
CANADA / JUDGMENT

R. v. Holt

2022 BCSC 2364

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 2364 R. v. Holt

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Holt,

2022 BCSC 2364

Date: 20220728

Docket: 31110-2

Registry: Vancouver

Regina

v.

Brian Roger Holt

Before: The Honourable Madam Justice Ker

Oral Reasons for Sentence

Counsel for the Crown:

B. McCabe

K. Gallo

Counsel for the Accused:

J. Heller

Place and Date of Hearing:

Vancouver, B.C.

June 23, 2022

July 22, 2022

Place and Date of Judgment:

Vancouver, B.C.

July 28, 2022

- [1] These Reasons for Sentence were delivered as oral reasons. They have since been edited for distribution.

Introduction

- [2] Brian Roger Holt is before the Court for sentencing following his guilty plea to one count of second degree murder contrary to s. 235(1) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Mr. Holt entered his guilty plea on June 23, 2022. The charge relates to the murder of his former employer, John Leslie McIver. The offence occurred in the early morning of June 26, 2019, inside Mr. McIver's business premises, McIver Appliances.
- [3] Pursuant to s. 235(1) of the Code, the offence of second degree murder carries a mandatory sentence of life imprisonment with no eligibility for parole for at least 10 years. The sole issue before the Court on this sentencing is the determination of the appropriate period of parole ineligibility.
- [4] To be clear, Mr. Holt will be subject to a life sentence - that means supervision for the rest of his life. The decision today on parole ineligibility simply sets the timeframe for when he can apply for parole. Whether he obtains parole is a decision for the Parole Board of Canada to make when they assess suitability for release: *R. v. Danjou*, 2020 BCSC 1820 at para. 10; *R. v. Meers*, 2018 BCSC 465 at para. 12.
- [5] This point was recently confirmed by the Supreme Court of Canada in *R. v. Bissonnette*, 2022 SCC 23 where Chief Justice Wagner writing for a unanimous Court, observed at para. 41:

There is no guarantee that offenders will be granted parole when their ineligibility period expires. Offenders must prove to the Board that they no longer represent a danger to society and that it is therefore no longer necessary to keep them in custody. Parole is a statutory privilege and not a right.

(Citations omitted.)

Position of the Crown and the Defence

- [6] At this sentencing hearing, the Crown and the defence presented a joint submission on sentence. They both recommended the same sentence be imposed in the circumstances: the automatic life sentence with the parole ineligibility period set at the statutory minimum of 10 years' imprisonment as provided by s. 745(c) of the Code.

- [7] The nature of the offence and the surrounding circumstances of its commission are horrifying. The deceased was a 78-year-old businessman. He started McIver's Appliances approximately 55 years ago, a very successful family business that was widely regarded as providing sound and reliable service to thousands of loyal customers over the years.
- [8] Mr. Holt harboured a grievance over how he had been treated by Mr. McIver when employed by him between 2010 and 2015. Mr. Holt's employment ended abruptly on April 1, 2015, after a heated argument with Mr. McIver.
- [9] About four to six weeks before Mr. McIver was killed, out of the blue, Mr. Holt attended at the McIver family home. Mr. Holt advised Mr. McIver that he was managing an apartment building and discussed a deal for appliances for that building. He provided a telephone number and an address for the building. Mr. McIver passed this information along to his daughter, Karen Andrews, whose follow-up inquiries revealed that the address and phone number provided by Mr. Holt were not valid.
- [10] In the early morning of June 26, 2019, Mr. Holt went to McIver Appliances and met with Mr. McIver, who invited him inside the business premises. Mr. Holt remained on the premises for about 30 minutes. During the course of this meeting, Mr. Holt and Mr. McIver had some sort of argument which turned physical. Mr. Holt became angry, reached for a metal hand tool, and struck Mr. McIver in the head. He then struck Mr. McIver in the head with an appliance motor that was located on a nearby workbench. He proceeded to strangle Mr. McIver with an electrical cord.
- [11] Mr. McIver's daughter discovered her father's lifeless body and the grisly murder scene when she arrived at work a little later that same morning.
- [12] The murder of Mr. McIver has had profound and devastating consequences for his entire family and the large community of friends and customers that he made in his 55 years of running McIver's Appliances.
- [13] Mr. Holt's decision to take the life of his former employer must be met with a denunciatory sentence that represents "a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive law": *R. v. C.A.M.*, [1996] 1 S.C.R. 500 at para. 81, 1996 CanLII 230 (S.C.C.); *R. v. Atwal*, 2006 BCCA 493 at para. 21.

The Legal Framework

- [14] Pursuant to ss. 745(c) and 745.4 of the Code, where an offender is convicted of second degree murder, the court shall set the period of parole ineligibility between 10 and 25 years. The legal framework is not in dispute in this case. And, as agreed by counsel, Mr. Holt falls at the lower end of the spectrum of parole ineligibility.

[15] In the leading case of *R. v. Shropshire*, [1995] 4 S.C.R. 227, 1995 CanLII 47, Justice Iacobucci, writing for the Court, held at para. 18:

The determination under s. 744 [now s. 745.4] is thus a very fact-sensitive process. The factors to be considered in fixing an extended period of parole ineligibility are:

- (1) the character of the offender;
- (2) the nature of the offence; and
- (3) the circumstances surrounding the commission of the offence;

all bearing in mind the discretionary power conferred on the trial judge.

