
CANADA / JUDGMENT

R. v. Brittain

2020 BCSC 1821

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1821 R. v. Brittain

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Brittain,

2020 BCSC 1821

Date: 20201015

Docket: 46690-2

Registry: Penticton

Regina

v.

John Brittain

Before: The Honourable Madam Justice Beames

Oral Reasons for Sentence

Counsel for the Crown:

C. Forsyth

A.T. Vandersluys

Counsel for the Accused:

P.S. McMurray

Place and Date of Trial/Hearing:

Kelowna, B.C.

October 14-15, 2020

Place and Date of Judgment:

Kelowna, B.C.

October 15, 2020

- [1] THE COURT: John Brittain is before the court for sentencing. He has pled guilty to all of the four counts on the indictment as charged, namely, that he committed the second degree murder of Rudi Winter, the first degree murder of Barry Wonch, the first degree murder of Susan Wonch, and the first degree murder of Darlene Knippleberg. All of the murders took place on April 15, 2019, in Penticton, British Columbia.

Principles and Purpose of Sentencing

- [2] Parliament has set out in the Criminal Code the sentencing principles, purposes, and objectives as well as the sentences which are mandated for the offences in this case.
- [3] The offence of murder, whether first degree or second degree, results in a mandatory life imprisonment. Life imprisonment sentences in Canada for obvious and practical reasons must run concurrently. Any offender who has committed murder, whether one or multiple, has only one life to spend in prison.
- [4] The offence of first degree murder has a mandatory requirement that the offender not be eligible to apply for parole until the offender has served 25 years of the sentence (s. 745(a)). For the offence of second degree murder, while the sentence remains life imprisonment, the Criminal Code sets a minimum mandatory of 10 years before the offender is eligible to apply for parole (s. 745(c)). The sentencing judge has the discretion to increase the period of parole ineligibility to a maximum of 25 years for second degree murder having regard to the character of the offender, the nature of the offence, and the circumstances of the offence (s. 745.4).
- [5] In 2011, Parliament amended the Criminal Code with respect to offenders convicted of multiple murders to give sentencing judges the discretion, having regard to the character of the offender, the nature of the offence, and the circumstances surrounding its commission, to order that periods of parole ineligibility can be served consecutively, which means one after the other, rather than concurrently, which was the law prior to 2011.
- [6] The general principles, purposes, and objectives of sentencing apply to, and guide the determination of, both the discretion to be exercised with regard to the period of parole ineligibility for second degree murder and the discretion to be exercised with respect to whether periods of parole ineligibility should be concurrent or consecutive: *R. v. Shropshire*, [1995] 4 S.C.R. 227; *R. v. Kam*, 2020 BCSC 1369.

- [7] Section 718 of the Criminal Code provides that the fundamental purpose of sentencing is to protect society and contribute to the respect for the law and the maintenance of a just, peaceful, and safe society by imposing sanctions that have one or more objectives including, most importantly to this case, denunciation, deterrence, separation of offenders from society where necessary, and reparations for and acknowledgment of harm done to victims and the community.
- [8] The fundamental principle of sentencing is found in s. 718.1 which provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [9] Section 718.2 requires a sentencing judge to have regard to aggravating and mitigating circumstances; and to take into consideration the principle that sentences should be similar to sentences imposed on similar offenders for similar offences; and the principle that, where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.
- [10] Although not directly set out as an objective in the Criminal Code, I will deal also with the objective of retribution, long recognized to be an objective of sentencing in Canada, including in *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500 and which is a principle relied on heavily by Crown in this case. To quote from Chief Justice Lamer, as he was, who delivered the judgment for the court in *R. v. M.(C.A.)*:
79. Retribution, as an objective of sentencing, represents nothing less than the hallowed principle that criminal punishment, in addition to advancing utilitarian considerations related to deterrence and rehabilitation, should also be imposed to sanction the moral culpability of the offender. In my view, retribution is integrally woven into the existing principles of sentencing in Canadian law through the fundamental requirement that a sentence imposed be "just and appropriate" under the circumstances. Indeed, it is my profound belief that retribution represents an important unifying principle of our penal law by offering an essential conceptual link between the attribution of criminal liability and the imposition of criminal sanctions. With regard to the attribution of criminal liability, I have repeatedly held that it is a principle of "fundamental justice" under s. 7 of the Charter that criminal liability may only be imposed if an accused possesses a minimum "culpable mental state" in respect of the ingredients of the alleged offence. It is this mental state which gives rise to the "moral blameworthiness" which justifies the state in imposing the stigma and punishment associated with a criminal sentence. I submit that it is this same element of "moral blameworthiness" which animates the determination of the appropriate quantum of punishment for a convicted offender as a "just sanction". As I noted in *Martineau* in discussing the sentencing scheme for manslaughter under the Code, it is a recognized principle of our justice system that "punishment be meted out with regard to the level of moral blameworthiness of the offender"

