

CANADA / JUDGMENT

R. v. Kam

2020 BCSC 1369

COURT

Supreme Court of British Columbia

DECIDED

28 July 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1369 R. v. Kam

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Kam,

2020 BCSC 1369

Date: 20200728

Docket: 27763

Registry: Vancouver

Regina

v.

Rocky Rambo Wei Nam Kam

Before: The Honourable Madam Justice Gerow

Oral Reasons for Sentence

Counsel for the Crown:

D.L. Mulligan

J.W. LaPorte

Counsel for the Accused:

G. Orris. Q.C.

F. Alamy

Place and Date of Hearing:

Vancouver, B.C.

July 22 & 23, 2020

Place and Date of Judgment:

Vancouver, B.C.

July 28, 2020

- [1] THE COURT: Rocky Rambo Wei Nam Kam has been found guilty of the first degree murder of Richard Jones and the first degree murder of Dianna Mah-Jones. The mandatory sentence for each count is life imprisonment without eligibility for parole for 25 years parole. The issue to be determined is whether the parole ineligibility periods should be consecutive or concurrent.
- [2] The Crown's position is that the mandatory sentence for first degree murder of life imprisonment with 25 years parole ineligibility should be imposed for each count to be served consecutively, pursuant to s. 745.51 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. The Crown is also seeking ancillary mandatory orders prohibiting Mr. Kam from possessing weapons and for the taking of his DNA.
- [3] The defence's position is that Mr. Kam should receive the mandatory sentence for first degree murder of life imprisonment without eligibility for parole until he has served 25 years for each count to be served concurrently.

Background Facts

- [4] On June 11, 2020, Mr. Kam was found guilty of the brutal murders of Mr. Jones and Ms. Mah-Jones. Mr. Kam forced his way into the Jones' residence on September 26, 2017, and attacked and killed Ms. Mah-Jones and Mr. Jones with a knife and a hatchet.
- [5] There was no evidence that Mr. Kam had any prior dealings with the victims, and there was no apparent motive for the murders. At trial Mr. Kam testified and admitted he had killed Mr. Jones and Ms. Mah-Jones, but said he did not know why he killed them.
- [6] The issues at trial were whether Mr. Kam had the requisite intent for murder and, if so, whether the murders were both planned and deliberate. I found that the Crown had proved beyond a reasonable doubt that Mr. Kam had the requisite intent for murder and the murders were both planned and deliberate.

Applicable Law

- [7] Mr. Kam has been found guilty of two counts of first degree murder. The mandatory sentence for first degree murder is imprisonment for life without eligibility for parole until the person has served 25 years of the sentence, pursuant to ss. 235 and 745 of the Code.

- [8] Section 745.51 of the Code allows for parole ineligibility periods for multiple murders to be served consecutively. The section reads:

745.51 (1) At the time of the sentencing under section 745 of an offender who is convicted of murder and who has already been convicted of one or more other murders, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission . . . decide that the periods without eligibility for parole for each murder conviction are to be served consecutively.