[Parenthesis added.]

[16] Parole ineligibility is part of the punishment and an important element of the sentencing in the context of an offence of second degree murder: *R. v. Bhandher*, 2010 BCSC 1812 at para. 3; *R. v. Reiersen*, 2007 BCSC 541 at para. 4; and *Bissonnette* at para. 58.

[17] As noted above, s. 745.4 of the Code sets out the factors for consideration in determining whether to increase parole eligibility beyond 10 years. As Mr. Holt plead guilty, there was no trial and therefore no s. 745.2 jury recommendation to consider.

[18] The purpose and principles of sentencing outlined in ss. 718, 718.1, and 718.2 of the Code remain relevant in setting the period of parole ineligibility under s. 745.4. Thus, the factors to be taken into account when increasing parole ineligibility include denunciation, deterrence, and future dangerousness. Proportionality is always a consideration (*Reiersen* at para. 4; *Bissonnette* at paras. 50-53), as is the parity principle.

[19] Finally, the principle of retribution also informs the sentencing objectives in a case such as this one. Retribution is neither vengeance nor denunciation, and requires a sentence to "properly reflect the moral blameworthiness of the particular offender": *R. v. Dolman*, 2017 BCSC 2564 at para. 11, citing *R. v. Yliruusi*, 2011 BCSC 268 at para. 13, *aff'd* 2013 BCCA 496.

[20] Sentencing is a fact-sensitive process and each case is unique. However, as Justice Donald explained in *R. v. Cerra*, 2004 BCCA 594 at para. 17, the appropriate range of sentence should be assessed considering other similar sentencing decisions (i.e. the parity principle):

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.

- [21] After reviewing a number of authorities, Donald J.A. determined in *Cerra* at para. 26 that there appear to be two main "ranges" for parole ineligibility in second degree murder cases where parole is extended beyond the statutory minimum of 10 years.
- [22] The first elevated range is from 12 to 15 years and represents cases with some particularly aggravating feature.
- [23] The second, and more elevated range, is from 15 to 20 years. This latter range relates to cases with extremely aggravating facts or egregious circumstances, placing the offender at the highest order of moral culpability or dangerousness. Parole ineligibility periods beyond 20 years are usually reserved for exceptional cases.
- [24] Neither of the elevated ranges outlined in *Cerra* and confirmed in *R. v. Bennight*, 2012 BCCA 461 at para. 18, are engaged in this case.
- [25] Of course, the wide discretion granted to sentencing judges is informed by the case law and general ranges of sentences for particular offences. However, while courts must consider ranges, the jurisprudence from the Supreme Court of Canada is clear that "ranges" are guidelines, not hard and fast rules or "straitjackets": *R. v. Friesen* 2020 SCC 9 at paras. 37, 108. So long as the sentence imposed is in accordance with the principles and objectives of sentencing and is proportionate to the gravity of the offence and the degree of responsibility of the offender, a sentence outside the regular range is not necessarily unfit: *R. v. Nasogaluak*, 2010 SCC 6 at para. 44; *R. v. Lacasse*, 2015 SCC 64 at paras. 56-72; *Friesen* at paras. 37-38, and 108; and *R. v. Parranto*, 2021 SCC 46 at paras. 42-54, and 205.
- [26] It is important to reiterate that the judicial function in a case such as *Mr. Holt's* is one of sentencing and not of parole determination--upon expiry of the parole ineligibility period, it still remains for the parole authorities to determine the offender's suitability for release: *Danjou* at para. 10; *Bhandher* at para. 8; *Reierson* at para. 5; and *Bissonnette* at para. 41.
- [27] Another set of legal principles are also engaged in this sentencing--those that govern whether the sentencing judge should accede to a joint submission. In *R. v. Bacon*, 2020 BCSC 1377 at paras. 61-71, and *R. v. McKnight*, 2021 BCSC 2542, at paras. 21-29, I reviewed the principles that govern how joint submissions are dealt with by the courts.
- [28] As this is a joint submission, the principles enumerated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, establish the analytical framework that is applied in determining whether a sentencing judge should accede to a joint submission. A joint submission is when the Crown and defence agree to recommend a particular sentence to the judge in exchange for the accused waiving their right to a trial by entering a plea of guilty to an offence. Both sides carefully weigh the risks of taking the charges to trial, as well as a host of other factors, and determine that the certainty of resolution of a case is preferred. As Justice Moldaver, writing for the Court, noted in *Anthony-Cook* at para. 1, "[r]esolution discussions between Crown and defence counsel are not only commonplace in

the criminal justice system, they are essential" (emphasis added).

