
CANADA / JUDGMENT

R. v. Bayko

2009 BCSC 1956

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Supreme Court of British Columbia

DECIDED

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2009 BCSC 1956 R. v. Bayko

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bayko,

2009 BCSC 1956

Date: 20090120

Docket: X71806-2

Registry: New Westminster

Regina

v.

Jerry Patrick Bayko

Before: The Honourable Mr. Justice Gaul

Oral Reasons for Sentence

January 20, 2009

Counsel for the Crown:

R. Bonner, Q.C.

Counsel for the Accused:

P. Del Rossi

I. Ferbey

Place of Trial:

New Westminster, B.C.

- [1] THE COURT: Jerry Bayko is before the court to be sentenced on a charge of manslaughter in relation to the December 2007 death of his girlfriend and fiancée, Shannon Raylene Deschamps.
- [2] On August 25, 2008, Mr. Bayko entered a not guilty plea to the offence of second-degree murder, but with the consent of the Crown, entered a guilty plea to the lesser and included offence of manslaughter.
- [3] On December 9, 2008, I heard submissions on sentencing from both counsel for the prosecution and counsel for the defence. I reserved my judgment until today so that I could consider counsels' submissions and arguments, and review the jurisprudence that had been provided to the court.

The Facts

Circumstances of the offence

- [4] Mr. Bayko and Ms. Deschamps had been in a personal relationship for the year preceding Ms. Deschamps' death. The relationship was an unhealthy and dysfunctional one. Mr. Bayko was struggling with alcohol and depression problems, and Ms. Deschamps was addicted to crack cocaine and suffered from mental health problems. Ms. Deschamps would often ask Mr. Bayko to go out and purchase drugs for her. Ms. Deschamps' drug use was a major cause of friction between her and Mr. Bayko and created a significant amount of stress in the relationship.
- [5] In the summer of 2006, Ms. Deschamps was hospitalised for drug and mental health problems. Unfortunately, shortly after being discharged from the hospital, Ms. Deschamps returned to using cocaine. It was at this time that Mr. Bayko started to use cocaine also. In order to cope with his pre-existing depression, Mr. Bayko began using a combination of alcohol, sleeping pills and cocaine.
- [6] On the evening of December 11, 2007, the lifeless body of Shannon Deschamps was found by strangers in the alley behind Alley Cats Massage Parlour in Surrey, British Columbia. Emergency medical personnel arrived on the scene and attempts were made to resuscitate Ms. Deschamps, however their efforts were to no avail as she was dead.
- [7] When first questioned by the police, Mr. Bayko acknowledged arguing with Ms. Deschamps on December 11; however, he denied killing her. After further police investigation, Mr. Bayko was arrested on January 11, 2008, for the murder of Ms. Deschamps.
- [8] During the course of his questioning, Mr. Bayko informed the police that he and Ms. Deschamps had had an argument at his residence on December 11, 2007, regarding her drug use. He also told the police that on that day he had used cocaine and taken sleeping pills and had consumed a large quantity of alcohol. He and Ms. Deschamps had left his residence and

had gone for a walk, during which their argument over her drug use continued. Ms. Deschamps had been critical of his inability to fund her drug habit and had disclosed to him that she had been unfaithful and had been prostituting herself to pay for her drug addiction. He had pursued Ms. Deschamps and had continued arguing with her, notwithstanding her telling him to leave her alone. Mr. Bayko indicated that the combination of his drug and alcohol consumption, in conjunction with Ms. Deschamps telling him that she wanted to end the relationship, caused him to lose control of his senses. When the couple reached the alleyway behind the massage parlour, Mr. Bayko grabbed Ms. Deschamps around the throat and maintained that hold for several minutes. After Ms. Deschamps lost consciousness, Mr. Bayko fled the scene, leaving Ms. Deschamps' body in the alleyway. Upon arriving at home, Mr. Bayko spoke to no one about what he had just done to Ms. Deschamps and made no attempt to obtain medical assistance for her.

- [9] Ms. Deschamps died from manual strangulation. She suffered blunt force trauma to the head, a broken thyroid bone, a fractured thorax and extensive bruising and fingernail marks to her neck. The violence inflicted on Ms. Deschamps was not fleeting, nor was it insignificant. Mr. Bayko brutally assaulted her and in doing so he caused her death.