80 However, the meaning of retribution is deserving of some clarification. The legitimacy of retribution as a principle of sentencing has often been questioned as a result of its unfortunate association with "vengeance" in common parlance. But it should be clear from my foregoing discussion that retribution bears little relation to vengeance, and I attribute much of the criticism of retribution as a principle to this confusion. As both academic and judicial commentators have noted, vengeance has no role to play in a civilized system of sentencing. Vengeance, as I understand it, represents an uncalibrated act of harm upon another, frequently motivated by emotion and anger, as a reprisal for harm inflicted upon oneself by that person. Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.

81 Retribution, as well, should be conceptually distinguished from its legitimate sibling, denunciation. Retribution requires that a judicial sentence properly reflect the moral blameworthiness of that particular offender. The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct.

[Emphasis in original.]

Circumstances of the Offence

- [11] John Brittain and his former wife, Katherine Brittain, separated in 2012. I am told they divorced in 2014. Mr. Brittain, at the time of the offences, lived on Lakeview Street in Penticton. Katherine Brittain, in 2012, purchased a house on Cornwall Drive in Penticton, and she lived there from 2012 until at least the date of the murders. Despite their separation and divorce, the Brittains remained close. Mr. Brittain attended at Katherine Brittain's home on a regular, often daily, basis.
- [12] All of the victims in this case were neighbours of Katherine Brittain. Rudi Winter lived adjacent to her. Barry and Susan Wonch lived across the street. Darlene Knippleberg also lived across the street and besides the Wonches' residence.
- [13] Frictions initially developed, as I understand it from the statement of facts filed by the Crown in this matter, between Katherine Brittain and Rudi Winter over trees or tree branches. Starting in 2015, Katherine Brittain made complaints to the City of Penticton about Mr. Winter and his wife. The complaints were addressed by City staff, but apparently not to the satisfaction of Katherine Brittain. She had other grievances with the Winters, including about smoke coming out of their chimney, drainage issues, and property line violations.

- [14] In 2017, Katherine Brittain made a complaint to the City about Barry Wonch running a furniture business out of his residence without a licence. She also had other grievances against Barry and Susan Wonch, including that they parked their vehicle in front of her house to antagonize her.
- [15] By April of 2019, Katherine Brittain's relationship with her neighbours was very poor. She believed, I am told, that the Winters, the Wonches, and Darlene Knippleberg talked about her and were bullying and/or harassing her. For years, she aired her complaints about her neighbours to and with her ex-husband, the offender, John Brittain. In the first half of 2018, commencing, I believe, in February of 2018 and continuing until May of 2018, Mr. Brittain had counselling sessions to address his relationship with Katherine Brittain. He was looking, as I understand it, for some assistance about how to completely end the relationship and/or to reconcile in some fashion. He told his counsellor during those sessions that the neighbours were the biggest issue preventing him from leaving the relationship for good. He told the counsellor that he wanted to leave Penticton and that the issue of Katherine's neighbours was one of the anchors (to use the counsellor's words) keeping him in Penticton.
- [16] Dr. Lohrasbe, a psychiatrist who was retained by defence to assess Mr. Brittain, provided a report which became an exhibit on sentencing. Dr. Lohrasbe opined there is no doubt that Mr. Brittain was "enmeshed in an unhealthy relationship" with his ex-wife and that he "identified closely with her suffering and her perceived victimization". He said Katherine Brittain and, through her, John Brittain viewed those neighbours as Katherine Brittain's tormentors. According to what Mr. Brittain told Dr. Lohrasbe, while Katherine Brittain shared her concerns about her neighbours with Mr. Brittain, she repeatedly asked Mr. Brittain to avoid interacting with them. There is no evidence that he ever did, in fact, interact with them prior to April 15, 2019.
- [17] On April 15, 2019, Mr. Brittain went to work after having a brief telephone conversation with Katherine Brittain. His employer was in the process of moving offices. He first attended the old office and then the new office. He had, in that process, several conversations with other employees. He appeared, according to what I have been advised, to be behaving normally. As the state of the new office was not conducive to work, Mr. Brittain decided to return home. He left his office at approximately 10 a.m. and arrived home shortly thereafter. At 10:07, he called Katherine Brittain and left a voicemail message for her saying he was planning to return to his old office to see if he could do some work there. Although he left that voicemail message at 10:07, Mr. Brittain, in fact, remained at home for a while longer.
- [18] At approximately 10:19 a.m., Rudi Winter arrived at the house across the street from Mr. Brittain's. The house belonged to a friend of Mr. Winter and Mr. Winter was going to continue doing some maintenance on the irrigation system at that house which he had started on April 12.

