it was, of alcohol consumption prior to driving but impairment could not be proven, the courts in those cases, much like this, imposed such a condition which includes alcohol. This re-emphasized to me that alcohol consumption was a factor in this case.

This case was presented to me by both counsel that they were in complete agreement as to the facts and the sentence. If counsel were disputing any fact relative to the joint recommendation, there is an obligation to notify the court. I received no such notification.

After the case was adjourned for my decision, I wrote a letter to counsel telling them that I was considering rejecting the joint recommendation on the basis that Mr. Zenk was a police officer and therefore a higher standard of conduct was expected from him.

Pursuant to many Manitoba Court of Appeal decisions, most recently in R. v. Perron from 2007, I was required to advise counsel of my discomfort and concerns and to invite them to make submissions. The Court of Appeal has been very clear that it is a reversible error for a trial judge to reject a joint recommendation without telling counsel of their concerns and allowing counsel to make further submissions.

The purpose of those submissions is not simply a formality to a preconceived decision. A trial judge must always keep an open mind on a matter until those submissions have had a full airing in court, and I made that quite clear in my opening comments on September 12th.

What happened at the subsequent court hearing on September 12th was very troubling to me. For the first time in court, I heard that this joint recommendation was made as a result of a plea bargain. Nowhere was the term "plea bargain" mentioned to me in August.

Now, I recognize that for most lay people, this

discussion might be difficult to understand. Let me explain:

The Manitoba Court of Appeal in many cases, including R. v. Pashe, R. v. Sinclair and R. v. McKay, has outlined the rules and guidelines that sentencing judges must apply in assessing joint recommendations. Included in those guidelines are the following:

That a sentencing judge should give a joint recommendation very serious consideration and should only depart from the joint submission when there are cogent reasons for doing so.

In determining the cogent reasons, the sentencing judge must take into account all of the circumstances of a joint submission, including if the joint submission was part of a plea bargain and whether there existed a quid pro quo; whether there existed exigencies in the evidence; and whether or not the sentence recommended is out of line with similar cases.

So you see, though it is always open to a sentencing judge to reject a joint recommendation, it is clear that great weight must be given to such a recommendation in all the circumstances, and most especially in situations where the joint recommendation is based on a plea bargain. Judges must be vigilant and vigorous in their examination of joint recommendations based on plea bargains.

Joint recommendations, though, are not always based on a plea bargain. Often there is a meeting of the mind between counsel where both recognize that the evidentiary basis for a plea is justified and both agree that the sentencing precedents call for a particular sentence or range of sentence. That is a true joint recommendation. However, in some cases, that joint recommendation is based on a true plea bargain; in other words, there is some difficulty with the case and both sides

are prepared to cut their losses, so to speak. The accused is prepared to enter a plea to a certain charge or set of charges and a certain sentence or range of sentence is presented. In these cases, there is an exchange of consideration, a quid pro quo.

Because the accused is giving up something significant, perhaps a chance he would be found not guilty at trial, the Court of Appeal has rightfully said that in those cases a sentencing judge who intends to reject a joint recommendation must only do so after the most cautious and exhaustive of examinations. As well, a judge should not depart from a joint recommendation simply because he has an opinion that the sentence proposed would not be enough.

Nowhere in the August submissions was the term "plea bargain" used, yet it was front and centre in September. This was a significant and material change in the presentation of this case in court. I fully recognize that a joint submission made by experienced counsel on the basis of a true plea bargain should rarely be interfered with. I recognize, as the Court of Appeal has said, that individuals who give up certain rights should be able to expect a relative degree of certainty in court. Yet, I am left with the question as to why this was never mentioned.

If I had sentenced in August, it would have been in ignorance of a material fact. The record will show my displeasure at this material change in circumstances. This was the first time I had heard that other charges facing the accused had been stayed not because the accused had pled guilty to dangerous driving causing death but because the Crown was of the opinion there was no legal proof to proceed with those charges. This was the first time I heard the word "exigencies" in relation to the evidence the Crown had available to it on the charge of dangerous driving cause death. This was the first time I heard the phrase

"prosecution at risk".

Finally, although I had heard, in passing, from Mr. Wolson in August of a prior adjournment in the case in order for Mr. Minuk to refer the matter for further investigation, this was the first time I was told the details of a subsequent RCMP review of the scene investigation and related investigated activity.

