

CANADA / JUDGMENT

R. v. Bentil

2025 BCSC 2116

COURT

Supreme Court of British Columbia

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2025 BCSC 2116 R. v. Bentil

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bentil,

2025 BCSC 2116

Date: 20251016

Docket: 34392-3

Registry: Vancouver

Rex

v.

David Christian Bentil

Before: The Honourable Mr. Justice Brongers

Oral Reasons for Sentence

Counsel for the Crown:

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S. Gillespie

Counsel for the Accused:

P.S. McMurray

C. St. Germain

Place and Date of Hearing:

Vancouver, B.C.

September 23, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 16, 2025

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INTRODUCTION

- [1] THE COURT (by videoconference): On April 10, 2025, David Bentil was found guilty of the second degree murder of Andrew Wadden, contrary to s. 235(1) of the Criminal Code, R.S.C. 1985, c. C-46 (the "Code"). The incident that gave rise to the charge took place on May 7, 2022, at CRAB Park in Vancouver.

- [2] Sentencing submissions were presented by the Crown and the defence on September 23, 2025. As a conviction for second degree murder entails an automatic sentence of life imprisonment, the main issue is the duration of Mr. Bentil's parole ineligibility. The Crown proposes 12 years. The defence suggests 10 years, which is the statutory minimum.
- [3] I have considered the submissions of the Crown and the defence, as well the material in the Court's record. My sentencing decision is as follows.

APPLICABLE LEGAL FRAMEWORK

- [4] Mr. Bentil was convicted of second degree murder by a jury. The legal principles that apply to sentencing in such circumstances were reviewed by our Court of Appeal earlier this year in *R. v. Berry*, 2025 BCCA 14.
- [5] Paragraphs 19-21 of *Berry* explain how to calculate the specifics of a second degree murder sentence, in terms that can be summarized this way:
- a) upon a conviction for second degree murder (subject to certain exceptions that do not apply here), an accused is subject to a mandatory minimum sentence of life imprisonment with a minimum period of parole ineligibility of 10 years;
 - b) the sentencing judge has the discretion to increase the 10-year period of parole ineligibility up to a maximum period of 25 years;
 - c) the criteria for setting the period of parole ineligibility are threefold:
 - i. the character of the offender;
 - ii. the nature of the offence and the circumstances surrounding its commission; and
 - iii. the recommendation, if any, made by the jury regarding parole ineligibility;
 - d) general sentencing principles of deterrence, denunciation, and assessment of future dangerousness are factors to be considered in assessing parole ineligibility;
 - e) "unusual circumstances" are not required to extend the period of parole ineligibility; and
 - f) within the category of second degree murder, there will be a broad range of seriousness reflecting various degrees of moral culpability, and sentences are to be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [6] Paragraphs 24-28 of *Berry* explain the fact-finding process that must be conducted by all sentencing judges after an accused has been convicted by a jury. This can be challenging since juries do not give reasons for their decisions. The sentencing judge:
- a) must accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty;

- b) may find any other relevant fact that was disclosed by evidence at the trial to have been proven;
 - c) must not make findings inconsistent with a jury's verdict;
 - d) need only find sufficient facts in order to impose sentence, and need not attempt to set out a complete theory of the facts; and
 - e) should not try to follow the logical process of the jury when the factual implications of the jury's verdict are ambiguous, and instead come to an independent determination of the relevant facts.
- [7] Finally, when relying on facts for sentencing purposes, the judge must generally be satisfied that they were proven on a balance of probabilities. The exception to this rule is when it is an aggravating fact, in which case the standard of proof is that of beyond a reasonable doubt.

