

CANADA / JUDGMENT

R. v. Charleson

2024 BCSC 1191

COURT

Supreme Court of British Columbia

DECIDED

16 May 2024

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2024 BCSC 1191 R. v. Charleson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Charleson,

2024 BCSC 1191

Date: 20240516

Docket: 42104-3

Registry: Port Alberni

Rex

v.

Rykel Louise Elizabeth Charleson, also known as Rykel Louise Elizabeth Frank, and Mitchell Joshua Frank

Before: The Honourable Justice Tammen

Oral Reasons for Sentence

Counsel for the Crown:

K.A. Henders Miller

A.J. Taylor

Counsel for the Accused, Rykel Charleson also known as Rykel Frank:

B.S. Lynskey

Counsel for the Accused, Mitchell Frank:

S.T. Littlely

Place and Date of Hearing:

Port Alberni, B.C.

May 16, 2024

Place and Date of Judgment:

Port Alberni, B.C.

May 16, 2024

- [1] THE COURT: This case can only be described as tragic, yet such a descriptor fails entirely to capture the facts and circumstances that led to the death of a young child, Don-Tay Lucas, at the tender age of six, nor can the impact of Don-Tay's death on his immediate family, extended family, caregivers, and the broader community be summarized succinctly with similar descriptors. Portions of the victim impact statements are heartbreaking in their poignancy.
- [2] The death of any child is tragic on a grand scale, more so when the death is caused by unlawful homicide. More so still when the perpetrators are parents, those entrusted with caring for and nurturing the victim.
- [3] In this case, the two perpetrators are Rykel Charleson, also known as Rykel Frank, Don-Tay's mother, and Mitchell Frank, Don-Tay's stepfather. Each of them has individual circumstances in their backgrounds which could be labelled tragic. For certain, neither Ms. Frank nor Mr. Frank was emotionally and mentally equipped to properly care for Don-Tay.
- [4] Mr. Frank learned nothing about appropriate parenting from his parents, both practising alcoholics who largely neglected their children's needs.
- [5] Ms. Frank was abandoned by her father before birth and then abandoned by her mother while still an infant. She lived with her grandmother until age five, when she returned to live with her mother in Port Alberni, BC. From a very young age until age 13, Ms. Frank was a victim of both physical violence in the home and sexual abuse. At age 13, Ms. Frank became involved with an older man and became pregnant, later miscarrying. Around that time, Ms. Frank started drinking and developed a serious alcohol dependency.
- [6] Mr. Frank began drinking at age 17 and developed an alcohol problem between ages 18-22. He was 22 when he met Ms. Frank and commenced living with her. At that time, Ms. Frank's two children, Don-Tay and Mia, one year older than Don-Tay, were in foster care. Both Don-Tay and Mia were returned to Ms. Frank's care between November 2017-March 2018. By that time, Ms. Frank had given birth to a daughter, Lily.

- [7] In March 2018, the household consisted of Mr. Frank, Ms. Frank, Mia (age seven), Don-Tay (age six), Lily (nine months), and Nisa (Ms. Frank's nine-year-old sister). Ms. Frank describes being overwhelmed with caring for four children. Mr. Frank was often absent because of work. When both Mr. Frank and Ms. Frank were home, they both drank to excess.
- [8] The agreed statement of facts sets out in brief compass the acts and injuries which led to Don-Tay's death. I reproduce or summarize some of the salient facts here:
5. Between December 2017 until the time of his death, both [Ms. Frank] and [Mr. Frank] engaged in various methods of abusing Don-Tay including:
- a. biting him;
 - b. hitting him;
 - c. making him plank;
 - d. making him run up and down the stairs; and
 - e. forcing him to hang from his knees on the top of a door until he fell.
- ...
7. On Feb. 27 at 08:57 hours, a video was taken of Don-Tay planking with a cloth in his mouth. He is crying hysterically in the video, and [Ms. Frank] can be heard, sometimes laughing. There is an injury visible on the corner of [Don-Tay's] right eye.
8. Between March 9 and 13, [Ms Frank] and [Mr. Frank] engaged in abusing Don-Tay, as described in paragraph 5. During this period, they deprived him of sleep, food, and water. By the end of this period, Don-Tay was covered in bruises and abrasions over his face, head, neck, torso, and extremities.
- [9] On March 9, 2018, Don-Tay was kept home from school. On March 12, 2018, Don-Tay was also kept home from school:
12. In the early morning hours of Tuesday, March 13, the blunt force injuries to Don-Tay's brain caused him to have a seizure. Ms. Frank and Mr. Frank] tried to treat the seizure by putting Don-Tay in the shower.
- [10] In the early morning hours of March 13, 2018, Ms. Frank texted her mother. Ms. Charleson called for an ambulance. First responders attended at the house at 9:28 a.m. They were not able to revive Don-Tay and he was transported to the hospital where he was pronounced dead:
19. On autopsy, the pathologist found the bruises to Don-Tay's body too numerous to list, but noted abundant bruises and abrasions over his face, head, neck, torso, and extremities. There were several areas of blunt force trauma to the head.