- [9] In determining the appropriate sentence, the general sentencing principles set out in ss. 718 to 718.2 of the Code have application. In *R. v. Boutilier*, 2017 SCC 64 at para. 54, the Supreme Court of Canada stated that the sentencing principles set out in those sections apply to every sentencing decision.
- [10] Sections 722 and 722.2 of the Code also have application. Those sections require that when determining the sentence to be imposed on an offender the court shall have regard to victim statements from the individuals impacted by the commission of the crime and the community.
- [11] Counsel have provided a number of cases to assist me. Although I do not intend to refer to them all, I have reviewed them thoroughly.
- [12] In *R. v. Shropshire*, [1995] 4 S.C.R. 227 at para. 18, the Supreme Court of Canada, in considering increased parole ineligibility for second degree murder pursuant to s. 745.4, noted that the determination of parole ineligibility is a very fact-sensitive process. Both s. 745.4 and 745.51 of the Code set out the same factors to be considered, namely the character of the offender, the nature of the offence, and the circumstances surrounding its commission.
- [13] I have been referred to a number of cases in which consecutive periods of parole ineligibility have been imposed under s. 745.51. Those include: *R. v. Baumgartner*, 2013 ABQB 761; *R. v. Husbands*, [2015] O.J. No. 2674 (S.C.J.), *R. v. Vuozzo*, 2015 PESC 14, *R. v. Garland*, 2017 ABQB 198; *R. v. Saretzky*, [2017] A.J. No. 831 (Q.B.); *R. v. Borutski*, [2017] O.J. No. 6876; *R. v. Downey*, 2019 ABQB 362; *R. v. Granados-Arana*, 2018 ONSC 1756; *R. v. Bissonnette*, 2019 QCCS 354; *R. v. Forman*, 2019 BCSC 2165.
- [14] I have also been referred to a number of cases involving multiple murders in which concurrent sentences have been imposed under s. 745.51, including *R. v. Koopmans*, 2015 BCSC 2120; *R. v. Bains*, 2015 BCSC 2145; *R. v. Klaus*, 2018 ABQB 97; *R. v. McArthur*, 2019 ONSC 963; *R. v. Zerbinos*, 2019 BCSC 584, *R. v. Salehi*, 2019 BCSC 698.

- [15] In Salehi, the Crown sought two sentences of 21 years to be served concurrently. After reviewing the case law dealing with s. 745.51, the court at para. 26, commented that the authorities suggest a concurrent sentence is appropriate where there is one continuous act or single criminal enterprise. The court agreed with the Crown that since the two murders arose out of one continuous criminal act, it was not an appropriate case in which to impose a consecutive term of parole ineligibility.
- [16] However, as noted by the Crown, consecutive sentences have been imposed when murders occur at the same time, for example, *R. v. Bourque*, [2014] N.B.J. No. 295 (Q.B.); and *R. v. Baumgartner*. In *Bourque* at para. 10, the court found that the offences fell within s. 745.51 as they were offences against separate and distinct victims. In *Baumgartner* at para. 4, the court made a similar finding in a case involving four victims.
- [17] The court in Salehi referred to *R. v. Holt*, 2012 BCSC 408 at para. 10, in noting that even though the issue to be determined is the appropriate period of parole ineligibility, the judicial function is one of sentencing and not to determine when parole will be granted. It still remains for the parole authorities to determine the offender's suitability for release.
- [18] In *R. v. Klaus* at para. 20, the court referred to the following comments from *R. v. Vuozzo* at para. 10:

As Campbell J noted in *R. v. Vuozzo* . . . there is a common misconception on the part of many members of the public that murderers automatically get out of jail once they have served 25 years of their life sentence. In fact, parole for multiple murderers is rare. In other words, eligibility for parole and the granting of parole are two distinct matters, and the prospect of the Parole Board granting parole for a multiple murderer is slim.

- [19] Persons convicted of first degree murder are not entitled to statutory release. It is for the Parole Board to assess the suitability of releasing the offender, keeping in mind the purposes and principles set out in the Corrections and Conditional Release Act, S.C. 1992, c. 20. The Parole Board considers the nature and gravity of the offences and will not grant parole if the offender poses a threat to society.

Discussion

- [20] As noted in *Shropshire*, the determination of parole ineligibility is very fact-sensitive. In determining the appropriate parole ineligibility period, the factors set out in s. 745.51 of the Code, as well as the sentencing principles set out in ss. 718, 718.1, and 718.2 of the Code, and the victim impact statements filed pursuant to ss. 722 and 722.2 of the Code are to be considered.