THE FACTS

Character of the Offender

- [8] At the sentencing hearing, information regarding Mr. Bentil's character was provided through two sources:
- 1) submissions made by his current counsel; and
 - 2) a letter prepared by his former counsel whose subject line is: "Counsel Authored Background Report for David Bentil".
- [9] This letter is dated August 27, 2024. That was over one year prior to the sentencing hearing, and over one month before the trial had even begun. It was addressed to counsel for the Crown. The letter sets out information about Mr. Bentil's background that was obtained from Mr. Bentil himself, his mother, his sister, and his aunt.
- [10] The letter explains that Mr. Bentil is an Indigenous Black Canadian male raised in British Columbia. It also contains a discussion of oppression and racism that Black persons experience in our province. Its authors acknowledge that their letter is not an "Impact of Race and Culture Assessment" (IRCA), although they "followed the IRCA process based on prior anecdotal experiences with previous Black Canadian offenders" when preparing it.
- [11] Current counsel for Mr. Bentil also concede that previous counsel's letter is neither a true IRCA or Gladue report, and they do not ask the Court to treat it as such. They nevertheless urge the Court to consider the factual statements contained therein as relevant information that can be considered for sentencing purposes. In the absence of a formal objection by the Crown, I will do so.
- [12] Mr. Bentil is now 21 years old. He was 18 at the time of the offence.

- [13] He was born and raised in Surrey, although he has also lived in Shawnigan Lake, Prince George, and Calgary, Alberta. He has been in custody since his arrest on May 8, 2022.
- [14] As noted in his previous counsel's letter, Mr. Bentil's ancestral background is Jamaican, Indigenous, and African. His parents divorced when he was young, and he grew up mostly under the care of his mother. She had difficulty parenting him, stemming largely from her financial and health issues, and she inflicted verbal and physical abuse upon him. His father was largely absent, although when present he was demanding, abusive, and unsupportive. However, Mr. Bentil has now reconciled with his mother and they have been close since he has been in custody. Unfortunately, his father passed away during the trial, and such a reconciliation is no longer possible.
- [15] Mr. Bentil has been diagnosed with attention deficit hyperactivity disorder (ADHD), dyslexia, and anxiety. He struggled at school as he had difficulties with comprehension and regulating his emotions. At his father's initiative, he was sent to a private boarding school in Grade 10, but after being bullied and isolated in this environment, he dropped out. Since being in custody, Mr. Bentil has been working towards completing his high school diploma equivalency.
- [16] As a teenager, Mr. Bentil fell into a gang lifestyle, selling drugs and using them heavily. His illicit narcotics of choice were MDMA and cocaine. His mental health issues were exacerbated by his substance abuse, and he has attempted suicide.
- [17] In spite of his acknowledged involvement in unlawful drug trafficking, however, Mr. Bentil has no criminal record. Indeed, until the present offence, he had never been charged with or convicted of any crime.
- [18] No formal letters of reference were submitted on behalf of Mr. Bentil at the sentencing hearing. That said, his mother, sister, and aunt attended his trial almost continuously, and they regularly communicate with him through phone calls and visits, even though he is in custody. It is therefore apparent that he now has strong family support.
- [19] Mr. Bentil was also given an opportunity to address the Court directly. Commendably, he did so. He expressed regret for the actions that led to Mr. Wadden's death and his wish that he could personally apologize to Mr. Wadden's family for what happened.

Nature and Circumstances of the Offence

- [20] I find that the following facts concerning the nature and the circumstances of the offence that were necessary for the jury's finding of Mr. Bentil's guilt were proven at trial:
- a) Mr. Bentil went to CRAB Park in Vancouver on the morning of May 7, 2022, with the intent to try to sell drugs at the homeless encampment that was there at that time;
 - b) Mr. Bentil had an initial interaction and confrontation with Mr. Wadden at CRAB Park;

