
CANADA / JUDGMENT

R. v. Bidesi

2018 BCSC 902

COURT

Supreme Court of British Columbia

DECIDED

27 April 2018

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2018 BCSC 902 R. v. Bidesi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bidesi,

2018 BCSC 902

Date: 20180427

Docket: X077493

Registry: New Westminster

Between:

Regina

v.

Russell Bidesi

Before: The Honourable Madam Justice Duncan

Oral Reasons for Sentence

Counsel for the Crown:

J. Fogel

M. Vojvodic

Counsel for the Accused:

S.R.A. Buck

Place and Date of Hearing:

New Westminster, B.C.

March 29, 2018

Place and Date of Judgment:

New Westminster, B.C.

April 27, 2018

Introduction

- [1] On February 16, 2018, I convicted Mr. Bidesi of the second degree murder of Bradley McPherson. A conviction for second degree murder carries a mandatory sentence of life imprisonment. Pursuant to ss. 745(c) and 745.4 of the Criminal Code, when an offender is convicted of second degree murder the court may set the period of parole ineligibility at between 10 and 25 years.
- [2] Mr. Bidesi is before the court today for the imposition of the period of parole ineligibility. The Crown seeks an increased period of parole ineligibility in the range of 15 to 25 years. Mr. Buck submits a range of 12 to 15 years is fit in Mr. Bidesi's case.
- [3] In *R. v. Shropshire*, [1995] 4 S.C.R. 227, Mr. Justice Iacobucci, writing for the Court, said:
- 18 The determination under s. 744 [now s. 745.4] is a very fact-sensitive process. The factors to be considered in fixing an extended period of parole ineligibility are:
- (1) the character of the offender;
 - (2) the nature of the offence; and
 - (3) the circumstances surrounding the commission of the offence;
- all bearing in mind the discretionary power conferred on the trial judge.
- [4] The purpose and principles of sentencing outlined in ss. 718, 718.1 and 718.2 are also relevant in setting the period of parole ineligibility under s. 745.4.
- [5] Section 718 states:
- The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
 - (b) to deter the offender and other persons from committing offences;
 - (c) to separate offenders from society, where necessary;

- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[6] Section 718.1 states:

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

[7] Section 718.2 requires the court to take into consideration any relevant aggravating or mitigating circumstances.

[8] While sentencing is a fact-sensitive process, the appropriate range of sentence should be assessed considering other similar sentencing decisions. Donald J.A. observed in *R. v. Cerra*, 2004, BCCA 594:

17 It has often been said that sentencing is an individualized process and comparisons with other cases are difficult. But difficult as they may be, comparisons must be made when reviewing sentences for fitness. Patterns may emerge from an examination of sentencing decisions. I have discerned a pattern from decisions of this Court suggesting, in broad terms, the following: parole eligibility greater than 10 years is justified when there is some particularly aggravating feature; for a penalty of greater than 15 years, egregious circumstances of a higher order of moral culpability are present.

[9] In *R. v. Bennight*, 2012 BCCA 461, MacKenzie J.A. said:

[18] The following principles apply to the decision to impose an extended period of parole ineligibility:

- Under s. 745.4 of the Criminal Code, the sentencing judge must consider the character of the offender, the nature of the offence, the circumstances surrounding the commission of the offence, and the recommendation of the jury (if any).
- The general sentencing principles of denunciation and deterrence and the judge's assessment of the offender's future dangerousness are relevant factors: *R. v. Shropshire*, [1995] 4 S.C.R. 227, 102 C.C.C. (3d) 193.
- Parole ineligibility greater than 10 years is justified when there is some particularly aggravating feature: *Cerra*, at para. 17 (per Donald J.A.).
- There are two broad groupings of cases where parole ineligibility is extended beyond 10 years: parole ineligibility periods from 12 to 15 years and parole ineligibility periods from 15 to 20 years. The latter group of cases relates to cases at the highest order of moral culpability or dangerousness: *Cerra*, at para. 26 (per Donald J.A.).