- [29] It is an accepted and entirely desirable practice for counsel to agree to a joint submission on sentence in exchange for a guilty plea. Agreements of this nature are vitally important to the well-being of our criminal justice system as well as our justice system at large. They bring certainty to the proceedings for both sides and ensure a conviction for the Crown. They eliminate the uncertainty and risk of proceeding to trial, including minimizing the stress and numerous costs associated with taking matters to trial.
- [30] Joint submissions also play a vital role in contributing to the smooth and efficient administration of justice. Guilty pleas on a joint submission assist in preserving the all too scarce resources of the justice system and thereby permit those resources to be deployed elsewhere to be used for other equally pressing matters: Anthony-Cook at paras. 1, 25, and 35-40. Indeed, as Moldaver J. noted in Anthony-Cook, "our justice system would be brought to its knees, and eventually collapse under its own weight" without joint submissions: at para. 40.
- [31] No doubt there may be some who wish that I would override the proposed joint submission and impose a harsher sentence in this case. While such wishes are understandable in the wake of this tragic offence and, to a degree, are informative of what a segment of the public perceives as "the right thing to do", they are not what informs how the propriety of joint submissions are assessed. Though judges are afforded considerable discretion when it comes to imposing sentences, such discretion is not unfettered. Exercising that discretion does not mean a judge is free to do whatever 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 the Code and the case law that interprets the provisions of the Code. Case law interpreting the governing sentencing principles provides a framework and guidance on how the principles must be considered when imposing a sentence in a criminal case.
- [32] Sentencing is a highly individualized and delicate balancing process that considers numerous competing principles, objectives, and factors, and is described by many jurists as one of the most difficult facets of the criminal law: R. v. Suter, 2018 SCC 34 at para. 4; Lacasse, at para. 1. In Parranto at para. 9, the majority of the Supreme Court of Canada reiterated that sentencing is "[m]ore of an art than a science, . . . [requiring] judges to consider and balance a multiplicity of factors".
- [33] And, in the context of sentencing in cases involving murder and parole ineligibility periods, the Supreme Court of Canada confirmed this direction by stating in Bissonnette at para. 49 that "[t]here is no mathematical formula for determining what constitutes a just and appropriate sentence". The Supreme Court of Canada has repeatedly described sentencing as a "delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community":

C.A.M. at para. 91; Bissonnette at para. 49.

- [34] When imposing a sentence in a criminal case, judges must exercise their discretion judicially. This means they must apply the governing principles set out by the Code and the case law, assess all the circumstances, weigh and balance a host of competing principles and objectives, as well as 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. 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 that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender": Code, s. 718.1; Nasogaluak at paras. 43-44. The rule of law requires nothing less than operating within the parameters of these principles and applying the case law guidelines.
- [35] Given the critical importance of joint submissions to the proper functioning of the justice system, counsel must have a high degree of confidence that they will be accepted: Anthony-Cook at para. 41. In light of the benefits of joint submissions and the need for certainty, a sentencing judge's ability to refuse to follow a joint submission is highly circumscribed.
- [36] In Anthony-Cook, the Supreme Court of Canada directed that sentencing judges should only depart from joint submissions where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. As Moldaver J. wrote for the Court:
- [34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. 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. This is an undeniably high threshold -- and for good reason, as I shall explain.
- [37] Here, the parties have jointly recommended a sentence for Mr. Holt -- that the statutory minimum period of 10 years' parole ineligibility be imposed. As explained in *R. v. Manca*, 2019 BCCA 280 at para. 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".

[Citations omitted.]

- [38] Thus, a sentencing judge cannot simply do what she wants or accede to public sentiment. She must operate within fairly circumscribed parameters. A joint submission--arrived at through negotiations between senior and responsible counsel who are thoroughly familiar with all the issues in the case and have considered the implications of the guilty plea and the impact of the sentencing, including its impact on the reputé 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.
- [39] With these principles firmly in mind, I turn to the analysis the jurisprudence mandates for determining the appropriate period of parole ineligibility to be imposed when sentencing an offender to a life sentence in the case of second degree murder.
- [40] Before addressing the character of the offender, I will turn first to consider the two statutory factors enumerated in s. 745.4 of the Code--the nature of the offence and the circumstances of its commission.

Nature of the Offence and the Circumstances of its Commission

- [41] The nature of the offence and the circumstances of its commission are outlined in detail in Exhibit 1, the agreed statement of facts, filed at the sentencing hearing and read into the record. My summary of the offence and the circumstances of its commission are derived largely from that document. I have attached as Appendix A to these reasons the full agreed statement of facts with some minor editing to remove transcript references.
- [42] In brief compass, by June 2019, Mr. Holt was experiencing significant financial difficulties and facing eviction from his apartment. He continued to harbour resentment towards Mr. McIver over a belief that he had not been properly paid.
- [43] In the early morning hours of June 26, 2019, Mr. Holt armed himself with an imitation Glock handgun. He walked from his apartment to the business premises of McIver Appliances.
- [44] When Mr. McIver arrived at his business, Mr. Holt went over to him. The two men went inside McIver's Appliances. Once inside, Mr. Holt confronted Mr. McIver about the money he felt he was owed from his years of employment. An argument ensued and it quickly turned physical. Mr. Holt picked up a window or door crank/handle and struck Mr. McIver multiple times in the back of the head. The fight continued, and according to Mr. Holt, Mr. McIver continued to argue with Mr. Holt, which only made Mr. Holt angrier. By this time, Mr. McIver was on the ground and Mr. Holt, brandishing the imitation handgun, continued to scream at Mr. McIver, demanding "Where's my money?"
- [45] Mr. Holt then picked up an appliance motor from a nearby workbench and then repeatedly struck Mr. McIver in the back of his head--somewhere between a dozen and three dozen times.