Circumstances of the Offender

- [10] Mr. Bayko grew up in a relatively stable household with his parents and seven siblings. Although the family lived on a fixed income, Mr. Bayko's parents apparently did the best they could for their children. There apparently were no issues of physical abuse or substance abuse in the Bayko household. Mr. Bayko's father died when Mr. Bayko was 15 years old and it was shortly after that that Mr. Bayko dropped out of school.
- [11] According to the pre-sentence report that was prepared in this case, in 1995 Mr. Bayko was diagnosed with spinal cord disease and a lower lumbar disorder. In or around 1998, Mr. Bayko broke his kneecap and notwithstanding the need, he has never had surgery to correct this injury. As a result, he has had to wear a knee brace.
- [12] Mr. Bayko's work experience has constantly been limited and has consisted primarily of manual labour jobs of short duration. Since the age of 19, Mr. Bayko has been seeking, obtaining and subsisting on income assistance from the provincial government when not working.
- [13] The pre-sentence report also notes that Mr. Bayko was experiencing problems with depression in 2005, and that in 2006 he slit his wrists with a knife and required hospitalisation. In addition to his problems with depression, Mr. Bayko has a long history of alcohol abuse. His use of crack cocaine began when he met and started seeing Ms. Deschamps.

- [14] Mr. Bayko acknowledges that he has been in denial about his drug problem and has recently been attending and participating in drug and alcohol meetings while incarcerated awaiting sentence.
- [15] Mr. Bayko will soon be 41 years old. He has a prior criminal record consisting of a 1992 conviction for assault for which he was fined \$300; a 1993 conviction for theft under \$1,000 for which the passing of sentence was suspended and he was placed on probation for six months; and finally, a 2006 conviction for causing a disturbance for which the passing of sentence was again suspended and he was again placed on probation for one year.
- [16] I note that it was only eight months after the expiry of his probation order for his last offence that Mr. Bayko assaulted and killed Ms. Deschamps. The present offence is clearly a significant escalation from his past involvement with the criminal justice system. I also note from the pre-sentence report that drug and alcohol counselling, as well as anger management counselling, were conditions of at least one of his previous probation orders. Given the circumstances of the case at bar, it is clear that the past counselling was unsuccessful.

Victim Impact

- [17] Shannon Raylene Deschamps was born on December 15, 1968. She was four days shy of her thirty-ninth birthday when she died.
- [18] Ms. Deschamps' early family life was marked with tragedy, as her mother died when Ms. Deschamps was young, and her father abandoned the family. As a teenager, she resided with her older sister for a while. Sadly, Ms. Deschamps developed mental health problems during the course of her life, and fell victim to the evils of illegal narcotics that resulted in her working as a prostitute to pay for her addiction.
- [19] A Victim Impact Statement authored by Ms. Deschamps' older sister was filed in these proceedings, and the Court has taken note of the indescribable loss and pain being felt by the Deschamps family.

Principles of Sentencing

- [20] The maximum punishment for manslaughter is life imprisonment. In circumstances such as those in the case at bar, there is no minimum penalty.
- [21] The relevant principles the Court must consider when fashioning an appropriate sentence are set out in the Criminal Code of Canada [the "Code"].

- [22] The purposes of sentencing, according to Section 718 of the Code, include denouncing unlawful conduct, deterring the offender and others from committing offences, protecting the public by removing the offender from society where necessary, assisting in rehabilitating the offender, providing reparations for harm done to victims or to the community, and promoting a sense of responsibility in the offender and acknowledgement of the harm done to victims and the community.
- [23] Section 718.1 of the Code provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [24] Section 718.2 of the Code requires that a sentencing judge take into account the aggravating and mitigating circumstances relating to the offence and the offender, and impose a sentence that is similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

Aggravating Circumstances

- [25] At the time of the offence, Mr. Bayko and Ms. Deschamps had been in a personal relationship for approximately one year. They were discussing marriage, and Ms. Deschamps was three months' pregnant with what was believed to be Mr. Bayko's child when she died. The fact that Mr. Bayko assaulted and killed the woman who he was planning to marry and who was carrying his child is a significant aggravating factor.
- [26] Moreover, Mr. Bayko was aware of Ms. Deschamps' struggles with drug addiction and mental health problems. Nonetheless, he pursued her on the day in question and carried on an argument with her, unable to accept and comply with her wish to be left alone. Mr. Bayko's inability or unwillingness to respect Ms. Deschamps' wishes precipitated the heightening of tensions between them and led directly to his attack on her and her resulting death.
- [27] Mr. Bayko was either callous or cowardly when, after the assault, he failed to obtain medical assistance for Ms. Deschamps. In either event, this too is an aggravating factor.