- The possibility of a parole ineligibility period greater than 20 years remains in exceptional circumstances: Cerra, at para. 36 (per Ryan J.A.).
- Orders extending the period of parole ineligibility are highly discretionary and are part of the sentence pursuant to s. 673 of the Criminal Code. Such orders are therefore appealed pursuant to s. 687(1). An appellant [sic] court should only interfere with a trial judge's sentencing order if the court is convinced it is not fit or it is clearly unreasonable: Shropshire, at paras. 47-48.
- The wide discretion granted to sentencing judges is fettered by the case law and general ranges of sentences for particular offences. However, while courts must consider ranges, they are guidelines rather than strict rules. A sentence outside the regular range is not necessarily unfit, if it is in accordance with the principles and objectives of sentencing: R. v. Nasogaluak, 2010 SCC 6, [2010] 1 S.C.R. 206 at para. 44.
- Similarly, the two groups of parole ineligibility cases described in Cerra are intended as guidelines, not as binding categories within which a particular case must be placed: R. v. White, 2011 BCCA 328 at para. 24.

The Character of the Offender

- [10] Mr. Bidesi is 27 years old. His parents divorced when he was five and his mother moved to Australia. His father remarried and he has a half sister from that relationship. He also has an older sister, Sharlotte. Mr. Bidesi has always had a good relationship with his family. Mr. Buck filed a letter written by Sharlotte that indicates his family will continue to support him, notwithstanding his incarceration.
- [11] Mr. Bidesi was bullied in school as a result of his dark skin and speech impediment. He got into fights and ended up in an alternate school where he met a negative peer group. Mr. Bidesi did not complete high school on time but did complete his studies in jail. When Mr. Bidesi left school, he worked for an excavating company but drifted into drug use, drug trafficking and conflict with the law.
- [12] Mr. Bidesi's criminal activities began in 2009, when he was 19 years old.
- [13] On October 25, 2010, he was sentenced to 30 days in custody for three breach of undertaking convictions. The sentences included credit for pre-trial custody and were consecutive to each other.
- [14] On March 25, 2011, Mr. Bidesi received a sentence of four months jail for the offence of flight from a peace officer contrary to s. 249.1 of the Criminal Code. The offence date was August 2009. On the same day he received five months consecutive for dangerous operation of a motor vehicle. The offence date was October 2009.

- [15] On November 20, 2011, just over one month before Mr. Bidesi shot and killed Mr. McPherson, he shot Harpreet Sandhu, an acquaintance, and was charged with attempted murder. Fisher J., as she then was, convicted him of the lesser included offence of attempting to cause bodily harm: 2015 BCSC 1398.
- [16] On February 26, 2012, Mr. Bidesi and two others broke into the home of Kacey Rogers. Mr. Rogers was killed by a shotgun blast. Mr. Bidesi was charged with second degree murder. Mr. Bidesi was arrested on February 29, 2012 and held on remand. Four days later, he attacked a fellow inmate from behind, punching him and then kicking him when he fell to the floor. Mr. Bidesi was charged with assault causing bodily harm and was sentenced to six months imprisonment.
- [17] On May 19, 2015, Butler J. convicted Mr. Bidesi of manslaughter in the death of Kacey Rogers: 2015 BCSC 863.
- [18] On July 31, 2015, Fisher J. sentenced Mr. Bidesi to 30 months custody for attempting to cause bodily harm: 2015 BCSC 1442.
- [19] On February 2, 2017, Butler J. imposed a sentence of 14 years imprisonment on Mr. Bidesi for manslaughter: 2017 BCSC 198. He summarized the circumstances of the offence at para. 97 of his reasons for judgment on conviction:
- [97] I conclude that the following facts were proved:
- a) Bidesi planned and organized the Home Invasion. His plan was to break into the Home and rob Rogers of money and drugs on the evening of February 26, 2012.
 - b) Bidesi recruited Martinez and Lyde to take part in the plan.
 - c) Part of the planning included making arrangements for the three men to have firearms loaded for the purpose of carrying out the intended robbery at the Home. This included having the Pump Action Shotgun loaded with at least five shells. It also included having ammunition available for another shotgun and a handgun. Bidesi took active steps to ensure the home invaders were armed and ready for any challenge. There is no doubt that there were two shotguns used by the intruders. I conclude that the shotguns seized from Martinez's apartment were used in the Home Invasion.
 - d) Bidesi's planning also included preparations to ensure that the three men were dressed in black, wearing toques and gloves. Bidesi told the men how to dress and arranged for the acquisition of the accessories.
 - e) The three men went to the Home in the Camry, which was driven by Bidesi.
 - f) In the course of the Home Invasion, three men or one of them decided to break into the house by firing the Pump Action Shotgun into the front door.