I will confess that I wondered why all of this was not mentioned before. I can only conclude this was a serious but inadvertent omission. However, the information on this point substantially changed the picture for me. It was critically important information but it should have been presented in a complete form in August.

Further, I discovered that now the consumption of alcohol by the accused was not an agreed fact in this case. The record will show I was troubled by this. Mr. Wolson explained that when he said impairment was not a factor in the August hearing, he meant to say that any consumption of alcohol was not a factor and could not be taken into account in sentence. He agreed, in effect, that his words were not as precise as they should have been but that his position on this point was consistent.

We are all guilty, from time to time, of lack of clarity. However, it is of utmost importance, we would all agree, that in a court of law and in a criminal case, clarity is critical. The result of a lack of clarity could be a misunderstanding by a trier of fact that could give rise to a wrong verdict or a wrong sentence. Words in the courtroom are of utmost importance and, in this case, the lack of clarity is significant.

While alcohol consumption does not mean the accused was impaired, it is a factor, an aggravating factor, in this case and an important factor in weighing the appropriate sentence and then assessing the joint

recommendation.

So in these two important ways, the case in September was disturbingly different to me. In the end, though, I must accept what has now been presented and clarified.

I recognize as well that, in the minds of some, the events of September the 12th might be viewed as a zealous attempt to support a joint recommendation that was in some jeopardy. While I reject that notion, it troubles me to the extent that it reflects badly on the administration of justice and can only serve to contribute to undermine confidence in our system of justice and to promote public cynicism.

So let us turn to that topic of what people really believe happened the evening of February 24th and the morning hours of February 25th, 2005, because I sense a clear disconnect between the evidence before this court, and therefore what I must sentence on, and what many in the public may believe happened.

Mr. Zenk, judges do not leave their common sense or their life experience at the door when they don their robes. We are human beings like everyone else. So let me tell you what many people really believe happened two and a half years ago, not because it is something I can take into account but because it is what is on the minds of many, many people and why this case has attracted such emotion, passion and controversy.

Simply put, Mr. Zenk, what many people believe is that after work on February 24th, 2005, you went out partying and drinking with your friends and police colleagues; that you went to a bar until closing time and then returned to the home of one of your friends where the partying continued until the early morning hours when the home owner went to bed but you didn't. You stayed up, presumably with others.

We draw on our own experiences, Mr. Zenk, and for many our experience may tell us that you partied and drank the night away and then, just past 7:00 a.m., you got into your vehicle to drive home, loaded, and ploughed into the back of Crystal Taman's car, killing her.

But that is not the evidence before this court. In fact, the case I heard is worlds apart from that.

I heard a case where a man worked a shift, was up all night, drove home and for some inexplicable reason failed to see warning lights or red lights in clear daylight and drove into the back of a car. Maybe he was tired and fell asleep. We don't know because he doesn't remember. But it was described as a momentary lapse of attention, something that could happen to any one of us and perhaps has, without such tragic consequences.

Many in the public and many in this courtroom, including, most importantly, Crystal's family, do not understand why there is a difference between "what we all know happened," and what has been heard in court. Why is it that police officers, trained in the powers of observation, seemingly had no relevant evidence to present to the court as to the activities of Mr. Zenk during the evening of February 24th and the early morning hours of February 25th, 2005? Is it because, as Mr. Minuk says, they were not really paying attention to the activities of others and since Mr. Zenk was not really important in the scheme of things there is every reason to believe they wouldn't pay attention? Well, that is what we are asked to accept, and there is no evidence upon which I can accept anything else. But Mr. Zenk, you will understand if many aren't suspicious and cynical about whether this lack of information and evidence is more a matter of a "thin blue line" where people stand together to protect one of their own. Further, Mr. Zenk, we learn that there were problems in the investigation

of this matter by attending police. You will understand if some people look upon that as equally protective of a fellow officer.

Finally, Mr. Zenk, the only person who could really tell us what happened that night is you. You do not have to, of course, because you are cloaked with the right to remain silent. But nonetheless, it seems you have a memory loss not substantiated by any medical evidence before this court. I accept that lack of memory, Mr. Zenk, as I must. You will understand that some may view that as more than convenient, hence the difference between "what we all know happened," and the case in court is worlds apart. It is little wonder that this lends itself, potentially, to the "perfect storm" of cynicism and why many feel you are, in the proverbial sense, "getting away with murder". It is then little wonder why many in the public believe you need to be severely punished for this offence. They want their pound of flesh. They want to hear the clanking of the cell door.