Victim Impact Statements

- [21] A number of victim impact statements were filed. Ms. Mah-Jones and Mr. Jones' immediate family members provided victim impact statements. As well, a statement written by close friends and neighbours of Ms. Mah-Jones and Mr. Jones, and a community impact statement written on behalf of Ms. Mah-Jones' dance group were provided.
- [22] The victim impact statements all describe the devastating effect the deaths of Ms. Mah-Jones and Mr. Jones had on their family and friends.
- [23] Ms. Mah-Jones was one of four sisters. She was described as a vibrant and fun-loving individual who contributed much to the community through her work as an occupational therapist and a volunteer. Mr. Jones was described as a warm, kind, and generous man. Ms. Mah-Jones and Mr. Jones were a vital and active part of their family and friends' lives and their deaths have left a gaping hole.
- [24] Their family report that since the murders, they have suffered from deep sadness and anxiety, including concerns about their own safety. The pain and suffering that Mr. Jones and Ms. Mah-Jones' family are going through and will continue to go through is apparent from reading the statements. Ms. Mah-Jones and Mr. Jones were loved and cherished by their family and their loss will be felt forever by them.
- [25] Ms. Mah-Jones was an active and vital member of a dance group. The dance group provided a statement setting out the impact her murder had on them. In the statement, the group describes the emotional impact of losing a valued friend and an energetic member of the group, and the void Ms. Mah-Jones' death has caused. Her death also caused the dance group concerns about their own safety and security and the security of their families, as her murder occurred just after a dance practice.
- [26] As well, the community was impacted by the murders. The murders of two people in their home impacted the sense of safety and security for the community at large.
- [27] The sentence to be imposed in criminal cases is governed by fixed principles applied to the circumstances. It is not a measure or indication of the value which a court places upon the life of the deceased person, nor is it reflective of the intrinsic value or worth of the victims' lives. There is nothing that this court can do or say that can fix the pain or the loss Mr. Jones and Ms. Mah-Jones' family and friends have suffered. No sentence will ever restore them to you. The court extends its deepest sympathy to Mr. Jones and Ms. Mah-Jones' family and friends for their tragic loss.

Section 745.51

- [28] I turn to the factors set out in s. 745.51 of the Code.

The Nature of the Offences and the Circumstances Surrounding their Commission

- [29] The nature of the offences and the circumstances surrounding their commission are to be considered. Mr. Kam brutally attacked and murdered Mr. Jones and Ms. Mah-Jones in their residence on the evening of September 26, 2017. During the attacks, Mr. Kam inflicted severe and extensive injuries to both victims causing their deaths.
- [30] The evidence is that Mr. Kam spent two hours and 23 minutes in the Jones' residence. Mr. Kam assaulted Ms. Mah-Jones in the living room causing a number of blunt force injuries, including breaking her nose, and at least one blood-letting injury. Mr. Kam then dragged Ms. Mah-Jones into the kitchen where he slit her throat with a knife, severing her carotid artery.
- [31] During his attack on Ms. Mah-Jones in the living room, Mr. Kam heard Mr. Jones entering the house. Mr. Kam hid and attacked Mr. Jones with a knife as he entered the kitchen. Mr. Kam then subjected Mr. Jones to a prolonged and vicious attack with a knife before striking him with a hatchet in the head and neck. Mr. Jones suffered over a hundred sharp force injuries during the assault.
- [32] Mr. Kam then moved both bodies into the bathroom where he left them in the shower with the water running.
- [33] Mr. Kam took time to eat and drink while he was in the Jones' residence. It is apparent from the forensic evidence that Mr. Kam looked around the Jones' residence, including opening cupboards. However, I determined that the motive for the murders was not robbery, as there were valuables and electronics left in the residence.
- [34] The evidence established that Mr. Kam planned and deliberated the murders. He purchased the hatchet, knives, twine, and gloves he used in the month prior to the murders.
- [35] On the evening of September 26th, Mr. Kam went out for dinner and then returned home to retrieve his backpack containing the hatchet, gloves, and twine used in the murders. He also had two knives with him, a pocketknife and a kitchen knife. According to Mr. Kam, when he saw Ms. Mah-Jones park her car and go into the house, he hid and armed himself with the hatchet and the pocketknife, knowing she would return. After she returned to her car, Mr. Kam followed Ms. Mah-Jones to her front door, forced his way into the house and attacked her.
- [36] After he left the Jones' residence, Mr. Kam took steps to cover up his involvement in the murders by disposing of evidence in two locations.

