

CANADA / JUDGMENT

R. v. Halverson

2020 BCSC 1095

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1095 R. v. Halverson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Halverson,

2020 BCSC 1095

Date: 20200724

Docket: 25932

Registry: Nelson

Between:

Regina

v.

Miles Halverson

Before: The Honourable Mr Justice Crerar

Oral Reasons for Sentence

Counsel for Crown:

Rebecca B. Smyth

Counsel for Accused:

Blair F. Suffredine, QC

Place and Date of Hearing:

Nelson, B.C.

July 20, 2020

Place and Date of Judgment:

Nelson, B.C.

July 24, 2020

I. introduction

- [1] On September 18, 2019 Miles Halverson pleaded guilty to manslaughter, contrary to s. 236(b) of the Criminal Code, RSC, 1985, c. C-46, for causing the death of Matthew Reeder on June 5, 2018, at around 1 pm.
- [2] Mr Halverson was to have been sentenced in April of this year, but sentencing was delayed due to the Covid pandemic.

II. Circumstances of the offence

A. The death

- [3] The violent death leading to this manslaughter conviction occurred on the main street of Nelson: Baker Street, lined with restaurants and shops, and filled with pedestrians. It was particularly shocking to the small and relatively peaceful community of Nelson.
- [4] The victim and the offender were both long-time members of the Nelson street community. Mr Halverson and Mr Reeder had known each other for several years. They were, for the most part, friends.
- [5] In the years leading up to Mr Reeder's death, they had both led difficult lives. Both were known to police. Both struggled with alcohol and drug abuse, and homelessness. In the weeks leading up to the incident, Mr Halverson had been living on the street and in a shelter. He had recently lapsed back to heavy drinking. After an argument with his partner, he left their home.
- [6] That said, at the time of the incident, Mr Halverson says that was not under the influence of alcohol: it was still early in the day.
- [7] This senseless death arose from a dispute over a prime panhandling location. Mr Halverson was en route to panhandle in front of the Pharmasave pharmacy located at 685 Baker Street. It is apparently one of the best spots for panhandling in Nelson. Mr Halverson considered himself to have a proprietary right to this panhandling spot.
- [8] Earlier that very day, the police had broken up a fight between Mr Halverson and Mr Reeder over the prime Pharmasave panhandling spot.
- [9] As Mr Halverson biked down Baker Street he saw that Mr Reeder was panhandling in that location.

- [10] At the time of his death, Mr Reeder was sitting down on the sidewalk in front of the pharmacy. His back and head rested against the brick wall of the store. His legs were crossed.
- [11] The incident was captured on surveillance video from across the street. The video, coupled with multiple eyewitness accounts, establishes a clear sequence of events.
- [12] Mr Halverson approached the pharmacy from the west, riding a yellow bicycle down Baker Street. He passed the front of the pharmacy. He did a U-turn across traffic. He biked between two parked vehicles. He parked and got off his bicycle.
- [13] He walked swiftly, straight at Mr Reeder, yelling at him to move, and waving his fists.
- [14] In a single motion with his right foot, Mr Halverson kicked Mr Reeder in the side of the head. As Mr Reeder was sitting and Mr Halverson standing, it was a direct kick with full force. Mr Halverson was wearing steel-toed boots.
- [15] Mr Reeder immediately slumped forward. The skin behind his ear turned black. His face and hands turned purple.
- [16] Mr Halverson continued to yell at the unresponsive Mr Reeder, angrily waving his arms. Multiple witnesses heard Mr Halverson say words to the effect that if Mr Reeder did not leave his panhandling spot, he would come back and hurt him again.
- [17] A bystander, Christopher Yarrow, stepped in. He said that he was worried that Mr Halverson would kick Mr Reeder again. Mr Yarrow said to Mr Halverson, "I think you killed him." After pacing back and forth several times, Mr Halverson walked back to his bicycle and pedalled away.
- [18] Although Mr Halverson left the scene, he did not seek to evade capture or flee the city.
- [19] He went to a liquor store. There he met an employee, whom he knew well. Mr Halverson said, "I think I killed Mattie. I booted him in the head."
- [20] Mr Halverson then went to the Stepping Stones Shelter a few blocks away. The police found him there and arrested him.
- [21] Although Mr Halverson initially denied any involvement in Mr Reeder's death, he soon admitted that he had kicked Mr Reeder in the head. The police report records that he was visibly upset when he talked about Mr Reeder: he described him as a friend with whom he regularly had shared drinks.
- [22] While in custody, Mr Halverson told police about another reason he had assaulted Mr Reeder. Mr Halverson had heard allegations that Mr Reeder had committed a sexual assault by touching the buttocks of a female complainant. Mr Halverson said that he felt strongly about this assault, and was very angry at Mr Reeder. Witnesses in the street community confirmed that Mr Halverson often spoke of punishing Mr Reeder for this alleged act. In the immediate aftermath of the assault, a witness recounts him saying words to the effect of "He

