

CANADA / JUDGMENT

R. v. Ebrahimian

2022 BCSC 2290

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 2290 R. v. Ebrahimian

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Ebrahimian,

2022 BCSC 2290

Date: 20221219

Docket: X083556

Registry: New Westminster

Rex

v.

Kia Ebrahimian

Before: The Honourable Mr. Justice Blok

Oral Reasons for Sentence

Counsel for the Crown:

M. Fortino

S. Bertrand

Counsel for the Accused:

D. Turko, K.C.

T. Magder

Z. Zwanenburg

Place and Date of Hearing:

New Westminster, B.C.

December 16, 2022

Place and Date of Judgment:

New Westminster, B.C.

December 19, 2022

- [1] THE COURT: I am about to give reasons for sentence in this matter. In the normal course, a transcript of these reasons will be ordered and I reserve my right to edit that transcript in the usual way by making any necessary corrections, adding headings and case references, and other revisions of that sort. Nothing of substance will be changed.

I. Introduction

- [2] On October 3, 2022, on the eighth day of a scheduled 19-day trial, Kia Ebrahimian pleaded guilty to the second-degree murder of three members of his family. The victims were his mother, Tatiana Bazzyar, Ms. Bazzyar's common law spouse, Francesco Zangrilli, and Mr. Ebrahimian's sibling, Medea Ebrahimian, who went by the mononym Befrin.
- [3] Mr. Ebrahimian is now before the court to be sentenced for these offences.
- [4] A conviction for murder carries with it a mandatory life sentence, meaning that even if released from prison, Mr. Ebrahimian will be under some form of control for the remainder of his life. The only substantive question on this sentencing hearing is how long he must serve in jail before he may apply for parole.
- [5] Crown and defence have presented a joint submission on sentence which calls for a period of parole ineligibility of 15 years. The issue before the court is whether that submission ought to be accepted.
- [6] Before proceeding further, I wish to acknowledge the profound loss that has been suffered here by the family and friends of the victims. I acknowledge in particular the members of Mr. Zangrilli's family, who monitored these proceedings remotely from the Canadian Embassy in Rome, Italy through special arrangements made by the Crown. The specifics of those arrangements are set out in a ruling I gave on November 16, 2022, and which may be found at 2022 BCSC 2081.

- [7] In giving these reasons, I will proceed as follows: first, I will review the circumstances of the offences; I will then review the impact on the victims, the circumstances of the offender, and the sentencing positions of Crown and defence; I will then begin my discussion, starting with the governing Criminal Code provisions and moving on to the aggravating and mitigating factors in this case; finally, I will provide my analysis, give my conclusion on the joint submission and then impose sentence, including any ancillary sentencing orders.

II. Circumstances of the Offences

- [8] The events in question took place on June 13, 2020 at a residence on Wakefield Drive in Langley, British Columbia. At the time, there were four people living there: Ms. Bazyar, Mr. Zangrilli and Ms. Bazyar's adult children, Befrin, a transgendered man who was 23 years old, and the offender, Kia Ebrahimian, who was 24 at that time.
- [9] At 5:29 p.m. on June 13, Mr. Zangrilli called the Langley RCMP on the non-emergency line. The recording of that call indicates Mr. Zangrilli began the call in a measured tone but that changed quickly as he urgently called for help. Female screams were heard in the background, as was the voice of another male admitted to be that of Mr. Ebrahimian. Mr. Zangrilli is heard pleading with Kia to stop.
- [10] Just one week prior, on June 5, 2020, Mr. Zangrilli called the same non-emergency line because of a flare-up in an ongoing conflict between Mr. Ebrahimian and Befrin. There had been discord in the home for some time, particularly since Mr. Ebrahimian had moved back into the house at the end of March 2020.
- [11] It is of some note that in the weeks leading up to the murder, Mr. Ebrahimian had expressed anti-trans views and made threats towards Befrin. In the time immediately prior to the murders, Mr. Ebrahimian was arguing with his mother and stepfather about his having to move out of the home and Befrin being permitted to stay.
- [12] Police arrived at the residence within about 10 minutes. Short minutes later, they noticed the house was on fire. A later forensic investigation found that the fire had been ignited at about 5:41 p.m., or about 12 minutes after the call to police, and it was found to have originated in the living room of the main floor of the house.
- [13] Officers spotted a person, who was Mr. Ebrahimian, at an upper floor window and they told him the house was on fire. He said he was aware there was a fire. They asked him if there were others in the house and he said there were three others inside. He expressed concern about his dogs. Mr. Ebrahimian was subsequently evacuated with the help of neighbours, who brought a ladder from across the street. One of the neighbours asked if anyone else was inside the home, and Mr. Ebrahimian said "no". Mr. Ebrahimian was brought to a police cruiser to wait while emergency personnel secured the scene, and while waiting he again inquired about the safety of his two dogs.

