CANADA / JUDGMENT

R. v. Anderson

2024 BCSC 545

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2024 BCSC 545 R. v. Anderson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Anderson,

2024 BCSC 545

Date: 20240326

Docket: 22342

Registry: Rossland

Rex

v.

Joel Aaron Thomas Anderson

Corrected Judgment: The text of the judgment was corrected

at paragraph [88] on June 28, 2024 and July 23, 2024

Before: The Honourable Mr. Justice Crossin

Oral Reasons for Sentence

Counsel for the Crown:

A. Mayes

C. Pine

(March 1, 2024 only)

Counsel for the Offender:

J. Heller

S. Grewal

Place and Dates of Hearing:

Vancouver, B.C.

February 21-2, 2024 &

March 1, 2024

Place and Date of Judgment:

Rossland, B.C.

March 26, 2024

[1] Mr. Anderson was charged with the second-degree murder of Mr. Harold Paddock. The trial turned on whether the Crown had proved beyond a reasonable doubt Mr. Anderson possessed the requisite intent for murder. I found proof in that regard fell short.

[2] These reasons concern the sentencing of Mr. Anderson for the crime of manslaughter.

[3] The circumstances of the offence are relatively straightforward. At the time of the offence both Mr. Paddock and Mr. Anderson were citizens of Trail, British Columbia, navigating life in Trail in significantly different ways. Mr. Paddock was 78 years of age, in ill health, and quietly living out his life battling significant physical and mental disabilities.

[4] Mr. Anderson was then 25 years of age, having essentially led a wasted life to that date by reason of mental illness; aggravated by chronic drug abuse; all having contributed to a history of criminal activity; some of which was defined by outbursts of violence, largely directed at persons known to him, including intimate partners.

[5] The offence before the court is yet another example of a sudden burst of violence, but on this occasion with fatal and tragic consequences.

[6] Mr. Paddock and Mr. Anderson were unknown to one another, notwithstanding the small community.

[7] In the early morning hours of August 22, 2017 Mr. Paddock, with the assistance of a walker, was slowly making his way across the main street of Trail when he was abruptly attacked and beaten to death by the offender. The beating unfolded quickly. It was a brutal and unprovoked assault on a completely vulnerable and defenceless stranger. Mr. Paddock was then left by Mr. Anderson lying bloodied and unconscious in the middle of the street. He never regained consciousness and died approximately one month following the attack. His injuries included a skull fracture, fractures to his upper and lower jaw, and his nose. On this morning, Mr. Anderson was wearing steel toed boots. He kicked Mr. Paddock to death while Mr. Paddock lay wholly powerless on the pavement of the street.

[8] The evidence at trial revealed the offence was committed in somewhat bizarre circumstances but arguably in predictable circumstances, given the background of Mr. Anderson.

[9] Some context leading to the offence begins in the late hours of August 21, 2017 and the very early hours of August 22, 2017. It is within this timeframe the offender travelled on foot from downtown Trail to the home of his father. His father's house was within walking distance from downtown. His father lived in the home with his then partner. Mr. Anderson had lived with his father from time to time in this house but at the time of the offence was not living there. As well, at this time, his father and his partner were, to the knowledge of Mr. Anderson away from the home. Mr. Anderson entered the home and as a consequence of auditory delusion, fuelled by drugs and anger, he lit the home ablaze and departed, making his way on foot back to downtown Trail. This was approximately 5:00 a.m. the morning of August 22, 2017. He was subsequently charged and pled guilty to arson.

[10] It was while he was in the vicinity of the A&W in downtown Trail, having made his way back from his father's home, that he saw Mr. Paddock. Mr. Anderson was still, to one degree or another, under the influence of delusion and drugs. Mr. Anderson then attacked and killed Mr. Paddock as described.

[11] In relation to the beating, I made these findings of fact at trial:

[168] The assault as a whole was approached by the accused with a certain deliberateness, notwithstanding the attack occurred quickly, more or less on the spur of the moment. The testimony of the accused concerning the physical aspects of the beating are generally consistent with the video evidence and the evidence of the pathologist, Dr. Doyle.

[169] I find the accused threw Mr. Paddock to the ground. I accept he did not punch Mr. Paddock, other than perhaps to his shoulder. I find the accused then stomped on the head of Mr. Paddock. The accused testified at least at one point he did this "at least once". I find Mr. Paddock was stomped at least once, but there cannot properly be a finding beyond that. I find the accused stomped on the head of Mr. Paddock wearing heavy leather steel toed boots.