- [46] Mr. McIver was no doubt mortally wounded by the blows to his head. His breathing became shallow. Mr. Holt explained in his July 24, 2019 statement to Sergeant Dufresne, and again in court at the sentence hearing on July 22, 2022, that he felt he could not leave Mr. McIver to die, drowning in his own blood, and so Mr. Holt took a heavy-gauge cord, wrapped it around Mr. McIver's neck, stood on his back, and strangled Mr. McIver until he was no longer breathing.
- [47] Mr. Holt took Mr. McIver's cash and bank cards from his wallet and left the premises approximately 30 minutes after he had arrived. Mr. Holt tried, on two occasions, to withdraw money from Mr. McIver's bank account from an ATM: once at a Scotiabank and once at a TD Bank. He was unsuccessful.
- [48] Mr. Holt was able to partially pay his landlady \$670 for his June rent. Mr. Holt disposed of his bloody clothes, his shoes, the window crank, and the imitation Glock handgun. This last item was recovered by the Vancouver Police Department on the riverbank where Mr. Holt said he threw it.
- [49] An autopsy report, prepared by Dr. Steven White, a forensic pathologist, outlined that Mr. McIver's death was caused by "multiple blunt force injuries including lacerations, contusions, and abrasions concentrated around the head. There were also numerous skull fractures, some of which were depressed, causing injury to the brain with associated bleeding."

Background and Circumstances of the Offender

- [50] Mr. Holt is now 39 years of age. He was 36 years of age when he killed Mr. McIver.
- [51] Mr. Holt has no criminal record. He has been gainfully employed for most of his adult life.
- [52] Mr. Holt was born in Vancouver. His family moved to Prince George and then to Ottawa. Mr. Holt's father is a self-trained engineer and was employed by BC Tel. Early in Mr. Holt's life, his family relocated to Ottawa as his father was working as part of a national commission dealing with fibre optics projects.
- [53] Mr. Holt recalled that his family moved back to British Columbia when he was six or seven years old and settled in the Lower Mainland.
- [54] Mr. Holt wanted to follow in his father's footsteps and pursue a career in sciences or engineering, as he had an aptitude for this type of work.
- [55] Regrettably, Mr. Holt began to binge drink when he was still a teenager. He has struggled with alcohol use and that struggle continued during his years of work with McIver Appliances. However, Mr. Holt managed to keep his difficulty with alcohol largely in check. He is, and will be, recovering from his alcohol use disorder for the rest of his life.

- [56] Sometime after leaving McIver Appliances, Mr. Holt enrolled in the British Columbia Institute of Technology's ("BCIT") electrician apprenticeship program. At the time of his arrest, Mr. Holt was in his third year of that four-year program.
- [57] Counsel for Mr. Holt explained that part of the grievance, or building resentment, that Mr. Holt developed towards Mr. McIver stemmed from Mr. McIver minimizing Mr. Holt's difficulties with alcohol. Mr. Holt was struggling to keep his problematic alcohol use under control and Mr. McIver would give him, as part of his bonuses, gift certificates to the liquor store or take him to a bar.
- [58] In June 2019, Mr. Holt conflated his escalating financial difficulties and his perceived grievance with Mr. McIver, with a belief that he had been underpaid. Mr. Holt is keenly aware that he should not have done what he did in the circumstances and is extremely remorseful for what he has done.
- [59] Unfortunately, with the onset of COVID-19 in April 2020, Mr. Holt, who has been in custody since July 23, 2019, has been unable to access any Alcoholics Anonymous programming or to attend chapel since April 2020. I have no doubt, however, that he will take whatever counselling, treatment, or educational programs that are recommended by the Correctional Services of Canada authorities while serving his sentence.

Victim Impact Statements

- [60] Pursuant to s. 722 of the Code, I have taken into account the 10 victim impact statements that were filed at the sentencing. Collectively, the statements describe the devastating harm done to, and the catastrophic loss sustained by, Mr. McIver's family, friends, customers, and community as a result of his death. They too are victims as defined in s. 2 of the Code.
- [61] I have read all of the victim impact statements. They are profoundly moving and emotional. The despair and grief, along with fear of Mr. Holt, as expressed in them is palpable.
- [62] Leslie McIver (Mr. McIver's widow), Trista McIver (Mr. McIver's daughter), Karen Andrews (Mr. McIver's daughter), and John Andrews (Mr. McIver's son-in-law), all read their victim impact statements in Court. All were courageous in their presentations and further confirmed the immense loss, helplessness, and emptiness that has settled upon the McIver family since this offence.
- [63] All 10 victim impact statements are eloquent letters that speak both to the joy that Mr. McIver brought to the lives of his family, friends, and customers, and the unfathomable grief and emptiness of the shattered lives they now experience in light of his senseless and brutal death.
- [64] As a result of Mr. McIver's murder, his daughter, Karen Andrews, who worked with her father for 35 years, had to go through the painful and scarring experience of closing down the family business.

[65] Tyler Andrews is the grandson of Mr. McIver and the son of Karen and John Andrews. His grandfather's work ethic inspired him to get a business degree and continues to inspire him as he works towards obtaining his CPA. In describing the emotional impact his grandfather's murder has had upon him, Tyler wrote as follows:

What once was a business that I was so proud of, I rarely find myself speaking of as it only reminds me of the horrors that we have endured. What once was a place of family, love, and fond memories of helping my grandfather and mother in the summers, has become the place that my grandfather took his final breath. Not only did Brian take away our family business at a financial and physical level, but he has clouded every loving memory that I have of it. There is not a single memory of McIver's appliances that does not lead back to the murder of my grandfather.