Mitigating Circumstances

- [28] From the outset of the prosecution, the defence has sought the Crown's acceptance of a plea to manslaughter. The fact that Mr. Bayko pleaded guilty eliminated the necessity of holding a trial and all of the associated costs and emotional upheaval that a trial would have caused the Deschamps family. Mr. Bayko deserves credit for that.
- [29] I have also taken particular note of the statement Mr. Bayko read in court, a copy of which has been entered as an exhibit on sentencing. I accept this is indicative of Mr. Bayko's early acceptance of responsibility for his actions and a genuine sign of remorse for his actions.

- [30] Both counsel for the Crown and counsel for the defence made reference to the fact that to a certain degree, Mr. Bayko was provoked by the actions of the deceased. I accept that Mr. Bayko acted on the spur of the moment, triggered to some degree by his anger at and disillusionment with Ms. Deschamps. However, in my view, this mitigating circumstance carries less weight than the preceding ones.

Credit for Pre-Sentence Custody

- [31] Both counsel for the Crown and counsel for Mr. Bayko have submitted that the Court should grant Mr. Bayko credit for the twelve months he has spent in pre-sentence custody. The jurisprudence on the issue of pre-sentence custody indicates that as a general rule of thumb time spent in custody awaiting sentence is credited on a two to one basis.
- [32] I have nothing before me to indicate that this rule of thumb should not be followed in Mr. Bayko's case.

Positions of the Parties

- [33] The Crown's position is that the appropriate range of sentence is nine to ten years in prison, resulting in a sentence of seven to eight years after credit for pre-sentence custody.
- [34] The defence's position is that the appropriate range of sentence is seven to eight years, resulting in a sentence of five to six years after credit for pre-sentence custody.
- [35] The jurisprudence suggests that the range of sentence for manslaughter involving individuals in a personal or spousal relationship is between four and thirteen years. However, as both counsel pointed out during their respective submissions, a sentencing judge is not limited by the boundaries of any range of sentence if the circumstances of the offence and the offender warrant going above or below the range. (See: *R. v. Bernier*, 2003 BCCA 134.)

The Crown's Position

- [36] The prosecution relies on a number of cases to justify its submission that a sentence of nine to ten years in prison is appropriate in the circumstances including *R. v. T.N.J.*, 2004 BCCA 374; *R. v. Lemay*, [1998] J.Q. no. 1947; *R. v. Ellsworth*, 2003 BCSC 1315; *R. v. Wildeman*, 2002 BCCA 112; *R. v. Bridle*, 2007 BCSC 1100.
- [37] At trial, the offender in *R. v. T.N.J.*, pleaded guilty to manslaughter for having killed his partner. The offender was 20 years old at the time of the offence with no criminal record. Notwithstanding those mitigating factors, the British Columbia Court of Appeal found a sentence of eight-and-a-half years in prison was appropriate. The circumstances of the victim's death are somewhat similar to the case at bar in that the offender had been consuming alcohol and cocaine during the day, became angry with his partner and subsequently strangled her. A factor that distinguishes the *T.N.J.* case from the facts at bar is that the offender disposed of the body. While that is not the case in the present instance, the

offender in the case bar, Mr. Bayko, did abandon Ms. Deschamps and made no attempts to get her medical assistance.

- [38] In *R. v. Lemay*, the Quebec Court of Appeal reduced a twenty year sentence to thirteen years for an offender who was convicted of manslaughter in the strangulation death of his girlfriend. When their relationship deteriorated, the offender took the deceased to his father's cabin and strangled her. He abandoned the body and fled to the United States. Later, he surrendered himself to the police. The offender was 39 years old, had psychological problems and was chronically unemployed; very similar to Mr. Bayko's circumstances. A distinguishing factor in *Lemay* is the fact that the offender had been previously convicted for assault and unlawful confinement of a former spouse and her child. I take note of what Mr. Justice LeBel observed in his reasons in *Lemay*:

Apart from the particularities of each case, one notes, from a review of the jurisprudence, that homicides committed in the context of spousal conflicts or ones akin thereto are frequently punished by sentences of between eight and twelve years' imprisonment.