- [19] At approximately 10:28 a.m., Mr. Brittain became aware that Mr. Winter was across the street. According to what he told the police, Mr. Brittain "snapped" and realized that he "had the means to stop this harassment".
- [20] Mr. Brittain, a gun hobbyist and collector who was a frequent target shooter, with a valid firearms licence and multiple firearms and types of ammunition, took a .303 calibre bolt action Lee-Enfield rifle out of a box he stored it in, went to his linen closet to retrieve ammunition, and went to his bedroom to load cartridges into the 10-round magazine and into a cloth cartridge holder which was on the butt of the rifle. He also removed the trigger lock. He then exited his home, crossed the street, and from about 12 feet away called out Mr. Winter's name. As Mr. Winter, who had been facing away from Mr. Brittain's house and from Mr. Brittain as he approached, started to turn, Mr. Brittain shot him. He then shot Mr. Winter three more times, including the last shot which was to Mr. Winter's head. Each time he fired, he manually operated the bolt action.
- [21] Mr. Brittain picked up at least three expended shell casings, according to his counsel (one shell casing was left in the Lee-Enfield rifle) and he then calmly walked to his car, which he had parked a short distance away, crossing a main thoroughfare in Penticton to do so. While he walked, he held the rifle against his right side parallel to his body. When he got to his car, he put the rifle on the front seat and the expended shell casings in the cupholder.
- [22] For unknown or, at least to me, unexplained reasons, Mr. Brittain then drove to a bank, approximately three minutes away, and withdrew \$200 from the ATM inside the bank. He arrived at the bank at 10:38 and left the bank at 10:41. He then drove to Cornwall Drive, where his ex-wife and the victims resided, which is a drive from the bank of approximately 10 minutes in duration.
- [23] He parked in front of the Winter residence. He noted as he was approaching or as he parked that the garage door at the Wonch residence, which had been open or partly open, closed, which led him to believe that the Wonches were in the garage. He opened the trunk of his car and retrieved another rifle, a .357 magnum calibre Rossi Model 92 Ranch Hand lever action rifle and ammunition. He had placed the unloaded firearm and ammunition in the trunk earlier, intending to go target shooting. That firearm is shorter and less visible than the Lee-Enfield rifle. He loaded the magazine of the Rossi and walked to the Wonches' garage door.
- [24] When he knocked on that door, it was opened. Barry and Susan Wonch were both inside. Mr. Brittain walked into the garage, I am told, approximately 12 feet and, from approximately six feet away, shot Barry Wonch two or three times, according to his statement to the police, although the other evidence suggests there were only two shots, and then shot Susan Wonch two times. The autopsy results indicated that Barry Wonch was, in fact, shot twice, once in the back right shoulder/upper arm area and once through the head. Susan Wonch was shot in the back and through the head.