But let me make it absolutely clear, Mr. Zenk, those factors are not something this court or any court can entertain in deciding a fit and appropriate sentence. To do so would corrupt the very foundations of our justice system and plunge our system into chaos. So it does not matter what we think happened, what we must do is only sentence or decide cases on the evidence before us. If we were to substitute our opinions or the opinions of others for proof and evidence, we would surely undermine fundamentally our system of justice. For to replace our feelings or opinions for facts would mean that any citizen could be the subject of arbitrary justice, of decisions based, not on evidence and proof, but on innuendo and personal biases.

So it is then, in this case, Mr. Zenk, as with all others, I must sentence you on the evidence before me, and

let's review that evidence again.

As I earlier indicated, the evidence on August 22nd was that Mr. Zenk's plea was based on anecdotal historical evidence of the consumption of alcohol along with the facts of an accident whereby Mr. Zenk, driving at a normal speed, ignored all sorts of clear warning lights and signs and, on a normal day, drove his vehicle into the back of Mrs. Taman's car at just past 7:00 a.m. The combination of those factors I was told justified the plea. Yet on September the 12th, the consumption of alcohol part of those facts was disputed as I described.

What is the effect of this? Simply put, and this is critical for people to understand, where there is a difference in the facts presented, a sentencing judge must, and I repeat, must accept the version offered by the accused in the absence of proof of the facts by the prosecution. There is no discretion here.

In other words, when Mr. Wolson says, "my client does not agree" that there was any alcohol consumption by him or that alcohol consumption is not an agreed fact, I must accept that unless Mr. Minuk presents me with evidence.

You will recall that I asked Mr. Minuk if he was calling evidence on this point, and after a recess he indicated he was not. It was, in fact, Mr. Minuk who quoted the case of R. v. Gardiner, which supports the proposition that the Crown has the burden of proof of disputed facts throughout the conduct of a case. Therefore, I must accept that the factual basis for the plea of guilty to dangerous driving cause death does not include the consumption of alcohol, a fact that in my view is substantially different to the case presented to me upon which I recalled counsel on September the 12th.

Mr. Wolson, in fact, describes his client's involvement and the basis of the plea as not keeping a

proper lookout, and the Crown accepts those circumstances as appropriate to justify the plea.

This leads to the question as to why Mr. Minuk chose not to call evidence on this point, the point of the consumption of alcohol. Let me be clear, he is not obliged to call evidence. What Mr. Minuk chose to do is not wrong in any legal sense and is common practice, and my comments on this issue are not intended to be critical of the decision of Mr. Minuk not to call evidence on the disputed facts. Oftentimes, I recognize that these types of issues themselves become part of the plea bargain on facts that take place in discussions between counsel. Counsel find they have a dispute on a fact but no evidence will be called on the disputed fact.

But, it raises a significant issue.

From this court's perspective, the consumption of alcohol in this case is or could be a significant fact, and I think it is a significant fact from the family's perspective and from the public perspective, as well. It is clearly an aggravating fact in the circumstances, even in the absence of proof of impairment.

I wonder, then, why the consumption of alcohol was mentioned at all if it was known it was a fact to be disputed yet couldn't be or wouldn't be proven? You see, I recognize that disputes as to facts go on daily in sentencings in this province and throughout the country. In most cases, evidence is not called, either because in a practical sense it would not make any difference to the sentence but also because the factual dispute may not be, in the scheme of things, something that counsel feels is so important enough that they have to go to battle over it. But it seems to me, practically speaking and related to the issue of public confidence and understanding, that there should come a time when the old adage "put up or shut up"

should be used.

Clearly, in this case the consumption of alcohol is a significant fact, everyone knows that, so why would it be mentioned if the prosecution were not prepared to prove it? There may be good reasons but they have not been made clear to me. If there were police officers who witnessed Mr. Zenk consuming alcohol, why were they not called to the stand?

In some cases there may be good reason for counsel to seriously consider whether it is better to simply refrain from articulating a fact when they know it is in dispute and won't be proven, or be prepared to call the evidence where the dispute exists and let the trier of fact make the evidentiary determination. There may be cases, and this is one of them, that may almost compel the Crown to call its evidence in proof of a material fact in dispute, and if it does not have the evidence to call, then not to have mentioned the fact at all or to at least have addressed the issue of why no evidence is being called. To do otherwise can have the effect of undermining confidence in the system and confusing the issues in the public, and that is the potential here.

