
CANADA / JUDGMENT

R. v. D.A.W.

2002 BCCA 336

COURT

British Columbia Court of Appeal

DECIDED

29 May 2002

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2002 BCCA 336

Citation:

R. v. Whicher

Date: 20020529

2002 BCCA 336

Docket:

CA028645

COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

REGINA

RESPONDENT

AND:

DAVID ASHLEY WHICHER

APPELLANT

Before:

The Honourable Mr. Justice Hall

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Thackray

P.S. McMurray

Counsel for the Appellant

R.A. Mulligan, Q.C.

Counsel for the Respondent

Place and Date of Hearing:

Victoria, British Columbia

13 March 2002

Place and Date of Judgment:

Vancouver, British Columbia

29 May 2002

Written Reasons by:

The Honourable Mr. Justice Hall

Concurred in by:

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Thackray

Reasons for Judgment of the Honourable Mr. Justice Hall:

Background:

- [1] This is a sentence appeal in a home invasion case. The offence occurred on January 2, 2001, in a rural area of Saanich, British Columbia, after dark, at around 7 p.m. The occupants of the home, Mr. and Mrs. D., a couple in their mid 70s, were watching television in the living room when the appellant and his co-accused came through the unlocked back door. The appellant was brandishing a knife as he entered. The two men demanded money from the elderly occupants of the house, the appellant waving the knife around as the demands were made. Slash marks were found on the wallpaper in the TV room and on the door jamb of the room. The residents complied with the demands for money by giving the intruders the cash they had in their respective wallets. The total amount of cash taken was in the order of \$300.00.
- [2] Not satisfied with what had been produced, the two men kept urging the victims to give them more. Whilst the men were engaged in this conduct, the phone rang. The appellant then decided that the telephone lines in the house should be cut. While holding the knife, he conducted the male victim throughout the house and proceeded to cut the phone lines.
- [3] His confederate remained with the female victim. She appears to have become very upset by all of the commotion and she became involved in a scuffle in the hallway with the other man. During this scuffle, she bit her assailant's hand drawing blood and causing him to react angrily. He threatened her. While the appellant was upstairs and away from the scuffle

occurring downstairs, he found a jewellery box in the bedroom and took some jewellery from it. He and the male victim then returned to the main floor of the house, where the co-accused was assaulting the female victim on the couch in the TV room. He apparently demanded that she remove her housecoat and when she refused he started pulling it off. Eventually she removed the housecoat and threw it at him. During the struggle, her face was partially buried in the couch pillows and her assailant got his hands under her pyjama top and starting fondling her breasts. She was struggling and screaming. During these events, the appellant confined her husband in a nearby chair. He held the blade of the knife to his cheek and advised him not to move. Eventually, when the female victim began to cry, the co-accused desisted from his assault upon her. By this time, the two men had been in the premises for about half an hour.

- [4] The two men then discussed taking a car from the victims but ultimately decided not to do so. They eventually left the premises, telling the victims that if they called the police they would come back and slit their throats. They took a portable phone with them and proceeded to a bus stop located nearby. A neighbour, who chanced to be passing by, observed the two men running away from the area of the house and, thinking the situation a bit odd, went to the area at the roadway where the men were then standing in order to have a better look at them. Although the victims had not been able to telephone from their own house, the female victim, though badly shaken, had been able to go to a neighbour's house and phone for police assistance. Soon after, the neighbour observed a police vehicle at the residence. He went to the residence and told the police what he had observed. The two men were then apprehended by the police. The phone and some cash were found on the co-accused. The appellant had the butcher knife and the female victim's wallet on his person.
- [5] The victims were taken to hospital. They were both found to be in a very upset condition. The female victim had physical injuries including bruises and loosened teeth.
- [6] In his statement to police, the appellant said that he and his co-accused had been drinking and decided to enter this house to get money in order to purchase more alcohol or drugs. He described what had happened in the house as follows:

There was the old couple sitting in the living room, and we just demanded some money. We got some money and from there we stole the phone from their house, and somehow Gord was in a physical confrontation with the older lady because she ended up biting his finger or something while I was standing there holding the knife at the older man saying not to move and, you know, 'Just give us some money and we'll leave. That's all we want is some money and we'll leave.' I don't know how long we were there. It was actually quite a while.

- [7] At the sentence proceedings, it was agreed between counsel that at the time his confederate sexually assaulted the female victim, the appellant was in the room but may not have appreciated that there was a sexual assault occurring. While the assault on the wife was continuing, the appellant was restraining the husband from assisting his wife by holding a knife to his cheek.

