

CANADA / JUDGMENT

R. v. Crossley

2023 BCSC 2126

COURT

Supreme Court of British Columbia

DECIDED

17 November 2023

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2023 BCSC 2126 R. v. Crossley

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Crossley,

2023 BCSC 2126

Date: 20231117

Docket: X083803

Registry: New Westminster

Rex

v.

Curtis James Crossley

Before: The Honourable Justice Mayer

Oral Reasons for Sentence

Counsel for the Crown:

R. Flannigan

J. Gock

Counsel for the Accused:

G. Ng

S. Head

Place and Date of Trial/Hearing:

New Westminster, B.C.

November 17, 2023

Place and Date of Judgment:

New Westminster, B.C.

November 17, 2023

INTRODUCTION

- [1] Curtis Crossley was charged with the second degree murder of Robert Powshuk on November 19, 2021. On August 29, 2023, Curtis Crossley plead guilty to the lesser and included offence of manslaughter of Robert Powshuk, contrary to s. 236(b) of the Criminal Code, R.S.C. 1985, c. C-46 [Code] and is now before the court for sentencing.
- [2] Crown and defence, by way of a joint submission, submit that a fit sentence would be nine years and six months, minus credit for pre-trial custody.

CIRCUMSTANCES OF THE OFFENCE

- [3] Crown and defence have agreed to certain facts regarding the circumstances of the offence, which are attached as Appendix "A" to these reasons.
- [4] The Crown has advised the court that reasonable steps have been taken to provide members of Mr. Powshuk's family an opportunity to prepare victim impact statements, but no such statements have been provided.

CIRCUMSTANCES OF THE OFFENDER

Personal Background, Character, and Current Circumstances

- [5] Curtis Crossley's background is set out in a Pre Sentence Report dated February 27, 2019, a psychiatric assessment by Dr. Brink dated May 26, 2023, and a Gladue report dated November 13, 2023, prepared by Elder Bucksot of the Kitigan Zibi Anishabeg First Nation, located on Algonquin territory in Quebec. Additional background has been provided in defence submissions.
- [6] Curtis Crossley is 38 years old and was 36 at the time of the offence. He identifies as indigenous and reports that his father was the subject of the "60s scoop" resulting in his father being removed from his family by government officials as a child.
- [7] Although the Crown and Defence advance a joint submission on sentence, Curtis Crossley's indigenous background must be considered by the Court in determining whether the proposed sentence is fit in all of the circumstances. The Court is conscious of the direct and indirect impacts of Curtis Crossley's indigenous heritage.

- [8] The Pre Sentence Report, Psychiatric Assessment, and Gladue report shows that Curtis Crossley has a history of substance abuse, combined with limited cognitive abilities, and mental illness in the form of schizophrenia - in partial remission.

Criminal Record

- [9] Curtis Crossley's criminal record includes a conviction for manslaughter and two counts of aggravated assault in 2005, for which he received a sentence of seven years minus credit for pre-trial custody. These offences arose in the context of a home invasion. Curtis Crossley was 18 at the time of this offence - for which he was found to be a party.
- [10] Other than the 2005 conviction for manslaughter the majority of Curtis Crossley's convictions are for theft under \$5,000. He has one other conviction for uttering threats - for which he received a suspended sentence.

LEGAL FRAMEWORK / PRINCIPLES

Principles of Sentencing

- [11] Section 718 of the Code provides that 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". Objects in imposing a just sentence include denunciation and deterrence, separating offenders from society where required, rehabilitation, providing reparation for harms done to victims or the community and promoting a sense of responsibility in offenders and acknowledging the harm done to victims.
- [12] Section 718.1 of the Code provides that in all cases a sentence must be proportionate to the gravity of the offence and the offender's degree of responsibility and moral blameworthiness; *R. v. Parranto*, 2021 SCC 46 at paras. 11-12
- [13] Section 718.2(a) of the Code provides that a sentence must be increased or reduced to reflect for aggravating or mitigating circumstances relating to the offence or the offender.
- [14] Section 718.2(b) of the Code provides that the sentence imposed should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
- [15] Section 718(d) of the Code provides that the court should not deprive an individual of liberty if less restrictive sanctions may be appropriate.
- [16] Section 718(e) of the Code provides that all available reasonable sanctions other than imprisonment should be considered consistent with the harm done to the community for all offenders with particular attention to Aboriginal offenders. In this respect, this Court is required to apply the principles set out by the Supreme Court in *R. v. Gladue*, [1999] 1 S.C.R. 688 and the Court of Appeal in *R. v. Kehoe*, 2023 BCCA 2.