At some point there comes a practical obligation to call evidence and provide full disclosure to the court. But, let me finish with what I started: There was no obligation to do so and, in making my comments, I am not intending to be critical of Mr. Minuk in this regard. My comments are made in the hope that in the future, in cases such as these, prosecutors will consider the importance of calling evidence on disputed facts that have significant import to a sentencing.

All told, the presentation of this case in court and the evidence I have or do not have upon which to pass sentence has left me frustrated and disappointed.

The case, in fact, changed so materially to me in September that the first thing I did was to go back and review cases on dangerous driving to satisfy myself that the essential elements were still present to justify such a plea. You will recall I asked Mr. Minuk if he agreed that such a basis still existed and he agreed that it did. After careful review, I concluded that such a basis for the plea still existed.

Although the description of the driving by Mr. Zenk was described as a momentary lapse of attention, it was clearly more than that. This was not a case where someone, while driving a motor vehicle, momentarily took their eyes off the road and an accident ensued. In this case, the lapse was much more than momentary. It involved Mr. Zenk missing clearly marked overhead yellow warning lights and the clear evidence of vehicles stopped at a clearly marked red light. That is dangerous driving without question. Why he drove in this fashion we may never know. It was only about five minutes from the time he began to drive that morning. He may have fallen asleep. We may never know.

However, in assessing the degree of dangerousness, those facts fall clearly in the lower end of what has been considered by the courts to be dangerous. There is no impairment, there is no alcohol consumption, there is no speed, there is no evidence of erratic driving. There was inadvertence, more than momentary, but inadvertence with tragic consequences.

On those facts, a properly informed public would understand that perhaps there but for the grace of God go many people. It does not make it right, it does not excuse it, it does not decriminalize the behaviour, but those are the facts upon which a sentence must be based. And on the scale of cases of dangerous driving, these facts that I have before me now fall much towards the lower end of that range

and scale.

Based on those facts, then, what is an appropriate sentence?

Counsel have filed a number of cases and have argued that a conditional sentence is appropriate based on those authorities. I have reviewed all of those cases. Based on the facts as I now have them and those precedents, and based on the plea bargained joint recommendation, I cannot disagree. I have concluded that it would be inappropriate for me to deviate in these circumstances.

After carefully reviewing these cases and others, based on the particular facts presented, a conditional sentence is appropriate. Those facts also include, of course, all of the comments made by counsel in justifying the recommendation. Those include, not exhaustively, the lack of prior record of the accused, his remorse, his guilty plea and his loss of employment.

The Eckert case is clearly distinguishable in this instance based on the prior and subsequent conduct of that accused and his record. But as the Court of Appeal said in Eckert, the facts do become all important and critical. They can range in a continuum from a short period of attention through to those that involve a significant impairment while knowingly driving unsafe vehicles and prolonged periods of driving at a high rate of speed.

The case as presented here to me is, as I have already indicated, towards the lower end of the range of that continuum.

The case of R. v. Burfoot is not too dissimilar to this case. In that case, the accused pled guilty to a set of circumstances where he ended up on the wrong side of a road and caused the death of a driver coming the other way. In that case, there was no alcohol consumption, no speeding, no erratic driving prior to the accident. It appears that

we may never know why the accident occurred; that the accused perhaps fell asleep or was daydreaming. An 18-month conditional sentence was imposed.

In R. v. MacKenzie, the accused entered a guilty plea to dangerous driving cause death. There was no joint recommendation. The Crown asked for a custodial sentence of 18 months while the defence asked for a sentence of two years less one day to be served conditionally in the community. The facts were that Mr. MacKenzie admitted to having several beer and was driving on Main Street in Winnipeg in an erratic manner, squealing tires and passing cars at a high rate of speed. The weather conditions were poor: rain that later turned to snow. A passenger in his car was killed. It was estimated Mr. MacKenzie's blood alcohol content was between .07 and .10 at the time of the accident. He had a prior record. There were certainly facts in that case more aggravating than the ones that I must accept here. Ultimately, though, a sentence of two years less one day to be served conditionally in the community was imposed in that case.

Under Section 742.1 of the Criminal Code, a court can consider a conditional sentence where a person is convicted of an offence except one punishable by a minimum term of imprisonment and the court imposes a sentence of less than two years, and is satisfied that serving a sentence in the community would not endanger the safety of the community and would be consistent with the fundamental principles of sentencing as set out in Section 718 of the Criminal Code. Those prerequisites are all met here.