[8] The appellant and his co-accused were jointly charged with offences of breaking and entering a dwelling house and committing a robbery, confinement, and possession of a weapon for a purpose dangerous to the public peace or for the purpose of committing an offence. The co-accused was charged in an additional count with the sexual assault of the female victim.

[9] The co-accused elected to be tried by a Supreme Court judge without a jury. After a trial, he was convicted on November 14, 2001 on all four counts. On January 7, 2002, at his sentencing, the judge said the following:

I have given the submissions a great deal of thought and I have read the cases that have been referred to. I am satisfied that the appropriate sentence on Count 1, that is the break, enter, and robbery, is one of 13 years; on Count 2, the unlawful confinement, 18 months; on Count 3, possession of a weapon, 18 months; and Count 4, the sexual assault, 2 years. The sentences which I have imposed on Counts 2, 3, and 4 are to be served concurrent to that on Count 1. I will give you credit for pre-trial custody time of one year, which means that you have 12 years to serve, Mr. C.

[10] Shortly after his arrest, the appellant pleaded guilty to both the break and enter and robbery offence and the possession of a weapon offence. The Crown did not proceed against him on the confinement count. Sentencing was adjourned for some time to allow the court to obtain psychiatric and other pre-sentence information about the appellant. The case came on for sentencing before Filmer P.C.J. on May 23, 2001.

[11] After hearing submissions from counsel on the matter of sentence, Filmer, P.C.J., sentenced this appellant to 10 years on the breaking and entering count and three years concurrent on the weapons count. He said this about the effect of these events on the two elderly victims and the neighbourhood:

These events must have absolutely destroyed the security that not just the persons present here felt about the 6700 block of West Saanich Road, but anyone who resides in that area. The occupants of this house, I gather, now will not leave it without locking it even if it is for the simple factor of going down to get the mail or the newspaper.

[12] At the time of the offences, both men were aged 24, both had criminal records and both had substance abuse problems. The appellant's confederate was, at the time of the offence, serving a conditional sentence for another breaking and entering for which he had been convicted four months earlier. It appears that the confederate was the person who knew about the house and its occupants from some contact he had earlier had with the householders.

- [13] In the case of this appellant, counsel for the Crown at the sentence hearing suggested a sentence between 10 and 14 years. Defence counsel suggested that the sentence sought by the Crown would be in the extreme high end of the range, and that a sentence in the order of five years would be appropriate. In the case of the co-accused who had sexually assaulted the elderly female victim, the Crown sought a sentence in the range of 15-18 years and the defence suggested a sentence range of 11-14 years.
- [14] The sentencing judge in this case had the benefit of a report on the appellant by a psychologist associated with Forensic Psychiatric Services. He also had the benefit of a pre-sentence report. To that pre-sentence report was attached a pre-disposition report of September 30, 1994, prepared when the appellant, then a young offender, was before a youth court judge for carrying a concealed knife.
- [15] As is depressingly often the situation in these cases, this appellant has had a difficult background. He was born in Western Ontario and his parents separated when he was approximately eight years old. The appellant stayed with his father and led a fairly unsettled life, often moving. When his father, who drove a truck, was away at work, he was placed in the care of family friends.
- [16] After 1986, when his father became involved in a common law relationship, the appellant moved with the father and his companion to different places in Ontario and lived for a time in Alberta. He said alcohol was abused in the household and that he had been sexually assaulted by the adult son of the common law spouse. For a time, in Alberta, he resided with his father's employer. He said this was not a good experience for him. Ultimately, in 1993, he came to reside with his mother in Campbell River, B.C. Apparently, he had no contact with his mother between the ages of eight and sixteen. He later returned to again reside with his father in Ontario. He returned from there to British Columbia and resided for some time with his older sister on Vancouver Island. He had dropped out of school with about a grade nine or ten level education. His work history has been relatively sporadic.
- [17] The appellant said that he had known his co-accused for about a year prior to the events of January 2, 2001. In the forensic report, he described the background between them as follows:

"We met while taking a job search workshop in Sidney. That was just over a year ago. We would go outside at breaks to smoke cigarettes. We were both on Social Assistance. One day, we were both getting our cheques and we went to the Red Lion Tavern. We would hang out and drink when we had money. In the Spring, Gord said he wanted to go to Edmonton where he has a daughter. We stayed in a Homeless Shelter there until we both started working and got an apartment. Once we started working, our drinking got out of control again -- so we lost our jobs and the apartment. We were in Edmonton for less than 3 months before returning to Vancouver Island."