[175] First, he testified that upon seeing Mr. Paddock, he came to the view Mr. Paddock was involved in the sexual exploitation of his daughter. He also testified a voice in his head he called Ina told him about the involvement of Mr. Paddock in that exploitation and the accused should beat him up.

[176] I do not reject the evidence of the accused that he was subjected to intrusive thoughts relating to the exploitation of his daughter. He testified these thoughts arose in the evening or early morning hours relating to his father and Karin and as such, again out of anger, motivated him to burn down his father's house.

[177] The second feature of these intrusive thoughts, as testified by the accused, is that he was accompanied in all of this by a voice facilitating these thoughts, and in fact directing that he burn down his father's house and beat up Mr. Paddock. The voice featured prominently in the evidence of the accused.

[178] I also conclude, as I have briefly stated, that the accused was, at the time of the offence, under some influence of methamphetamine.

[179] In this regard, it is not seriously contested by the Crown that the accused is a long term drug addict. I accept for a period of time leading up to the assault, methamphetamine was his drug of choice. I accept the evidence of the accused he ingested methamphetamine at some point in the evening or early morning hours while at his father's home. The particular aspect of the evidence of the accused has somewhat of a ring of truth. He testified that his supplier 'Chris' was invited to the house where the accused then purchased the drug.

[12] Upon leaving the scene of the beating Mr. Anderson met up, by chance, with a person known to Mr. Anderson as part of a cohort in the relatively small drug world of Trail. Mr. Anderson shortly thereafter engaged in some kind of argument with this person and assaulted the person by hitting him with the coffee pot.

[13] In due course, Mr. Anderson was arrested without incident in the early afternoon of the same day, August 22, as he continued to wander the streets of Trail.

The Circumstances of the Offender

[14] The Court has the benefit of a presentence report dated December 6, 2023; a Gladue report dated February 5, 2024 (Mr. Anderson's mother, now deceased, identified as Métis); and a forensic psychiatric report dated February 13, 2024.

[15] This material provides a good deal of background to the life of the offender. It is a background defined and informed by mental illness, childhood trauma, and drug abuse.

[16] Mr. Anderson, at the time of the offence had been a resident of Trail most of his adult life. He achieved little education and only unremarkable sporadic employment. These failings are attributed largely to prolonged drug use and an early diagnosis of ADHD.

[17] He was born to Charlene and Ken Anderson. He has an elder brother with whom he is mostly estranged and in fact the brother has been the victim in the past of one of Mr. Anderson's violent outbursts. Mr. Anderson has a half-sister with whom he has little communication. His parents separated when he was one year old. His mother moved with the children to Osoyoos.

[18] A Gladue report was prepared by First Nations Elder Caroline Buckshot. Elder Buckshot is a resident Elder with the Justice Institute of British Columbia and an Elder with the Parole Board of Canada. The report reveals Charlene Anderson was a non-registered member of Métis Nation. She was an abusive alcoholic. The abuse was directed at Mr. Anderson and his brother. Mr. Anderson also reported that at the age of four or five he was sexually abused by a male and female babysitter.

[19] Mr. Anderson returned to Trail to live with his father at the age of 11 or 12. Unfortunately he received little parental direction from his father and quickly found his life deteriorating. He did not complete high school due to behavioural problems and drug use. It is reported he was diagnosed with certain mental issues as his life evolved.

[20] He was initially diagnosed with bipolar disorder in approximately 2012. It appears he has been receiving disability payments in this regard. He has been on and off a regime of medication for some years. He also has been diagnosed with polysubstance abuse/ dependence and mixed Cluster B personality disorder. These issues have been exacerbated over the years by an addiction to OxyContin that eventually evolved into significant use of methamphetamine.

[21] This cluster of issues has led to a series of criminal convictions over the past six years leading to the offence before the court. The circumstances of these offences has some relevance that will be dealt with in some particularity, but, generally, there have been 25 convictions placed before the court. These convictions include failing to comply with court orders; orders largely directed at counselling and treatment regarding the root cause of his criminal conduct; namely drug addiction. There also has been many convictions for violence as previously referenced, although it was what might be described as low grade violence. Certainly nothing approaching the violence at issue in this matter.

