
CANADA / JUDGMENT

R. v. Elliott

2014 BCSC 1435

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Supreme Court of British Columbia

DECIDED

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2014 BCSC 1435 R. v. Elliott

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Elliott,

2014 BCSC 1435

Date: 20140613

Docket: 34880

Registry: Duncan

Regina

v.

William Gordon Robert Elliott

Before: The Honourable Mr. Justice Bracken

Oral Reasons for Sentence

Counsel for the Crown:

S. Van Alstine, Q.C.

L. Ford

Counsel for the Accused:

S. Sheets

R. A. Miller

Place and Date of Trial/Hearing:

Duncan, B.C.

June 9-12, 2014

Place and Date of Judgment:

Duncan, B.C.

June 13, 2014

- [1] THE COURT: The defendant, Mr. Elliott, was charged with two counts of first degree murder. On July 19, 2013, with the agreement of the Crown, he pleaded guilty to second degree murder respecting both charges. He will receive the mandatory life sentence on both counts to run concurrently.
- [2] The issue before me is the period of time during which he will be ineligible for parole. The Crown seeks the maximum period of parole ineligibility of 25 years. The defence seeks a period of parole ineligibility of 12 to 15 years.
- [3] The first offence relates to the victim Karrie Ann Stone. Ms. Stone was living temporarily at a motel located at the south end of Duncan, British Columbia, not far from the residence of the defendant and his wife. Ms. Stone suffered from a serious drug addiction and engaged in prostitution to obtain funds to buy drugs. On the night of July 7, 2010, she was in the parking lot of the motel at approximately 3:30 a.m. when she met the accused, who drove through the parking lot in his wife's vehicle. Ms. Stone offered him sex in exchange for money and he accepted. Ms. Stone was seen by surveillance video to get into the car and to drive away. She was never seen alive again.
- [4] The defendant took her to his residence. His wife was away in the United States, and he and Ms. Stone were alone in the house. They engaged in sexual activity, including anal sex. The defendant paid her double what she had asked as payment. As they were leaving the residence, the defendant said that Ms. Stone asked for more money, suggesting to the defendant that if she did not receive more, she might return to the residence and tell his wife what had occurred. She had apparently seen photos of his wife and family while she was inside the residence.
- [5] According to his own evidence, the defendant said words to the effect, "You want more? Wait here." He then went back into the residence and returned with an aluminum baseball bat held behind his back. When he approached her, he suddenly swung the bat without warning, hitting Ms. Stone in the head and knocking her down. She was not conscious, and he placed her in the box of his truck which was covered by a canopy, took a can of gasoline that he had at his residence, and drove to a remote location in the Glenora area near Duncan, where he dumped her on the ground and doused her with the gasoline that he had brought with him. He then lit her on fire.