He described their crime as follows:

"I don't know why I just walked right in. I could have turned around and walked out -- but I didn't. We discussed Break and Enters -- not Home Invasions. I had the knife -- he had bought it in Edmonton. We got the money -- cut the phone lines -- and then I say -- lets go and we leave." (emphasis added)

[18] The psychologist described the appellant's lifestyle since the age of 10 as "unstable and aimless." The appellant told the psychologist that when he was 16, while he was visiting with his grandparents in Florida, his sister called from Vancouver Island and told him that she had found their mother and that he should come out west. He was only then able to re-establish contact with his mother and sister. The psychologist noted that the appellant had for several years in his youth alternated between residing with friends and family and living on the streets. He, on occasion, moved back and forth between British Columbia and Ontario. He has had some sporadic employment but never a job for any significant length of time.

[19] The psychologist stated in the forensic report that the appellant's responses to testing indicated a person who has difficulty relating to others, who exhibits poor judgment and who often acts in an unpredictable and impulsive fashion. He has not accepted very much responsibility for his antisocial activities. He has had continuing problems with alcohol and drug abuse. The summary and recommendations made by the psychologist were as follows:

Before the Court is Mr. David Ashley Whicher, a 24-year-old man who has been charged with Break and Enter and Possession of a Weapon. He has a lengthy history of substance abuse, and he was physically and sexually abused. He has led an unstable and transient lifestyle for much of his life.

In this writer's opinion, Mr. Whicher is a moderate to high risk for violence. He is more apt to engage in instrumental violence rather than gratuitous violence, as shown by his criminal history. There are dynamic factors, which currently support the actuarial estimate of risk to reoffend. These include his substance abuse, antisocial attitudes, values, impulsivity, lack of employment and his inability to delay gratification.

Mr. Whicher appears receptive to treatment. He acknowledges important problems, and perceives a need for help in dealing with these problems. In my view, interventions focused on specific behavioural objectives may be useful rather than any insight-oriented therapy.

[20] Counsel for the appellant, in a careful argument, submitted that the global sentence of 10 years that was imposed upon this appellant was beyond the appropriate range for this offence and this offender. As the trial judge noted, the appellant had spent about five months in custody before sentence. Depending how much credit might be thought appropriate for that pre-sentence time, the sentence imposed here would aggregate somewhere between 10 and 11 years. Both counsel for the appellant and counsel for the Crown respondent referred to a number of authorities from British Columbia and other provinces dealing with this class of offence.

- [21] This was certainly a case that could properly be termed an incident of "home invasion." For whatever reason, over the past several years, this class of offence seems to have become more prevalent. Not surprisingly, it has caused alarm and apprehension in the populace. A person's home is usually considered to be a place of safety and repose. All too frequently, however, it seems that the expectation that this will be so has been rudely shattered by instances like the present case where occupants of households are confronted with persons breaking into their houses in violent fashion and subjecting them to often terrifying ordeals. The object of these invasions is usually, as was the case here, to rob the householders.
- [22] Parliament takes a more serious view of breaking and entering a dwelling house than the same crime committed in relationship to another premises, as disclosed by the terms of Criminal Code, s. 348:

Breaking and Entering

348. (1) Every one who

- (a) breaks and enters a place with intent to commit an indictable offence therein,
 - (b) breaks and enters a place and commits an indictable offence therein, or
 - (c) breaks out of a place after
 - (i) committing an indictable offence therein, or
 - (ii) entering the place with intent to commit an indictable offence therein,
- is guilty
- (d) if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life, and
 - (e) if the offence is committed in relation to a place other than a dwelling-house, of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.

(emphasis added)

- [23] Prior to 1950, there was a distinction between breaking into a house by night or by day but that distinction ceased to obtain after that date. Housebreakings are perhaps more alarming in the hours of darkness but Parliament has not drawn any distinction in the legislation between day or night breaking and entering of a dwelling house.
- [24] Sentencing is meant 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" -- see Criminal Code, s. 718. In sentencing offenders, judges must have regard to various objectives, including the denunciation of criminal activity, general and specific deterrence and the rehabilitation of the offender. Regard must be had to the nature of the offence and the history and prospects of the offender. Where younger people are involved, the courts

will endeavour, if at all possible, to foster the possibility of rehabilitation. In the long run, if the young person can be turned away from a course of repeated offences, then the interests of society will be well served. Courts must also impose sentences that adequately mark society's disapproval of the offender's breach of societal norms and that will deter both the individual offender and others minded to offend, from conduct harmful to the fabric of an orderly society.