[22] Mr. Anderson was in what appears to be a somewhat dysfunctional relationship in the months leading to the day of this offence. The relationship had effectively ended prior to these events however it was a relationship that produced a child; a baby daughter. The baby was almost immediately apprehended after birth by the Ministry due to the drug addled state of both mother and father. The daughter has since been adopted.

The Criminal Record and Circumstances

[23] The criminal record has been placed before the court. In addition the circumstances of the criminal history has been provided through transcripts of various sentencing proceedings concerning Mr. Anderson. As well, Mr. Anderson was extensively cross-examined in this area at trial.

[24] Mr. Anderson has been convicted of 14 offences involving violence, including threats of violence. He has six convictions for breaches of court orders including two convictions for breach of conditional sentence orders.

[25] His criminal convictions begin at the age of 19. The circumstances of the offences inevitably made reference to him being under the influence of drugs, his inability or unwillingness to seek and maintain a counselling regime, and his failure to take prescribed drugs.

[26] I think it is fair to say that over the years the provincial courts in the Kootenays have bent over backwards attempting to provide opportunities to Mr. Anderson to take advantage of counselling and treatment orders that had been made that were connected to a series of probation and conditional sentence orders imposed by the courts.

[27] The approach of the courts in this regard has always rested on Mr. Anderson imploring the court that he can do better if only given a chance at recovery. This dynamic evolved however into a pattern of breaches and broken promises; and on each occasion a warning by the courts; namely, the safety of the community would soon overtake any sense of charity and hope of rehabilitation; and any escalation of criminal behaviour would end badly for Mr. Anderson. These urgings of the court proved prophetic. That said, it sadly is not a story that is particularly unique regarding offenders living in the cycle of childhood trauma and mental illness; begetting drug use and self-destructive behaviour along a path of recurring failure; constantly seeking an exit to something resembling a productive life.

[28] On June 5, 2017 Judge Brown sentenced Mr. Anderson for certain criminal offences. Judge Brown's comments to Mr. Anderson at the sentencing were typical of comments made to Mr. Anderson over the years by variety of judges. Judge Brown observed that Mr. Anderson's criminal behaviour was fuelled by drugs and Mr. Anderson well knew that he was essentially uncontrollable under the influence. Judge Brown echoed the comments of many judges as follows:

It makes you this violent uncontrollable person The concern I have is at what point are you going to go beyond just mouthing off, threatening, and when are you going to really hurt somebody, because if the risk is that high, sir, that is when you go to the pen. If the risk gets elevated that high, you go to jail because you cannot live in society, you are too much of a risk, it is about trying to protect people and protect you from harming yourself further. You've got one mind. That is all you got. Once you fry it, it is gone.

[29] And further,

the report does indicate that you still have a general violence risk factor of moderate to high, but that it can be addressed if you do not consume alcohol or drugs. Your risk obviously and logically reduces dramatically. I mean right now you are not really a risk because you are not drunk and you are not stoned, but add that stuff to you and you just do a 360 and become this incredible person.

[30] Mr. Anderson, within a short while after his release on this occasion committed the offences on August 22, 2017 as previously referenced, including the offence before the court. Once again he appeared before Judge Brown for sentencing on two of the three offences committed on August 22, 2017; that is arson and assault with a weapon. He was also

sentenced for the offence of threatening, committed a day or two after these events. This offence occurred while Mr. Anderson was in custody and attending a hospital to have a hand injury treated.

[31] The proceedings before Judge Brown occurred on September 17, 2018. Mr. Anderson had not, at this point, been charged with the murder of Mr. Paddock.

[32] On a joint submission, the court imposed a sentence of three years for the arson; two years consecutive for assault with a weapon; and six months concurrent for threatening; less credit for time served in custody.

[33] The warrant for this sentence expired October 5, 2022. He continues to be in custody in relation to the offence before the court.

Position of the Crown

[34] The Crown submits a sentence in and around the range of 7.5-10 years is the appropriate sentence in the circumstances. Those circumstances, submits the Crown, being largely aggravated. The offence was brutal and cold-blooded. The victim was vulnerable and defenceless. While fuelled by drug-induced delusions; it was nevertheless, submits the Crown, the type of conduct Mr. Anderson knew or ought to have known would inevitably occur because he had, time and time again, ignored even his own sober insight and the coincidental urgings of the various courts.

[35] The Crown says the circumstances are far closer to murder than accident and that there is little evidence, other than, once again, the promises of Mr. Anderson, that Mr. Anderson has found the strength of character to make the necessary changes in his life even after all these years.