- [11] The cause of death was severe blunt-force head trauma caused by the combination of injuries inflicted on Don-Tay.
- [12] Clearly, both accused caused Don-Tay's death by committing acts of wanton cruelty. It seems unfathomable that they would engage in such behaviour with a defenceless child with whom both accused were in a position of trust, yet those are the facts of this case for which both accused must now be sentenced.
- [13] Both accused have entered pleas of guilty to unlawful act manslaughter. The range of sentence for unlawful act manslaughter is extremely broad, potentially stretching from a suspended sentence to life imprisonment. Here, counsel put forward a joint submission and submit that a fit sentence for both accused, prior to deduction for time already spent in custody, is 15 years. All counsel pointed out the aggravating and mitigating factors present here and I agree with counsel's assessment.
- [14] Obviously, the most serious aggravating factors are that this was a crime involving prolonged abuse with considerable violence committed against a vulnerable young person with whom both accused were in a relationship of trust. Both accused abused that trust in a truly horrific manner. Section 718.04 of the Criminal Code, R.S.C. 1985, c. C-46, therefore requires that I give primary consideration to denunciation and deterrence of that conduct.
- [15] There are also present for both accused several mitigating circumstances. Neither accused has a criminal record. Both accused have entered early guilty pleas and spared victims, witnesses, and the community the agony of an emotionally-charged trial. Both accused have expressed remorse, which I accept as being genuinely felt by each.
- [16] Ms. Frank wrote a statement of apology which her counsel read in Court. Mr. Frank expressed remorse in exercising his right of allocution.
- [17] In addition, there are powerful Gladue factors present in the personal histories of both accused. For both Ms. Frank and Mr. Frank, I have the benefit of extremely helpful and thorough Gladue reports. Those reports speak to the unfortunate legacy of colonialism, in particular the lasting impacts of the residential school system on generations of Indigenous peoples and the particular impacts on each of these accused.
- [18] Ms. Frank is a member of the Hesquiaht First Nation. Ms. Frank, and by extension the author of the Gladue report, have asked that certain extremely personal details from the report not be read aloud in Court. I will respect those wishes and attempt to summarize some of what is noted at pages 10 and 11.
- [19] Under the heading of "Gladue factors present for Ms. Frank": Ms. Frank is a descendent of the Indian Residential School system. Her mother, maternal grandmother, and maternal aunts and uncles are all Indian Residential School survivors. Ms. Frank was abandoned by her biological father from birth and did not have him in her life. She was abandoned by her mother when she was ten months old and placed into the care of her grandmother. Her grandmother died when Ms. Frank was five. She has had many other family members who

have passed away and reported that she has never properly grieved. Throughout her life, Ms. Frank has been exposed to poor parental figures.