[Reeder] shouldn't do that to women. I punched him out. The Ambulance is coming. That's for him."

- [23] I return to the scene in front of the pharmacy. The unresponsive Mr Reeder was rushed by ambulance to Kootenay Lake Hospital, and then transported via air ambulance to Kelowna General Hospital. At no point did he show any signs of brain activity. Mr Reeder was pronounced dead in Kelowna 30 hours after the fatal kick.
- [24] An autopsy was performed. Dr Jason Doyle prepared a report. The doctor concluded that the cause of Mr Reeder's death was a sub-arachnoid hemorrhage secondary to blunt force trauma to the head. The kick twisted Mr Reeder's neck suddenly. This movement tore the artery at the base of the brain or in the upper spine, causing a hemorrhage. Mr Reeder was under the influence of ethanol at the time of the injury, increasing the risk of a hemorrhage.
- [25] One positive note arises from this sad story. Mr Reeder's organs were transplanted to five needy recipients whose lives were saved or improved by Mr Reeder's loss.

III. Circumstances of the accused

- [26] Mr Halverson is now 55 years old. He was 53 at the time of the offense.
- [27] A pre-sentence report dated December 13, 2019 provides a detailed description of Mr Halverson's current circumstances and history.
- [28] Although he at first had a relatively stable childhood, the breakup of his parents' marriage at age 14 left him with little guidance or discipline. He left home at age 17. He has struggled with alcohol since his teen years. He has had two significant domestic relationships. Both relationships involved alcohol abuse and domestic violence.
- [29] Mr Halverson has a long criminal record. He has 43 convictions in all. Many of his convictions were for violent offences: two for uttering threats; six for simple assault; two for assault causing bodily harm; and one for assault with a weapon. He has 17 convictions for breaches of court orders. These breaches include multiple failures to attend counselling and to abstain from alcohol.
- [30] His last conviction for uttering threats was in July 2010: he received three months' incarceration and one year probation.
- [31] His most recent offence involving physical violence dates back to 2006: a mitigating factor in the sentencing exercise. That said, that offence was particularly brutal. Mr Halverson and a friend severely beat a lone male victim. Mr Halverson held down the victim so that his friend could stab him with a knife. They attempted to break the victim's legs against a tree. During the assault, Mr Halverson kicked the victim in the face and head. The violence was in part fueled by alcohol consumption.