- [14] The doors to the house were locked, but the officers gained entry to the house by breaking a glass door at the rear of the residence. Thick black smoke prevented them from entering fully. One officer spotted a male lying face down about three feet inside the doors. This was Mr. Zangrilli. His clothing was on fire. The officer grabbed the male by the ankles and dragged him outside. The other officer then grabbed a hose and put out the fire on the body, following which they noticed significant stab wounds on it. The body was moved to a safer location where police and first responders unsuccessfully attempted lifesaving measures. Mr. Zangrilli was declared dead at the scene.
- [15] The fire was a significant one that essentially destroyed the house and also damaged neighbouring houses. Once the fire was extinguished, or largely extinguished, firefighters drew the attention of police to two bodies in the wreckage. However, it took two days to retrieve those bodies due to structural safety concerns.
- [16] Forensic examination determined that the fire occurred after the deaths of the three victims.
- [17] As already noted, Francesco Zangrilli's body was pulled from the fire. It had been located in the kitchen area on the main floor of the home. A post-mortem examination determined that he died as a result of 15 sharp force injuries, categorized as one incision injury and 14 stab wounds, which were mostly to his head and back. Two of those wounds were deemed lethal or potentially lethal.
- [18] The house had a form of split-level configuration, and Befrin's body was found at the bottom of some stairs leading from the kitchen area to a lower-level bedroom. A post-mortem examination determined that he died as a result of 27 sharp force injuries, categorized as five incision injuries and 22 stab wounds, which were on various areas of his upper body.
- [19] Tatiana Bazyar's body was found in the main floor living room. It was severely damaged by the fire. The pathologist was unable to determine the precise cause of death because the body was so badly burnt, but she was able to say that Ms. Bazyar suffered extreme blood loss prior to death. At trial, Mr. Ebrahimian admitted that Ms. Bazyar died as a result of at least one sharp force injury that resulted in a significant bloodletting event.
- [20] The bodies of both Ms. Bazyar and Befrin smelled strongly of gasoline. Forensic chemistry analysis of the clothing worn by those two victims confirmed the presence of gasoline. Gasoline was also found present on the sweatshirt worn by Mr. Ebrahimian that evening.
- [21] Mr. Ebrahimian was transported to the Langley RCMP detachment. At that point, he was considered to be a mere witness to the events and he was interviewed as such. He told the interviewer that his family circumstances were normal and that there were no problems in the home. He again expressed concern about his dogs and asked for updates on them. He was not truthful with the interviewing officer about the events preceding the fire, telling the interviewer that he woke up that afternoon on hearing a bang coming from downstairs, and when he left his upper-floor room to investigate, he saw smoke and so he then returned to his room.