Offence-specific Considerations

- [17] Section 236 of the Code provides that the maximum sentence for manslaughter is life and there is no minimum. The usual range for manslaughter is from 4 to 15 years - unless there are special circumstances: *R. v. Badhesa*, 2019 BCCA 70 at paras. 6 and 49.
- [18] Where a sentence for manslaughter falls within the applicable range depends on the circumstances. As was set out by Justice Devlin at paras, 44 and 45 of *R. v. Hothi*, 2023 BCSC 1564:
- [44] The wide range of sentences for manslaughter reflects the numerous ways in which the offence can be committed. As expressed by our Court of Appeal in *Badhesa*:
- [24] The offence of manslaughter encompasses conduct which has caused the death of another person and falls short of intentional killing. It covers a wide range of cases extending from "near accident" to "near murder" and different degrees of moral culpability attach along a continuum within that spectrum. A sentencing judge assesses moral culpability for manslaughter by considering the offender's mental state in the context of the unlawful act itself and the offender's personal characteristics, blending and balancing all in combination. Factors that weigh in the balance include intentional risk-taking, the harm caused, the normative character of the offender's conduct, the degree of deliberation involved, the existence of provocation and the element of chance involved in the resulting death. [Citations omitted.]
- [45] Faced with this wide range, the Court in *Badhesa* provided the following guidance to sentencing judges on how to determine an appropriate sentence in a given case (at para. 26):
- the judge must carefully determine the degree of an individual offender's moral culpability and craft a sentence that accounts adequately for the unique constellation of relevant factors present in a case. The task is complex and sometimes factors unrelated to where the unlawful act falls on the "near accident" to "near murder" spectrum nonetheless bear on the degree of the offender's moral culpability. Where an offender falls on the spectrum of individual moral culpability is a question of fact.
- [Emphasis added.]
- [19] Factors which may be considered include the following, identified in *R. v. Stone*, [1999] 2 S.C.R. 290, at para. 247 (quoting from *R. v. Laberge*, 1995 ABCA 196), quoted in *R. v. Hothi*, at para. 53:

Therefore, the court must look not only at the physical characterization of the act itself, but must assess a range of other considerations. These include the choice of weapon used to effect the unlawful act, the degree of force the offender used in perpetrating the act, the extent of the victim's injuries, the degree of violence or brutality, the existence of any additional gratuitous violence, the degree of deliberation involved in the act, the extent to which the act reflected forethought of action or planning, the complexity of the act, what, if anything, provoked the act,

the time taken to perpetrate the act and the element of chance involved in the resulting death.

Joint Submission

[20] As already stated this is a joint submission on sentence. As established by the Supreme Court of Canada in *R. v. Anthony Cook*, 2016 SCC 43, a court should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute.

Relevant Case Authorities

[21] Crown and defence refer to the following authorities, each of which I find to be instructive:

- a. *R. v. Plowman*, 2015 BCCA 423 - in which three accused involved in a group attack of a victim were convicted of manslaughter and received sentences of 7, 7 and 5 years respectively.
- b. *R. v. Camille*, 2018 BCSC 1595 - in which an indigenous offender convicted of manslaughter was sentenced for nine years and six months. This was the accused's second conviction for manslaughter. Associate Chief Justice Holmes stated in her reasons that in many cases an offender's second offence for manslaughter will require a sentence of at least ten years - although consideration is given to the particular circumstances of the offender.
- c. *R. v. Poorman*, 2020 BCSC 1420 - in which an indigenous offender was convicted of manslaughter of a victim who the offender believed had given a baby cocaine. A sentence of nine years was imposed.
- d. *R. v. Leglace*, 2013 BCSC 1044 - in which an indigenous offender was convicted of manslaughter of his spouse, who he had stabbed 19 times. The offender was sentenced to ten years and six months.

