
CANADA / JUDGMENT

R. v. Gladue

2022 BCSC 1009

COURT

Supreme Court of British Columbia

DECIDED

1 June 2022

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2022 BCSC 1009 R. v. Gladue

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Gladue,

2022 BCSC 1009

Date: 20220601

Docket: 75807

Registry: Prince George

Regina

v.

Dennis Daniel Gladue

Before: The Honourable Justice G.C. Weatherill

Oral Reasons for Sentence

Counsel for the Crown:

E. Yao

Counsel for the Accused:

D. Donnelly

Place and Date of Hearing:

Prince George, B.C.

May 31, 2022

Place and Date of Judgment:

Prince George, B.C.

June 1, 2022

- [1] THE COURT: On March 21, 2022, Mr. Gladue pleaded guilty to a charge under s. 235(1) of the Criminal Code, R.S.C. 1985, c. C-46 of the second degree murder of Christin West. The matter was put over to May 31, 2022 for a sentencing hearing.
- [2] An agreed statement of facts was filed as Exhibit 1 when Mr. Gladue's guilty plea was entered. That agreed statement of facts was read in open court by the Crown during the sentencing hearing yesterday, and was also filed as Exhibit 1 at the hearing. It details the relationship that Ms. West had with Mr. Gladue. It also details how Ms. West was killed at Mr. Gladue's hands by multiple stabbings. A copy of Exhibit 1 will be attached to these reasons for judgment as Appendix "A". Accordingly, there is no need for me to reiterate the facts contained in it.
- [3] Section 745(c) of the Criminal Code stipulates that the sentence for a conviction on a charge of second degree murder is life imprisonment. That is the sentence I must impose today. It means that Mr. Gladue will be required to remain in prison for the rest of his natural life, unless he is granted parole. Whether or not parole is granted will be determined by the Parole Board of Canada pursuant to the provisions of the Corrections and Conditional Release Act, S.C. 1992, c. 20.
- [4] Parole may be granted if, in the opinion of the Parole Board of Canada, Mr. Gladue:
- a) will not by reoffending present an undue risk to society at any time during the remainder of his life; and
 - b) his release will contribute to the protection of society by facilitating his reintegration into society as a law-abiding citizen.
- [5] The only matter for determination by this court is the period for which Mr. Gladue will be ineligible to apply for parole. The minimum period of parole ineligibility is 10 years and the maximum period is 25 years. The period of parole ineligibility is determined by the sentencing judge. The factors to be considered are set out in s. 745.4 of the Criminal Code. The court may increase the parole ineligibility from the minimum 10 years, after having regard to the character of the offender, the nature of the offence, and the circumstances surrounding its commission.

Principles of Sentencing

[6] The principles of sentencing are set out in ss. 718, 718.1, and 718.2 of the Criminal Code and are well known. The court must give primary consideration to the objectives of denunciation and deterrence when imposing a sentence for a crime involving the abuse of a vulnerable person, including, as is the case here, an Indigenous female: *R. v. L.P.*, 2020 QCCA 1239.

[7] A Gladue report dated March 9, 2022 was prepared in this case. It details Mr. Gladue's difficult personal history and family relationships, including his heavy consumption of alcohol and drugs since age 14, that he left his father's home at age 17, that he became estranged from his family, and that he has been left to his own devices since then. Those devices led him to criminal convictions for:

a) January 2007

Assault causing bodily harm to his then-common law spouse for which he served 14 months in jail

b) November 2007

Assault upon his mother for which he received a suspended sentence

c) November 2010

Aggravated assault on his then-common law spouse for which he received a jail sentence of 12 months

d) March 2014

Impaired driving for which he received a fine

e) March 2015

Assault causing bodily harm for which he received a jail sentence of nine months (and I note parenthetically that Mr. Gladue has no recollection of the circumstances of that offence

f) March 2016

Sexual interference involving his eight-year-old daughter for which he received a jail sentence of five years

[8] Counsel for the defence was able to confirm that alcohol played a significant role in each of these offences, other than the March 2015 offence in respect of which Mr. Gladue has no recollection.

[9] In addition to the offences I have mentioned, Mr. Gladue has also been found guilty several times of failing to comply with recognizances and/or probation orders.