- [6] On his evidence, she was alive and spoke the words, "I can't breathe," while the fire burned. He then removed her belongings and her lower false teeth to prevent identification. The upper plate of her dentures was found a few feet away from the body. It was not likely thrown there by the defendant, as he wanted to remove all chance of identification. One is left to speculate how it got there.
- [7] A berry picker discovered Ms. Stone's body on July 12, 2010, on the same day as she was reported missing. The defendant kept her personal belongings, which were ultimately recovered by the police at the conclusion of their investigation.
- [8] The police spent many hours on the investigation, speaking with friends and those who had seen her last, and trying to track down the owner of the vehicle that Ms. Stone was seen getting into on the surveillance video from the motel parking lot. All of those efforts were without success.
- [9] On January 21, 2011, approximately six months later, Tyesia Jones, an 18-year-old girl, left her home to attend a party with friends. Her plan was to stay at the girlfriend's home overnight after the party. She and her friends left the party at approximately 1:45 a.m. and walked to the friend's home. As it turned out, the friend went to visit with a boyfriend. Ms. Jones was also in contact with a boyfriend of hers. She and her boyfriend communicated by cellphone and text messages, and it was arranged that they would meet near the Superstore in Duncan a short time later. The Superstore was a relatively close distance to the home that Ms. Jones was visiting.
- [10] She left the home and started to walk toward the Superstore. While she was walking, she was in contact through text messages with the boy she was going to meet. She followed a route that took her across Cowichan Tribes lands, across the railway tracks from the Superstore. Near the recreation centre and gymnasium on the Cowichan Tribes lands she, for the last time, contacted her friend by text. The time was about 3:35 a.m., and she was never seen alive again.
- [11] The evidence is that the defendant was driving his pickup truck in the area at about that time. He did not know Ms. Jones but had seen her around town. He struck her with his truck while she was walking and knocked her down. He said that was an accident. He stopped the truck and got out and saw her lying unconscious in the road. He picked her up and put her in the box of his truck and drove to an area of dense bush at the rear of a cemetery off Indian Road, again in the Glenora area near Duncan.
- [12] On the way there, he said that he saw her try to get up while she was in the box of his truck. When they arrived, he removed her from the truck, beat her in the right side of her head and face with a heavy stick causing significant damage to her face. He removed all of her clothing and he choked her with her brassiere. He then dragged her into the bush where he pried out some of her teeth, again in an effort to avoid identification. He tried to remove one of her eyes with a stick. The defendant took some of the teeth and all of her clothing from the scene and burned them at another location. Some of her teeth and a portion of the

braces she had on her teeth were left behind and later recovered. She had multiple abrasions on her legs, arms, and back, as well as bruises on her hip.

- [13] She was found on June 28, 2011, six days later. She had been severely beaten. There was evidence of strangulation, and it could not be determined what the ultimate cause of her death was.
- [14] The police began an investigation. Early in the investigation, an alert member of the RCMP in the Courtenay/Campbell River area suggested the defendant as a possible suspect as a result of an offence the defendant was convicted of in that area. The defendant was known to be living in the Duncan area. The police followed up on that information, as well as other information they were aware of, and ultimately obtained a search warrant for the residence of the defendant. The warrant was executed on April 21, 2011. No evidence was found to link the defendant to the murder of Ms. Jones, but the forensic examiners noted a small spot on a moulding near the floor in the porch of the house and was determined, through DNA analysis, to be the blood of Ms. Stone. That was the first indication to police that the two offences were connected.
- [15] The police then began an extensive undercover operation in which the defendant was recruited into what he believed to be a criminal organization that carried out extensive criminal activities. All of the members of the fictitious criminal organization were police officers. No real criminal activity was engaged in, but the defendant believed that there was. He was involved in 52 actions of what he believed to be criminal activity. He was paid for his actions.
- [16] The members of the undercover team eventually gained his trust and told him that he was to be accepted as a member of the organization, but to do so, he had to meet the so-called crime boss. That meeting was arranged at a hotel in Victoria on April 14, 2012, almost one year after the search warrant was executed at the residence of the defendant. During the intervening time, the defendant had been kept busy with what he thought was criminal activity throughout the province and under the surveillance of the undercover team.
- [17] At the meeting with the crime boss, which lasted about three and a half hours, the defendant was told that he had to divulge the details of these offences, because the crime boss was aware of the police interest in him as a suspect in the murder of Ms. Jones through what he was told was a rogue police source in the Greater Vancouver area. He was told that the police were near the point where he was to be arrested and charged. He was also told that there was someone in the organization who might be able to contribute so as to prevent his conviction on any charges through the fictitious rogue police officer.