[66] It is extremely difficult to adequately capture in words the enormity of the tragedy and the far-reaching consequences wrought by Mr. McIver's senseless and needless death. In *R. v. Hunter*, 2016 BCSC 796, Justice Holmes (as she then was) had this observation at para. 43 about the effects of the offence of murder:

Murder has powerful and far-reaching effects. Family and friends of the deceased carry the heaviest loads of grief, loss, and regret. But others with no direct association to the deceased find their lives changed also. Members of the community wonder whether they too, or those they care about, may be at risk. The quality of life in the community inevitably declines.

[67] Those observations are equally apposite here.

[68] Mr. Andrews' comments quoted above, captures the essence of the tragedy of this case.

[69] The victim impact statements profoundly establish just how many lives have been shattered by the senseless death of Mr. McIver. Much like the situation in *R. v. Nguyen*, 2014 BCSC 338, and *R. v. Poepl*, 2021 BCSC 725, the impact of this offence on the McIver and Andrews families was sudden, and continues to be tragic, far-reaching, and unending. The family is a tightly-knit one. At one moment living and working in relatively close proximity, and the next - as a result of this brutal beating - they are left with a gaping void at the centre of their universe.

[70] Karen Andrews' comments in her victim impact statement establish that her father was the family's compass and lighthouse. As a result of Mr. Holt's actions, a wife has lost a cherished husband, children have lost a beloved father, and grandchildren have lost an adored grandfather. The community of friends and family of Mr. McIver have been tragically affected. The extinguishment of the light from the family's "lighthouse" through Mr. McIver's death has sucked everyone he knew into a dark void of unending grief--a giant chasm of emptiness, fear, and sadness.

Positions of Counsel

[71] As noted earlier, the Crown and defence have jointly submitted that when considering the nature of the offence and the circumstances surrounding the commission of this murder, along with the background and character of Mr. Holt, the period of parole ineligibility should be set at the statutory minimum of 10 years.

[72] Counsel for the Crown relied on the following cases to support their position:

Case Name

Parole Ineligibility

R. v. Peers and Harding, 2006 BCSC 1971

12 years

R. v. Harding, 2012 BCCA 52

12 years

R. v. Shields, 2013 BCSC 1485

10 years

R. v. Meers, 2018 BCSC 465

10 years

R. v. Bona, 2021 BCSC 532

11 years

[73] Defence counsel relied on the following cases:

Case Name

Parole Ineligibility

R. v. Yliruusi, 2011 BCSC 268

10 years

R. v. Tan, 2011 BCSC 595

10 years

R. v. D.W.M., 2005 BCSC 1061

10 years

R. v. Oland, 2016 NBQB 43

10 years

[74] I have reviewed all the cases provided by both the Crown and the defence. They provide useful guidance in imposing a sentence that is comparable to those imposed on similar offenders in similar circumstances. At the end of the day, however, every case is, to some extent, unique, and the sentence I impose must be one that is a fit sentence for this particular offence and this particular offender.

Analysis

[75] I turn first to address the aggravating and mitigating circumstances.

Aggravating Circumstances

[76] The aggravating circumstances for this offence include the following:

- i. Mr. Holt committed this offence against his former employer in his employer's business premises. Mr. McIver's business premises was virtually a second home for him given his long hours spent there, which amounted to eight to 12 hours a day, six days a week. Mr. McIver invited Mr. Holt inside the premises on the morning he was killed. He was entitled to feel safe and secure inside his business, much the same way individuals are entitled to feel safe in the sanctity of their own home.
- ii. Mr. Holt used two tools or devices as weapons in the commission of this offence. He first beat Mr. McIver about the head with a window/door crank, and then used an appliance motor to continue his attack. Mr. Holt also used an imitation Glock handgun when he attended the business and demanded to be paid. He continued to wield the imitation handgun demanding money, even after Mr. McIver was lying wounded on the floor of the shop.
- iii. The killing of Mr. McIver was prolonged and brutal in nature. Mr. Holt repeatedly hit a 78-year-old man in the head with two different tools. Mr. Holt then completed the attack by strangling Mr. McIver.
- iv. Mr. Holt robbed Mr. McIver of the contents of his wallet and endeavoured to withdraw money from Mr. McIver's accounts after Mr. Holt had killed him.
- v. Finally, pursuant to s. 718.2(a)(iii.1) of the Code, the murder of Mr. McIver has severely impacted his family and friends, who are victims by virtue of s. 2 of the Code, particularly his immediate family, being his wife, his daughters, his son, and his grandchildren. The victim impact statements filed at the sentencing hearing amply demonstrate the breadth of emotional and psychological devastation that they have experienced and will continue to experience, likely for the rest of their lives.

Mitigating Circumstances

[77] The mitigating circumstances in this case include the following:

- i. Mr. Holt's otherwise unblemished past, as he has no criminal record.

ii. Before the commission of this offence, Mr. Holt had been gainfully employed and was in his third year of a four-year course of studies at BCIT, training to become an electrician.

iii. Mr. Holt's guilty plea, which is indicative of his acceptance of responsibility for his actions.

iv. Mr. Holt's sincere expression of remorse for his actions, both in his statement to Sgt. Dufresne and in court at the sentencing hearing. The expression of remorse is also indicative of his acceptance of responsibility, as well as his accountability for this offence and his rehabilitative potential.