- [32] Most of Mr Halverson's offences are related to alcohol. Mr Halverson partly recognizes this problem. That said, as noted in the pre-sentence report he has tended to minimize the seriousness of his alcohol abuse and aggression and the effect they have had on his victims and the community at large.
- [33] In his adult life, he has generally been able to remain employed, primarily in the forestry sector. For several years leading up to the incident, however, he has been on government assistance, supplemented by odd jobs. He has blamed his difficulties in the last few years primarily on the external factor of the downturn in the forestry sector, rather than on his own drinking.
- [34] Mr Halverson has successfully completed residential treatment for alcoholism, in 1995, 2011, and 2014. Each time, however, he has slipped back to drinking. He and family members confirm that his longest sober stint was seven months, after completing his residential treatment in 2014.
- [35] Past programmes and counsellors have recommended that Mr Halverson make the effort to obtain his high school diploma and to take further counselling courses to address his problems with alcohol and anger management. Although he has in past recognized these problems and stated a desire to address them, he has not done so. Mr Reeder's death clearly evidences that Mr Halverson has not fully come to grips with the harm these unresolved conditions have caused and the risks they will continue to pose to his family and society unless he confronts them in a profound, sustained, and permanent way.
- [36] Soon after his arrest, he expressed remorse at killing Mr Reeder. He has written apology letters to the family, and, as I will discuss in a moment, participated with Mr Reeder's family's request for a collaborative sentencing process. In Court, at the end of the sentencing hearing, he wept and expressed sincere remorse.
- [37] That said, the pre-sentence report notes that he still minimizes the seriousness of his offence. When he was asked by the probation officer in the course of preparing the pre-sentence report of the intended and anticipated effect of his kick, he said that he expected Mr Reeder to run away when he saw Mr Halverson coming, out of fear. He attributes Mr Reeder's death as much to bad luck and medical happenstance as to his own violence. In his statement to the Court, Mr Halverson confirmed that he did intend to hurt Mr Reeder, to move him from Mr Halverson's self-appointed panhandling location. He also expressed his own anxiety at being too old to be in jail. These statements betray lingering elements of justification, bad luck, and self-pity.

IV. time in custody

- [38] Mr Halverson has served 780 days in custody since his arrest. This translates as a credit of 1170 days time served, on the principles set out in *R. v. Summers*, 2014 SCC 26.

V. the principles of sentencing

- [39] In *R. v. Schirmer*, 2019 BCSC 1404, Justice Ehrcke sets out general principles of sentencing:
- [24] The principles of sentencing have evolved in Canadian common law and are now largely codified in Part XXIII of the Criminal Code. Section 718 of the Criminal Code provides that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society. As set out in s. 718, the objectives of sentencing include the denunciation of unlawful conduct, deterrence of the offender and others from committing further offences, separation of the offender from society where necessary, rehabilitation of the offender, reparation for harm done, and promotion of a sense of responsibility in the offender, including acknowledgment of the harm done.
- [25] Section 718.1 articulates the most basic principle of sentencing, namely that the sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [26] Section 718.2 sets out a number of specific principles: A sentence should be similar to sentences imposed on similar offenders for similar offences in similar circumstances. An offender should not be deprived of liberty, if a less-restrictive sanction is appropriate. All reasonable sanctions, other than imprisonment, should be considered if they are reasonable and consistent with the harm done, with particular attention to the circumstances of aboriginal offenders. Where consecutive sentences are imposed, the total sentence should not be unduly long or harsh. A sentence should be increased or reduced to take account of any aggravating or mitigating circumstances.
- [40] In the recent case of *R. v. Badhesa*, 2019 BCCA 70 our Court of Appeal set out the principles to be applied in sentencing for the offence of manslaughter, in the particular context where the offender has troubles with alcohol. At paragraphs 24-26 the Court said:
- [24] The offence of manslaughter encompasses conduct which has caused the death of another person and falls short of intentional killing. It covers a wide range of cases extending from "near accident" to "near murder" and different degrees of moral culpability attach along a continuum within that spectrum. A sentencing judge assesses moral culpability for manslaughter by considering the offender's mental state in the context of the unlawful act itself and the offender's personal characteristics, blending and balancing all in combination. Factors that weigh in the balance include intentional risk-taking, the harm caused, the normative character of the offender's conduct, the degree of deliberation involved, the existence of provocation and the element of chance involved in the resulting death: *R. v. Plowman*, 2015 BCCA 423 at para. 40, citing *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 80; *R. v. Stone*, [1999] 2 S.C.R. 290 at para. 247.
- [25] The purpose of the balancing exercise is to ensure that the sentence fits the degree of the offender's moral fault for the harm done by the unlawful act underlying the offence of manslaughter. The measure of the fitness of a sentence lies in the principle of proportionality: a sentence must be proportionate to the seriousness of the offence and the moral blameworthiness of the offender. If a sentence for manslaughter passes this

fundamental test it is a fit sentence. If it does not, it is unfit: Stone at para. 233; R. v. LaBerge, 1995 ABCA 196 at paras. 6-11; R. v. Draper, 2010 MBCA 35 at para. 7.