- [18] The defendant then divulged the details of the two murders. A short time later he was arrested and charged. He was interviewed by the police following his arrest and, while he at first refused to talk to the police, once he was shown the video of his meeting with the crime boss and told about the details of the investigation, he provided a statement to the police in which he admitted his guilt.
- [19] It can be seen that the circumstances of these offences were brutal, senseless, and callous. The fact that he set fire to Ms. Stone when he knew she was still alive is particularly egregious. While the initial blow with the baseball bat at his residence might possibly be seen as an impulsive act, there was nothing impulsive about putting Ms. Stone in the box of his truck, taking a can of gasoline, and driving to the location where he set fire to her. His calculated behaviour in removing her clothing so that she could not be identified is further evidence of a mind with no other concern than avoiding detection.
- [20] Likewise, the initial striking of Ms. Jones with his vehicle is said to have been accidental, his story is that he was somewhat panicked and wanted to avoid responsibility. Instead, he placed her in the back of his truck and while driving, through motions and movements in the back of his truck, he became aware she was still alive. Nevertheless, he took her to a remote location, where she was brutally killed and sexually assaulted and, on his own admission, he wanted to have sexual intercourse but could not get an erection. He then stripped and degraded her body before leaving her naked in the bushes.
- [21] The circumstances of these offences, as I said, can only be described as brutal and callous.
- [22] The defendant is a 26-year-old aboriginal man with a troubled and troubling past. His upbringing was marked by neglect and disadvantage. His parents were both consumed with drug and substance abuse. His mother left the home soon after he was born and went to Vancouver where she worked as a street prostitute. His father tried to raise him, but could not provide properly for his needs. The father rented out their home to raise money, and he and the defendant lived in a rundown house with no water, heat, or electricity. On one occasion when he was six or seven, his mother came to the Island to visit and found him sick, without proper clothing or food, and living in a house without heat or electricity. She took him back to Vancouver with her.
- [23] While her intentions were no doubt the best, her lifestyle exposed the defendant to drugs, violence, and prostitution. Eventually he came back to Duncan, where he was in and out of the care of the Ministry of Children and Families. His schooling was sporadic and he was expelled from one school for fighting. At age 11, he was placed in a permanent foster home which he liked and felt happy in. However, at some point after he had been there and settled, he was suspected of sexual impropriety with a female resident and he was removed from the home. He denied any blame in that incident, and felt very unfairly treated by the decision to remove him. His behaviour continued to deteriorate and he was often in difficulty.

- [24] Shortly after he turned 16 years old, he committed two serious sexual assaults. The first was in the Courtenay area where he had then been living. He was out riding his bike and saw a 15-year-old girl that he did not know. He approached her to ask for directions. She could not help him and tried to leave, but instead he punched her several times, knocked her down, and committed a full act of forced sexual intercourse. She suffered a broken nose, black eyes, and injuries to her vaginal area. It was her first sexual experience. The defendant was convicted of the offence of aggravated sexual assault and sentenced to 30 months under an intensive supervision order which caused him to spend part of his time in custody and part of it under supervision in the community. That offence took place in June of 2004.
- [25] Before that matter had been concluded in court, he was in Duncan where he and some of his friends committed a break and enter, and in the process stole alcohol. They went to a park where they drank some of the alcohol. There was a young female there who he approached, punched in the face, and sexually assaulted. Again, he was convicted.
- [26] He has other convictions for escaping lawful custody, breaching recognizance, break and enter, and taking a motor vehicle without the owner's consent.
- [27] There is a Gladue report, as they are known, in evidence which describes the history of the aboriginal peoples in this area, and in particular the life and background of the defendant. It speaks eloquently to the disadvantaged upbringing of the defendant. There is some evidence that falls short of a diagnosis of fetal alcohol syndrome, but certainly some of those traits are present in his makeup. There can be no doubt that his background as a First Nations person has relevance to his offending.
- [28] The forensic psychology report and the pre-sentence report both remark on the seriousness of the offences and the fact that prior interventions have not succeeded. The defendant showed little interest in learning more about his aboriginal culture, and his behaviour has worsened, rather than improved, since his period of custody.
- [29] The psychiatric report that was prepared in connection with this sentencing contains the following comment at page 10 [as read in]:

Mr. Elliott says the current offences were unplanned. He did not come up on his own initiative to disclose the offences to police. In fact, his initial admissions were to individuals he believed were criminal elements. I am not convinced about the sincerity of the defendant's remorse and his statements to me during my examination. Mr. Elliott exhibits a high risk for sexual violence in the medium to long term. He appears to exhibit a robust history of sexual sadism which goes back to adolescence. His first criminal conviction was a violent sexual assault perpetrated against a stranger.