[69] What I take from the facts as to the nature and circumstances of the offence is that Mr. Holt, due to his perceived grievance and brewing resentment over a pay issue, became enraged at Mr. McIver and his refusal to accede to Mr. Holt's demands for "his money".

[70] While the beating of Mr. McIver had an element of impulsive rage, it was not without foresight of the consequences of what he was doing. Mr. Holt's moral blameworthiness for this offence is high. He repeatedly beat his former employer, a man twice his age, with two different tools and then strangled him. There is a significant element of seemingly unresolved anger on the part of Mr. Holt which can be inferred from the circumstances surrounding the murder of Mr. McIver.

[71] As noted earlier, counsel have presented a joint submission as to the parole ineligibility period to be imposed in this case. Accordingly, the issue the Court must address is whether it ought to accede to the joint submission and impose the proposed sentence of life imprisonment without eligibility for parole for 10 years.

[72] In McKnight, I outlined the framework on how joint submissions are to be assessed at paras. 39-41:

As noted earlier in these reasons, the Supreme Court of Canada'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 the joint submission. The decision in Anthony-Cook establishes a high threshold for rejecting a joint submission, namely: whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. As summarized in Anthony-Cook at para. 34, determining that the high threshold for rejecting a joint submission has been met signifies the court is satisfied that the submission 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. . .

If a joint submission appears to be unduly lenient or unduly harsh, the sentencing judge is not obliged to accept it: Anthony-Cook at para. 25. However, as sentencing judges are only rarely permitted to depart from joint submissions, there is a corollary obligation upon counsel to ensure that they amply justify their positions on the facts of the case as presented in open court.

In light of the potentially contentious nature of a joint submission, at paras. 51-53 and 58-60 the decision in Anthony-Cook provides guidance for sentencing judges where the joint submission raises concern:

- i. Sentencing judges should approach the joint submission on an "as-is" basis," and the public interest test applies whether the judge is considering varying the proposed sentence or adding something to it: Anthony-Cook at para. 51;
- ii. Sentencing judges should apply the public interest test when they are considering 'jumping' or 'undercutting' a joint submission: Anthony-Cook at para. 52;
- iii. The greater the benefits obtained by the Crown, and the more concessions made by the accused, the more likely it is that the sentencing judge should accept the joint submission, even though it may appear unduly lenient: Anthony-Cook at para. 53;
- iv. If the sentencing judge is not satisfied with the sentence proposed, the judge should notify counsel of her concerns and invite further submissions, including the possibility of allowing the accused to withdraw their guilty plea: Anthony-Cook at para. 58;
- v. If the sentencing judge's concerns about the joint submission are not alleviated, the judge may allow the accused to apply to withdraw [their] guilty plea: Anthony-Cook at para. 59; and
- vi. Finally, sentencing judges should provide clear and cogent reasons for departing from the joint submission: Anthony-Cook at para. 60.

[73] Bearing those principles in mind, I note the following:

[74] First, I am satisfied that the authorities provided by counsel in support of the joint submission, which I have reviewed, delineate that the proposed period of parole ineligibility is properly within the accepted range of sentence for this type of offence.

[75] Second, and of critical importance here, is the fact that the joint submission as to sentence in this case clearly represents an agreement negotiated and reached by extremely competent, senior, and experienced counsel who have considered the effect of the joint submission from all perspectives, including the impact it will have on the reputation of the administration of justice: Russell at para. 4. Mr. Holt's guilty plea has saved several weeks of court time in this Court. This joint submission as to the sentence to be imposed represents a very carefully calibrated outcome in a case that seemingly had potential risks for both sides had the matter gone to trial.

- [76] Third, in my view, the recommended sentence appropriately balances the aggravating and mitigating factors in this case and reasonably seeks to ensure that the sentence imposed honours the overarching principle of sentencing: that the sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [77] Fourth, the proposed sentence properly reflects the principles of sentencing applicable to these offences with a primary emphasis on deterrence and denunciation as well as retribution which, I point out, is not vengeance. Rather, it is, as then Chief Justice Lamer noted in *C.A.M.* at para. 80:

the meaning of retribution is deserving of some clarification. The legitimacy of retribution as a principle of sentencing has often been questioned as a result of its unfortunate association with "vengeance" in common parlance. See, e.g., *R. v. Hinch and Salanski*, *supra*, at pp. 43-44; *R. v. Calder* (1956), 114 C.C.C. 155 (Man. C.A.), at p. 161. But it should be clear from my foregoing discussion that retribution bears little relation to vengeance, and I attribute much of the criticism of retribution as a principle to this confusion. As both academic and judicial commentators have noted, vengeance has no role to play in a civilized system of sentencing. See Ruby, *Sentencing*, *supra*, at p. 13. Vengeance, as I understand it, represents an uncalibrated act of harm upon another, frequently motivated by emotion and anger, as a reprisal for harm inflicted upon oneself by that person. Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more. As R. Cross has noted in *The English Sentencing System* (2nd ed. 1975), at p. 121: "The retributivist insists that the punishment must not be disproportionate to the offender's deserts."

[Emphasis in original.]