- [26] Sentences imposed for manslaughter range from a suspended sentence to life imprisonment. Given that wide range, the judge must carefully determine the degree of an individual offender's moral culpability and craft a sentence that accounts adequately for the unique constellation of relevant factors present in a case. The task is complex and sometimes factors unrelated to where the unlawful act falls on the "near accident" to "near murder" spectrum nonetheless bear on the degree of the offender's moral culpability. Where an offender falls on the spectrum of individual moral culpability is a question of fact. Absent palpable and overriding error, that finding is entitled to deference: Plowman at paras. 39, 44-45, citing R. v. Richer, 2005 BCCA 3; R. v. Engebretsen, 2016 BCCA 182 at paras. 9-12, 17.

VI. positions of the crown and the defence

- [41] The Crown argues that the deliberate violence of the kick indicates a high degree of moral culpability. Based largely on that factor, and the offender's significant criminal record and history of violence, the Crown submits that an appropriate sentence is between four and six years. The Crown urges the Court to impose a sentence that keeps Mr Halverson in a federal penitentiary for at least two more years, after taking into account credit for time served. The Crown submits that such a sentence will appropriately realize the sentencing principles of deterrence and denunciation, while providing Mr Halverson with the structured environment and programming available in the federal penitentiary system to better support his rehabilitation and reintegration into society.
- [42] Counsel for Mr Halverson submits that an appropriate sentence is 1 to 2 years. With the credit for time served, he should be released now or soon, with probationary terms. He notes that the last criminal conviction for a physically violent act occurred in 2006. He argues that the deterrence will not realistically influence a person suffering from alcoholism. He points to Mr Halverson's letters of apology and genuine remorse. Finally, he notes that Mr Halverson has a near-perfect behaviour record while in custody.

VII. victim impact statements

- [43] The mother, father, and brother of Mr Reeder submitted victim impact statements. While they bereave the loss of their son, they do not focus on vengeance or anger. Instead, they express a very humane desire that Mr Halverson receive the assistance he needs, towards rehabilitation and ultimate reintegration in society. At the same time, the family has stated that they wish to ensure that Mr Halverson never does anything like this again.

- [44] Mr Reeder's family went one step further, and sought the assistance of the Collaborative Sentencing Project, in order to provide brief submissions on an appropriate sentence for Mr Halverson. Part of the recommended process for collaborative sentencing is the participation of the offender. The Court recognizes that, consistent with his remorse, Mr Halverson willingly participated in the process via videoconferencing this April.
- [45] The main stated goal of the family in the sentencing recommendations was for Mr Halverson to receive the necessary rehabilitation programming that he has in past neither received nor sustained. Those rehabilitation programmes would focus on alcohol abuse, anger management, and impulse control, as well as education and employment skills. They agree with the Crown's position that the type of rehabilitation programs that would be in Mr Halverson's best long-term interests are found in the federal correctional facilities. They request that following his custodial sentence Mr Halverson be given assistance to find transitional housing, and receive ongoing assistance in the form of an Alcoholics Anonymous sponsor, community workers, and others, to help him stay away from alcohol and crime. The family has laudably offered to engage in further restorative justice work with Mr Halverson during and after his custody if he so wishes.

VIII. discussion and decision

- [46] I will start by addressing Mr Halverson's primary argument: that the kicking death stems significantly from Mr Halverson's alcohol abuse. In *R. v. Badhesa*, the Court of Appeal addressed this issue directly:
- [39] Intoxication by alcohol or drugs often figures prominently in manslaughter cases. While relevant to moral culpability, self-induced intoxication that leads to violence is typically the product of intentional risk-taking, which conduct is itself dangerous, irresponsible and blameworthy. In such circumstances, the offender is held fully accountable for his or her condition and principles of deterrence and denunciation are paramount in the determination of a fit sentence. This is because the offending conduct encroaches on our society's basic code of values and warrants condemnation and punishment: *Green* at paras. 16, 19, 23.
- [47] The Court concluded, however, that where mental illness or another cognitive disability affects the offender's decision-making capacity with respect to both the decision to drink and to commit the violence, it may serve as a mitigating factor. The Court states:
- [40] However, an offender's volitional and decision-making capacity in connection with self-induced intoxication and related violence may stem, at least in part, from mental illness or other cognitive disability. Depending on the circumstances, both the mental illness and related self-induced intoxication may reduce the offender's moral culpability. The criminal law views individuals as autonomous and rational beings and seeks to impose criminal liability solely on those who are responsible for the state they were in when an offence is committed: *R. v. Bouchard-Lebrun*, 2011 SCC 58 at paras. 48, 68. Similar concerns animate