- [30] Concern has been expressed in the psychological report and by the Crown in their submissions that the offending of the defendant has been unpredictable and committed against victims who were strangers to him. These offences both had sexual overtones and, coupled with two prior sexual assaults, pose a significant concern for the court.

- [31] While the defendant has admitted his guilt and has expressed remorse, he has never been able to properly explain his conduct. None of the violent offences has been driven by alcohol or drugs, and none has been explained by a sudden impulse of anger towards a particular individual or individuals. Both of these offences have a calculated and callous aspect to them.
- [32] It is impossible to state the trauma and damage that the defendant has caused to the victims, their families, and to this community, particularly the First Nations community. The victim impact statements filed in this case illustrate, in very clear and heartbreaking terms, the impact of the loss of Ms. Stone and Ms. Jones to their families and friends.
- [33] The principles of sentencing as set out in s. 718 of the Criminal Code are well known, but they bear repeating:

The fundamental purpose of sentencing is 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 that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
 - (b) to deter the offender and other persons from committing offences;
 - (c) to separate offenders from society, where necessary;
 - (d) to assist in rehabilitating offenders;
 - (e) to provide reparations for harm done to victims or to the community; and
 - (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.
- [34] Section 718.2 of the Criminal Code outlines other sentencing principles that I must bear in mind. One of them is s. 718.2(e) that provides that all available sanctions other than imprisonment must be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.
- [35] Obviously in this case a mandatory life sentence is required, regardless of aboriginal status, although I clearly must bear in mind the principles expressed in *R. v. Gladue*, [1999] 1 S.C.R. 688, and more recently in *R. v. Ipeelee*, 2012 SCC 13.
- [36] Section 745.4 of the Criminal Code relates to the issue before me, that of determining the period of parole ineligibility. It states:

Subject to section 745.5, at the time of the sentencing under section 745 of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section 745.2, by order, substitute for ten years a

number of years of imprisonment (being more than ten but not more than twenty-five) without eligibility for parole, as the judge deems fit in the circumstances.

[37] I have already commented on the history of the defendant and, to some degree, on his character. Clearly these offences are disturbing, the absence of an explanation is troubling. He has expressed remorse and entered early guilty pleas, both of which are positive signs of accepting responsibility.

[38] In addition, he did something that was quite unique, in my experience, he agreed to meet and did meet with the mothers of Ms. Stone and Ms. Jones, and in that meeting he spoke to them about the offences and about the circumstances. He apologized to both.

[39] The offences are very serious and the circumstances of the offences are, as I say, egregious.

[40] The Crown seeks the maximum period of ineligibility of 25 years, and the Crown says that there is a range of categorization for second degree murder that ranges from near manslaughter to near first degree murder. The Crown submits that these offences are near first degree murder.

[41] Counsel for the defendant submits that the range of parole ineligibility based on a comparison of other similar cases is in the appropriate range of 12 to 15 years.

[42] In *R. v. Cerra*, 2004 BCCA 594, our Court of Appeal commented on the approach to determining parole ineligibility. At paragraph 17, Mr. Justice Donald stated:

It has often been said that sentencing is an individualized process and comparisons with other cases are difficult. But difficult as they may be, comparisons must be made when reviewing sentences for fitness. Patterns may emerge from an examination of sentencing decisions. I have discerned a pattern from decisions of this Court suggesting, in broad terms, the following: parole eligibility greater than 10 years is justified when there is some particularly aggravating feature; for a penalty of greater than 15 years, egregious circumstances of a higher order of moral culpability are present. So in this case, the savage and prolonged beating raises the penalty above 10 years eligibility. That much is conceded by Mr. Cerra's counsel who urged us to go no higher than 15 years in adjusting the penalty. The key issue is whether there was something more in this case lifting it into a still higher level of blameworthiness.