- [25] While Mr. Brittain was still at the Wonch residence, according to the evidence gathered by the Crown, a passing motorist saw Mr. Brittain inside the garage and saw a body on the floor of the garage. The motorist stopped and got out of his vehicle. Mr. Brittain told him, in a calm voice, according to the witness, to "Move on, the police will take care of it". Mr. Brittain has told his counsel that he has no recollection of that motorist or of the statement he is said to have made, but he does not deny it. The motorist, according to his evidence, then returned to his car, drove to the end of the street, and called 9-1-1.
- [26] Mr. Brittain, after shooting Barry and Susan Wonch, walked down their driveway, around a low fence, and then across the lawn and up to the door of the house next door, which belonged to Darlene Knippleberg.
- [27] He knocked on the door, and when Ms. Knippleberg opened the door, he shot her. After she had fallen to the floor and he had operated the lever action to load a fresh round, he shot her again in the head.
- [28] Mr. Brittain then returned to his vehicle. He placed the Rossi rifle in the front seat with the Lee-Enfield rifle and drove directly to the RCMP detachment in Penticton, approximately a five-minute drive from Cornwall.
- [29] He arrived at the detachment at approximately 11:13 a.m., which was approximately 45 minutes after he shot his first victim. He went into the detachment and told a civilian employee at the front desk that he wanted to turn himself in, stating, "I'm the guy who just shot four people".
- [30] After he was arrested and given access to legal counsel, he provided two voluntary warned statements that evening providing details of the shootings.

Circumstances of the Offender

- [31] Mr. Brittain was born, according to the report of Dr. Lohrasbe, on September 18, 1951. He is now 69 years old and was 67, approaching 68, years old at the time of the offences.
- [32] He graduated from high school in 1970, and from university, with a Bachelor's degree in Applied Sciences and Engineering, in 1975. He worked as an engineer, or using his engineering training, at many jobs; throughout Canada and abroad, including on two occasions in Tanzania, and one job in Nigeria. He has experienced, over the years, several episodes of severe work burnout and major depression, which have led to suicide attempts or suicide ideation. According to Dr. Lohrasbe, Mr. Brittain believes in retrospect that he drove himself extremely hard and had little social life for many years.

- [33] One of his depressive episodes was prolonged, leading to him being unemployed between approximately 1996 and 1999, but aside from that extended period of unemployment, it appears he was able to maintain relatively steady employment, albeit frequently changing employers and locales. He was also able to further his education, specifically in the area of project management.
- [34] Some of Mr. Brittain's work, and perhaps most of Mr. Brittain's work, has been for or associated with remote areas and impoverished populations. One of his first jobs abroad was associated with a church-sponsored project, and he has also worked for the Canadian International Development Agency. He worked for a First Nations band in Northern Manitoba. He engaged in volunteer activity, particularly including and connected to his involvement with music.
- [35] Mr. Brittain has, it appears, led a very solitary life. His first substantial intimate relationship was with Katherine Brittain, whom he met in Nelson, British Columbia, in 2005. Prior to the offences before the court, he had no history of violence and no criminal record.
- [36] Mr. Brittain spoke at the conclusion of the sentencing submissions made by counsel. He accepted full responsibility for his actions on April 15, 2019. He said that the foundations for his actions, he now believes, was laid over many years of workplace burnouts and major mental health issues and that, on that day, he believes he had a mental breakdown and reacted to threats and images which he now knows were not real. He said, and I accept, that he had no idea, nor did anyone else, that he would do what he did on that day. He said, and I also accept, that he has no idea now what caused him to behave as he did. He expressed a deep and obviously heartfelt remorse for his actions and the devastation he caused to so many people. He apologized to the families of the victims, the community, the RCMP, EMS, and restoration services workers who had to see the results of his actions that day, and to his ex-wife. He said that the images of the destruction and devastation that he wreaked on April 15, 2019, will torment him for the rest of his life.

Victim Impact Statements

- [37] Five people read aloud victim impact statements during the course of the sentencing hearing and their written statements were filed as exhibits. The wife and the daughter of Mr. Winter spoke lovingly about Mr. Winter and described the devastation caused by their loss of him as a result of the incomprehensible crime committed by Mr. Brittain on April 15.
- [38] The daughter and two nieces of the Wonches similarly described their love for Barry and Susan Wonch and the gaping hole left in their lives and the lives of other family members as a result of their murders.
- [39] Who would not feel great sympathy for the losses suffered by the family members of all three families, the Winters, the Wonches, and the Knipplebergs?

- [40] The murders have also had a lasting impact on various members of the RCMP and on civilian staff. One can completely understand the trauma associated with receiving two calls, or sets of calls, in short order of reports of execution-style shootings, occurring in Penticton, in two different parts of the city, and being dispatched to attend the scenes, not knowing whether they were related or who the gunman or gunmen were.
- [41] The community itself, as a whole, was no doubt traumatized by such crimes having been committed in such a small community where so many people know personally or know of other residents of the community, and the loss of the sense of safety occasioned by the types of crimes in that small city which many residents may well believe, to quote Crown counsel, are only supposed to happen in other communities.
- [42] The sense of shock, disbelief, and great loss will no doubt continue to have an impact on all of the family and friends of the victims, and on the RCMP members and staff, as well as on the community at large.