Character of the Offender

- [37] I turn next to the character of the offender. I was not provided with any presentence report or psychological or psychiatric reports to assist me. Counsel provided some details regarding Mr. Kam's background. As well, Mr. Kam testified at the trial about his background and the offences.

- [38] Mr. Kam is currently 27 years old. At the time of the offences and his arrest, he was 25 years old. Mr. Kam grew up in Hong Kong and completed high school there. He has two siblings. He moved to Canada to attend university at the University of Alberta, where he obtained a bachelor's degree in economics. Upon graduation, Mr. Kam sought employment in Calgary, but was unsuccessful. He moved to Vancouver sometime in the spring of 2017 to look for a job.
- [39] At the time he committed the murders, Mr. Kam was unemployed and being supported by his parents. Apparently he spent much of his time reading comic books and playing video games. Mr. Kam's evidence is that he had conflicts with his parents, particularly his mother.
- [40] There is no indication of past violence, antisocial behaviour, or mental disorders on the part of Mr. Kam. Dr. Shen, a psychologist who interviewed Mr. Kam and testified at trial, provided an opinion that he did not find any indication of mental disorders. However, Dr. Shen did not administer any psychological tests to Mr. Kam and his opinion was based almost entirely on Mr. Kam's description of the murders and his history.
- [41] The brutal and random nature of the murders reflects on Mr. Kam's character. Mr. Kam brutally murdered two innocent people in their home for no apparent motive. There is no evidence that Mr. Kam had any prior dealings with or knowledge of Mr. Jones or Ms. Mah-Jones before he killed them, and he offered no explanation as to why he chose them as victims. The attacks were prolonged and vicious. According to Mr. Kam, he did not experience any emotion after the murders.

Application of the Sentencing Principles

- [42] As noted earlier, the sentencing principles set out in ss. 718 to 718.2 of the Criminal Code must also be considered. The sections set out a number of factors that should be considered when sentencing, including denunciation, deterrence, both general and specific, separating the offender from society, rehabilitation of the offender, providing reparation for harm done to the victims and the community, and promoting a sense of responsibility in the offender.
- [43] Denunciation and deterrence are the paramount considerations in sentencing in this case, but the other sentencing principles set out in ss. 718 to 718.2 of the Criminal Code are also to be considered.
- [44] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The sentence should be increased or reduced to account for any relevant mitigating or aggravating circumstances. A sentence should be similar to sentences imposed on similar offenders in similar circumstances, and where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.
- [45] I will commence with denunciation. As stated earlier, the primary consideration in sentencing for these offences is denunciation. Mr. Kam has committed two brutal and senseless murders which call out for very strong denunciation.

- [46] The Crown argues that a single 25-year parole ineligibility does not adequately reflect that Mr. Kam deliberately murdered two innocent strangers. The Crown submits that Mr. Kam should not be sentenced to the same period of parole ineligibility for two murders as he would if he had killed one person.
- [47] However, neither s. 745.51 of the Code nor the case law support the Crown's argument that a single parole ineligibility does not reflect the fact that Mr. Kam is guilty of murdering two principle. Section 745.51 is discretionary and does not mandate that consecutive sentences must be imposed in cases involving multiple murders.
- [48] In many of the cases cited, the sentences for multiple murders are concurrent: see Klaus, Koopmans, McArthur, and Salehi. Even in the cases of multiple murders where courts have imposed consecutive sentences for some of the murders, they have imposed concurrent sentences for others: see Baumgartner and Forman.
- [49] As stated in Klaus:
- [69] . . . All such cases are horrendous and by their very nature call out for robust denunciation. The fact that s 745.51 grants a discretion is an indication that Parliament remained of the view that concurrent periods of parole ineligibility can satisfy the need for denunciation when balanced with other principles in cases involving multiple murders, even multiple first degree murders.
- [70] In other words, consecutive periods are not necessary to satisfy the objective of denunciation in all such cases. As previously noted, the strict control of the parole system itself serves the sentencing goal of denunciation.
- [50] In this case, the sentence to be imposed is for life. Even if Mr. Kam is released on parole, he will always be subject to the conditions imposed by the Parole Board. It will be for the Parole Board to determine if his continued incarceration is required for the protection of the public and, if he is to be released, the conditions under which he will be released. While by no means minimizing the gravity of these murders, I am of the view that the objective of denunciation is met in this case by the imposition of a life sentence with 25 years' parole ineligibility.
- [51] I turn next to deterrence. A sentence should be such that it deters both the offender from committing crimes in the future and others from committing such crimes. In this case, Mr. Kam will receive a life sentence and, even if eligible for parole, has no guarantee that he will be granted parole. As noted in the case law, the chances of parole for an offender who has committed multiple murders is slim. Even if granted parole, Mr. Kam will be under the supervision of the Parole Board for life.
- [52] In my opinion, a life sentence achieves the objective of both specific and general deterrence.