[43] Later in the same decision, the court said at paragraph 36:

The second point relates to the appropriate range of parole ineligibility. In *R. v. Shropshire*, [1995] 4 S.C.R. 227, at para. 18, the Supreme Court of Canada recognized that the determination of parole ineligibility is "a very fact-sensitive process". My colleague's reasons place the jurisprudence from this province with respect to this subject into two broad groupings -- from 12 to 15 years and from 15 years to 20 years. The latter group is said to contain those who are at the highest order of moral culpability or dangerousness. While I agree that these groupings might emerge from the case-law in this province, I would not want to be seen as capping parole ineligibility at 20 years for second degree murder. It cannot be forgotten that by virtue of s. 745.4

of the Code, Parliament has determined the range to be from 10 to 25 years. There will be cases, however rare, that call for the maximum prescribed by Parliament. As the court said in *Shropshire*, at para. 29:

In permitting a sliding scale of parole ineligibility, Parliament intended to recognize that, within the category of second degree murder, there will be a broad range of seriousness reflecting varying degrees of moral culpability. As a result, the period of parole ineligibility will run anywhere between a minimum of 10 years to a maximum of 25, the latter being equal to that prescribed for first degree murder.

- [44] Somewhat similar comments were made by the court in *R. v. Van Osselaer*, 2004 BCCA 3 at paragraph 24, where Mr. Justice Smith commented on the fact that each case is fact sensitive and it is not always useful to try and compare which case is more or less tragic or which offender is worse or better than the defendant. The same point was made in *R. v. Hoang*, 2002 BCCA 430, at paragraph 16.
- [45] Both the Crown and defence canvassed several cases that are said to be comparable to the offences here. The Crown referred to: *R. v. McCotter*, 2014 BCCA 27; *R. v. Thielen*, unreported, B.C. Supreme Court, November 3, 2011, New Westminster Registry; and *R. v. Runholm*, [2003] O.J. No. 875 (Ontario Supreme Court of Justice), all cases where 20 years was set as the parole ineligibility period.
- [46] The Crown also referred to *R. v. Kozak*, B.C. unreported, September 14, 2012, Campbell River Registry, and *R. v. Butorac*, February 10, 2011, New Westminster Registry, both cases where 23 years' parole ineligibility was imposed. I will say at this point that the latter two cases, in my view, are, as Mr. Sheets said in his submission, much different and much worse than the case at bar.
- [47] The Crown also referred to *R. v. Paul*, 2014 BCCA 81, and *R. v. Ipeelee*, 2012 SCC 13, with respect to the principles that must be considered and applied respecting aboriginal offenders. Crown also referred to *R. v. C.A.M.*, [1996] 1 S.C.R. 500, for principles of sentencing of general application, including the principle that retribution is an appropriate consideration for sentence.
- [48] Finally, the Crown referred to *R. v. Purdy*, 2012 BCCA 272, with respect to the interpretation of our Court of Appeal of the decision in *R. v. Mafi*, 2000 BCCA 135.
- [49] Counsel for the defendant referred to other comparable cases that involved aboriginal offenders, including *R. v. Paul* and *Ipeelee*, as well as *R. v. Bishop*, 2010 NUCJ 16; *R. v. Macki*, 2001 BCSC 427; *R. v. Ashawasega*, [1997] O.J. No. 625; *R. v. Sipes* (O'Donnell), 2012 BCSC 2019; and *R. v. Mafi*, 2000 BCCA 135. In all of those cases, the periods of parole ineligibility were set at less than 20 years, ranging between 15 and 18 years.