The Positions of the Parties

- [43] The Crown submits that I should impose, as required, lifetime sentences on each count to be served concurrently; that Count 1, the second degree murder of Rudi Winter, should result in a parole ineligibility period of 15 years; and that the first degree murders of Barry Wonch, Susan Wonch, and Darlene Knippleberg should result in the imposition of mandatory 25-year parole ineligibility periods. Crown submits that the three 25-year parole eligibility terms for the first degree murders should be concurrent, that is, served together. However, Crown submits that the 15-year term for the second degree murder should be stacked on top of, or served consecutively with, the first degree murder terms such that Mr. Brittain would be ineligible to apply for parole for a total of 40 years.
- [44] Counsel for Mr. Brittain takes no issue with the 15-year parole ineligibility period for the second degree murder of Mr. Winter. However, defence counsel submits that Mr. Brittain's parole ineligibility periods on all four counts should be concurrent, such that Mr. Brittain would first be eligible to apply for parole after a total of 25 years.

The Case Authorities

- [45] Counsel provided me with a joint book of authorities in this case. It contains, amongst other cases, 21 cases which have considered the issue of consecutive versus concurrent periods of parole ineligibility pursuant to s. 745.51 of the Criminal Code. All of the cases, which come from across Canada, are from trial courts, as I understand the section has not yet been the subject of appellate consideration. I have read all of the authorities, and will not review them now, although I will attach an index of the authorities provided to the transcript of my reasons once the transcript is prepared.

- [46] It is fair to say that the cases are difficult to reconcile or directly compare and difficult to organize into a statement of definitive principles. Different jurisdictions appear to have taken somewhat different approaches to the application of s. 745.51.
- [47] Defence counsel, I conclude, has fairly distilled the factors that seem to have been emphasized by the various trial judges who have had to consider and apply s. 745.51, including the age of the offender; whether the offender had a prior criminal record; whether sentencing follows a trial or guilty pleas; the nature of the victims, including whether the victims were particularly vulnerable such as children, especially if the offender was in a position of trust for the victim or victims; whether the offences were part of a continuous series of events or completely separate and different acts, such as in some of the authorities provided, murders separated by multiple years; and whether there were any psychological or psychiatric issues relevant to the offending.
- [48] In all but one of the cases from British Columbia, the appropriate period of parole ineligibility was found to be based on concurrent terms rather than consecutive terms, although I note that in those cases, the murders occurred as part of a continuous series of events. In the single exception, the case which imposed consecutive terms, *R. v. Forman*, 2019 BCSC 2165, the 35-year-old offender beat and choked his wife, causing her death. At least several hours later, having hidden his wife's body and then snow-shovelled and taken his children to church, he took one of his children into her room, strangled her to death, and then removed her body to another room before luring his second child into the bedroom and murdering her in the exact same manner. The sentencing judge in that case said:
- [38] Here, Mr. Forman is 35 years of age. Views may differ as to what a whole-life sentence might mean. There are examples within the authorities referred to by counsel where parole ineligibility clearly takes one past any reasonable life expectancy. There are others where consecutive sentences have not been imposed because the offender might have reached the age of 90, or approximately that age, before release. In my view, a period of parole ineligibility that would see the accused, Mr. Forman, at somewhere between 67 and 69, depending on the calculation of credit, is not such a sentence that it could be categorized as a whole-life sentence, to use that phrase. I reiterate my observation that I do not view these murders as effectively one event.
- [39] There are mitigating factors that the Crown has fairly pointed out. Mr. Forman has pled guilty at an early stage in the proceedings. No witnesses other than two police officers had given evidence before those guilty pleas were offered. Mr. Forman has no prior record. He has been, throughout his life by all accounts, a contributing member of society. His remorse is real and I am satisfied that he has considered and appreciates the gravity of his conduct. It had manifested in a desire or thought of committing suicide and I have no doubt that it has and likely will for the rest of his days be a burden greater than anything that this court will impose.