- [25] In the case of *R. v. C.A.M.*, [1996] 1 S.C.R. 500, the Supreme Court of Canada outlined the objectives of sentencing and enunciated the principles that should guide an appellate court. It noted particularly that a high measure of deference should be given to sentencing decisions made by a judge at first instance. Under the provisions of Code, s. 687(1), "Where an appeal is taken against sentence, the court of appeal shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against." At para. 89 of the judgment in *R. v. C.A.M.*, Lamer C.J. quoted the remarks of Iacobucci J. in *R. v. Shropshire*, [1995] 4 S.C.R. 227 (a homicide parole eligibility case):

An appellate court should not be given free reign to modify a sentencing order simply because it feels that a different order ought to have been made. The formulation of a sentencing order is a profoundly subjective process; the trial judge has the advantage of having seen and heard all of the witnesses whereas the appellate court can only base itself upon a written record. A variation in the sentence should only be made if the court of appeal is convinced it is not fit. That is to say, that it has found the sentence to be clearly unreasonable.

- [26] Earlier in the judgment at paras. 81 and 82, Lamer C.J. discussed the principles of retribution and denunciation as they applied to sentencing and went on to note the broad range of considerations that a court should assess in sentencing matters. These comments are as follows:

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. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. As Lord Justice Lawton stated in *R. v. Sargeant* (1974), 60 Cr. App. R. 74, at p. 77: "society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass". The relevance of both retribution and denunciation as goals of sentencing underscores that our criminal justice system is not simply a vast system of negative penalties designed to prevent objectively harmful conduct by increasing the cost the offender must bear in committing an enumerated offence. Our criminal law is also a system of values. A sentence which expresses denunciation is simply the means by which these values are communicated. In short, in addition to attaching negative consequences to undesirable behaviours, judicial sentences should also be imposed in a manner which positively instills the basic set of communal

values shared by all Canadians as expressed by the Criminal Code.

As a closing note to this discussion, it is important to stress that neither retribution nor denunciation alone provides an exhaustive justification for the imposition of criminal sanctions. Rather, in our system of justice, normative and utilitarian considerations operate in conjunction with one another to provide a coherent justification for criminal punishment. As Gonthier J. emphasized in *Goltz*, supra, at p. 502, the goals of the penal sanction are both "broad and varied". Accordingly, the meaning of retribution must be considered in conjunction with the other legitimate objectives of sentencing, which include (but are not limited to) deterrence, denunciation, rehabilitation and the protection of society. Indeed, it is difficult to perfectly separate these interrelated principles. And as La Forest J. emphasized in *Lyons*, the relative weight and importance of these multiple factors will frequently vary depending on the nature of the crime and the circumstances of the offender. In the final analysis, the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.

(emphasis added)

[27] Counsel for the appellant suggested, on the basis of cases such as *R. v. Parinas* (1993), 37 B.C.A.C. 41 (C.A.), that the appropriate range of sentence for this sort of matter is something in the order of five to eight years. In *Parinas*, a twenty year old accused and others had, by trickery, entered a house occupied by women and children. They terrorized victims for 45 minutes while looting the house. At trial, the accused was sentenced to three years imprisonment, having spent five months in custody prior to trial. The sentence was appealed to this Court. In this Court, Goldie J.A. said this at para. 36 of the judgment:

From the authorities to which I have referred, and having regard to the aggravating circumstances in the case at bar, I am of the view that an appropriate range for the robbery offences would be five to eight years. The premeditated confinement of two adults and two small children would appropriately fall within the same range. The mitigating factors were identified by the trial judge: youth, one previous conviction, stable family background, approximately five months in custody prior to trial and, since his period in custody after sentence, favourable prospects for rehabilitation.