- [22] As more information came in from the scene, Mr. Ebrahimian was formally detained as a suspect, warned and given access to counsel. He was then searched and found to have two knives on his person. The knives had blood on them, as did Mr. Ebrahimian's shoes. He was then arrested for murder. Later DNA testing confirmed that the blood was from Befrin and Mr. Zangrilli.
- [23] Mr. Ebrahimian was lodged in cells on the night of June 13, 2020, interviewed the next day, and then released without charge. Police put him up in a motel for the night.
- [24] The following morning, Mr. Ebrahimian called the Langley RCMP to report he had thoughts of self-harm. Police were aware he had been detained under the Mental Health Act, R.S.B.C. 1996, c. 288, in 2016, so he was apprehended again under the Mental Health Act and brought to hospital. He remained in hospital from that date, June 15, 2020, until he was released on July 11, 2020, at which time he was rearrested for murder after being formally charged. He has remained in custody since that date.
- [25] Mr. Ebrahimian provided his version of events to a psychiatrist, Dr. Kulwant Riar. Mr. Ebrahimian did not testify at trial, so this version of events has not been tested in any way. He told Dr. Riar that he got into an argument with his mother about the unfair treatment he perceived concerning his living situation. Mr. Zangrilli interceded and then called the police non-emergency number. Mr. Ebrahimian took out a knife he carried on his person and attacked Mr. Zangrilli without warning. He then attacked his mother. He did not remember them fighting back. When Befrin came in, he stabbed him too. Mr. Ebrahimian said that the events happened quickly and were now a blur to him. He then went to the garage and retrieved a can of gasoline and poured it around the living room and bedroom. He let the dogs outside first as he did not want them harmed. He claimed to Dr. Riar that he did not start the fire and said he believed it started by itself.

III. Victim Impact

- [26] Victim impact statements were provided by family and friends of the victims, including a statement on behalf of Ms. Bazyar's family, given by her brother, as well as statements from (1) Mr. Zangrilli's brother; (2) a long-time family friend of Mr. Zangrilli's; (3) Befrin's girlfriend, and (4) Befrin's childhood friend. Two of the statements were read by the persons themselves, and the others were read by Crown counsel.
- [27] The victims spoke of their deep, profound pain and loss, their inability to comprehend how this incident could have happened and their anger that it has happened. Some of the victims spoke of their ongoing suffering, which has variously included panic attacks, constant anxiety, a feeling of being unsafe, and being in tears every night.
- [28] These victim impact statements provide a stark picture of the terrible toll that these crimes have had on other people, including people who live thousands of kilometres away.

IV. Circumstances of the Offender

- [29] The details of Mr. Ebrahimian's background were provided in three reports: (1) a pre-sentence report filed November 28, 2022, prepared by a probation officer; (2) the forensic psychiatric report of Dr. Riar dated September 28, 2022; and (3) a further forensic psychiatric report, this one prepared by Dr. Mark Riley and dated November 28, 2022.
- [30] Mr. Ebrahimian is now 27 years old. He was born in Iran and came to Canada around age six. The family had left Iran for Turkey some 17 months prior and were accepted by Canada as political refugees. They settled in Saskatchewan but the parents soon separated, with Ms. Bazyar moving to British Columbia with the children and Mr. Ebrahimian senior moving to Toronto. It appears the offender lost contact with his father at this point.
- [31] Mr. Ebrahimian left school in Grade 10. At age 18 he reconnected with his father and travelled to Toronto to live with him, which lasted about a year. His father helped Mr. Ebrahimian get some additional schooling, and Mr. Ebrahimian found work with a cell phone company, but he told the probation officer he returned to live with his mother because his father "would not let him slack off" like his mother.
- [32] Mr. Ebrahimian later completed high school equivalency while in custody.
- [33] The reports provided to the Court all describe Mr. Ebrahimian as having a very isolated existence, with no friends or girlfriends. He did warehouse-type work that involved minimal interaction with others. He lived independently for a time, but mostly lived with his family. He was antisocial within the home, as he all but confined himself to his room and played video games.
- [34] In April 2016, Mr. Ebrahimian was apprehended under the Mental Health Act. He was 20 years old at the time. I will address this incident further when I review the psychiatric reports.
- [35] Alcohol use appears to have been problematic at times. Mr. Ebrahimian gave conflicting information on drug use, telling the probation officer that he has never used other substances, including marihuana, but telling Dr. Riar that he used marihuana sometimes.
- [36] Mr. Ebrahimian reconnected with his father following the laying of the current charges. His father has been in regular contact with him by telephone and videoconference and he is supportive of his son.
- [37] Mr. Ebrahimian declined to address the court when invited to do so, but he presented an apology through his counsel.