- [40] Having said that, there are very significant aggravating features. As I have observed, there can always, unfortunately, be worse factual situations. I have made the observation that other cases that courts have considered have involved more deaths. One can engage in much philosophical or social debate about which set of facts is worse. That is not the task before me. These were aggravated circumstances. The manner in which the killings took place, particularly with respect to the children, is particularly disturbing. The breach of trust, the fact that they were his own children, the fact of their ages, and the fact that it was carried out in the pretext of playing a game in their rooms, all are significant aggravating factors.
- [49] The sentencing judge concluded that the fit and proper result in that case was two concurrent periods of 25-year parole ineligibility for the first degree murders of his two children, followed by a consecutive 10-year period of parole eligibility for the second degree murder of his wife, for a total of 35 years of parole ineligibility.
- [50] On the issue of what the sentencing judge in that case called "whole-life sentences", I would also note the words of Chief Justice Lamer in M.(C.A.):

74 However, in the process of determining a just and appropriate fixed-term sentence of imprisonment, the sentencing judge should be mindful of the age of the offender in applying the relevant principles of sentencing. After a certain point, the utilitarian and normative goals of sentencing will eventually begin to exhaust themselves once a contemplated sentence starts to surpass any reasonable estimation of the offender's remaining natural life span. Accordingly, in exercising his or her specialized discretion under the Code, a sentencing judge should generally refrain from imposing a fixed-term sentence which so greatly exceeds an offender's expected remaining life span that the traditional goals of sentencing, even general deterrence and denunciation, have all but depleted their functional value. But with that consideration in mind, the governing principle remains the same: Canadian courts enjoy a broad discretion in imposing numerical sentences for single or multiple offences, subject only to the broad statutory parameters of the Code and the fundamental principle of our criminal law that global sentences be "just and appropriate".

The Parole System

- [51] The only issues in this case, or this sentencing, relate to parole and the amount of time that must pass before Mr. Brittain is first able to apply for parole which is, of course, separate from the sentence that Mr. Brittain must serve, which is for life. As a result of the focus on parole ineligibility during the sentencing hearing, it is helpful, in my view, to set out what Chief Justice Lamer said in M.(C.A.):

62 In short, the history, structure and existing practice of the conditional release system collectively indicate that a grant of parole represents a change in the conditions under which a judicial sentence must be served, rather than a reduction of the judicial sentence itself. Needless to say, an offender enjoys a greater measure of freedom and liberty when the conditions of his or her imprisonment are changed from physical confinement to full parole. Indeed, as we implicitly

held in *R. v. Gamble*⁶³ continued incarceration with an extended period of parole ineligibility (much less continued incarceration through an actual denial of parole) may constitute a deprivation of a cognizable liberty interest under s. 7 of the Charter. But even though the conditions of incarceration are subject to change through a grant of parole to the offender's benefit, the offender's sentence continues in full effect. The offender remains under the strict control of the parole system, and the offender's liberty remains significantly curtailed for the full duration of the offender's numerical or life sentence. The deterrent and denunciatory purposes which animated the original sentence remain in force, notwithstanding the fact that the conditions of sentence have been modified. The goal of specific deterrence is still advanced, since the offender remains supervised to the extent and degree necessary to prevent possible crime, and since the offender remains under the shadow of re-incarceration if he or she commits another crime. As well, the goal of denunciation continues to operate, as the offender still carries the societal stigma of being a convicted offender who is serving a criminal sentence.

63 Against this backdrop, the purpose and effect of the parole eligibility rules in the Corrections Act become clear. Within the broad statutory minimum and maximum sentences of the Code, Parliament has vested trial judges with considerable discretion to direct a just and appropriate sentence which advances the principles of deterrence, denunciation, rehabilitation and protection of society among other sentencing goals. But in addition to providing for the imposition of a global sentence which reflects the culpability of the offender, Parliament also established threshold periods of parole ineligibility, because it concluded that the traditional blend of sentencing principles also required that a minimum portion of the global sentence be served through conditions of physical confinement. As Iacobucci J. recently noted in *R. v. Shropshire*, in discussing the mandatory minimum period of parole ineligibility for first degree murder: "parole ineligibility is part of the 'punishment' and thereby forms an important element of sentencing policy".

64 While Parliament was undoubtedly animated by the full range of sentencing principles in setting such threshold periods, it appears to have been principally motivated by the sentencing goals of deterrence and denunciation. As the Manitoba Court of Appeal concluded in *R. v. Ly*, in discussing the 10-year parole ineligibility for second-degree murder under s. 744 of the Code: "Parliament's purpose in adding a minimum period of parole ineligibility to a life sentence was, in my view, twofold. It was to deter and denounce the crime."