DISCUSSION

Proportionality and Moral Blameworthiness

[22] The fundamental principle of sentencing is that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender": Code s. 718.1.

[23] As was stated by Justice Watchuk, "[t]he gravity of the offence is inherent in the offence of manslaughter - a human life is taken": *R. v. Deo*, 2022 BCSC 1835 at para. 148, quoted at para. 55 of *R. v. Hothi*.

[24] Determining the degree of Curtis Crossley's responsibility, or moral blameworthiness, takes into account his personal circumstances, mental capacity or motive for committing the crime. *R. v. Lacasse*, 2015 SCC 64, at para. 30, quoted at para. 56 of *R. v. Hothi*.

A. Aggravating and Mitigating Factors

[25] The following aggravating factors apply in this case:

- a. Curtis Crossley was a participant, along with his brother Ryan Crossley, as part of a group assault on Mr. Powshuk - and his role in Mr. Powshuk's death was closer to "near murder" than "near accident";
 - b. Curtis Crossley was carrying and used a knife during the assault on Mr. Powshuk;
 - c. Curtis Crossley was aware that Ryan Crossley had a knife and used it during his attack on Mr. Powshuk;
 - d. Curtis Crossley did nothing to stop Ryan Crossley, but rather participated in the assault, including kicking Mr. Powshuk as he lay on the ground;
 - e. Mr. Powshuk was defenceless throughout this attack;
 - f. After the attack, Curtis Crossley sprayed Mr. Powshuk in the face with bear spray as he lay on the ground;
 - g. Curtis Crossley cleaned up the scene and then fled the area, eventually throwing his knife into the water;
 - h. Curtis Crossley has a lengthy criminal record including a prior conviction for manslaughter; and
 - i. At the time of the offence, Curtis Crossley was in breach of his probation order imposed on July 15, 2021, that he must not possess any weapons, including knives.
- [26] The mitigating factors in this case includes that Curtis Crossley has entered a plea to manslaughter, has expressed remorse, his mental health and cognitive deficits and his secondary role in the death of Mr. Powshuk.

SENTENCE / DISPOSITION

Sentence

- [27] In this case the sentencing objectives which require the greatest emphasis include denunciation and general and specific deterrence.
- [28] There is no question that the offence for which Curtis Crossley has plead guilty is grave. Mr. Powshuk was savagely attacked - by Curtis Crossley and his brother. Despite this finding, Curtis Crossley's moral blameworthiness is tempered by factors including his mental health issues, limited cognitive abilities, history of substance abuse and his indigenous heritage and the inferred impact on his life.
- [29] I am satisfied that the administration of justice will not be brought into disrepute if the sentence proposed by the Crown and Defence is imposed. Accordingly, I impose a sentence of nine years and six months, subject to deduction for pre-sentence custody.

Credit for Pre-sentence Custody

[30] The Crown and Defence concede, and I find, that since his arrest for this offence that Curtis Crossley has been in custody for 728 days, which when multiplied by 1.5 pursuant to s. 719(3.1) of the Code results in a credit for pre-trial custody of 1,093 days.

Actual Sentence (accounting for pre-sentence custody)

[31] Accounting for pre-sentence custody I order that Curtis Crossley be incarcerated for a further period of 2,375 days (6 years and 185 days).

ANCILLARY ORDERS

[32] In addition, there will be the following ancillary orders:

1. Pursuant to s. 487.051(1) of the Code, I make an order in Form 5.03 authorizing the taking of samples of bodily substances from Curtis Crossley for the purpose of forensic DNA analysis and registration in the DNA National Databank.
2. Pursuant to s. 109(1) and (3) of the Code, you are prohibited from possessing any firearm or weapons or other devices set out in these provisions, for life, running from the date of this order.
3. Given that Curtis Crossley was not employed and homeless at the time of the offence and has remained in custody since, I waive application of a victim surcharge.
4. Finally, pursuant to s. 743.2 of the Code, I order that a copy of these reasons for sentence as well as a copy of the Admissions of Fact filed as Exhibit 1 on this sentencing, USB with video clips, book of materials, the pre-sentence report, psychiatric assessment and Gladue report be forwarded to the Correctional Service of Canada.

"Mayer J."

Appendix

Source & reproduction note

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