A. Psychiatric Reports

Dr. Kulwant Riar

- [38] The defence commissioned a psychiatric assessment from Dr. Riar prior to trial. Dr. Riar conducted interviews of Mr. Ebrahimian on March 17 and 18, 2022 and then prepared a report dated September 28, 2022. The purpose of the interviews was to determine Mr. Ebrahimian's state of mind at the time of the incident.
- [39] Dr. Riar reviewed Mr. Ebrahimian's reported personal history at some length. I will not review those details here, but will mention certain matters only.
- [40] Mr. Ebrahimian told Dr. Riar he had suffered from social anxiety and depression since about age 14, and this was part of the reason why he left school in Grade 10.
- [41] Mr. Ebrahimian told Dr. Riar there was considerable discord within the home, but he faulted the other family members for that and did not see himself as the cause of any discord. Dr. Riar noted that information from other sources indicated there was conflict arising from Mr. Ebrahimian's hostility to Befrin's transition from female to male. This conflict was evidently serious enough that Ms. Bazyar and Mr. Zangrilli had concerns that Mr. Ebrahimian would harm or even kill Befrin, although Mr. Ebrahimian himself denied this was an issue.
- [42] As noted earlier, Mr. Ebrahimian was detained under the Mental Health Act in April 2016, having run away from home and then found in North Vancouver expressing suicidal thoughts and being in possession of a jerry can of gasoline, a lighter, and a bottle of vodka. He was in hospital for five days and diagnosed with adjustment disorder with mixed mood and anxiety, as well as conflicts with his parents. He was admitted to hospital again on June 15, 2020, two days after the subject incident, as a result of his expressions of suicidal ideation. At that time, he was diagnosed with adjustment disorder with anxiety and depression, but no symptoms of psychosis were elicited or observed. He was discharged into custody on July 10. At the time, he expressed both suicidal ideation as well as homicidal ideation to staff but he was found to have no suicidal or homicidal ideations.
- [43] Mr. Ebrahimian told Dr. Riar that prior to the events of June 13, 2020, he was having bad anxiety and depression, and he was having paranoid thoughts and anger problems. He was using alcohol and sometimes marihuana. He had thoughts that others were trying to poison him and the government was trying to influence his brain, was "messing with his emails and computer" and was spying on him.
- [44] Dr. Riar said Mr. Ebrahimian has been taking a low dosage of antidepressant and antipsychotic medications since his post-incident hospital stay.
- [45] Dr. Riar concluded as follows:

In my opinion, I felt that around the time of the incident in question, Mr. Ebrahimian suffered a mild to moderate degree of depression and anxiety. I felt that his anxiety was unspecified type and his depression was chronic depression (persistent depressive disorder). I felt there was alcohol use disorder, most likely mild to moderate degree, which could be influencing his anxiety and depression.

By his self-report, there had been paranoid thoughts, where he felt that he was being followed and that there were people trying to harm him. These thoughts most likely were a product of anxiety or low mood. There were no other psychotic symptoms, like delusions or any other perceptual phenomenon, et cetera, especially command hallucinations or being controlled by some force which were influencing him to act in the way he acted.

In other words, I do not believe that he was suffering from any active psychiatric phenomenon at the time of the incident, which would have interfered with his ability to appreciate the nature of his actions towards the victims. In my view, Mr. Ebrahimian had a lot of resentment and anger towards all of the family members for various reasons and on the day of the incident, for some reasons unknown to me, all of his pent-up anger came to the surface and he became enraged. In that rage, he became reckless, stabbing his family members multiple times individually and killing them.