Discussion and Conclusion

[52] It goes without saying that the murders of Rudi Winter, Barry Wonch, Susan Wonch, and Darlene Knippleberg were horrific crimes. All four of those victims were killed by Mr. Brittain using a high-powered rifle at close range. More than one shot was fired at each victim. The Crown is not wrong to describe them as execution-style killings. That they were senseless and incomprehensible killings is also true. Mr. Brittain himself said that he was acting or reacting to threats and images he perceived and which he now knows were not real. That all of this tragedy flowed from what could only be described as relatively petty

neighbourhood grievances is nearly unimaginable.

- [53] As to the character of the offender, Mr. Brittain, I am satisfied that until April 15, 2019, he was a talented, educated, upstanding citizen who made positive contributions to society both in Canada and elsewhere. He suffered from some mental health issues, as well as possibly from some personality traits which were spoken of by Dr. Lohrasbe in his report which resulted in Mr. Brittain having a relatively isolated and solitary life, but absolutely nothing foreshadowed his actions over the course of approximately 45 minutes on April 15, 2019.
- [54] There are both mitigating and aggravating factors to be considered. With respect to mitigating circumstances, Mr. Brittain, when realizing what he had done, drove himself to the RCMP detachment and turned himself in. Despite receiving legal advice, which I am sure was to the contrary, he made full confessions and took full responsibility for his actions in warned statements taken later that day. He fully cooperated with the police. He waived his right to a preliminary hearing and he entered guilty pleas on all counts as charged. Indeed, I was told during the course of sentencing submissions that discussions about resolution of this matter without a trial started as early as May 2019. Further, Mr. Brittain was a first-time offender at the age of 67, going on 68, when he committed these murders.
- [55] He is, as I said earlier, and I accept, deeply remorseful and he takes full responsibility for his actions. He broke down several times while making his apologies in his remarks to the Court after counsel's submissions had concluded.
- [56] With respect to aggravating factors, the method of the killing, essentially execution-style, is an aggravating factor. So, too, is the fact that three of the four victims were killed in their own homes, where they were entitled to feel safe and should have been.
- [57] In seeking a total period of parole ineligibility of 40 years, which almost certainly exceeds Mr. Brittain's life expectancy and, if not, I note he would be 107 years old, Crown relies on the sentencing objectives of retribution, denunciation, and deterrence.
- [58] However, as is obvious from the cases I have quoted earlier, a life sentence without an ability to apply for parole until age 92, and without any assurance that parole would be granted even if applied for, in my view, meets the objectives of denunciation, deterrence, and retribution.
- [59] There is an argument to be made with regard to proportionality in that a person who commits four murders and is sentenced to consecutive 25-year parole ineligibility terms, receives on paper the same sentence effectively as someone who commits one first degree murder. That overlooks the prospects of parole at the expiration of the parole ineligibility period. Parliament made consecutive parole ineligibility terms discretionary when they enacted s. 745.51 and that means judges must be guided by and apply all of the sentencing principles, purposes, and objectives set out in the Criminal Code. Further, there is no discretion, pursuant to s. 745.51, to do anything but stack whole periods of parole

ineligibility so that a fit and proper sentence could be crafted for the individual offender on the offences before the court.