- [39] *R. v. Ellsworth* is a 2003 decision of Mr. Justice Parrett of this Court. Similar to the case at bar, Mr. Justice Parrett was faced with sentencing a man who was originally charged with second degree murder but pleaded guilty to manslaughter. The offender in that case was a 23-year-old young man who was employed in the community and who had no criminal record and who struck his girlfriend in the head several times with an axe. The fact that the killing took place in a domestic relationship context, that the offender used a weapon and inflicted horrendous injuries to the victim, and that he attempted to conceal his crime were all considered aggravating circumstances on sentencing. Mr. Justice Parrett sentenced the offender to ten years in prison. I find there are clear distinctions between this case and the case at bar.
- [40] In *R. v. Wildeman* the British Columbia Court of Appeal upheld an eight-year sentence for a man who was convicted of manslaughter in relation to the death of his common law wife. Factoring in the time the offender spent in pre-sentence custody, the sentence equated to ten years in prison. Like the case at bar, the offender had consumed alcohol prior to the offence. He began arguing with his wife and struck her a number of times with great force causing a rupture of her small intestine and her eventual death. An aggravating factor in the *Wildeman* case that is not present in the case at bar is the fact that offender was on probation for having assaulted his wife on a previous occasion and was prohibited from consuming alcohol.
- [41] In *R. v. Bridle*, a 2007 decision of Mr. Justice Barrow of this Court, the offender was sentenced to nine years in prison. That amount of time was reduced after giving the offender credit for his pre-sentence custody. There are similarities between the facts in *Bridle* and those in the case presently before the Court. The offender assaulted his vulnerable spouse and left her afterwards without seeking to obtain medical assistance for her. The offender had a criminal history and substance abuse problems, particularly

alcohol, and those problems played a leading role in his life. What distinguishes the case from the one before the Court is that at the time of the offence, the offender was on probation for having previously assaulted his wife. This is a significant aggravating circumstance that is not present in the case at bar.

- [42] The Crown argues that Mr. Bayko bears a high moral culpability for the death of Shannon Deschamps. Counsel for the Crown also submits that the jurisprudence supports its position that denunciation, deterrence and retribution are the principal sentencing factors in the case at bar and that a sentence of nine to ten years in prison is appropriate.

The Defence's Position

- [43] The defence for its part submitted a number of cases also. They included *R. v. Bell*, [1995] O.J. No. 4533; *R. v. Chan*, 2006 ONCJ 436, *R. v. Gaeler*, [2006] CarswellOnt 5123 (Ont. S.C.) ; *R. v. Pearson*, 2002 NBQB 218; and *R. v. S.J.I.*, 2005 NWTSC 92.
- [44] In *R. v. Bell*, the court acceded to a joint submission of seven years, three months for a particularly violent manslaughter involving a husband beating his wife. Following the beating, the offender contacted the authorities and emergency medical assistance arrived shortly thereafter. Unfortunately, that assistance was not sufficient to resuscitate the offender's wife. In accepting the joint submission, Mr. Justice Watt of the Ontario Court of Justice, General Division, noted that a fit sentence for this offence and offender would have been nine to ten years, excluding any credit for time served. The offender had served fifteen and a half months of pre-sentence custody. The facts that distinguish the Bell case from the case at bar are immediately apparent: there was a joint submission before the court and the offender took steps to obtain medical assistance for his wife following the assault.
- [45] In the case of *R. v. Chan*, a 2006 decision of the Ontario Court of Justice, the offender was sentenced to a total of four years, two months for the manslaughter death of his wife. The court found that the offender lost his temper with his wife of 35 years and in the ensuing fight, the offender's wife's head and shoulders were pinned between a bed and a wall and she suffocated. The offender delayed calling for medical assistance and rearranged the furniture in the house so as to avoid responsibility for the death. The offender was 61 years old at the time of the offence with no criminal record. The sentencing judge noted that, "Apart from this offence, Mr. Chan appears to be a decent, honest, hard-working man, a good father and husband". I query how a husband who kills his wife can be described as a good husband. Nevertheless, the court noted that the offender's sole child remained supportive of him and found that the offence was at the lower end of the sentencing range. The facts of this case distinguish it from the case at bar, and in any event I respectfully decline to follow it. As noted in the Lemay decision, homicides committed in the context of a domestic relationship will attract serious and significant punishment.