I believe that the presence of anxiety, depression and alcohol use disorder likely had played a part in making him more irritable, angry, impulsive, reactive and exercising a poor judgement in material time of the incident, but these disorders did not render him incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

Dr. Mark Riley

[46] Dr. Riley prepared a forensic psychiatric report at the request of the Court.

[47] Dr. Riley noted that while Mr. Ebrahimian agreed to participate in an interview, he declined to discuss anything relating to his relationship with the victims or the circumstances of the offences, although he said he would do so after he was sentenced. Dr. Riley said this "consequently limited the scope of the current assessment" and, specifically, he was unable to offer an opinion with respect to Mr. Ebrahimian's mental state around the time of the offences, how his mental state might relate to what occurred, and how it might impact risk management in future.

[48] As was the case with Dr. Riar's report, I will not attempt a summary of all matters discussed by Dr. Riley, but instead I will refer to certain matters only. Much of his report was taken up with a review of Mr. Ebrahimian's interactions with psychiatrists and psychologists following his post-arrest mental health certification in June 2020.

[49] In these various interactions, Mr. Ebrahimian reported such things as suicidal thoughts, a belief that his food had been spiked, and feelings of being watched, that he was in a "simulation game" and that his family and the government had been spying on him when he was online. He also reported hearing voices, including voices telling him to harm himself. He has in fact attempted self-harm twice by attempting to jump over a railing from a height and by swallowing a razor blade.

[50] Dr. Riley said:

Mr. Ebrahimian's mental condition has continued to fluctuate in severity with increased suicidal thinking at times of increased stress, such as prior to his court appearances. He has required more intensive psychiatric and psychological support at these times, as well as close monitoring due to the risk of suicide.

[51] Dr. Riley considered the possibility of malingering, but said there is "insufficient clinical evidence to support the conclusion that his reported symptoms are not an accurate reflection of his mental condition". He noted there were objective signs of mental disorder observed and documented while Mr. Ebrahimian has been in custody.

[52] Dr. Riley summarized as follows:

Mr. Ebrahimian had few friends at school and he has remained socially isolated since he ceased attending school prior to graduating. He has worked for limited periods of time, but his social and occupational functioning appear to have [been] significantly impacted by his mental health problems. The nature and severity of these problems appears to have evolved over time, and was not clarified until approximately one year after the current offences. He has presented with a mix of anxiety, mood and psychotic symptoms, with the latter symptoms becoming an increasing focus of concern over the year following the current offences. Mr. Ebrahimian has continued to report a mix of similar symptoms, including hearing voices, which have partially responded to treatment with antipsychotic medications. The most appropriate psychiatric diagnosis at the present time, as per the DSM-5 is schizophrenia, first episode, currently in partial remission.

Mr. Ebrahimian has a history of alcohol use, but there is no clinical evidence to support a diagnosis for any substance use disorder, and substance use does not appear to have been associated with the current offences.

Mr. Ebrahimian currently appears to be suffering from a severe and persisting mental illness and he will continue to require ongoing psychiatric supervision and treatment for the foreseeable future, regardless of his custody status. He is currently prescribed two antipsychotic medications, and although he appears to have partially responded to treatment, it is reasonable to assume that his mental condition will continue to fluctuate in severity. The prospects for full remission and recovery are limited. The risk of a full relapse of psychotic symptoms would be very high in the absence of ongoing psychiatric treatment, and this would be associated with an increased risk of harm to himself and others.

V. Positions of Crown and Defence

A. The Joint Submission

[53] Both Crown and defence agree that the appropriate period of parole ineligibility is 15 years. They have presented this as a joint submission.

[54] The term "joint submission" is something of a term of art in the criminal law area. It refers to a situation where Crown and defence come to an agreement that in return for a guilty plea or pleas, the Crown will join the defence in a joint submission on sentence. The Supreme Court of Canada in *R. v. Anthony-Cook*, [2016] 2 S.C.R. 204, noted the substantial benefits that joint submissions provide to our criminal justice system. The Court said:

[1] Resolution discussions between Crown and defence counsel are not only commonplace in the criminal justice system, they are essential. Properly conducted, they permit the system to function smoothly and efficiently.