- g) Rogers came to the kitchen window to investigate the shots which were fired into the front door of the Home. He was shot and killed by a single shot fired from either the Brno or the Pump Action Shotgun by one of the three men: Bidesi, Martinez, or Lyde.
- h) After Rogers was shot, all three men entered the Home, led by Bidesi. They confronted M.B., took a small quantity of cash, and fled.
- [20] In preparing for the sentencing before Butler J., the Crown sought an assessment of Mr. Bidesi under the dangerous offender provisions in the Criminal Code. Dr. Lindsey Jack completed a psychological assessment of Mr. Bidesi based on collateral materials. Mr. Bidesi did not participate in any interviews for the purpose of the report.
- [21] Dr. Jack reviewed Mr. Bidesi's family and educational history, consistent with what I have set out earlier in these reasons. He found no indication that Mr. Bidesi had any mental health issue such as a major mood or psychotic disorder. Dr. Jack noted that Mr. Bidesi was reported to be oppositional with corrections staff. He was described in reports as disrespectful, not following rules, calling the staff names, lacking in emotional control and unresponsive to direction or limit setting. Mr. Bidesi was compliant for periods of time and as a result was moved off an enhanced supervision unit to a regular living unit but he often required consequences and special placement.
- [22] Dr. Jack also noted that Mr. Bidesi was viewed as someone who engaged in intimidation of other inmates and associated with anti-social peers. He was involved in fights with other inmates and appeared to brag about one alleged assault on a fellow inmate.
- [23] Mr. Buck says that Mr. Bidesi's behaviour in custody is difficult to assess, because the normal rules and social codes do not apply in that setting. I note, however, that Mr. Bidesi's behaviour before his incarceration is consistent with his reported behaviour in custody. When faced with challenges or perceived slights his default response is to resort to violence.
- [24] Given Mr. Bidesi's convictions which pre-date the homicide of Mr. McPherson and his conduct after, the Crown submits that he is as dangerous a person as one could imagine and should be isolated from society for a lengthy period. The period of parole ineligibility should place Mr. Bidesi in the highest range outlined in Cerra.
- [25] Mr. Buck points out Dr. Jack's observation that Mr. Bidesi has not received much in the way of programming while incarcerated because he has been awaiting trial on the matter before me. As a result, Mr. Bidesi has not been able to demonstrate his willingness to engage in rehabilitation. Additionally, Mr. Bidesi was only 21 years of age when he committed this offence and his youth must be a factor in determining a fit sentence.
- [26] Mr. Buck cites *R. v. Gibson*, 2001 BCCA 495 as an example of a case where, notwithstanding that the accused had a record for violence, a parole ineligibility period of 12 years was substituted for 20 on appeal. The accused was 20 at the time of the offence and stabbed a man after a brief altercation on a city street.

The Nature of the Offence and the Surrounding Circumstances

- [27] The Crown maintains that an angry Mr. Bidesi shot the victim in the back of the head in an act that was as close to an execution as one can describe. Mr. McPherson was an innocent party-goer. Mr. Bidesi used a firearm at a crowded house party, putting anyone in his vicinity at risk.
- [28] Mr. Buck characterizes the killing as an impulsive act with little to no foresight, far from an execution style killing. He also notes the evidence that Mr. Bidesi was drinking and consuming drugs in the hours leading up to the murder, attenuating his moral blameworthiness to some degree.