Aggravating factors

- [10] There are the following agreed aggravating factors in relation to the circumstances surrounding the commission of the offence before me:
- a) Mr. Gladue and Ms. West were intimate partners (although I add parenthetically that defence counsel submits that their sexual intimacy was intermittent);
 - b) Ms. West was an Indigenous woman with elevated vulnerability;
 - c) Mr. Gladue killed Ms. West in her own home where she should have felt secure and safe;
 - d) The killing was an act of extreme violence, as is reflected by the at least 33 stab wounds to Ms. West's body, some of which were found by the pathologist to have likely been inflicted during Ms. West's defensive manoeuvres;
 - e) After killing Ms. West, Mr. Gladue covered her body with a blanket. He then poured bleach on the blanket and around the body before taking a shower and leaving the residence in Ms. West's car. Her body was not discovered for six days. ;It was discovered by Ms. West's sister and mother;
 - f) Ms. West's family has been significantly impacted by her murder; and
 - g) Mr. Gladue has a criminal record that includes offences of violence.
- [11] Given these aggravating circumstances, Mr. Gladue's moral culpability is plainly at the high end of the spectrum.

Mitigating Factors

- [12] There are also the following agreed mitigating factors in this case:
- a) Mr. Gladue expressed remorse for his actions and pled guilty at a very early stage of the proceeding, thereby avoiding what would likely have been a very difficult and emotionally-charged trial; and
 - b) Mr. Gladue is an Indigenous man whose background of early substance abuse is all too prevalent in the Indigenous persons coming before the courts.
- [13] Defence counsel added as a "slightly mitigative" circumstance that Ms. West instigated the confrontation that led to her death by pulling a knife on Mr. Gladue, although counsel conceded that Mr. Gladue's response to her doing so was disproportionate to the threat he was facing.

Victim Impact Statements

- [14] Victim impact statements relating to Ms. West's murder were provided and read to the court by each of Ms. West's mother, Beatrice West, and her three sisters, Cynthia, Candace, and Nicole. I want to thank them for their eloquent and genuine words. They gave the court meaningful insight into the profound and devastating impact that Ms. West's death has had and continues to have on her family.

Joint Submissions

- [15] The Crown and the defence have made a joint submission that a period of parole ineligibility of 15 years is appropriate in this case.
- [16] The relatively recent decision of the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43 sets out the analytical framework to be applied in determining whether a sentencing judge will accede to a joint submission.
- [17] It may be that some will want me to override the proposed joint submission and impose a lengthier period of parole ineligibility. While such wishes are understandable given the devastating impact the murder of Ms. West has had on the lives of her family, those wishes are not what informs how the propriety of joint submissions are to be assessed.

Discussion

- [18] Judges are afforded considerable discretion when it comes to imposing sentence, but it is not an unfettered discretion. Exercising that discretion does not mean a judge is free to do whatever he or she wants regardless of what counsel have placed before the court. Judicial discretion in imposing a sentence is informed by the consideration of a number of principles outlined in both the Criminal Code and in the case law that interprets the provisions of the Criminal Code. The case law that governs sentencing principles provides a framework and guidance on how the principles must be considered when imposing a sentence.
- [19] Sentencing is a highly individualized and delicate balancing process that considers numerous competing principles, objectives, and factors. It has been described by many jurists as one of the most difficult facets of the criminal law: *R. v. Suter*, 2018 SCC 34 at para. 4.
- [20] When imposing a sentence, judges must exercise their discretion judicially. This means they must apply the governing principles set out by the Criminal Code and the case law, assess all the circumstances, weigh and balance a host of competing principles and objectives, and consider the aggravating and mitigating factors, the range of sentences established in the case authorities, the moral blameworthiness of the offender, and any other relevant circumstances.

- [21] Informed by those various factors and considerations, the sentencing judge then determines the just and appropriate sentence for the case, bearing in mind the overarching principle stipulated in the Criminal Code that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender": *R. v. Nasogaluak*, 2010 SCC 6 at paras. 43 to 44. The rule of law requires nothing less than operating within these parameters of principle and applying the case law guidelines.
- [22] In *Anthony-Cook*, the Supreme Court of Canada directed that sentencing judges should only depart from joint submissions in cases where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. As Mr. Justice Moldaver wrote for the court at para. 34, and I quote:
- [34] []. Rejection denotes a submission 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. []
- [23] As also explained in *R. v. Manca*, 2019 BCCA 280 at para. 29:
- [29] The principles governing joint submissions are well established. Where the Crown and defence agree to recommend a particular sentence in exchange for a guilty plea, the sentencing judge may only depart from the recommendation where the "proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest" []
- [24] Similarly, the Ontario Court of Appeal recently observed in *R. v. Fuller*, 2020 ONCA 115, that a joint submission on sentence following a guilty plea should only be rejected in rare cases because joint submissions are, as *Anthony-Cook* emphasized, vitally important to the well-being of our criminal justice system, as well as our justice system at large. This case is a good example of that observation.
- [25] To summarize, the Supreme Court's decision in *Anthony-Cook* provides clear direction to sentencing judges on the law as to how joint submissions are to be viewed, the test to be applied if the judge considers departing from the joint submission and, if the judge decides that the joint submission cannot be endorsed, the process to be followed before rejecting a joint submission. The sentencing judge cannot simply do what he or she wants or accede to public sentiment. He or she must operate within fairly circumscribed parameters.
- [26] A joint submission, arrived at through negotiations between responsible counsel who are thoroughly familiar with all the issues in the case and who have considered the implications of the guilty plea and the impact of the sentencing, including its impact on the reputation of the administration of justice, is entitled to considerable deference and is not to be lightly rejected: *R. v. Russell*, 2013 BCSC 697 at para. 4.