- [46] The decision in *R. v. Gaeler*, a 2006 decision of the Ontario Superior Court of Justice has a number of similarities to the case at bar. The offender in that case pleaded guilty to the manslaughter death of his wife and was sentenced to seven-and-a-half years in prison. The offender strangled his wife after she confronted the offender's mistress on the telephone. The offender did not seek medical attention for his wife and only contacted the authorities the day following the offence to report that he believed his wife was dead. In sentencing the offender to seven-and-a-half years in prison, the court took into account the fact that it was a joint submission. In the case at bar, there is no joint submission.
- [47] In contrast to the preceding cases, the defence points to the cases of *R. v. Pearson*, a 2002 decision of the New Brunswick Supreme Court, and *R. v. S.J.I.*, a 2005 decision of the Northwest Territories Superior Court. In both of those cases the assaults upon the deceased spouse were aggravated.
- [48] In *Pearson*, the 34-year-old offender shot his fiancée after she told him she wanted to end the relationship. The offender attempted to conceal his crime and did not cooperate with the police. The court sentenced the offender to nine years in prison.
- [49] In *S.J.I.*, the court sentenced the offender to eight years in prison for having beaten and stabbed his wife following a party at which they were both drinking and arguing. The offender had a significant record, including convictions for crimes of violence.
- [50] The defence submits that manslaughter offences where the underlying assault is particularly cruel or aggravated will attract higher sentences than those where the underlying offence is not so brutal. Counsel for Mr. Bayko argues that Mr. Bayko's assault on Ms. Deschamps, although deadly, was not as brutal as those that have attracted sentences at the higher end of the range, that is, nine or ten years in prison. Nor was the assault upon her a premeditated one like some of the case authorities provided to the Court.
- [51] Based upon this analysis, counsel for Mr. Bayko submits that the appropriate sentence in this case is in the range of seven to eight years.

Conclusion

- [52] The facts in the case before me are egregious. The offender knew Ms. Deschamps was addicted to drugs and suffered from mental illness. On the day in question, Mr. Bayko argued with her and continued to do so after the couple left his residence. Notwithstanding her pleas to be left alone, Mr. Bayko continued to pursue and argue with Ms. Deschamps. When they reached the alleyway behind the massage parlour, Mr. Bayko consciously and deliberately assaulted Ms. Deschamps by strangling her. Even though this was the person who was pregnant with his child, he abandoned Ms. Deschamps in the alleyway after having strangled her, and took no steps later on to ascertain her well-being or obtain any medical assistance for her. Ms. Deschamps died in the alleyway behind a massage parlour at the hands of Mr. Bayko.

- [53] I accept that Mr. Bayko's faculties were impaired to a certain degree by drugs and alcohol, and that he was emotionally distraught on account of what Ms. Deschamps was doing and saying to him. However, I still find Mr. Bayko's conduct egregious. There is a high degree of moral culpability that flows to Mr. Bayko for his callous and cowardly treatment of Ms. Deschamps and the sentence imposed today should reflect that.
- [54] Mr. Bayko, will you please stand.
- [55] Mr. Bayko, I accept that you are remorseful for having killed Ms. Deschamps and that there remains some prospect for rehabilitation in your case. You have recognized the ghastly nature of your crime as well as the horrific consequences it has brought for the Deschamps family. You have in the past and continue to face problems related to substance abuse and depression. The violence you wrought on Ms. Deschamps was vicious and fatal. You were unable to control your emotions and actions, and when fuelled by the alcohol and drugs you consumed on the day in question, you lashed out at and killed the person with whom you had an intimate relationship.
- [56] The sentencing principles of denunciation, general deterrence and retribution are principal considerations in this case. I am also mindful of the need to assist your rehabilitation so as to reduce the risk of your re-offending. Your deadly actions of December 11, 2007, show the danger you pose to the public when you are under the influence of alcohol and drugs.
- [57] Having regard to the circumstances of this offence, including the fact that the victim was someone with whom you were having a relationship and who was carrying your child, as well as the fact that you were under the influence of alcohol and drugs at the time of the offence, I am satisfied that a just and appropriate sentence is eight years in prison. Taking into account the twelve months you have spent in pre-sentence custody and granting you double credit for that time, the sentence I now impose upon you is one of six years in prison. You may be seated.
- [58] In addition, I am making orders pursuant to s. 487.051(1) and s. 109 of the Code.
- [59] Pursuant to s. 487.051(1) of the Code, I am making an order authorizing the taking from Mr. Bayko for the purposes of forensic DNA analysis any number of samples of one or more of his bodily substances that are required for that purpose by means of the investigative procedures described in s. 487.06(1) of the Code.
- [60] I am also, pursuant to s. 109(2) of the Code prohibiting Mr. Bayko from the possession of any firearm, crossbow, prohibited weapon, ammunition, and explosives for a period of ten years following your release from prison. A prohibition order will be prepared by the appropriate authority and served upon you. I delegate to that authority the duty to inform you of the consequences of any violation of that prohibition order.
- [61] Those are my reasons.

"Gaul J."

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