Case Law

- [29] The Crown relies on the following authorities to substantiate a range of 15 to 25 years for parole ineligibility in this case:

R. v. Cerra, *supra*

R. v. Bennight, *supra*

R. v. Bell, 2013 BCCA 463

R. v. Doucette, 2015 ONCA 583

R. v. Baker, 2017 BCSC 2178

R. v. Douglas, 2018 BCSC 254

- [30] Mr. Buck submits that Cerra and Bennight both involved much more egregious killings because the victims died from beatings inflicted over a long period of time. He cites the following authorities to substantiate a slightly elevated range of parole ineligibility of 12 to 15 years:

R. v. Mafi, [2000] B.C.J. No. 339 (CA)

R. v. Gibson, *supra*

R. v. Nash, [2009] N.B.J. No. 17 (NBCA)

R. v. Stewart, [2008] O.J. No. 5449 (Ont.SCJ)

R. v. Doucette, 2015 ONCA 583

R. v. Monney, 2017 ONSC 1007

R. v. Williams, [1997] N.S.J. No. 299 (NSSC)

Victim Impact Statements

- [31] Mr. McPherson's mother, Susan Simning, and his younger sister, Mariah, read their victim impact statements at the sentencing hearing. Ms. Simning was awakened by friends of Mr. McPherson at 5:00 in the morning on Christmas Eve, telling her that he had been shot and was dead. He had just moved back into her home and the act of packing up his belongings after his sudden and untimely death was an emotionally wrenching task for her.
- [32] Other family members and many friends of Mr. McPherson provided written victim impact statements. It is evident that Mr. McPherson was loved by many people and is deeply missed. For obvious reasons, the Christmas season is particularly difficult for them.

Application of the Sentencing Principles to this Case

- [33] I turn now to a consideration of the factors referred to in s. 745.4 of the Criminal Code in determining the appropriate period of parole ineligibility. In doing so I am mindful of the principles of sentencing in the Criminal Code set out earlier in my reasons as well as the range of circumstances in the cases cited by counsel.
- [34] I deal first with the aggravating factors. While Mr. Bidesi's criminal record pre-dating the murder of Mr. McPherson is not extensive, it includes a conviction involving the use of a firearm. Mr. Bidesi was the architect of the shotgun killing of Kacey Rogers just two months after he killed Mr. McPherson and then subsequently committed further violent offences while on remand.
- [35] The murder of Mr. McPherson was callous, cowardly and utterly senseless. I concluded in my reasons at conviction that Mr. Bidesi was reacting to people calling him out over his loutish conduct in the bathroom when he shot Mr. McPherson. The fact that he carried a loaded gun to a house party indicates he had little regard for what he had done to Mr. Sandhu earlier that year, or to the safety of others.
- [36] After shooting Mr. McPherson, Mr. Bidesi again resorted to the use of firearms in planning and carrying out the acts that resulted in the death of Mr. Rogers. Those features of his criminal record and of his conduct post-dating the offence before me support the Crown's contention that Mr. Bidesi is a dangerous person from whom society must be protected.
- [37] Whether or not Mr. Bidesi has any insight into why he resorts to violence is an unknown, as he declined to participate in Dr. Jack's assessment and has not otherwise accessed programming, either in custody or out. He chose not to address the court at this sentencing hearing. He was a relatively young man when he committed this offence, which is a mitigating factor. Mr. Bidesi's youth and the fact that he has not yet received substantial programming means that rehabilitation cannot be ignored, but I am of the view that it must take on diminished significance in this case in light of the need to emphasize the sentencing principles of denunciation and deterrence.

Disposition

- [38] It is important to remember that regardless of the period of parole ineligibility, the sentence that is to be imposed in this case is life imprisonment. My task at sentencing is to determine how much time must pass before Mr. Bidesi is eligible for parole. It will be up to the National Parole Board to determine whether he is ever granted parole.
- [39] Mr. Bidesi, stand up. For the second degree murder of Bradley McPherson, I sentence you to life imprisonment with no eligibility for parole for 15 years.
- [40] There are also a number of mandatory ancillary orders:
- 1) Pursuant to s. 109(3) of the Criminal Code, you are prohibited from possessing any firearm, cross-bow, restricted weapon, ammunition and explosive substance for life after release from your term of imprisonment.
 - 2) Under this 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.
 - 3) Murder is a primary designated offence within the meaning of s. 487.04 of the Criminal Code. 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.
 - 4) I exercise my discretion not to impose a Victim Fine Surcharge in this case.
- [41] Finally, pursuant to s. 743.2 of the Criminal Code, I order that a copy of my Reasons for Sentence be forwarded to the Correctional Service of Canada. At the Crown's request I order that the exhibits also be forwarded.

"Duncan J."

The Honourable Madam Justice Duncan

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