- c) as a result of this interaction, Mr. Bentil chose to leave CRAB Park but was pursued by Mr. Wadden to the Main Street overpass, while Mr. Wadden subjected Mr. Bentil to insults and threats;
 - d) Mr. Bentil then phoned his friend, Eric Kim, who proceeded to walk over to the Main Street overpass to join Mr. Bentil;
 - e) Mr. Bentil, Mr. Kim, and Mr. Wadden then interacted on the Main Street overpass, after which Mr. Wadden turned around and went back to CRAB Park, with Mr. Bentil and Mr. Kim following in pursuit;
 - f) Mr. Bentil was angry at Mr. Wadden and wanted to fight him;
 - g) once in CRAB Park, Mr. Kim tackled Mr. Wadden to the ground, and a fight ensued between the two men;
 - h) Mr. Bentil joined the fight, and together with Mr. Kim they attacked Mr. Wadden using their knives; and
 - i) Mr. Bentil's knife had a 17-centimetre blade which he used to repeatedly stab Mr. Wadden, inflicting multiple wounds to the chest which caused Mr. Wadden's death.
- [21] At the sentencing hearing, counsel for the Crown and Mr. Bentil made submissions about conflicting evidence presented at trial regarding the use of bear spray during the fight, and whether it was sprayed by Mr. Bentil, Mr. Wadden, or both. I am of the view that it is not necessary make a determinative finding of fact with respect to this question for the purposes of sentencing in this case. While there was evidence of bear spray deployment, there was no evidence that it played a direct causal role in Mr. Wadden's death. In addition, the jury evidently found that Mr. Bentil had the necessary intent for second degree murder, and did not find that Mr. Bentil was acting in self-defence. As such, the question of who deployed bear spray need not be determined now.
- [22] However, there is a relevant aspect of the jury's verdict that is ambiguous, and that is which of the two ways for proving the second degree murder element of intention was proven beyond a reasonable doubt. In other words, did Mr. Bentil actually intend to cause the death of Mr. Wadden (i.e., the first way of proving intention), or did Mr. Bentil mean to cause Mr. Wadden bodily harm which he knew was likely to cause death and was reckless about whether or not death was caused (i.e., the second way of proving intention)?
- [23] In these circumstances, I may come to an independent determination of the relevant facts based on my assessment of the evidence presented. As such, I accept Mr. Bentil's denial that he did not actually intend to kill Mr. Wadden. However, based on the fact that he stabbed Mr. Wadden multiple times with a knife in the chest, I find that Mr. Bentil did mean to cause Mr. Wadden harm that he knew was likely to cause death and that he was reckless about whether his actions caused Mr. Wadden's death.

Jury Recommendation

[24] Section 745.2 of the Code provides that where a jury finds an accused guilty of second degree murder, the judge presiding at the trial shall, before discharging the jury, put to them the following question:

You have found the accused guilty of second degree murder and the law requires that I now pronounce a sentence of imprisonment for life against the accused. Do you wish to make any recommendation with respect to the number of years that the accused must serve before the accused is eligible for release on parole? You are not required to make any recommendation but if you do, your recommendation will be considered by me when I am determining whether I should substitute for the ten-year period, which the law would otherwise require the accused to serve before the accused is eligible to be considered for release on parole, a number of years that is more than ten but not more than twenty-five.

[25] In other words, there is a requirement that the jury be given an opportunity to make a parole ineligibility recommendation in the event it renders a verdict of guilty in respect of a second degree murder charge.

[26] In the case at bar, however, I discharged the jury without asking first whether it wished to make a parole ineligibility recommendation. To contextualize my omission, but not to excuse it, I also note that neither counsel for the Crown nor counsel for the defence made mention of s. 745.2 of the Code or otherwise asked me to canvass the jury on whether it wished to make any recommendations on parole ineligibility at the time the jury rendered its verdict on April 10, 2025, after seven days of deliberations.

[27] However, at the September 23, 2025, sentencing hearing, both counsel brought to my attention for the first time s. 745.2 of the Code and the fact that the jury in this case was discharged without being instructed to consider a parole ineligibility recommendation. Counsel also informed me that they are of the collective view that this should not prevent the Court from sentencing Mr. Bentil. As a remedial measure, they suggested that the Court conduct the sentencing with the assumption that the jury would have recommended imposing a 10-year period of parole ineligibility, had the jury been given the opportunity prior to its discharge.