Position of the Defence

[36] The defence submits Mr. Anderson has done well in custody. It has been a lengthy period of custody; almost seven years; and, but for a slip or two, Mr. Anderson has begun to turn the corner that he has failed to turn so many times.

[37] He has found spirituality that has alluded him in his life. The defence submits that given his background and early addiction and mental challenges, it cannot be surprising the journey to turn that corner has been long and full of failure. The defence says the principle of totality and proportionality must be carefully weighed in these circumstances. In this regard the three offences; arson, assault with a weapon and manslaughter, all occurred within hours of one another and were borne from a continuum of irrationality. The defence says incarceration at the high end of provincial time or the low end of federal time is the appropriate range.

Victim Impact

[38] Ms. Patricia Paddock, the daughter of Mr. Paddock, provided a compelling statement to the court. The court very much appreciates hearing from Ms. Paddock. Ms. Paddock reveals she has suffered sadness, anxiety and stress in a sustained way over the years since her father was killed in these circumstances. She has suffered insomnia, headaches and bad dreams. There is no doubt the loss of her father in these circumstances has severely impacted her life.

Principles of Sentencing

[39] The fundamental purpose of sentencing is to protect society and contribute to respect for the law and maintenance of a just, peaceful and safe society: s. 718, Criminal Code.

[40] Other objectives include: (i) denouncing unlawful conduct and its resultant harm; (ii) deterrence, both general and specific; (iii) separating offenders from society where necessary to protect the public; (iv) assisting in rehabilitation; (v) providing reparation for harms done; and (vi) promoting responsibility in offenders and acknowledging the impact of their conduct: Criminal Code, s. 718(a)-(f).

[41] Sections 718.1 and 718.2 of the Criminal Code delineate a number of sentencing principles that guide judges in crafting a just sanction that will give meaningful effect to one or more of the codified sentencing objectives:

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[42] Achieving a proportionate sentence is a case-specific determination, requiring a multi-factoral analysis tailored to the individual circumstances of the offence and the offender: R. v. Nur, 2015 SCC 15 at para. 43. All relevant factors must be considered.

Range of Sentence for Manslaughter

[43] There is clear guidance from our Court of Appeal that there is a usual or general range, albeit quite broad, concerning sentencing for manslaughter. In R. v. Engebretsen, 2016 BCCA 182 the Court described the general range of sentence for manslaughter as 4 to 15 years imprisonment. In other words, it would probably only be in unusual circumstances that would take a sentence below or above this range.

Analysis

[44] There is no doubt Mr. Anderson committed a horrific, cowardly and senseless act of violence that fatally injured a citizen of Trail who was just going about his business in the morning hours. It was an unprovoked attack and ended the life of a neighbour, a friend, and a father. It is clearly an offence that falls at the more serious end of the offence range: R. v. Pop, 2013 BCCA 160 at para. 23.

[45] I have touched on aggravating and mitigating circumstances.

[46] The attack was deliberate and severe. Mr. Paddock was kicked with steel toe boots. It was unprovoked against a man prone, unprotected, and helpless. Mr. Anderson at the time of the offence was under court order to keep the peace and be of good behaviour. It was an attack on the sudden; but not out of character; at least the character emerging from time to time as a consequence of illicit drug consumption.

[47] That said Mr. Anderson was clearly not operating within the boundaries of rational thought. Given his upbringing it might be said it was practically preordained that his life would culminate in this kind of event. Mr. Anderson has been willing to plead guilty to manslaughter for a good deal of the time leading to trial and he has expressed on numerous occasions remorse that I consider to be genuine.

[48] Sentencing is a highly individualized exercise, assessed within the framework of principle, but informed by the particulars of the offence and the offender.

[49] The Crown has placed authorities before the court in the range of seven to 12 years incarceration; including R. v. Green, 2001 BCCA 672 (10.5 years); R. v. Matthias, 2010 BCSC 458 (10 years); R. v. McCormick, 2017 BCSC 145 (12 years); R. v. Hussain, 2021 BCSC 2068 (7.5 years); and R. v. Bragg, 2023 BCCA 73 (7 years).

[50] The defence has submitted the circumstances calls for a sentence less severe; more in keeping with authorities, largely from out of this province, including: R. v. An, 2011 ABQB 217 (5 years); R. v. Hickey, 2011 NSSC 186 (3.5 years, however this was a case of a provoked one-punch act); and R. v. Taylor, 1998 ABCA 354 (6 years).