It is also important to note the comments of the Court of Appeal in many cases about conditional sentence orders; included is the fact that conditional sentences are sentences of imprisonment served in the community and the Court of Appeal has noted that they are not to be viewed, as

such, as lenient sentences. There is no opportunity for early release.

So, what is the effect of the fact that Mr. Zenk was a police officer, albeit off duty at the time of the accident? I raised that issue after the first hearing in August. Counsel responded, in effect saying that his status did not change the nature of the case and was a factor taken into account in the recommendation. As well, it was pointed out to me this offence did not take place during duty.

I want to be clear. I believe that there is a higher standard required of police officers, whether on or off duty, and of all those who are officers of the court, frankly, and to whom the public looks for maintenance of law and order in our society. We must expect those who we trust to enforce our laws will themselves be of the utmost good character.

It is clear that there are a line of cases that clearly suggest that duty belongs, and while I recognize that most of those cases presented dealt with offences committed on duty, I believe that that duty extends 24 hours a day, seven days a week. The powers of police officers do not end with the end of their shift, so it is that their duty and responsibility never end.

It is clear to me that this higher standard is correctly articulated in the cases of R. v. Cusack, R. v. Dosanjh, and R. v. Koopman, among many others, all of which were cited at the hearing in September.

It does not necessarily mean that a police officer convicted of a criminal offence will automatically be subject to a more severe sentence but it is a factor that a court must consider in all the circumstances. Does that higher standard then change the nature of this case to the extent that I should depart from the accepted sentences and the joint recommendation?

Clearly, I initially felt this was something I had to seriously consider and hence I called counsel back. I was having real trouble with the joint recommendation based on that fact and that fact alone to be sure. However, upon lengthy reflection, I have to confess agonizing reflection, I cannot find with certainty that this higher standard changes the case for Mr. Zenk. And let me be perfectly clear; I make that decision based on what I consider the material change in facts presented to me in September. A dangerous driving case based on inadvertence, and in the absence of aggravating circumstances like the consumption of alcohol and the other factors already mentioned, and based, as I now know, on a true plea bargain should not attract a jail sentence for anyone, even one like Mr. Zenk who is subject to a higher standard. I recognize that the law requires that any doubt on an appropriate sentence must be exercised in favour of the accused.

Mr. Zenk, despite the fact that you appear sincerely remorseful for your actions and despite your previous and subsequent good character and despite the significant support you have from family and friends and their outpouring of expression of support for your generally good character, and despite the loss of your chosen employment, make no mistake I have no sympathy for you. You are the author of your own fate. I will impose a sentence and you will be required to live by the letter of that law and that sentence. But long after it is over, the pain of your actions will remain with the Taman family and those affected by Crystal's death, and your punishment will be a life sentence because you will never be able to escape the memory of what you did on the morning of February 25th, 2005.

Further, your actions brought shame on the uniform you wore and to all those other women and men who are sworn

to protect us. Perhaps the publicity surrounding this case will have the sobering effect of altering the behaviour of others in the future. I hope so. And if so, Crystal Taman's death will not be in vain.

Before concluding today, I want to make a few additional comments.

I do want to recognize, in fairness to you, Mr. Minuk, that you can only deal the cards from the hand that was given to you. In other words, you can't make a silk purse out of a sow's ear. Nonetheless, I remain extremely frustrated by the lack of available information and evidence surrounding the activities of Mr. Zenk in the hours preceding this tragedy.

As well, I want to make a brief comment on the issues related to the media coverage that both counsel addressed in September. Much has been written about this case and much information has been presented in the media, information not before this court. The information is not something I can take into account, and I would never, and of course, could never take it into account in any fashion. However, in fairness to the media, I want to say that some of the public misunderstanding could have been avoided had there been a clear articulation of the plea bargain in this case and the reason for it at the first sentencing hearing in August.

I recognize that there may be cases where it is not in the interests of the administration of justice to publicly air the basis for a plea bargain, for example, where to disclose information may jeopardize an ongoing investigation or where that information might be sensitive or confidential, or where to disclose would threaten the safety of individuals, affect the integrity of the case before the court or the like.

However, if there is no compelling reason why a

thorough airing of the basis for a plea bargain cannot be heard in court, then it should be done so and it should be done so at the earliest opportunity. To do so would contribute to public understanding and make the process in court more transparent. It would also help to diminish the opportunity for the kind of speculation that is bound to occur in the absence of such an explanation. In short, the more information the better.