the determination of a fit sentence: *R. v. Friesen*, 2016 MBCA 50 at para. 18. Impaired reasoning, delusional disorders and other compromised mental conditions distinguish those afflicted from ordinary, fully accountable offenders for sentencing purposes: *R. v. Ayorech*, 2012 ABCA 82 at para. 12. Where an offender is found to be criminally responsible, but suffering from a serious mental illness or disability, a more lenient disposition than would otherwise be called for may well be appropriate to reflect a diminished level of criminal responsibility .

- [42] When mental illness causes or contributes to the commission of an offence, it is a mitigating factor and a sentence may be reduced because the offender's moral culpability is attenuated. In these circumstances, general deterrence is a less weighty consideration because a mentally ill offender is not an appropriate medium for making an example to others: *R. v. Belcourt*, 2010 ABCA 319 at para. 8. Nor does specific deterrence or severe punishment play a significant role in the determination of a fit sentence. The former is meaningless when an offender is out of touch with reality and the latter may be disproportionate to the offender's degree of responsibility: *R. v. Batisse*, 2009 ONCA 114 at para. 38.
- [43] Cases involving mental illness and intoxication in combination are, of course, intensely fact-driven. Detailed and specific medical evidence is essential to a proper understanding of their relationship in a particular case, if any, as well as their impact on the offender's moral culpability. Generalizations are insufficient: *Friesen* at para. 25. In our view, insofar as possible, taking into account all of the relevant evidence, a sentencing judge should strive to determine the extent to which an offender's mental illness contributed to the offending conduct, including any contribution to his or her self-induced intoxication: *R. v. Ellis*, 2013 ONCA 739 at para. 116; *Friesen* at paras. 22-32.
- [48] The present case lacks the "detailed and specific medical evidence" and formal diagnosis of a mental illness that would allow this Court to place weight on this factor as a mitigating circumstance. The most that can be said is that Mr Halverson has struggled with alcohol, and his life style has ranged from sobriety to heavy drinking. Mr Halverson himself admits that he was not under the influence of alcohol when he decided to kick Mr Reeder. He advised the police and others that he intended to hurt Mr Reeder, and it appears that this intention was pre-meditated. This represents a conscious and unclouded decision to inflict violence that falls far short of the scenario envisioned in *Badhesa*, where a mental illness significantly diminished the offender's ability to exercise free will and to choose his actions.
- [49] I turn to the cases cited by the Crown, as well as other cases in the jurisprudence of manslaughter.
- [50] The Crown starts with two Court of Appeal cases that are frequently cited in manslaughter sentencing decisions. In *R. v. Gillies* (1998) 107 BCAC 157 at paras 11-12, the Court noted that while the Criminal Code prescribes a range for manslaughter running from suspended sentence to life, the typical range is 4 to 6 years. In *R. v. Richter*, 2005 BCCA 3 at paras 33-34, the Court indicated that those ranges were merely guidelines or suggestions, and that a

court should focus on the principles of sentencing set forth in the Criminal Code, as well as the circumstances of the offense and the offender. Ultimately, sentencing is an individualized process: the sentence must be one that is appropriate for this particular offence and this particular offender.