[51] Of course, no case fits neatly into another, including the case at bar.

[52] In Green for instance, while the offender, like the case at bar, was under the influence of illicit drugs at the time of the offence, the conduct at issue in Green defies characterization. Green killed a defenceless long-time female friend with 37 stab wounds to her head, neck, face and chest. He then eviscerated her body from breast plate to pelvic bone; exposing her internal organs and leaving his cutting device, a broken piece of mirror, embedded inside her exposed abdomen.

[53] Justice Low, on behalf of the court in Green, makes these observations that I think are relevant to the considerations in this case:

[16] I do not accept the submission made on behalf of the appellant that, because the appellant was not aware of what he was doing at the time of the killing, the brutality of the killing does not aggravate the circumstances to any great extent The appellant went on a reckless binge. He used a mind-altering substance known to be capable of bringing about uncontrolled, violent conduct. In that state, he attacked the victim. He is criminally responsible for the degree of violence that caused the death of the victim and for the post-mortem indignity to the body of the victim.

[54] Green had no history of violence.

[55] Similarly, Matthias was a case of ghastly circumstance. The offender in that case, while under the influence of drugs, coupled with features of mental illness, doused his mother with gasoline. She ultimately was set ablaze by a lighter in the possession of the accused.

[56] Justice McEwan in Matthias put it this way: "A denunciatory sentence is required to reflect the seriousness of the crime. Mr. Matthias should be separated from the community to assist him to the extent possible to become rehabilitated and to protect the community."

[57] In this regard, Justice MacKenzie observed in R. v. McCormick:

[59] Conversely, the Crown has significant doubts about Mr. McCormick's potential for rehabilitation, noting that the medical reports have indicated he is able to quickly "clear his mind" of any drug-induced psychosis once he refrains from using drugs, which he is capable of doing, but that his past history of an almost immediate return to the ingestion of crystal meth and other narcotics after a brief spell in prison does not bode well for his future rehabilitation.

[60] The Crown says it is more than likely that upon his release from whatever sentence is imposed, Mr. McCormick will revert to the consumption of narcotics due to his addictions, given he has rejected treatment in the past.

[58] The Court in McCormick was clearly concerned, given the accused's history, that there was no reason not to think the accused would, once released, succumb to his addiction.

[59] This is, indeed, the purport of the submission of the Crown in the case at bar.

[60] The defence has submitted the case of An. In An the offender was described as an outstanding scientist in the field of microbiology and biochemistry, as well as a "loving father, husband, and exemplary citizen with no record or history of violence." He pled guilty to the manslaughter death of his wife. He had discovered an affair and was unable to control his emotions. He beat his wife and she ultimately succumbed when pushed down stairs. He received five years incarceration.

[61] In Taylor, a sentence was imposed of six years in circumstances where there does not appear to be any intoxicants or illness at play. Taylor simply decided to teach a smaller man a lesson and undertook a prolonged beating of the victim. While the victim was on the ground, the offender punched him in the face while the victim was breathless and pleading. He kicked the victim in the head multiple times and finally dropped onto the victim's abdomen with both knees, lacerating the victim's liver. This was, in fact, the death blow.

[62] In the case at bar, counsel of course addressed the finding of this court that at the time of the offence Mr. Anderson was suffering from self-induced and self-inflicted drug fuelled delusion. It is a finding that requires the court to consider how, if at all, this described state may reduce the moral blameworthiness associated with the offence.

[63] In R. v. Badhesa, 2019 BCCA 70, the court reduced the manslaughter sentence from 10 to seven years. The offender had no history of violence but had evidence of depression. On all accounts, he was a loving family man, not only in relation to his wife but also his 61-year-old mother. Quite out of character, he began a binge of alcohol consumption, leading to anger, culminating while in the home with the assault of his wife and the beating death of his mother. His state, therefore, was one of intoxication and living with mental illness. On this issue, the court found:

[40] However, an offender's volitional and decision-making capacity in connection with self-induced intoxication and related violence may stem, at least in part, from mental illness or other cognitive disability. Depending on the circumstances, both the mental illness and related self-induced intoxication may reduce the offender's moral culpability. Where an offender is found to be criminally responsible, but suffering from a serious mental illness or disability, a more lenient disposition than would otherwise be called for may well be appropriate to reflect a diminished level of criminal responsibility: R. v. Ramsay, 2012 ABCA 257 at para. 21.