[28] The question to be addressed is, therefore, whether and how to proceed with this sentencing when the jury did not have a chance to make a s. 745.2 recommendation and it is now too late for it to do so.

[29] Further to research performed following the sentencing hearing, I became aware of four Canadian authorities that have dealt with cases where, by oversight, a trial judge failed to seek jury recommendations following a second degree murder guilty verdict prior to discharging the jury. They are:

- 1) R. v. Bain, 2019 QCCA 460;

- 2) R. v. Brass, 2018 MBQB 182;
 - 3) R. v. MacKinnon, 2019 ONSC 3436; and
 - 4) R. v. Webb, 2021 QCCS 5078.
- [30] All four authorities are to the effect that such an oversight does not preclude the sentencing judge from nevertheless proceeding to impose a sentence. Furthermore, three of the authorities suggest that an appropriate curative approach is to proceed with sentencing on the assumption that the jury would have made the recommendation that is the most favourable to the offender, so long as there is no objection by the Crown. I will discuss each of the four cases briefly here.
1. R. v. Bain, 2019 QCCA 460
- [31] This was an appeal from a high-profile sentencing in relation to the second degree murder conviction of Richard Henry Bain for killing a person during a shooting that took place on the night of the 2012 Quebec provincial election at the Parti Québécois victory celebration at a Montreal theatre.
- [32] The Quebec Superior Court sentencing judge failed to seek a parole ineligibility recommendation pursuant to s. 745.2 of the Code prior to discharging the jury. An appeal of his sentencing decision was heard by a five-judge panel of the Quebec Court of Appeal and was dismissed, with two concurring sets of reasons. The first set was written by Justices Hilton, Hogue, and Healy; the second set was written by Justices Hesler and Levesque.
- [33] The three majority appellate judges wrote the following in their joint reasons at paras. 25-27:
- [25] It is certainly perplexing that such an omission occurred at a trial presided over by so experienced a trial judge with such experienced counsel and that they did not draw the omission to the judge's attention before the jury was discharged. It is undoubtedly a reflection, however, of their surprise at the verdict the jury returned. That being said, when Cournoyer J. mentioned it at the outset of the sentencing hearing on September 9, 2016, five days after the verdict was returned on September 4, it was understood by all concerned to have been an error in good faith that could not be cured at that stage because the jury had been discharged. Equally significant is the fact that neither counsel raised it in their sentencing submissions to the trial judge as a basis to determine the period of ineligibility, nor did he allude to it in his sentencing judgment.
- [26] In any event, there is no way to know whether the jury, after 11 days of deliberation on the verdict, would have accepted an invitation from the trial judge to make any recommendation at all, knowing that under existing Quebec jurisprudence their recommendation would have to be unanimous, and that while he was bound to consider it, he was not obliged to accept it.