[2] Joint submissions on sentence -- that is, when Crown and defence counsel agree to recommend a particular sentence to the judge, in exchange for the accused entering a plea of guilty -- are a subset of resolution discussions. They are both an accepted and acceptable means of plea resolution. They occur every day in courtrooms across this country and they are vital to the efficient operation of the criminal justice system. As this Court said in *R. v. Nixon*, 2011 SCC 34, [2011] 2 S.C.R. 566, not only do joint submissions "help to resolve the vast majority of criminal cases in Canada", but "in doing so, [they] contribute to a fair and efficient criminal justice system" (para. 47).

[Endnote omitted.]

[55] However, joint submissions are not sacrosanct and they must still be approved by the court. The Supreme Court of Canada in *Anthony-Cook* said a joint submission ought to be rejected only in relatively narrow circumstances:

[32] Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[56] The Court also said:

[54] As trial judges are obliged to depart only rarely from joint submissions, there is a "corollary obligation upon counsel" to ensure that they "amply justify their position on the facts of the case as presented in open court" .

[57] In the present case, counsel explained that resolution discussions had been underway from a very early stage, but defence counsel encountered substantial delays in receiving a psychiatric opinion on Mr. Ebrahimian's state of mind at the time of the events. Counsel noted that the case was largely presented through an extensive set of admissions, essentially leaving only the mental element for murder as the issue being tried. Once the psychiatric

opinion was received, the agreement between Crown and defence was reached in short order.

- [58] The Crown's submissions at the sentencing hearing were fully adopted by the defence.
- [59] In its submissions, the Crown outlined the general principles of sentencing, the nature of and principles relating to parole eligibility, the significance of mental illness in assessing an appropriate sentence, and the aggravating and mitigating factors in this case.
- [60] The principal cases referred to were: *R. v. Bennight*, 2012 BCCA 461; *R. v. Mafi*, 2000 BCCA 135; *R. v. Singh*, 2010 BCSC 1747; *R. v. Grantham*, 2022 BCSC 1827; *R. v. Landrick*, 2020 BCSC 1888; *R. v. G.C.Z.*, 2015 BCSC 2518; and *R. v. Badhesa*, 2019 BCCA 70. The Crown also cited *R. v. Bissonnette*, 2022 SCC 23, which establishes that periods of parole ineligibility cannot run consecutively.
- [61] As already noted, defence counsel adopted the Crown's submissions in full, while adding a few further points. Defence counsel said Mr. Ebrahimian has suffered from depression since age 14 and has lived a very solitary life. She submitted that "blameworthiness" is a very ill-fitting term where an offender suffers from a mental illness and noted Dr. Riar's conclusion that this tragic event was an unfortunate lashing out on Mr. Ebrahimian's part.
- [62] Defence counsel addressed the suggestion that Mr. Ebrahimian harboured ill-will towards Befrin over his trans status, noting that Mr. Ebrahimian returned to the Lower Mainland after living with his father in Toronto because he missed his sister.
- [63] Counsel said that Mr. Ebrahimian has told her he feels terrible and deeply regrets what happened. He does not want to go to court and he does not want to live. Defence counsel notes that these sentiments have been acted upon in his attempts to harm himself. She said that Mr. Ebrahimian "lives in a painful existence".