And further:

[44] When assessing a fit sentence, the judge should attribute a degree of moral culpability to the offender commensurate with the magnitude of the mental illness and its overall role in the commission of the offence: Ramsay at para. 25. Where mental illness played a central role, the importance of deterrence and punishment should be given less weight and treatment and public protection concerns should be increased: Batisse at para. 38. This decreased emphasis on deterrence and punishment is consistent with the proportionality principle, which is the sine qua non of a just sanction: R. v. Safarzadeh-Markhali, 2016 SCC 14 at para. 70; Ellis at para. 183.

[64] In R. v. Hussein, 2021 BCSC 2068 the accused was charged with second-degree murder but convicted of manslaughter. The accused stabbed the victim multiple times. The accused at the time of the offence was suffering from mental illness. There was some evidence he was also under the influence of illicit drugs at the time of the stabbing. The accused had a history of the kind of criminal activity associated with chronic drug users and drug traffickers. He did not however have a history of violence. He was sentenced to seven and one-half years in prison, less credit for time in custody. The Court in Hussein referenced R. v. Newton, 2016 BCSC 1440 at para. 48 as follows:

[48] R. v. Newton, is instructive. Mr. Newton pled guilty to manslaughter. He was a young man, addicted to drugs; in fact it was found he was in a state of drug induced psychosis of the time of the offence. He randomly stabbed a stranger on a bus and then fled. Mr. Newton had a lengthy criminal history but no history for violent offences.

[50] What emerges from the authorities is that the sentencing principles of deterrence and denunciation, both specific and general, are to be the primary considerations in the case at bar.

[65] The Court in Newton imposed a sentence of seven years imprisonment.

[66] In addition, on the issue of moral blameworthiness in the particular circumstances of Hussein, the Court noted:

[52] In addition to the conduct, I must of course consider moral blameworthiness.

[53] I accept the fact Mr. Hussein was a drug addict and that he had consumed drugs the morning of the killing. I also accept he was afflicted by mental disorders at the time of the offence that were being addressed by a regime of medications.

[55] Mr. Hussein is a long time drug addict. He knew his drug use had caused him to be before the courts for years prior to this event. It is clear from the material placed before the court that he had been told in no uncertain terms that his drug use created grave risks to himself and the public. Nevertheless, he continued to traffic in drugs, exist in the drug culture, and ingest illicit drugs.

[67] In my view these comments have application to the case at bar. The moral blameworthiness in the case at bar, while attenuated somewhat given his state, is still in the higher range. I recognize it is often difficult to construct rational contours around the analysis of behaviour when that conduct is driven by addiction and mental illness. Indeed, in some way, the attack could be viewed as a momentary lapse. The weight of the evidence however demonstrates it was a lapse that Mr. Anderson knew or ought to have known was something that was almost predictable in the face of continued, untreated drug use.

[68] This was alluded to by Dr. Nicola Hodelet in her presentence psychiatric report where she stated:

It is not clear to me what better strategies he has developed whilst in prison, to deal with life's ups and downs. Unfortunately he reports that he has 'failed' programs for substance use disorder and would be at high risk of using substances to deal with stressors in the future.

The sorts of victims that he would be most likely to encounter would be family members or partners, peace officers or police in situations where Mr. Anderson is in conflict. However even random members of the public, like the victim of the index offence, could be at risk particularly if he is intoxicated or experiencing symptoms of psychosis or mood disorder.

[69] And finally:

The severity of these kinds of offences could be grave, though not likely to be immediate on his release into the community. The risk is likely to increase when he veers away from the support or treatment that is in place for him or as drug or alcohol use increases. It is possible that such offences could happen frequently as they did prior to 2017. The likelihood of such offences occurring is moderate to high.

[70] Nevertheless I do accept Mr. Anderson's advice to the Court that he has found a new sense of determination; that he sees a new light at the end of his dark tunnel, and that his remaining time in custody will be spent productively. He is determined to deal with his drug addiction appropriately and to seek inspiration and motivation by exploring his Indigenous roots.

