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EDITORIAL (AUGUST 2016): “An egregious breach of trust”

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Six years in a federal penitentiary.

Given the judicial constraints in this case, Ontario Superior Court Justice Edward Then has delivered a fair sentence to Constable James Forcillo of the Toronto Police Service for the attempted murder of Sammy Yatim on a Toronto streetcar three years ago. A jury had previously found Forcillo not guilty of second degree murder, or manslaughter, but guilty of the lesser charge of attempted murder.

It has never been more critically important for the courts to send the right message to police.

Forcillo shot Yatim nine times. The three initial shots felled the teen who had been wielding a 10-centimetre pocket knife and shouting obscenities at the officer, who was standing outside the streetcar.

Forcillo paused for six seconds and then fired six more shots.

It is this pause, and the second volley of shots, that led to officer's conviction. Police officers are trained to know that they cannot use lethal force against someone who is not an imminent threat. After three shots, Yatim was no longer an imminent threat to anyone, and was likely already dead. Although Forcillo testified at trial that Yatim was getting up after the first three shots, ample video evidence showed that this was not the case.

It is troubling to think that had the officer not fired the second volley of shots there might not have been a criminal conviction at all.

Defence counsel had requested a sentence of house arrest, while the Crown argued for eight to 10 years in prison. Constraining the judge's ruling was a section of the criminal code that prescribes a mandatory minimum sentence of five years for any person found guilty of attempted murder while using a gun (including police officers though the defence argued otherwise, an argument the judge ultimately rejected).

It must have been a challenge for Then to determine the appropriate sentence, but we think he struck the right balance in his 32-page decision. The six-year sentence, wrote the judge, "will serve to emphasize to other officers in executing their duties with respect to the discharge of their firearms that they do so only as a last resort...not as their first and only option".

Although the conviction is unprecedented — no Canadian police officer involved in an on-duty shooting death has ever been found guilty of committing a crime — it is important to remember that the crime itself is equally unprecedented. As such, Forcillo's actions are not a reflection of poor training, but rather his extraordinarily poor judgment.

Consider that according to former Supreme Court Judge Frank Iacobucci's 2014 report on use of lethal force by the TPS, approximately 20,000 calls the service receives annually relate to "persons-in-crisis", of which 8,000 involve apprehensions under the Mental Health Act. The report notes that only five such encounters between 2002 and 2012 resulted in the fatal shooting of emotionally disturbed persons. (As the data does not include 2013, Sammy Yatim is not counted among the five.)

It's a revealing set of statistics that not only demonstrates the professionalism of the majority of Forcillo's colleagues in such contexts, but also the sheer volume of police interactions with persons-in-crisis. It has never been more critically important for the courts to send the right message to police.

Stressing that "the sentence I am about to impose should not be taken to reflect adversely on the well-deserved reputation of the [TPS] as a whole," Then described Forcillo's actions on that July night a little over three years ago as "an egregious breach of trust".

Reflecting on the sentencing, the Yatim's family lawyer Julian Falconer said, "There is a significance to today because [the sentence] reflects the fact that there may be some equality under the law; that maybe police, today, just once, are as accountable as the rest of us."

We believe they should always be as accountable as the rest of us.

Let this sentence serve as a reminder.