- [53] One of the purposes of sentencing is to separate offenders from society where necessary. Section 745.51 of the Code was enacted in part to ensure that individuals whose future dangerousness is apparent at the time of sentencing will never be released. The Crown submits that a consecutive parole ineligibility is necessary in order to protect the public. The Crown submits that given the brutal, barbaric, and random nature of these murders, Mr. Kam will always represent a lethal threat to the public.
- [54] As stated earlier, little is known about Mr. Kam's character. He has no criminal record and no history of criminal behaviour. I have not been provided with any presentence reports or any psychological or psychiatric assessment for this sentencing.
- [55] I agree with the Crown that the randomness and brutal nature of these murders is extremely disturbing and an indication of future dangerousness. However, given the lack of any presentence report or psychological or psychiatric reports, I find there is insufficient evidence on which to determine whether Mr. Kam will pose a danger to the community in 25 years or how he will respond to incarceration and any programs available for rehabilitation.
- [56] In my opinion, the protection of the public by the separation of the offender from society is satisfied by the imposition of a life sentence without eligibility for parole for 25 years. As noted earlier, there is no guarantee that if Mr. Kam is eligible for parole in 25 years, it will be granted. If and when he applies for parole, the Parole Board will assess Mr. Kam's situation and the fact he murdered two people and the circumstances surrounding those offences in determining whether he can be released into the community with the necessary conditions to ensure the safety of the community.
- [57] Although the primary sentencing principles to be considered in sentencing for murder are denunciation, deterrence, and the protection of the public, rehabilitation is also a factor to be considered.
- [58] Mr. Kam is a young man with no prior criminal record. While the nature of the crime is extremely troubling and an indication that Mr. Kam may continue to represent a threat to society, as stated earlier, there were no presentence reports or psychological or psychiatric reports that indicate Mr. Kam is incapable of rehabilitation and therefore will be dangerous in 25 years.
- [59] The Parole Board will be able to observe Mr. Kam and obtain whatever information is necessary, including psychological assessments, in order to determine whether he can be rehabilitated and whether his continued incarceration is necessary.
- [60] Another factor to consider is reparations for harm done. The victim impact statements set out the devastating effect of these offences on Mr. Jones and Ms. Mah-Jones' family and friends and their community. There is no aspect of any sentence in this case that can offer reparation to the victims or the community for the harm done.