- [27] We therefore do not consider this good-faith error of the trial judge and the omission of both counsel to draw it to his attention on a timely basis, regrettable though it is, to be valid factors to take into account in assessing the merits of Mr. Bain's appeal.
- [34] As for the two minority judges, they expressed greater concern in their joint reasons about the sentencing judge's oversight, in the sense that they felt it warranted affording less appellate deference to the sentencing judgment: Bain at paras. 58-61. They nevertheless concluded that they could not interfere with the sentence imposed in the circumstances of that case.
2. R. v. Brass, 2018 MBQB 182
- [35] In this case that was before the Manitoba Court of Queen's Bench, the judge did seek a s. 745.2 recommendation regarding parole ineligibility from the jury. However, the offender had already been convicted of another murder. As such, s. 745.21 of the Code required the judge to also seek a jury recommendation regarding whether the period without eligibility for parole be served for the subject murder consecutively to the period without eligibility for parole imposed for the previous murder. However, the judge failed to seek such a s. 745.21 recommendation before discharging the jury.
- [36] The judge found that he could still pronounce sentence, notwithstanding this oversight. He did so by following the Crown's recommendation that he presume that the jury would have recommended that the periods of parole ineligibility be served concurrently and not consecutively:
- [30] In respect of the failure to instruct the jury in accordance with s. 745.21 of the Code, I agree with the position of the Crown. In view of my conclusions in respect of the applicability of s. 745.51 of the Code, the jury should have been asked to provide its recommendations about whether any periods of parole ineligibility should be served consecutively. However, in my opinion the failure to ask for its recommendations does not preclude the court from considering the imposition of a consecutive period of parole ineligibility. In so doing, I will take the approach suggested by the Crown that I assume the jury members recommended that the periods of parole ineligibility be served concurrently. That is one factor which I will consider along with the other considerations set out in s. 745 (1) of the Code, namely, the character of the offender, the nature of the offence, and the circumstances surrounding its commission.
3. R. v. MacKinnon, 2019 ONSC 3436
- [37] This was an Ontario Superior Court case in which the sentencing judge made the same error as was made by the Manitoba Court of Queen's Bench judge in Brass, namely, a failure to seek a s. 745.21 recommendation from the jury.

- [38] The Ontario sentencing judge, relying on Brass and the Quebec Court of Appeal's decision in Bain, found that he could still sentence the offender. Like in Brass, the Ontario judge did so by presuming that the jury would have recommended that the periods of parole ineligibility be served concurrently and not consecutively:
- [35] At the time of the sentencing hearing, the court brought the failure to ask for a s. 745.21 recommendation to the attention of the parties. Neither the Crown nor the defence submitted that this error deprived the court of jurisdiction to make an order under s. 745.51 and I am satisfied that it did not. A similar error occurred in R. v. Brass, 2018 MBQB 182, and an analogous one in R. v. Bain, 2019 QCCA 460. In both cases, the court held that the failure to seek a recommendation from the jury did not preclude the court from making the order to which the recommendation would have been relevant: see Brass, at paragraphs 11 and 30; Bain, at paragraphs 26, 27 and 60.
- [36] That is not to say that the failure to seek a recommendation is irrelevant to the parole ineligibility decision. In Brass, Crown counsel submitted that as a result of the failure to ask for a recommendation with respect to whether the periods of parole ineligibility should be served consecutively, it should be presumed that the recommendation would have been that they be served concurrently. The trial judge adopted that approach in Brass and I do so in this case as well.
4. R. v. Webb, 2021 QCCS 5078
- [39] This was a Quebec Superior Court case directly analogous to the case at bar, in that the sentencing judge did not seek a s. 745.2 parole ineligibility recommendation before discharging the jury. After citing Bain and MacKinnon, the sentencing judge decided to proceed with sentencing regardless, with the assumption that the jury would have recommended a 10-year period of ineligibility:

[French Original Text]

- [77] Tout comme dans l'affaire Bain, le Tribunal a malheureusement omis, avant de dissoudre le jury, d'inviter celui-ci à formuler ses recommandations quant à la période d'éligibilité de l'accusée. Ce n'est qu'un mois plus tard, lors des représentations sur la peine, que le soussigné attira l'attention des procureurs sur cette omission.
- [80] S'inspirant de cette approche [de l'affaire MacKinnon] et du consentement des parties, le soussigné présumera donc que le jury aurait recommandé, de façon unanime, que Mélissa Webb purge une période d'incarcération minimale de dix ans avant d'être éligible à une libération conditionnelle.