- [78] Finally, Mr. Holt's potential for rehabilitation appears to be realistic. He has tried very hard to resolve his longstanding alcohol addiction and appears to be genuinely committed to maintaining sobriety. He is an intelligent man with a desire to pursue further learning and development. He has the support of his family.
- [79] Applying the test articulated in *Anthony-Cook*, I am not of the view that to impose the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. Further, I do not find that the sentence put forward in this joint submission is so unhinged from the circumstances of the offence and the offender that its acceptance would lead a reasonable and informed person aware of all the relevant circumstances, including certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

[80] I am of the view that such a reasonable and informed person would regard the present proposed disposition as one that reflects a properly functioning justice system, founded on the fundamental principles of proof beyond a reasonable doubt and the presumption of innocence, that takes into account the tough decisions required to be made by both the Crown and counsel for the accused in difficult situations such as the present one. Indeed, as the Ontario Court of Appeal noted in *R. v. Fuller*, 2020 ONCA 115 at para. 16:

A joint position on sentence following a guilty plea should only be rejected in rare cases because such positions are "vitally important to the well-being of our criminal justice system, as well as our justice system at large": *R. v. Anthony-Cook*, 2016 SCC 43, [2016] 2 S.C.R. 204, at para. 25. Given that such positions "help to resolve the vast majority of criminal cases in Canada" and promote a "fair and efficient criminal justice system", deference to those positions should be the rule, not the exception: *R. v. Nixon*, 2011 SCC 34, [2011] 2 S.C.R. 566, at para. 47. The effective and efficient operation of our criminal justice system relies on litigants enjoying a high degree of confidence that joint positions will be accepted when guilty pleas are entered.

[81] The case at bar is a perfect example of that observation.

[82] Accordingly, I am satisfied that it is appropriate to accede to counsel's joint submission that a period of parole ineligibility in excess of 10 years is not required in this case. Of course, Mr. Holt, it will be for the Parole Board to determine whether or not you will be granted parole if you apply when the time comes. If you are not rehabilitated, you will not be granted parole, even at the end of the ineligibility period I am about to impose.

Conclusion

[83] Would you please stand, Mr. Holt.

[84] I sentence you to imprisonment for life without eligibility for parole until you have served at least 10 years, commencing on the date you were taken into custody.

[85] You can have a seat, Mr. Holt.

Ancillary Orders

[86] There are four ancillary orders to make in this case.

[87] Pursuant to s. 487.04 of the Code, murder is classified as a primary designated offence, meaning the DNA order is mandatory, not discretionary. Accordingly, pursuant to s. 487.051(1) of the Code, I make an order in Form 5.03 authorizing the taking of samples of bodily substances from you for the purposes of forensic analysis and registration in the DNA National Databank.

[88] As well, Mr. Holt, pursuant to s. 109(2)(a) of the Code, I order that you are prohibited from possessing any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition, and explosive substance for a period of 10 years following your release on parole. Pursuant to s. 109(2)(b) of the Code, you are prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.

[89] I also order that pursuant to s. 743.21 of the Code, during the custodial period of your sentence, you shall not communicate, directly or indirectly, with the following people:

- 1) Leslie McIver;
- 2) Trista McIver;
- 3) Declan McIver;
- 4) Karen Andrews;
- 5) Jonathan Andrews;
- 6) Tyler Andrews;
- 7) Jordan Andrews; and
- 8) Maureen McIver.

[90] Finally, pursuant to s. 743.2 of the Code, I order that a copy of these reasons for sentence, once finalized and published, as well as a copy of Exhibits 1-4 filed on the sentence hearing, be forwarded to the Correctional Services of Canada.

[91] Is there anything further, Mr. McCabe?

[92] CNSL B. McCABE: No, thank you very much, Madam Justice.

[93] THE COURT: Mr. Heller?

[94] CNSL J. HELLER: No.

[95] THE COURT: I wish to thank counsel for their professionalism and sensitivity in their conduct of this case and for their extremely thoughtful and helpful submissions. You have assisted the Court immeasurably in a very difficult case and you are to be commended for your efforts in that regard. Thank you very much.

[96] CNSL B. McCABE: Thank you, Madam Justice

[97] CNSL J. HELLER: Thank you, Madam Justice.

[98] THE COURT: Thank you. Good luck, Mr. Holt.

"Ker J."