- [50] I will say that it is clear from R. v. Shropshire at paragraph 21 that deterrence is a factor to consider in setting the period of parole eligibility. In addition, the court in Shropshire made it clear that, in exercising its discretion, the court does not necessarily usurp the discretion of the Parole Board, see paragraph 34.
- [51] An essential analysis in the circumstances of this case is to consider the principles of R. v. Gladue as they apply to the circumstances of these offences and the situation of the defendant. We are reminded by the Supreme Court of Canada in Ipeelee that the analysis is not limited to less-serious cases, and that it is not simply an automatic reduction on the basis of the defendant's aboriginal status. As Mr. Sheets, counsel for the defendant, has aptly put it, the history of aboriginal people spans generations and the impact carries through long after the precipitating treatment has ended.
- [52] Here, the factors are in large part manifest in the lack of proper parenting and the resulting neglect and disadvantage while the defendant was young. The Gladue report notes that the defendant's father, who I will add has been present and supportive throughout these proceedings, learned his parenting skills from previous generations. It is submitted that there has been a systemic failure of parenting and guidance for the defendant that, in my view, clearly impacts, to some degree at least, his moral culpability.
- [53] The culture of the aboriginal community in this area is a strong, positive, and progressive one. The community is supportive of its people. Indeed, efforts were made to try and interest the defendant in the culture of First Nations people in this area without success. Nevertheless, the principles of Gladue still apply.
- [54] These factors, of course, figure into the assessment of mitigating and aggravating considerations in determining the appropriate period of parole ineligibility. The defendant's background of neglect and absence of guidance are mitigating factors for consideration. Likewise, his early guilty plea and acceptance of responsibility are in his favour. No doubt a trial of this matter would have had a tremendous adverse effect on the families of the victims.
- [55] However, those factors must be balanced against the aggravating factors of the brutality of these offences and the degradation of the bodies of the victims following their deaths. The defendant has demonstrated cold and calculating behaviour, designed largely to avoid being caught. Also, the predictions of his future dangerousness, which is said to be high, is another factor that must bear prominence in my consideration. The psychological report that I have referred to outlines some of these concerns and his history of offending demonstrates the high risk he poses.

- [56] Upon considering all of these factors, I find that applying the factors respecting Gladue, Ipeelee, as reflected in the Paul decision, as well as the cases that I have considered, some more egregious, some worse, and in comparing those to try and determine a similar outcome for similar offenders in similar circumstances, I find there is still a need to set the period of parole eligibility above the range suggested by the defence.
- [57] In the result, I set the period of parole eligibility at 20 years.
- [58] Mr. Elliott, would you stand up, please. Is there anything you would like to say before I impose sentence?
- [59] Then with respect to the second degree murder of Karrie Ann Stone, I impose a life sentence with no eligibility of parole for 20 years. With respect to the second degree murder of Tyesia Jones, I impose a life sentence with no parole eligibility for 20 years.
- [60] There will be a mandatory firearms ban under s. 110, I believe it is, for life.
- [61] MR. VAN ALSTINE: It's 109, I believe, My Lord.
- [62] THE COURT: Thank you, 109.
- [63] MR. VAN ALSTINE: And did Your Lordship consider a DNA order or are you relying on the DNA that has already been taken from Mr. Elliott?
- [64] THE COURT: I am prepared to make a second order, I think it is mandatory, in any event.
- [65] MR. VAN ALSTINE: Yes, and that's pursuant to s. 487.051(1).
- [66] THE COURT: Thank you, yes. Mr. Sheets, anything further?
- [67] MR. SHEETS: No, thank you, My Lord.
- [68] THE COURT: You may sit down, Mr. Elliott. That concludes my reasons for sentence.
- "J.K. Bracken J."

The Honourable Mr. Justice Bracken

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