- [61] I turn next to the issue of promoting acceptance of responsibility and acknowledgment of the harm done to the victims or the community. Mr. Kam has accepted responsibility for the killings of Mr. Jones and Ms. Mah-Jones. To date he has shown no remorse or acknowledgment for the harm done. However, there is no evidence on which to conclude that imposing a consecutive parole ineligibility period will promote Mr. Kam's acceptance of the harm done to the victims or to the community.
- [62] I turn next to the aggravating and mitigating circumstances I have considered.
- [63] The mitigating circumstances I have considered are that Mr. Kam is a young man and has no criminal record.
- [64] There are significant aggravating factors in this case. The victims were innocent and defenceless strangers who were murdered in their own home. The murders were brutal and vicious. Ms. Mah-Jones suffered numerous blunt force injuries and her throat was slit. Mr. Jones was subjected to a prolonged and vicious attack with a knife prior to being struck with a hatchet. Both victims were considerably older than Mr. Kam, and Mr. Jones was disabled.
- [65] I turn to the requirement that sentences should be similar for sentences imposed on similar offenders for similar offences. As indicated, I have been provided with cases where the courts have imposed both concurrent and consecutive periods of parole ineligibility periods for multiple murders. I note that some of the cases where consecutive parole ineligibility periods have been imposed did not consider the totality principle set out in s. 718.2: for example, *Garland*, *Bourque*, and *Borutski*. In *Garland*, the court stated it did not matter what the period of parole ineligibility was, because the offender would be 79 years of age when 25 years elapsed.
- [66] While a sentence should be similar to offences imposed on similar offenders for similar offences, the determination of a fit sentence is very fact-specific. As a result, it is difficult to reconcile the cases.
- [67] I turn next to totality and restraint. In determining whether a consecutive sentence should be imposed under s. 745.51, the principles of totality and restraint set out in s. 718.2(c) and (d) of the Code should be considered, along with the other factors, in order to ensure the combined sentence is not unduly long or harsh. A sentencing judge must also consider whether a less restrictive sanction would attain the same sentencing objectives that a more restrictive sentence seeks to attain: *R. v. Johnson*, 2003 SCC 46 at paras. 28-9.
- [68] In *R. v. Zinck*, 2003 SCC 6 at para. 31, the Supreme Court of Canada, in discussing s. 743.6 of the Code which allows the court to delay parole in certain circumstances, stated that delayed parole in criminal law is a special additional form of punishment and should not be ordered without necessity in a routine way.
- [69] I agree with the comments in *Klaus* that stacking periods of parole ineligibility should also remain the exception and must be justified by the circumstances of the case.

- [70] In this case, the only discretion the court has is to impose parole ineligibility of 25 or 50 years. A consecutive parole ineligibility period would mean that Mr. Kam would not be eligible to apply for parole until he was 75 years old.
- [71] It is my opinion that imposing a 50 year parole ineligibility period in the circumstances would be unduly long and harsh. As stated earlier, I have insufficient evidence to conclude that a more restrictive sanction is required than 25 years' parole ineligibility for Mr. Kam for the protection of the public.
- [72] It bears repeating that even if Mr. Kam is eligible for parole after 25 years of incarceration, there is no guarantee he will be granted it. It will be for the Parole Board to determine if Mr. Kam's continued incarceration is required for the protection of the public and, if he is to be released, the conditions under which he will be released.

Conclusion

- [73] Having considered the factors set out in s. 745.51 of the Code, the general sentencing provisions, the case law, and the submissions, I conclude that this is not an appropriate case in which to impose consecutive periods of parole ineligibility. It is my view that a life sentence with 25-year parole ineligibility emphasizes the denunciation and deterrence which are paramount in sentencing Mr. Kam for these brutal offences.
- [74] Mr. Kam, please stand up. I am imposing the following sentences:
- [75] On Count 1, I sentence you to life imprisonment with no eligibility for parole for 25 years.
- [76] On Count 2, I sentence you to life imprisonment with no eligibility for parole for 25 years, to be served concurrently with Count 1.
- [77] I order a firearms prohibition pursuant to s. 109(a) of the Criminal Code. The duration of the order will be for life with respect to any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition; for 10 years after your release from prison with respect to any other firearm, cross-bow, restricted weapon, ammunition, or explosive substance.
- [78] I authorize the taking of samples from Mr. Kam for DNA analysis pursuant to s. 487.051(1) of the Criminal Code.

"Gerow J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/13/2020BCSC1369.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-kam-2020>

Prepared on 27 October 2026 · Esheria