[English Translation of French Original Text]

- [77] As occurred in the Bain case, the Court unfortunately omitted, before discharging the jury, to invite it to provide its recommendations regarding the period of eligibility of the accused. It was only one month later, during the sentencing hearing, that the undersigned brought this omission to the attention of counsel.
- [80] In accordance with this approach [taken in the MacKinnon case] and with the consent of the parties, the undersigned will assume that the jury would have recommended, unanimously, that Mélissa Webb serve a minimum period of incarceration of 10 years before being eligible for parole.
- [40] Having reviewed this jurisprudence, I have decided to address the fact that no s. 745.2 parole eligibility recommendation was sought from the jury prior to its discharge in the same way that it was addressed by the Quebec Superior Court in Webb, based on the guidance provided by the authorities of Bain, MacKinnon, and Brass, and in accordance with the joint curative proposal of counsel for the Crown and Mr. Bentil.
- [41] Specifically, I will proceed to determine the duration of Mr. Bentil's parole ineligibility with the assumption that the jury would have recommended that it be set at the statutory minimum of 10 years.

POSITION OF THE CROWN

- [42] Counsel for the Crown take the position that Mr. Bentil's parole ineligibility period should be increased from the 10-year minimum to a period of 12 years.
- [43] Their position is founded primarily on their submission that there are eight aggravating factors in this case, namely:
- a) the offence was largely unprovoked, in that the argument Mr. Bentil was having with Mr. Wadden had ended several minutes prior to the stabbing and Mr. Wadden was attempting to flee at the time of the offence;
 - b) the offence was cowardly, in that it was perpetrated by two offenders (Mr. Bentil and Mr. Kim) against one victim (Mr. Wadden) who was attempting to disengage and flee;
 - c) the offence was particularly brutal in that it was explosive, violent, and unrelenting, delivered with the intention of inflicting as much damage as possible in a short amount of time;
 - d) the offence was, to some extent, premeditated, in that Mr. Bentil had ample opportunity to consider his actions as he followed Mr. Wadden over the Main Street overpass;
 - e) the offence entailed the use of a large fixed-blade knife which Mr. Bentil brought to the scene, demonstrating that he was prepared to use lethal force;
 - f) the offence entailed multiple stab wounds inflicted while Mr. Wadden was on the ground and past the point he could defend himself;

- g) the offence took place in broad daylight, in a public park, and in front of multiple civilian eyewitnesses, some of whom were children; and
 - h) Mr. Bentil fled the scene of the offence and made no attempt to obtain medical assistance for Mr. Wadden.
- [44] Counsel for the Crown say that the only mitigating factors in this case are Mr. Bentil's young age at the time of the offence and the fact that he does not have a criminal record.
- [45] Ancillary DNA and firearm prohibition orders are also being sought by counsel for the Crown. They take no position on whether the victim fine surcharge should be imposed.

POSITION OF THE DEFENCE

- [46] With respect to determining the parole ineligibility period, counsel for the defence dispute some of the aggravating factors raised by the Crown, namely factors (a), (c), (d), and (f).
- [47] First, they deny that the offence was unprovoked. They say it was preceded by threats and insults from Mr. Wadden, who was the one who initially pursued Mr. Bentil.
- [48] Second, they deny that the offence was premeditated. They say it was precipitated by an angry exchange between Mr. Bentil and Mr. Wadden. Also, Mr. Bentil was reacting, in part, to Mr. Kim's act of chasing and tackling Mr. Wadden. Mr. Bentil was not calmly reflecting and considering his course of action.
- [49] Third, while they acknowledge that the offence was violent and unrelenting, they submit that this should be contextualized by considering that all parties had heightened emotions, acted spontaneously and impulsively, and that the offence was of short duration.
- [50] Fourth, they submit that the multiple stab wounds should not be considered an aggravating factor, since they were only relevant to the jury's rejection of Mr. Bentil's claim to be acting in self-defence.
- [51] Counsel for the defence also say that there are three mitigating factors in this case to be considered in addition to Mr. Bentil's youth and lack of criminal record. They are Mr. Bentil's:
- a) horrendous family background and circumstances;
 - b) remorse for having committed the offence; and
 - c) conditions in pretrial custody.
- [52] Accordingly, counsel for the defence urge the Court to maintain Mr. Bentil's period of parole ineligibility at the statutory minimum of 10 years.