- [20] Ms. Frank reports being sexually abused throughout her life. Ms. Frank stopped attending school when she was in Grade 6 because of bullying, and then commenced home schooling, which did not go well for her.
- [21] Ms. Frank began using drugs and alcohol at age 13, and in her early 20s started using harder drugs. When she was in a car accident at age 14, she experienced systemic racism in the healthcare system while trying to access treatment for her injuries.
- [22] She was involved in a previous domestic relationship in which she was a victim of domestic violence.
- [23] Ms. Frank's mother passed away in 2022.
- [24] Mr. Frank is a member of the Ahousat First Nation. He was raised in Ahousat and moved to Port Alberni when he was in his early 20s. Many of his family members were survivors of the Christie Residential School on Meares Island.
- [25] Mr. Frank grew up in a household where abuse was normalized and alcoholism prevalent. From ages 9-16, Mr. Frank was housed primarily within the child welfare system. Since age 18, Mr. Frank has suffered from periods of suicidal ideation.
- [26] For both Ms. Frank and Mr. Frank, I must take into account the systemic and background factors when I assess the degree of responsibility of the offender, the person being sentenced. Powerful Gladue factors such as those present here attenuate the degree of moral blameworthiness for both offenders. At the end of the day, in any sentencing proceeding, the judge's task is to attempt to craft a fit sentence for the individual offender, a sentence which takes into account the disparate considerations I have addressed.
- [27] Crafting a fit sentence, particularly for crimes of violence, is the single most difficult task of a trial judge. No sentence I impose today will bring Don-Tay back, nor in any meaningful way will it ease the pain felt by those who loved him. The sentence must be one which adequately reflects society's condemnation of the crime. The sentence must also not lose sight of prospects for rehabilitation of both these accused, comparatively young people being sent to prison for the first time.
- [28] In arriving at a fit sentence in this case, I have been aided greatly by the professionalism and endeavour of all counsel who, as noted, make a joint submission on sentence.
- [29] In *R. v. Anthony-Cook*, 2010 SCC 43, the Supreme Court of Canada provided trial judges with considerable guidance on the proper approach to a joint submission and also set out the many benefits of such submissions to the overall functioning of the criminal justice system. All of the considerations set out at paras. 35-44 apply here. At para. 42, the Court noted that a judge should only reject a joint submission "where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice

system."

- [30] With that in mind, I turn to the proposed sentence here, 15 years' imprisonment.
- [31] Both Crown and defence counsel have provided cases from this and other provinces which assist in identifying a rough range of appropriate sentence for a case of unlawful act manslaughter which involves child abuse perpetrated by a caregiver.
- [32] Based on those authorities, I am persuaded that a realistic range is between 10-15 years' imprisonment. I agree with Mr. Lynskey that the jointly-proposed sentence is at the upper end of that range. That being so, there is no reason for me to depart from the joint sentence proposed by counsel. I intend to sentence both accused pursuant to the joint submission. The sentence I intend to impose for both Ms. Frank and Mr. Frank is 15 years. From that must be deducted time already spent in pretrial custody. Both accused have been in custody for slightly more than two years, since early May 2022. Each is entitled to credit for time spent in custody at a 1.5:1 ratio. Therefore, each accused will receive credit for three years plus one month, so 37 months. That leaves a sentence to be served of 12 years less one month, or 143 months.
- [33] Ms. Frank, would you please stand. Ms. Frank, I sentence you to 143 months' imprisonment. You may be seated.
- [34] Mr. Frank, would you please stand. Mr. Frank, I sentence you to 143 months' imprisonment. You may be seated.
- [35] The ancillary orders I must impose are, first of all, with respect to s. 109 of the Criminal Code, those are mandatory orders, so for each accused pursuant to s. 109(2)(a), I make an order prohibiting you from possessing any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition, and explosive substance for a period of ten years following your release from prison.
- [36] Pursuant to s. 109(2)(b) with respect to each accused, I make an order prohibiting you from possessing any prohibited firearm or restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- [37] Manslaughter is also a primary designated offence for purposes of the DNA provisions of the Criminal Code. Pursuant to s. 487.051, I make an order authorizing the taking of bodily substances for the purpose of DNA analysis in respect of each accused, such samples to be taken while they are in custody.
- [38] I am waiving the victim fine surcharge because I have imposed a lengthy term of imprisonment.
- [39] Finally, pursuant to s. 743.2 of the Criminal Code, I make an order that the reasons I have just given be transcribed and transmitted to the Corrections Service of Canada ("CSC") to assist them in administering the sentence for each of these accused. That section also requires that I order the transmission of such other materials as might be relevant in the

administration of the sentence. My view is that I should order: Exhibit 1 (the agreed statement of facts) be transmitted; and Exhibits 4 and 5 (the Gladue reports), which would no doubt be of great assistance to the CSC.

[40] Do counsel have any position on those exhibits going?

[41] CNSL A. TAYLOR: No, Justice.

[42] CNSL B. LYNSKEY: I would agree.

[43] CNSL S. LITTLE: Agreed.

[44] THE COURT: All right. So I will order, in addition to my reasons for sentence, that Exhibit 1 (the agreed statement of facts), Exhibit 4 (the Gladue report for Mr. Frank), and Exhibit 5 (the Gladue report for Ms. Frank) be transmitted to the CSC as well.

"Tammen J."

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