VI. Discussion

A. General Principles

- [64] As noted earlier, a sentence of life imprisonment without eligibility for parole for at least 10 years is mandatory upon a conviction for second degree murder. That comes from s. 745(c) of the Criminal Code. Section 745.4 of the Criminal Code requires that the sentencing court consider substituting a longer period than the minimum of 10 years of parole ineligibility by considering the character of the offender, the nature of the offence and the circumstances surrounding the commission of the offence. It is for that reason that I have reviewed all of those matters in these reasons.
- [65] On this issue, there are several important principles to bear in mind. First, a decision establishing a period of parole ineligibility on a conviction of second-degree murder is a "sentence" within s. 673 for the purposes of Part XXI of the Criminal Code. Accordingly, the general sentencing principles contained in Part XXIII of the Criminal Code apply to a parole

ineligibility decision under s. 745.4, including the objectives of denunciation and deterrence: *R. v. Salah*, 2015 ONCA 23, at paras. 266-267. Those general sentencing principles include the objectives of denunciation and deterrence, the prospects for rehabilitation, the principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender, and that similar periods of parole ineligibility ought to be imposed in similar circumstances.

- [66] Second, an increase in the period of parole ineligibility from the statutory minimum does not require proof of "unusual circumstances" (*R. v. Shropshire*, [1995] 4 S.C.R. 227, at paras. 26-27 and 31-33), though in general, it requires that there be some "particularly aggravating feature": *R. v. Cerra*, 2004 BCCA 594, at para. 17.
- [67] In *Cerra*, the Court of Appeal said sentencing cases it had examined broadly suggested parole eligibility greater than 10 years is justified where there was some particularly aggravating feature, but for a period of greater than 15 years, egregious circumstances of a higher order of moral culpability have been present (at para. 17). In *R. v. White*, 2011 BCCA 328, at para. 24, the Court clarified that those ranges were "descriptions of the results of relevant cases, intended as guidelines or suggestions, but not as binding categories within which a particular case must be placed". See also *R. v. Paul*, 2014 BCCA 81, at para. 37.

B. Aggravating and Mitigating Factors

- [68] Section 718.2 of the Criminal Code sets out some of the sentencing principles I have already mentioned, but it also states that the sentence (or here the parole ineligibility period) ought to be increased or reduced (although not below the minimum) to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.
- [69] I find the aggravating factors to be as follows:
- a) the victims were family members. This is a statutory aggravating factor by reason of s. 718.2(a)(ii) of the Criminal Code;
 - b) the victims were brutally murdered inside their home, a place where they were entitled to feel safe;
 - c) the house was deliberately set on fire after the victims were killed, which was an indignity to the bodies of the victims, and the fire put others at risk and caused damage to neighbouring properties;
 - d) weapons were used, that is two knives, to carry out the attacks; and
 - e) the unsuspecting nature of the attack. The telephone call made by Mr. Zangrilli demonstrates that there was no forewarning of the attack. The victims were defenceless.

- [70] The Crown addressed whether the evidence of Mr. Ebrahimian's opposition to or disapproval of Befrin's gender transition put this matter into the category of a hate crime, but the Crown noted there was much discord in the home prior to the killing and so the evidence does not meet the reasonable doubt standard.
- [71] I agree with that assessment. While Mr. Ebrahimian evidently expressed anti-trans views, there was conflict within the home arising from a variety of matters. The evidence referred to, while very concerning, would not have proven beyond a reasonable doubt that the offences in question were motivated by Mr. Ebrahimian's hatred of Befrin as a trans person or trans persons generally.
- [72] I find the mitigating circumstances to be as follows:
- a) the absence of any criminal history on Mr. Ebrahimian's part;
 - b) Mr. Ebrahimian's relative youthfulness. He was 24 years old at the time of these events;
 - c) the guilty pleas. Although these were mid-trial guilty pleas, I am satisfied that they came as soon as circumstances reasonably allowed. Given Mr. Ebrahimian's mental health difficulties, defence counsel was understandably careful to ensure that this aspect was properly investigated and that Mr. Ebrahimian was competent and capable of giving rational and informed instructions;
 - d) Mr. Ebrahimian's mental state. Although his mental state at the time of the event did not deprive him of being a rational actor who could appreciate the nature and consequences of his actions, the fact that he had mental health difficulties at the time does attenuate his moral culpability; and
 - e) Mr. Ebrahimian's current mental state. I agree with counsel's submissions that while this is not necessarily a mitigating factor, it is nonetheless a factor that is properly taken into account as part of the overall circumstances of this offender. His current mental state includes a diagnosis of mental illness, active supervision by mental health professionals and continued monitoring of medications. His mental health fluctuates and appears to be complicated to manage. I agree that his status as a mentally disordered offender is going to mean different impacts of incarceration on him and it will impact, as well, his prospects for rehabilitation. I have considered Mr. Ebrahimian's reduced moral culpability due to mental health issues, the effect of incarceration on him as an offender with a diagnosed mental health disorder, and the issue of future dangerousness, and I have assigned weights to those matters as best I can, as outlined in Bennight at paras. 27 and 28.