- [53] No position is taken on the ancillary DNA and firearm prohibition orders sought by the Crown, although counsel for the defence acknowledged that such orders are mandatory due to the nature of the offence for which Mr. Bentil was convicted. Counsel for the accused do, however, expressly request that the victim fine surcharge be waived.

ANALYSIS

- [54] The leading Supreme Court of Canada authority on determining the period of parole ineligibility for an offender convicted of second degree murder is *R. v. Shropshire*, [1995] 4 S.C.R. 227. It provides that, as a general rule, the period shall be 10 years. However, it is incorrect to start from the proposition that the sentence must be the statutory minimum unless there are unusual circumstances. Instead, the 10-year period is a minimum contingent on what the judge deems fit in the circumstances, taking into account the criteria set out at what is now s. 745.4 of the Code: *Shropshire* at paras 27 and 31.
- [55] Another helpful summary of the applicable principles for setting parole ineligibility periods can be found in the decision of Justice Dickson, then of this Court, in *R. v. Bhandher*, 2010 BCSC 1812 at paras. 5-6:
- [5] Because fixing the period of parole ineligibility is part of the sentencing process, the general principles set out in ss. 718, 718.1, and 718.2 of the Criminal Code must be considered, including aggravating and mitigating circumstances. The sliding scale established by s. 745.4 of the Criminal Code recognizes that within the category of second-degree murder there is a broad range of seriousness reflecting varying degrees of moral culpability. Denunciation becomes an increasingly important sentencing objective where there is a high degree of planning and premeditation. Denunciation is also particularly important where the offence and its consequences are highly publicized so that like-minded others may be generally deterred:
- [6] As a general rule the period of parole ineligibility following a second-degree murder conviction is 10 years. Unusual circumstances are not required, however, before an extension may be justified. Each case is unique and the sentencing process is intensely fact-sensitive. Nevertheless, the appropriate range of sentence should be assessed bearing in mind other similar sentencing decisions

[citations omitted]

- [56] Counsel for the Crown cited five sentencing decisions in support of their position, in which the parole ineligibility period was set for a period that ranged from 11 to 17 years. Counsel for the defence cited six sentencing decisions in support of their position, all of which were cases in which the parole ineligibility period was set at 10 years. Not surprisingly, none of these 11 cases involved circumstances identical to those in the case at bar.
- [57] That said, I found three of them to be of particular assistance, which I will discuss in chronological order.

R. v. Bhandher, 2010 BCSC 1812, 10-year parole ineligibility

- [58] The offender was not acquainted with the victim prior to the evening of the incident, but he knew the victim's girlfriend. The three of them met by chance at a restaurant and an argument ensued. The victim later called the offender to invite him to continue the confrontation. The offender, who was intoxicated, accepted the invitation and showed up at the victim's place with a handgun. The victim confronted the offender with a sword. The offender then shot the victim in his right thigh and forearm, and the victim turned to flee. The offender continued to shoot the victim, this time hitting him in the back, and the victim died from gunshot wounds. The judge accepted that the offender's initial intention was to scare, threaten, and beat the victim, but not to kill him, and that he brought the loaded handgun for self-protection.
- [59] The offender was 33 years old at the time, and had family support. While he had engaged in a criminal lifestyle, he had only one criminal conviction. It was for dangerous driving 11 years prior to the offence, and he was not given a custodial sentence. The judge also found the offender to be remorseful with good prospects for rehabilitation.

R. v. Bengy, 2012 ONSC 4463, 11-year parole ineligibility

- [60] Two groups of men were engaged in two fights in a parking lot following a harbour cruise. The offender joined the second fight at a point when the victim had been overpowered. Using a knife which he had brought to the cruise, the offender stabbed the victim in the heart. The victim died.
- [61] The offender was 19 years old and had no criminal record. The factors which the judge found to be aggravating were that the offender entered the fight with his knife when the victim was unarmed, outnumbered, and overpowered, and that the killing was intentional. In terms of mitigation, it was noted that the offender cooperated with the police by attending the police station after the stabbing, and that he was a young man with a reasonable prospect for rehabilitation.