[71] In this context he also expresses the wish to reengage with his daughter. This is laudable and understandable. The challenge will be accomplishing this in the face of the adoptive mother, stating to the Court, that she will move from the province if Mr. Anderson seeks to see his daughter. Mr. Anderson also hopes to seek to rebuild trust with his father who continues to reside in Trail. Mr. Kenneth Anderson spoke at the sentencing hearing. The father is certainly open to reconciliation but nowhere near allowing Joel Anderson back into his home. In fact Mr. Kenneth Anderson suggests Joel would not be welcome in Trail. In other words, Mr. Anderson has a long way to go and much to do in healing himself, and the wounds he has inflicted on others.

[72] In addition, it is appropriate and indeed mandatory the Court take into account the Indigenous background of Mr. Anderson in attempting to find a fit and proper sentence. Mr. Anderson has once again expressed a desire to engage with his Indigenous culture while in prison. As previously referenced, he has begun that exploration. I cannot stress enough how that journey will facilitate the healing and self-awareness required if Mr. Anderson is to experience a life other than simply an existence.

[73] The Court is guided in this regard by relatively recent comments by our Court of Appeal in R. v. Olson, 2023 BCCA 430. There, the Court reiterated the principles articulated in R. v. Kehoe, 2023 BCCA 2 at para. 24:

[24] Kehoe is an important case because it highlights the potential relevance of disconnection from Indigenous culture as one of the harms that has translated into terrible outcomes for Indigenous people creating a nexus explaining their disproportionate presence in the criminal justice system. As Justice Marchand emphasized in Kehoe:

[41] In considering systemic and background factors, the judge must take account of all the surrounding circumstances, including "the unique circumstances of the offender as an aboriginal person," and display sensitivity to and understanding of the "difficulties aboriginal people have faced with both the criminal justice system and society at large": Gladue at para. 81; Ipeelee at paras. 59-60, 75.

[42] It is not necessary to establish a direct causal link between systemic and background factors and the offence at issue. How the complex interplay of historical factors impacted a particular Indigenous offender may be difficult or impossible to establish. Nevertheless, the specific systemic or background factors at play are critically important. They may help the court assess the moral blameworthiness of the offender or identify appropriate sentencing objectives: Ipeelee at paras. 81-83; Hamer at para. 98.

[43] As for the appropriate sanctions, while restorative sentences may be more appropriate for Indigenous offenders, applying Gladue principles will not necessarily lead to a reduced sentence. There is no automatic heritage-based discount: Gladue at para. 88; Ipeelee at paras. 71, 75; Mero at para. 73. Generally, the more serious or violent the crime, the more likely it will be, as a practical matter, that the terms of imprisonment will be the same for an Indigenous and a non-Indigenous offender: Gladue at para. 33; R. v. Wells, 2000 SCC 10 at paras. 42-44; Ipeelee at paras. 84-85; Mero at para. 73.

[44] That said, no offence is so serious that it negates the need for a sentencing judge to consider s. 718.2(e) of the Code and Gladue principles: Ipeelee at paras. 84-85. ...

[25] Justice Marchand in Kehoe went on to deal with circumstances where:

[46] ... Canada's assimilationist policies have been so successful that the offender may be largely or completely disconnected from their Indigenous culture, community and support: Hamer at para. 115. In such cases, an obvious tension arises in the task of balancing (1) the well-known principle that it is not necessary to establish a direct causal link between systemic

and background factors and the offence at issue with (2) the requirement that it is nevertheless necessary to "evaluate relevant information about the significance of a person's Indigenous identity and the individual's circumstances as an Indigenous person": Hamer at para. 117.

[74] This has particular relevance to the Métis Nation. A Nation whose identity has been elusive.

[75] Mr. Mayes, with his usual candour, concedes the Indigenous background of Mr. Anderson may mitigate a sentence to be imposed. I have concluded certain mitigation is appropriate in this case in this regard.

[76] The courts have long come to the point of recognizing the fact of the generational human wreckage left behind in the wake of the residential school policies of the federal government. Ms. Buckshot advises the Métis Nation were victims as well of the '60's scoop'. It was a scoop that ripped children from their families, and then ripped their self-worth from their souls; often ending in unmarked graves.

[77] It is clear in my view the found generation borne of these policies live lives of chronic, degrading hopelessness. We as a society are invited to understand this in the context of a court imposing a sentence in a matter such as the circumstances at bar.

[78] It is mandated the objectives of sentencing in these cases require a sentence that reflect the gravity of the offence and protects the public. This must be tempered, however, with principles of proportionality and a recognition that a sentence must provide for such rehabilitation as is possible.