C. Analysis

- [73] Murder is the most serious of all offences. Here there was not just one, but three murders, and they were brutal, bloody and heartless murders committed by Mr. Ebrahimian against members of his own family in their own home. I am satisfied that these murders have the sort of aggravating factors that justify extending the parole ineligibility period beyond 10 years.
- [74] At the same time, the mitigating factors weigh substantially here. The guilty pleas, made as soon as reasonably possible, cut the trial short and obviated the need to call at least one witness who might have been further traumatized by having to testify. Mr. Ebrahimian's mental health issues mean that while the offences are perhaps as serious as they can be, his moral culpability is reduced.
- [75] As I have already noted, the Supreme Court of Canada in *Anthony-Cook* said that joint submissions should not be rejected unless "the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest". The Court went further by saying a joint submission should not be rejected unless it is:
- [34] so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.
- [76] The sentence jointly proposed here does not offend that standard. To the contrary, I would go so far as to say the proposed sentence is fit and proper, given all the circumstances I have outlined at some length, and in terms of comparable cases. In brief, I accept the joint submission.

VII. Imposition of Sentence

A. Ancillary Orders

- [77] I will now impose sentence, dealing first with the ancillary sentencing orders:
- a) there will be a so-called DNA order; put more formally, pursuant to s. 487.051 of the Criminal Code, there will be an order in Form 5.03 authorizing the taking of samples for the purposes of obtaining DNA for testing; and
 - b) pursuant to s. 109 of the Criminal Code, there will be a lifetime prohibition against possessing any firearm, cross-bow, restricted weapon, ammunition and explosive substance.
- [78] I address the additional ancillary aspect of a victim surcharge, about which counsel did not make any submissions, but in view of Mr. Ebrahimian's current and future circumstances, I waive the applicable victim surcharge.

B. Sentence

[79] Mr. Ebrahimian, would you please stand.

[80] You have pleaded guilty to the second-degree murder of Tatiana Bazyar, Francesco Zangrilli, and Medea Ebrahimian, also known as Befrin. For the reasons given, I hereby sentence you on each count to imprisonment for life without eligibility for parole until you have served 15 years of your sentence. These sentences will be served concurrently.

[81] You may now be seated.

[82] Pursuant to s. 743.2 of the Criminal Code, I direct that a transcript of these reasons be prepared and then sent to the Correctional Service of Canada together with the reports marked Exhibits 1 and 2 at this sentencing hearing.

[83] Counsel asked the court to also recommend that Mr. Ebrahimian serve his sentence in a hospital setting. I accept the reasonableness of this request, but I prefer not to make a specific recommendation to that effect because these matters are best left to the professional judgment of the Correctional Service of Canada. I expect that it will be clear to the corrections authorities from these reasons, and from the psychiatric reports I have excerpted, that Mr. Ebrahimian needs proper psychiatric care and close monitoring. I also refer to the concluding statement of Dr. Riley in his report:

At the present time, Mr. Ebrahimian has access to an appropriate level of professional support and supervision, and this should continue if he remains under the care of Corrections Service Canada.

[84] So, although I make no specific recommendation about where Mr. Ebrahimian should serve his sentence, I draw these matters to the attention of the corrections authorities.

[85] Those are my reasons for sentence. We will now adjourn.

"Blok J."

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