- [60] I have listened carefully to the heart-rending victim impact statements which were bravely delivered in court yesterday. The families of the victims in this case have suffered incalculable and incurable loss. Nothing can bring back the four victims nor make their families whole again. Although judges cannot, and I do not, make decisions based on sympathy or prejudice, I can assure the victims of these horrific crimes that they have my deepest sympathies for their losses.
- [61] I have also, as counsel are, I hope, aware, listened carefully to their helpful submissions. I commend counsel for the work they did in bringing this matter to a resolution without the need for a trial and for their assistance in compiling thoughtful arguments and relevant case authorities. In addition, as I said earlier, I have had the assistance of Dr. Lohrasbe's report.
- [62] Having considered all that I have heard and read and all of the principles, purposes, and objectives set out in the Criminal Code, I have concluded that a total parole ineligibility of 40 years would be unduly long and harsh and it is not necessary in order to meet the objectives of sentencing. It would not, in my view, be a fit and just or appropriate sentence in all of the circumstances.
- [63] Mr. Brittain, please stand.
- [64] Mr. Brittain, on Count 1, the second degree murder of Rudi Winter, I sentence you to life imprisonment, with no eligibility for parole for 15 years.
- [65] On Count 2, the first degree murder of Barry Wonch, I sentence you to life imprisonment, with no eligibility for parole for 25 years.
- [66] On Count 3, the first degree murder of Susan Wonch, I sentence you to life imprisonment, with no eligibility to apply for parole for 25 years.
- [67] On Count 4, the first degree murder of Darlene Knippleberg, I sentence you to life imprisonment, with no eligibility to apply for parole for 25 years.
- [68] The sentence on Counts 1, 2, 3, and 4 will be served concurrently.
- [69] Pursuant to s. 487.051 of the Criminal Code, you will provide a sample of your DNA for DNA analysis.
- [70] Pursuant to s. 109 of the Criminal Code, Mr. Brittain, you will be banned for life from possessing any firearm, crossbow, prohibited or restricted weapon, ammunition, or explosive substances.
- [71] That concludes my decision. Is there anything arising from counsel?
- [72] MR. FORSYTH: Just two matters, My Lady. First of all, with respect to items seized during the investigation, specifically firearms, there were a significant number of firearms seized.

- [73] THE COURT: And so you are looking for a forfeiture --
- [74] MR. FORSYTH: Is there an order of forfeiture for --
- [75] THE COURT: -- order?
- [76] MR. FORSYTH: -- for all firearms seized, and ammunition?
- [77] THE COURT: Any objection?
- [78] MR. McMURRAY: No.
- [79] THE COURT: Any objection to that? All right. There will be --
- [80] MR. McMURRAY: No.
- [81] THE COURT: -- an order forfeiting all of the firearms and ammunition seized by the police from Mr. Brittain or otherwise. I believe there was reference to a storage container. So --
- [82] MR. FORSYTH: Yes.
- [83] THE COURT: -- all of the firearms and ammunition seized will be forfeited. And?
- [84] MR. FORSYTH: And a copy of Your Ladyship's decision be provided to the Correctional Services of Canada as well as a copy of Dr. Lohrasbe's report?
- [85] THE COURT: The Code provides that the reasons be provided to the Correctional Service and, in the usual course, sentencing reasons are always ordered and transcribed for somebody and so, consequently, I will make the order that the reasons will be transcribed and provided to the Correctional authorities. Any objection, Mr. McMurray, to the report of Dr. Lohrasbe going, as well?
- [86] MR. McMURRAY: No, I had asked that -- I have asked for a similar order.
- [87] THE COURT: All right. The report of Dr. Lohrasbe will similarly be transmitted to the Federal Correctional authorities.
- [88] MR. FORSYTH: Thank you, My Lady. Those are my points.
- [89] THE COURT: Thank you very much, counsel, and to everyone else who has participated, and particularly the victims, in this sentencing process, I am deeply appreciative and I do not think there is much more that I can say. Thank you.

"A.J. Beames J."

Appendix A

R. v. M.(C.A.), [1996] 1 S.C.R. 500

R. v. Kam, 2020 BCSC 1369

R. v. Forman, 2019 BCSC 2165

R. v. Simard, 2019 BCSC 741
R. v. Salehi, 2019 BCSC 698
R. v. Batstone, 2019 BCSC 1520
R. v. MacKinnon, 2019 ONSC 3436
R. v. Downey, 2019 ABQB 365
R. v. Zerbinos, 2019 BCSC 584
R. v. McArthur, 2019 ONSC 963
R. v. Delorme, 2019 ABQB 2
R. v. Millard, 2018 ONSC 1299
R. v. Granados-Arana, 2018 ONSC 1756
R. v. Klaus, 2018 ABQB 97
R. v. Borutski, 2017 ONSC 7762
R. v. Saretzky, 2017 ABQB 496
R. v. Garland, 2017 ABQB 198
R. v. Ostamas, 2016 MBQB 136
R. v. Koopmans, 2015 BCSC 2120
R. v. Bains, 2015 BCSC 2145
R. v. Clorina, 2015 ABQB 252
R. v. Vuozzo, 2015 PESC 14
R. v. Baumgartner, 2013 ABQB 761
R. v. Bourque, 2014 NBQB 237

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