[79] To many perhaps, even submitting that a term of imprisonment in the range of 8-10 years, as the Crown seeks, may seem grossly inadequate. Mr. Paddock had his life snatched away in a matter of seconds. A life he had a right to live to its natural end. Mr. Anderson, regardless of today's outcome, will have much life ahead of him. It may be the price Mr. Anderson is to pay will never be high enough from the perspective of the family and friends of Mr. Paddock. The fact is, the legal parameters that must be adhered to by the court in imposing a sentence in a criminal case dissipate, from the perspective of the family of the victim, in the face of their overwhelming grief that follows a crime of this nature.

[80] But adhere to those principles the court must do. The task of the court is an unyielding dedication to those legal principles. The process must recognize that individual cases must pay heed to proportionality and parity. The court must have regard to sentences of similar punishment, in similar circumstances, for similar offenders.

[81] In this regard, while the case is tragic and disturbing, some authorities presented by the Crown, are, on balance, a reflection of a range of sentence that is not justified in this case. It is also my view however, that the submission that a fit and proper sentence in this matter falls within the range of 2-3 years does not adequately reflect the principles of deterrence and denunciation.

[82] Deterrence and denunciation remain the primary considerations on the facts of this particular case. The crime was chilling; the moral blameworthiness significant. This however cannot transcend all other considerations. The Court must provide meaningful and thoughtful consideration to the objective of rehabilitation and the principles of parity and proportionality.

[83] The defence also submits that the sentence imposed should take into account the offence of manslaughter was part of a 'spree' by Mr. Anderson on the morning of August 22, 2017. In this circumstance, submits the defence, had Mr. Anderson the opportunity to plead guilty to manslaughter at the same time as entering the pleas to arson before Judge Brown; Judge Brown would have imposed a concurrent sentence for manslaughter. The defence says the Court should now effectively, impose a concurrent sentence.

[84] I do not agree the manslaughter sentence would properly be viewed, in this hypothetical scenario, as effectively requiring the imposition of a sentence concurrent with the sentence for arson. In my view the offences were entirely different in kind and substance. The societal interests are distinct and require, for the purposes of sentencing, a nuanced appreciation of those distinct legally protected interests. In my view the criminal activity of Mr. Anderson at the relevant time cannot reasonably be characterized as a single endeavour.

[85] I adopt the general approach as found in R. v. Lee, 2018 BCCA 428 at para. 18:

[18] In my view, Mann is dispositive of this ground of appeal. As this Court held in Li, the test for the imposition of a consecutive or concurrent sentence is "whether the acts constituting the offence were part of a linked series of acts within a single endeavour". That test does not, however, compel the imposition of concurrent sentences where there is similar or overlapping evidence relating to both charges or a close link in time and place between them. Nor does consideration of whether the offences engage different legally protected interests amount to a legal error. On the contrary, in Mann, the offender pleaded guilty to drug-related offences and to possession of a loaded handgun found in close proximity to the drugs in his residence. The sentencing judge in Mann imposed a global sentence of seven years' imprisonment comprised of consecutive sentences for the drug and firearms offences. Applying R. v. Crevier, 2015 ONCA 619, the sentencing judge concluded that a consecutive sentence should be imposed for the firearms offence because, although committed at the same time, the gun and drug offences engaged different legally protected interests. On appeal in Mann, this Court saw no error in principle in the sentencing judge's analysis.

[86] I do reiterate however that in the circumstances at bar, careful consideration must be afforded the principle of totality.

[87] Please stand Mr. Anderson, for the offence of manslaughter I sentence you to 6.5 years imprisonment. You have been in custody 539 days. Therefore I assign credit of 1.5-1 bringing that custody to 809 days.

[88] Once credit is taken into account you have 1,566 days to serve on your term of imprisonment. This is just over 4 years and 3 months.

[89] There are ancillary orders I am mandated to make and counsel are in agreement:

a) Pursuant to s. 109(2) of the Criminal Code you are prohibited from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substance for 10 years after release from your term of imprisonment.

b) Under the same section you are prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life, running from the date of this order.

c) Manslaughter is a primary designated offence within the meaning of s. 487.04 of the Criminal Code. As such, pursuant to s. 487.05(1) I make an order authorizing the taking of a sample of bodily substance from you, for the purpose of forensic DNA analysis and inclusion in the national DNA databank.

d) The court will forward the relevant material in accordance with s. 743.2 of the Criminal Code.

e) The victim surcharge is waived.

"Crossin J."

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