APPENDIX A

Court File No. 31110

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

HER MAJESTY THE QUEEN

AGAINST

BRIAN ROGER HOLT

AGREED STATEMENT OF FACTS

1. Brian Holt worked at McIver Appliances from 2010 to 2015. During that time, Mr. Holt frequently socialized with the McIver family, including being invited to the family home for evens and out on Mr. McIver's boat.
2. On April 1, 2015, Mr. Holt's employment with McIver Appliances ended after a heated argument he had with Mr. McIver.
3. Approximately six weeks prior to Mr. McIver's murder, Mr. Holt visited the McIver family home. He and Mr. McIver went into the den and had a conversation. Later, Mr. McIver asked his daughter Karen Andrews to liaise with Mr. Holt who was apparently looking for appliances for the building he was living in. Despite being given a phone number and address that Mr. Holt had given her father, Ms. Andrews was unsuccessful in making contact with Mr. Holt.
4. In June 2019, Mr. Holt lived in an apartment on Logan Street. The building manager was Jennifer Moon. On June 4, 2019, Ms. Moon posted a "10 Day Notice to End Tenancy for Unpaid Rent or Utilities" on Mr. Holt's suite door for non-payment of June's rent. This was the third time Ms. Moon had commenced the eviction process against Mr. Holt for failure to pay rent. On June 25, 2019, Ms. Moon posted a "Suite Access Notification" on Mr. Holt's door, indicating that she would be entering his suite the next morning (June 26, 2019) at 9:30 am to conduct an inspection.
5. On June 26, 2019, at 5:33 am, Mr. Holt is captured on CCTV from the Husky Gas Station located at 709 SW Marine Drive (approximately 2 blocks from his residence) walking eastbound along West 70th Avenue. He was wearing all dark clothing with a ball cap, and had on his person sunglasses, gloves, and an imitation Glock handgun. From there, Mr. Holt's image is captured from multiple businesses making his way into the immediate vicinity of McIver Appliances located at 38 E. 69th Avenue, arriving at 5:54 am.
6. When Mr. McIver arrived in his truck at 6:35 am at the front of his business, Mr. Holt walked across the street to meet him. From there, the two men made their way into the business.

7. Once inside, Mr. Holt confronted Mr. McIver about money he felt he was owed from his years of employment. After Mr. McIver tried to escort Mr. Holt out of the business, the confrontation quickly turned physical (Mr. McIver was 78 years old at the time of his death), with Mr. Holt picking up a tool off the counter (described as a window or door crank/handle) and striking Mr. McIver multiple times in the back of the head. Mr. Holt described it as follows in his statement to Sgt. Dufresne: "I went to confront him about money he owed me and we got to arguing and it got physical. And I lost control and I sma-, I hit him a lot" and later in the same statement, "I lost, I snapped, I hit him". Continuing "... I hit him a lot. And we struggled. And there was a lotta blood coming. He was (makes gesture) a lotta of blood coming out of him. And we worked over in to the shop...".
8. As a result of the multiple blows Mr. Holt inflicted to Mr. McIver's head, Mr. McIver ended up on the ground. Mr. Holt continued to scream at him, demanding "where's my money where the fuck is my money?". At this point, Mr. Holt was using the imitation Glock handgun while screaming for his money. According to Mr. Holt, Mr. McIver "kept arguing with me which just kept making me angrier".
9. At that point, Mr. Holt picked up an appliance motor off a bench and repeatedly struck Mr. McIver in the back of his head: "Like I don't know if it was a dozen or two dozen, or three. Mr. McIver's breathing became shallow and Mr. Holt then took a heavy gauge cord, wrapped it around Mr. McIver's neck, stood on his back and strangled him until he was no longer breathing: "I stood on the back of him and... I don't know what it was, two or three minutes. It felt like it was 10, 20 minutes but I don't think it was like that."
10. Prior to leaving, Mr. Holt used a cloth to try and wipe up his bloody footprints. He also took Mr. McIver's cash and bank cards from his wallet. At some point, he also threw Mr. McIver's cell phone into the toilet. He then left out the back door of the business 32 minutes after he arrived carrying with him the bloody rag, imitation Glock handgun and tool he used to initially strike Mr. McIver.
11. Mr. Holt then travelled along the railroad tracks heading westbound before entering the Scotia Bank at 8191 Cambie Street and trying unsuccessfully to withdraw money from Mr. McIver's account. From there, he went home, changed clothes, and then left via the side entrance of his building (captured on another tenant's CCTV) and walked to the TD Bank where he once again attempted to withdraw money from Mr. McIver's account.
12. After returning from the bank, Mr. Holt met with Jennifer Moon and paid her \$670 in cash as partial payment for his June rent. He also discarded his bloody clothes, shoes, window crank and imitation handgun, some of which he threw into the Fraser River and other items went into a Port-A-John which he then poured Draino on. The replica Glock was later recovered by the VPD on the river bank where Mr. Holt said he threw it.

13. Mr. Holt was first arrested on July 3, 2019, and released the next day. On July 5, 2019, Mr. Holt told his father that he had gone for a walk and seen his ex-employer and that they had gotten into a 'tussle'. He further admitted he had an imitation handgun with him at the time. As a result of their son's admission [and with his knowledge and consent], Mr. Holt's parents spent the weekend trying, albeit unsuccessfully, to find him a lawyer.
14. An autopsy of Mr. McIver was done on July 4, 2019, by Forensic Pathologist Dr. Steven White. Dr. White opined that the cause of Mr. McIver's death was "multiple blunt force injuries, including lacerations, contusions, and abrasions, concentrated around the head. There were also numerous skull fractures, some of which were depressed, causing injury to the brain with associated bleeding." Further injuries inflicted on Mr. McIver by Mr. Holt are set out at pages 4 and 5 of the report, including fractures to Mr. McIver's C-7 and T-6 vertebrae, consistent with Mr. Holt's admission of standing on Mr. McIver's back while strangling him with a heavy gauge cord.
15. It should be noted that in stark contrast to Mr. McIver's extensive injuries which proved fatal, Mr. Holt was uninjured other than a cut to his right ring finger. As a result, Mr. Holt left behind blood drops which forensic analysis established as his.
16. On July 23, 2019, the VPD re-arrested Mr. Holt. The following day, Mr. Holt confessed to the killing of Jack McIver to Sgt. Revard Dufresne. He has been in custody ever since.

DATED the 22nd day of July, 2022, at Vancouver, British Columbia

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