[28] In the later case of *R. v. Robert* (1996), 108 C.C.C. (3d) 83 (B.C.C.A.), when dealing with a 33 year old partly aboriginal offender involved in a breaking and entering and the assault of the elderly occupant of a house, the appellant had been sentenced at trial to nine years. On appeal, this sentence was reduced to six years. There, it was observed there was no indication of violence or propensity to violence in the appellant's record, nor was there any indication that the appellant was likely to repeat such an offence. The appellant was described as a "binge drinker." It is significant that this Court in *Robert* did not treat the case as one of "home invasion". At para. 20 of his reasons, Goldie J.A., for the majority, distinguished the offence in that case from the sort of matter dealt with in *Parinas*. In the

course of doing so, he observed that he would view six years as the "low end of the range for that particular offence [home invasion]."

- [29] We were also referred to the case of *R. v. Collicott* (1998), 108 B.C.A.C. 19 (C.A.), where a 25 year old offender with apparently reasonable prospects of rehabilitation had his sentence of five years reduced to four years in a case involving a planned burglary of a house at night, coupled with an assault occurring on an occupant. Crown counsel, in argument, submitted that that case was not what could be described as a "frontal home invasion" like the present case, which I take to mean that there is a distinction between a planned burglary with an incidental assault and one involving an anticipated assault. In the case at bar, the two men marched into this house expecting to find it occupied and upon entry demanded money while brandishing a weapon. The object in view was to terrify the occupants into giving them money or valuables.
- [30] A recent case in which a substantial sentence of 15 years was upheld in an aggravated home invasion case, admittedly more serious than the circumstances of the case at bar, resulted in a sentence of 15 years being sustained in this Court. That decision is *R. v. Jones* (2000), 140 B.C.A.C. 30. In that case, there had been a home invasion by persons posing as police officers. In the course of their confining and abusing the occupants, there had been a serious sexual assault perpetrated upon one of the female occupants of the premises. I note this comment of Proudfoot J.A., giving the judgment of the Court at para. 19, that, "The question to be asked in the final analysis is whether the sentence was fit." This, of course, tracks the language of s. 687 of the Criminal Code and is the issue to be addressed by an appellate court on a sentence appeal.
- [31] Although cases in other provinces are often less applicable because of possibly different local circumstances, I note two cases, *R. v. Matwi* (1996), 105 C.C.C. (3d) 251 (Alta. C.A.) and *R. v. Harris* (1999), 142 C.C.C. (3d) 252 (N.S.C.A.) where sentences of 10 years and 15 years respectively, were imposed. The former case may be of less precedential value since it appears to adopt the now disapproved principal of "starting point" -- see *R. v. McDonnell*, [1997] 1 S.C.R. 948. The factual circumstances in *Harris* were more egregious than in this case, serious injuries having been caused to an elderly couple. However, the offender there was only 20, so that he was younger than this appellant. In that case, it was suggested in argument that the Nova Scotia Court of Appeal had previously established a sentence range of 6 to 10 years for sentences in cases of home invasions. The Court disagreed with this submission and said this at p. 270:

These statements in *Fraser* do not settle a range for home invasion robberies of 6 to 10 years. One must look at the individual case and the mitigating and aggravating factors and determine what the appropriate sentence should be. In *Shropshire*, at paragraphs 47 and 48, and in *McDonnell*, at paragraph 15, the Supreme Court relied on two decisions from Nova Scotia and stated:

I would adopt the approach taken by the Nova Scotia Court of Appeal in the cases of *R. v. Pepin* (1990), 98 N.S.R. (2d) 238, and *R. v. Muise* (1994), 94 C.C.C. (3d) 119. In *Pepin*, at p. 251, it was held that:

"in considering whether a sentence should be altered, the test is not whether we would have imposed a different sentence; we must determine if the sentencing judge applied wrong principles or (if) the sentence is clearly or manifestly excessive."

Further, in *Muise* it was held at pp. 123-24 that:

"In considering the fitness of a sentence imposed by a trial judge, this court has consistently held that it will not interfere unless the sentence imposed is clearly excessive or inadequate

The law on sentence appeals is not complex. If a sentence imposed is not clearly excessive or inadequate, it is a fit sentence assuming the trial judge applied the correct principles and considered all relevant facts. My view is premised on [sic] the reality that sentencing is not an exact science; it is anything but. It is the exercise of judgment taking into consideration relevant legal principles, the circumstances of the offence and the offender. The most that can be expected of a sentencing judge is to arrive at a sentence that is within an acceptable range. In my opinion, that is the true basis upon which Courts of Appeal review sentences when the only issue is whether the sentence is inadequate or excessive."

Unreasonableness in the sentencing process involves the sentencing order falling outside the "acceptable range" of orders; this clearly does not arise in the present appeal.