- [51] In *R. v. Badhesa*, the Court of Appeal provides further guidance with respect to the appropriate sentencing range for manslaughter:
- [49] In *Green*, this Court stated that most sentences for manslaughter fall within the period of four to 15 years' imprisonment. A sentence below or above that range is only imposed in rare cases involving special circumstances: *Green* at para. 10. In *R. v. Ispanovic*, 2008 BCCA 270, this Court reduced an effective eight year sentence for manslaughter to six years in circumstances involving a heavily intoxicated elderly offender who shot and killed an acquaintance. In *R. v. Johnson*, 2017 BCSC 1240, Justice Donegan sentenced a young aboriginal offender to four years' imprisonment for manslaughter for stabbing a stranger to death while heavily intoxicated. In *R. v. McCulloch*, 2016 BCSC 2069, Justice Fisher sentenced a middle-aged offender with a lengthy criminal record and history of drug addiction to six years' imprisonment for manslaughter for stabbing an acquaintance to death.
- [52] *R. v. Plowman*, 2015 BCCA 423 concerned an unprovoked attack on the victim outside of a nightclub by the three offenders. In a brief attack, the victim was punched and kicked, and ultimately stabbed. It was never proven who stabbed the victim, and the manslaughter convictions were based upon the offenders' concerted assault that was objectively dangerous from the outset. Two of the offenders had significant criminal records, and received sentences of seven years' imprisonment. One of the offenders was younger, with a greater potential for rehabilitation: he received a sentence of five years' imprisonment.
- [53] In *R. v. Badhesa*, the offender was a peaceful man with no history of violence or criminality. During a severe bout of depression that prompted heavy drinking, he beat his mother to death and severely injured his wife after an argument. As in the present case, the offender pleaded guilty. Given the influence of the offender's mental illness on the violent attacks, the Court of Appeal reduced the sentence for manslaughter from ten years to seven years' imprisonment.
- [54] In *R. v. Smith*, 2019 BCSC 2084, the victim called police to have the accused removed from his home. The offender hit the victim on back of the head with an unknown object, causing him to fall to the ground and hit his head. He then kicked the victim in the ribcage as he lay on ground. As in the present case, the offender pleaded guilty. He had a criminal record that included convictions for assault, and breach offences, and a long history of alcohol and drug abuse. At the same time, gaps in his criminal record indicated that he was able to avoid trouble for periods of time. The offender in that case was Indigenous, and the court found his moral blameworthiness was significantly attenuated by a consideration of the applicable Gladue factors, leading it to impose a shorter sentence: 5.5 years, with 46.5 months after

credit.

- [55] Counsel for Mr Halverson suggests that three cases offer appropriate guides to the Court based on similar facts. In all three cases, a single punch to the victim caused him to fall, strike his head, and die.
- [56] While every case turns on its own facts, I find that those cases are readily distinguishable from the facts of the present case.
- [57] The first case is *R. v. Sharpe*, 2019 BCSC 1754. The victim was a mentally disturbed man who had flicked a lit cigarette at Mr Sharpe's girlfriend's chest, and had attacked her with racist and other slurs. Mr Sharpe punched the victim, who fell and died. The offender received a sentence of two years, followed by probation. The Court noted that the accused had a minimal and dated criminal record, which involved no violence. The offender had no substance abuse problems. He posed little risk to reoffend.
- [58] The second case is *R. v. Huth*, 2014 BCSC 570. Huth arose from a brief and sudden fight among young men in their early 20s after the bars closed in Victoria. A single punch caused the victim to strike his head and die. The Court imposed a sentence of two years less a day, with three years' probation. The offender had no criminal record. He was gainfully employed. The Court noted his many admirable personal qualities and prior service to his family and community. He had no violent history and no substance abuse problems. He was a first-time offender with excellent prospects for rehabilitation.
- [59] The third case is not a "one-punch" case but rather a manslaughter case arising from kicking: *R. v. Valente*, 2012 ABQB 151. Mr Halverson's counsel argues that the Valente crime circumstances were more acute than in the present case. In what the Court described as "despicable," Mr Valente and another person attacked the victim without provocation. Despite the seriousness of the attack, Mr Halverson's counsel notes that Mr Valente only received four years' imprisonment, which after time served, translated to 46 months of federal incarceration: within the range of what the Crown presently seeks. As mitigating factors influencing the court, Mr Valente was a young first-time offender, with the active support of family members towards rehabilitation, and was productively employed.
- [60] Against this jurisprudential background, I will consider the aggravating and mitigating factors in arriving at a just sentence.
- [61] First, mitigating factors. Mr Halverson has expressed genuine remorse to the family and the Court. He has been a model prisoner in custody. Finally, he should be commended for ultimately admitting what he did and pleading guilty to these charges, thereby avoiding the need for a trial.
- [62] I turn to the aggravating circumstances, and in so doing, address the cases raised by Mr Halverson in suggesting a shorter sentence.