- [27] Accordingly, the issue that I must address in this case is whether I ought to accept the joint submission.
- [28] I have considered Mr. Gladue's character, the nature of the offence, and the circumstances surrounding its commission. I have also considered the impact of the "local situation" as described by Justice Wagner, as he then was, in *R. v. Lacasse*, 2015 SCC 64, in the application of the principles of denunciation and deterrence. In particular, I have taken into consideration that Ms. West was an Indigenous woman who was murdered in her own home by a person she knew and with whom she had been intimate.
- [29] Although the appropriate period for parole ineligibility is fact-specific to each case, I am satisfied that the case authorities counsel have provided in support of the joint submission demonstrate that a period of parole ineligibility of 15 years is properly within the accepted range of sentence for such offences. Indeed, it is at the high end of that range. The cases I have considered involve similar facts and include:
- *R. v. Shropshire*, [1995] 4 S.C.R. 277, where there was a 12-year parole ineligibility;
 - *R. v. Cerra*, 2004 BCCA 594, which upheld a 20-year parole ineligibility;
 - *R. v. Panghali*, 2011 BCSC 421, a 15-year parole ineligibility;
 - *R. v. Daigle*, 2017 BCCA 86, 15-year parole ineligibility;
 - *R. v. Martel*, 2019 BCSC 2233, 14-year parole ineligibility; and
 - *R. v. Poepl*, 2021 BCSC 75, 15-year parole ineligibility.
- [30] Significantly, the joint submission before me is the product of lengthy negotiations by experienced counsel who have considered its consequences from all perspectives, including the impact it will have on Ms. West's family members, as well as the repute of the administration of justice.
- [31] The Crown has relinquished the ability to seek a significantly longer period of parole ineligibility in exchange for the certainty of the guilty plea, thereby, negating the need for a lengthy trial. The defence has gained the certainty of the period of Mr. Gladue's parole ineligibility in circumstances of a wide range of parole ineligibility that is available to the sentencing judge, as well as the significant aggravating factors. In my view, the recommended parole ineligibility period appropriately balances the aggravating and mitigating factors in this case and reasonably seeks to ensure that the sentence to be imposed honours the overarching principle of being proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [32] Most importantly, the proposed sentence properly reflects the principles of sentencing applicable to these offences, deterrence and denunciation.

- [33] Applying the test articulated in the Anthony-Cook decision, I am of the view that imposing the proposed sentence would not bring the administration of justice into disrepute or otherwise be contrary to the public interest. Further, I do not find that the sentence put forward in this joint submission to be "so unhinged" from the circumstances of the offences and the offender that its acceptance would lead a reasonable and informed person, aware of all the relevant circumstances, including certainty and resolution discussions, to believe that the proper functioning of the justice system has broken down.
- [34] In my view, a reasonably informed person would regard the joint submission as reflecting a properly functioning justice system, one that takes into account the onerous decisions required to be made by both the Crown and counsel for the accused in difficult situations such as the present one.
- [35] Mr. Gladue, would you stand please? Do you have anything further that you wish to say before I impose sentence?
- [36] THE ACCUSED: No, Your Honour.
- [37] THE COURT: Thank you. I am sentencing you to life imprisonment with no eligibility for parole for 15 years.
- [38] I am also making the following ancillary orders:
- 1) there will be a mandatory lifetime firearms prohibition pursuant to s. 109(3) of the Criminal Code;
 - 2) there will be a mandatory order authorizing the taking of a DNA sample from you pursuant to s. 487.051 of the Code;
 - 3) there will be an order of forfeiture of all property and weapons related to the offence that were seized during the investigation, pursuant to ss. 490 and 491 of the Criminal Code; and
 - 4) there will be an order prohibiting you from communicating with Ms. West's family members, namely Nicole West, Beatrice West, Candace West, and Cynthia Waldo, during the custodial portion of your sentence, pursuant to s. 743.21 of the Code.
- [39] The victim surcharge will be waived pursuant to s. 737(2.1) of the Criminal Code.

"G.C. Weatherill J."

Appendix "A"

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