Sopinka J. in *McDonnell* refers to the principles just set out in both *Shropshire* and *M. (C.A.)* of deference absent an error in principle, including the unique qualifications of the judge and the circumstances of the community in which the offence occurred. He also refers to the role of the appeal court in minimizing disparity of sentences recognizing deference to the sentencing judge and that there is no such thing as uniform sentencing.

(emphasis added)

[32] Counsel for the Crown respondent in this case submitted that if earlier cases in this Court had suggested a range of seven to ten years as being appropriate for this type of offence, then, in view of the increasing incidence of this class of offence and, the associated continuing violence to householders, some upward revision might be necessary. In my opinion, this submission of Crown counsel has merit. While sentences are but one tool, and often a rather blunt one at that, in dealing with persistent societal problems, courts must, by the sentences they impose, endeavour to curb violent behaviour. Violent lawbreaking is a particularly serious threat to an ordered society. The instances of violent home invasions in this province are all too frequent. It must be made clear that those who engage in such activity will, upon conviction, face significant penalties. It seems to me that a sentence range of 8 to 12 years should be considered an appropriate range for sentences in this class of case. Of course, here, we are speaking of planned home invasions, not cases of breaking and entering where violence is not contemplated. That kind of case is less serious, although

there is always the regrettable danger in such cases that matters may go awry and unplanned violence may occur. As I noted earlier, Parliament has classed housebreaking as a very serious offence in any circumstances.

- [33] Although the above noted range can furnish a general guide, trial judges should not be unduly fettered in choosing an appropriate sentence, having regard to the widely varying factual circumstances of offences and offenders. Particularly egregious circumstances such as those present in the case of Jones may attract higher sentences. Correspondingly, a lower sentence may be thought appropriate for a relatively young offender who is perhaps led into a situation he or she did not fully appreciate might arise. What must be dealt with severely are the genus of break-ins and robberies that involve the violent invasion of residential premises that are occupied. These offences, perhaps particularly those that occur in the hours of darkness, are terrifying to the victims in particular and to the populace in general. In this class of case, deterrence, general and specific, assumes prime importance.
- [34] This appellant is now aged 25. He and his co-accused were involved in this case in a course of criminal activity that terrorized two elderly people in their home. As the material indicates, this incident has resulted in a change of attitude in the residents of a peaceful, rural community. This sort of activity, unfortunately, has the capacity to considerably damage the fabric of our society. It makes people feel less secure in their daily lives. It is all too often directed at people, like the victims in this case, who are essentially defenceless against such violence.
- [35] The appellant has had many misfortunes in his life. It seems that he has led a rather unsettled style of life and has had little employment stability. He appears now to have members of his family who take an interest in his well being. This is a positive development for him and it is to be hoped that this may turn him away from the self-destructive path he has hitherto been on. He will have to decide himself to make a radical change in his way of life if he is to have success in the future, however.
- [36] He was given a substantial global sentence for these crimes but this sentence was imposed for egregious conduct that must be firmly denounced by the courts. The sentencing judge indicated that he was endeavouring to respond in a measured way to a crime that was both grievous and senseless. The activity of these young men will, for a long time, have a negative effect on the elderly victims and their neighbours. In my view, it was necessary both for purposes of rehabilitation, as well as deterrence, that a substantial sentence be imposed.
- [37] It will be for the parole authorities to decide when this appellant is suitable for parole consideration. It seems to me that one thing that can be fairly said is that a lengthy period of supervision on parole is likely going to be necessary to assist the reformation and rehabilitation of this appellant. The appellant will have to come to an understanding of the enormity of his conduct on this occasion and of the necessity for a distinct change in his life, if he is to avoid difficulty in the future. His guilty plea may be some evidence of an attitudinal change.

[38] As pointed out by Chief Justice Lamer in *R. v. C.A.M.*, supra, judges in a community may be expected to have a reasonable sense of the requirements of sentencing in that community. It appears to me that the learned sentencing judge in the case at bar was alive to the proper considerations. I do not consider that it has been demonstrated that there was any error in principle in the approach taken or in the global sentence imposed in this case. I do not consider that the global sentence imposed was unfit, and I would not be disposed

to make any alteration in this sentence. I would, therefore, dismiss this appeal from sentence.

"The Honourable Mr. Justice Hall"

I AGREE:

"The Honourable Madam Justice Saunders"

I AGREE:

"The Honourable Mr. Justice Thackray"

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Prepared on 29 October 2026 · Esheria