- [63] The one-punch manslaughter cases offer some guidance. But a punch thrown in a spontaneous or near-spontaneous fistfight differs considerably in impetus and effect from the present circumstances. In contrast to a punch, a hard kick with a steel-toed boot to the head of a person sitting on the ground will almost certainly inflict grievous bodily injury, particularly to the face, eyes, or brain. This would be or should be clear to anyone. The present circumstance is much closer to an assault with a weapon than to a single punch.
- [64] Nor was the attack spontaneous or provoked, as is typical in the "one-punch" case law. The violence was to some extent premeditated. While biking past, Mr Halverson made a clear decision to turn and stop and park his bike and walk over and attack Mr Reeder. Mr Halverson admits that he intended to hurt Mr Reeder. They had fought earlier that day. Mr Halverson stated before and after the assault his intention to punish Mr Reeder with respect to the sexual assault allegations. Given his aggressive and angry demeanour, had Mr Yarrow not intervened, Mr Halverson may well have continued to kick Mr Reeder to teach him a lesson for sitting in his self-anointed panhandling spot.
- [65] The attack was in no reasonable way provoked. Mr Reeder was peacefully sitting on the ground. He was particularly vulnerable to the attack and helpless to defend himself.
- [66] In all, I agree with the Crown that the circumstances of the offence indicate the high moral blameworthiness of Mr Halverson in causing the death of Mr Reeder. This weighs heavily in considering s.718.1 of the Criminal Code.
- [67] Mr Halverson's lengthy and violent criminal record is another significant aggravating factor. His past convictions and incarceration have not given him sufficient insight that he must address his problems with alcoholism, anger management, and violence. I agree that a significant custodial term is necessary to denounce and deter Mr Halverson's ready resort to grievous and self-righteous violence. It is also necessary to separate Mr Halverson from society while he still suffers from unresolved problems with anger, violence, and alcohol. Without resolution of these problems, there is a significant risk that he will re-offend.
- [68] This observation can also be cast in a more optimistic light. A longer sentence will also assist in the necessary rehabilitation efforts for Mr Halverson. He has been unable to sustain or benefit from programmes in past while in society on his own without active assistance and supervision. Programmes aimed at education, anger management, and alcohol control will be more effective in custody, where past programmes have failed. The mandatory sobriety resulting from custody will also assist in these efforts.
- [69] Under s. 718.2(e) of the Code, the Court must consider whether lesser penalties would be appropriate. For the reasons listed above, they would not be. Further incarceration is necessary and proportionate to the serious crime that robbed Mr Reeder of his life, and robbed Mr Reeder's family of a son, brother, and father.

- [70] I agree with the Crown that the seriousness and circumstances of the offence and Mr Halverson's own circumstances, indicate an appropriate range of 4 to 6 years, in contrast to the "one-punch" cases suggested by the defence.
- [71] Mr Halverson, would you please stand.
- [72] Given all of the circumstances of the offence, and your own circumstances, the Court finds that an appropriate sentence, apart from credit for pre-sentence custody, would have been 5 years and 6 months.
- [73] As I have already explained, you are entitled to credit of a total of 1170 days representing the time that you have already spent in custody based on this offense.
- [74] Deducting that credit, the appropriate remaining and actual sentence the Court imposes on you is 2 years, 2 months, and 3 weeks.
- [75] The Crown also seeks two ancillary orders. They are:
- a) DNA order: an order, pursuant to s.487.05 of the Code, for the taking from the offender of the number of samples of bodily substances reasonably required for the purpose of forensic DNA analysis;
 - b) firearms prohibition: an order, pursuant to s.109(1)(a) and (b), that Mr Halverson be prohibited from possessing any firearm other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition, or explosive substance for 10 years, and an order, pursuant to s.109(2)(b), that Mr Halverson be prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- [76] Mr Halverson's counsel agrees that these are appropriately ordered. Given the violence of the offence, and Mr Halverson's history of violence, they are appropriately ordered.
- [77] Given the tenor of the Victim Impact Statements, and Mr Halverson's lack of assets and recent employment, there will be no Victim Fine Surcharge.

"Crerar, J"

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