Plea bargaining is a necessary part of the criminal justice system. It recognizes the vagaries and weaknesses inherent in some cases. However, there must be rules and transparency in court when plea bargains are made unless there are compelling reasons not to. Much of the misunderstanding and anguish that has arisen in this case could have been avoided, in my opinion, if on August 22nd, 2007 a full explanation of the plea bargain and the exigencies of the evidence and the factual basis upon which the plea was entered had been placed before the court for all to see. Failure to do that contributed to misunderstanding and speculation.

And finally, I think we would all have been well served in this case by a written agreed statement of facts. That, as well, would have prevented any misunderstanding in the courtroom.

Mr. Zenk, would you please stand up.

In the circumstances as proposed to me in the joint recommendation, I sentence you to a period of imprisonment of two years less one day to be served conditionally in the community. The conditions of that conditional sentence are as follows and they mirror the conditions that were presented to me as part of the joint recommendation by counsel.

The statutory conditions are as follows:

That you keep the peace and be of good behaviour.

That you appear before the court when required to do so by the court.

That you report within 48 hours of today to your conditional sentence supervisor and report thereafter in such manner and at such times as required by the conditional sentence supervisor.

That you remain within the jurisdiction of this court unless you obtain written permission from either the court or your supervisor in advance.

That you notify the court or your supervisor in advance of any change of name or address and promptly notify the court and your supervisor of any change of employment or occupation.

That you reside at an address to be provided at the time that you sign the conditional sentence order and that you not change that address without the written consent of either the conditional sentence supervisor or this court.

That you be bound by a curfew seven days a week from 8:00 p.m. to 6:00 a.m. for the first 15 months of that conditional sentence. The exceptions to that curfew are as follows:

For the purpose of travelling to and from your place of employment and home.

For the purpose of dropping your daughter at daycare.

For the purpose of performing the community sentence work order that I will order.

For travelling to and from the location, any location for the purpose of performing the community service work.

For the purpose of attendance at meetings with your sentence supervisor.

Four hours per week as arranged in advance with your sentence supervisor in order for you to attend to

personal needs, including medical and dental appointments and any other special circumstances as approved in writing in advance by your sentence supervisor.

Finally, any medical emergencies.

That you appear at the door of your residence and answer the telephone in regard to any curfew check conducted by your supervisor, any representative of Manitoba Corrections, any representative of the Royal Canadian Mounted Police, the Brandon Police Service, or any other recognized police service.

That you abstain absolutely from the consumption or possession of alcohol and the consumption and possession of non-prescription drugs and other intoxicants.

That you perform 180 hours of community service work within the first 18 months of this conditional sentence order.

That you attend, participate in and complete a substance abuse assessment and treatment as directed by your supervisor.

That you keep a copy of your conditional sentence order with you at all times when you are not at your residence and that you produce it to any peace officer upon request.

Mr. Wolson will have explained, no doubt, in his discussions with you what a conditional sentence order means. It is simply that. It is a sentence of imprisonment in the community.

A breach of the conditional sentence order will bring you back before the court and it is the practice in this province that it brings you back before the judge that sentenced you.

There are many remedies open to a judge if a breach of a conditional sentence order is proven and, in fact, proof that it did not occur lies on the offender. A

judge can continue the conditional sentence order, can amend it or vary it, or can order that the person, if the breach is proven, serve the remainder of the conditional sentence order in a custodial facility. I say that only so that you understand, Mr. Zenk, that any breach of these orders will immediately bring you back, likely in custody, before me at which time a determination would have to be made if the breach were proven and, if it were proven, the consequences to you could be significant, if you appreciate that.

As well, Mr. Wolson, I'll leave this to you, that you will take your client to sign the order forthwith at the clerk of the court's office, and if you, Mr. Zenk, have any questions with respect to that order and its application, I suggest that you either ask them now, ask at that time or consult your counsel. Do you understand that?

Finally, I am ordering that costs be ordered and a contribution towards the victim of crime surcharge fund as well be ordered. Mr. Wolson, 30 days to pay those amounts?

MR. WOLSON: What is the amount, please?

THE COURT: Madam Clerk.

MR. WOLSON: Thirty days is, 30 days will be fine.

THE COURT: Do you have any questions, Mr. Zenk?

Comments or questions from counsel?

Court is adjourned.

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