R. v. So, 2021 BCSC 1072, 10-year parole ineligibility

- [62] The offender was intoxicated at a karaoke bar. He was asked to leave by the victim and his friends. The offender then started a fight which he lost. In a fit of anger and humiliation, the offender rushed to the kitchen to get a knife, which he used to stab the victim. The victim tried to flee the room, but the offender followed and continued the attack. The incident resulted in the victim's death and lasted just a few minutes.

- [63] The offender was 36 years old and had no criminal record. While there was a high level of moral blameworthiness associated with the offender, the offence was committed in a sudden burst of anger following the humiliation of losing a fight. The offender was remorseful, there was no indication of future dangerousness if he were to remain sober, and his prospect for rehabilitation within 10 years was excellent.
- [64] Turning to the case at bar, I agree with counsel for the Crown that there are a number of aggravating factors present here. The most significant are the cowardly and callous nature of the offence. In particular, this was a two-on-one lethal assault on a victim who was trying to get away from his attackers, entailing significant violence that involved multiple and repeated stabbings with a sizeable knife. Once the attack was over, Mr. Bentil fled immediately without any concern for Mr. Wadden's condition. Mr. Bentil also showed no concern for the impact his actions had on the innocent bystanders, including children, who witnessed the crime that he perpetrated in a public park during the daytime.
- [65] On the other hand, I agree with counsel for the defence that this was not a case where there was a complete absence of provocation on the part of the victim. To the contrary, the unfortunate chain of events that led to the offence began with a confrontation at CRAB Park that was initiated by Mr. Wadden, and which he prolonged by following Mr. Bentil to the Main Street overpass after Mr. Bentil had decided to leave the park. I also agree with the defence that Mr. Bentil's actions, while horrific and unjustified, were not the product of any real considered reflection and premeditation. As such, I do not find these to be aggravating factors.
- [66] With respect to mitigating factors, there are several. Mr. Bentil was only 18 years old when the offence occurred. He has no criminal record. His actions must be understood within the context of his background and circumstances at the time of the offence, which were discussed earlier. He has expressed remorse for his actions. He also enjoys significant support from his family. While in custody, he is working to further his education and has taken steps to distance himself from criminal associations.
- [67] Ultimately, the question before me is whether the period of parole ineligibility needs to be extended beyond 10 years in order to meet the goals of sentencing. Weighing all of the aggravating and mitigating factors, the importance of deterrence, denunciation, and concerns about Mr. Bentil's future dangerousness, I conclude that the answer to this question is no.

SENTENCE

- [68] Mr. Bentil, will you please stand.
- [69] I sentence you to imprisonment for life without eligibility for parole until you have served at least 10 years of the sentence.
- [70] In addition, I make three ancillary orders.

- [71] First, you will be required to provide a DNA sample in accordance with s. 487.051(1) of the Code.
- [72] Second, you are prohibited for life from possessing firearms, cross-bows, restricted weapons, ammunition, and explosive substances in accordance with s. 109 of the Code.
- [73] Third, I agree with Mr. Bentil's request that the victim fine surcharge be waived in light of Mr. Bentil's financial circumstances before his arrest, and the unlikelihood that he will have the ability to pay it given the duration of his custodial sentence.
- [74] Mr. Bentil, you may be seated now.
- [75] That concludes my reasons for sentence. Unless there are any other matters, we are concluded. Counsel?
- [76] CNSL B. McCABE: No, thank you, Justice.
- [77] CNSL P. McMURRAY: No, thank you, Justice.
- [78] THE COURT: Thank you. Registrar, anything else?
- [79] THE CLERK: That should be all, Justice.
- [80] THE COURT: Registrar?
- [81] THE CLERK: That should be all, Justice, thank you.
- [82] THE COURT: Thank you. We are concluded.
- "Brongers J."

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