

CANADA / JUDGMENT

R. v. Kim

2025 BCSC 1823

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1823 R. v. Kim

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Kim,

2025 BCSC 1823

Date: 20250616

Docket: 34392-4

Registry: Vancouver

Rex

v.

Eric Gaon Kim

Before: The Honourable Madam Justice Ker

Oral Reasons for Sentence

Counsel for the Crown:

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Counsel for the Accused:

L.D. Myers, K.C.

J. Oppal

Place and Date of Hearing:

Vancouver, B.C.

June 4, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 16, 2025

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

Introduction

- [2] Eric Gaon Kim is before the Court for sentencing on one count of manslaughter, contrary to s. 236(b) of the Criminal Code, RSC 1985, c. C-46 [Code]. Mr. Kim was originally charged with second-degree murder for his role in the death of Andrew Wadden.
- [3] Shortly before jury selection, a new indictment was filed charging him with manslaughter. On October 3, 2024, the date set for jury selection on the trial with his co-accused, David Bentil, Mr. Kim entered a guilty plea to the manslaughter charge. Due to a variety of intervening complications, submissions on Mr. Kim's sentence hearing did not occur until June 4, 2025.
- [4] The maximum sentence for manslaughter is life imprisonment. There is no minimum sentence.
- [5] In *R. v. Hutchison*, 2024 BCSC 878, Madam Justice Murray observed:
- [30] The statutory range of sentences for manslaughter is the widest possible, with no minimum sentence and a maximum of life in prison. In *R. v. Huth*, 2014 BCSC 570, Mr. Justice Macaulay, discussed this broad range of sentence as follows:
- [6] The maximum sentence for manslaughter is life imprisonment. There is no statutory minimum sentence. Maximum sentences are reserved for the worst offenders who commit the most aggravated offences. Sometimes those cases are referred to as near-murder on a sliding scale of moral culpability. Understandably, manslaughter sentences of lesser severity are generally reserved for offenders with good backgrounds and rehabilitative prospects who commit manslaughter in the least morally blameworthy of circumstances. These are cases, which at the low end of the scale, begin to approach accident, which, if reached, would amount to a complete legal defence. Cases at the lower end of the sliding scale are sometimes referred to as near-accident . . .
- [6] Of course, criminal offences that result in the death of a person are among the most serious offences: *R. v. Huth*, 2014 BCSC 570 at para. 14.

- [7] As the offence of manslaughter covers such a broad spectrum of conduct from "near accident" to "near murder", the penalties for this offence range from a suspended sentence to life imprisonment: *R. v. Plowman*, 2015 BCCA 423 at para. 39; *Huth* at para. 6; *R. v. Badhesa*, 2019 BCCA 70 at para. 24.
- [8] The offence that grounds this case occurred on May 7, 2022, at approximately 10:15 a.m. It occurred in broad daylight in Crab Park, which is located at the north end of Main Street near the downtown Helijet location on Coal Harbour, adjacent to the Vancouver Convention Centre and the main docks for the cruise ship industry. To add to the gravity of the situation, a family vacationing from out of province were feet away from the attack.
- [9] Mr. Wadden, the deceased, was stabbed multiple times by Mr. Kim and his co-accused, Mr. Bentil. The stab wounds administered by Mr. Kim were not the cause of death, but his acts of tackling and subduing Mr. Wadden and of participating in the stabbing constitute an unlawful assault that contributed to Mr. Wadden's death.
- [10] In this case, the parties jointly submit that Mr. Kim should be sentenced to 14 years' imprisonment less credit for presentence custody.
- [11] Section 719(3.1) of the Code provides that credit can be given at an enhanced rate of 1.5:1, being 1.5 days for every day detained awaiting trial or sentence. Counsel agree that in this case, the credit should be at this enhanced rate. Mr. Kim has been in custody since his arrest on May 7, 2022. As of today's date, this translates to a total of 1,704 days.
- [12] On this joint submission, this would leave Mr. Kim with 3,406 days' imprisonment to serve, which is a sentence of approximately nine years, three months, and a few days. I will express the sentence at the end of my reasons as the remaining days he is to serve.
- [13] The principles from *R. v. Anthony-Cook*, 2016 SCC 43 govern the analysis as to whether the court should accede to a joint submission, which I will discuss further in these reasons.

Circumstances of the offence

- [14] I briefly described the circumstances of this offence in my introductory remarks. A more detailed description of the offence and Mr. Kim's role is contained in the admissions of fact marked Exhibit 1 on this sentencing. Counsel for the Crown read the admissions into the record. They are attached as Appendix A to these reasons.
- [15] In brief, Mr. Kim came to the aid of his co-accused who appeared to be in an argument or altercation with the deceased. As Mr. Kim arrived in the area, being the Main Street overpass, Mr. Bentil was pursuing the deceased over the bridge. Mr. Kim was also in pursuit, albeit from the opposite side of the street. As the three men reached the far side of the overpass near a set of stairs, Mr. Kim crossed the road approaching the deceased, with Mr. Bentil following closely behind. Mr. Kim approached the deceased and was making gestures.

- [16] In a subsequent recorded jail call, Mr. Kim admitted to an unknown male that the deceased was "like tryin' to run and then like I caught him off guard and then he ". It is obvious from the transcript of this conversation that the male with whom Mr. Kim was speaking was coaching him on what he should really be saying so that he did not incriminate himself. To Mr. Kim's credit, he has now admitted responsibility for his role in the offence and disavowed what the caller was telling him to say.
- [17] From the admissions, it is apparent that the deceased was endeavouring to run away from Mr. Kim and Mr. Bentil. It was Mr. Kim who tackled the deceased and took him to the ground. A brief altercation ensued where both men attacked the deceased, who did not fight back. Both accused were armed with knives. The deceased was stabbed approximately 16 times, according to the forensic pathologist's report. Four of the stab wounds were immediately life threatening. Mr. Wadden died at the scene as a result of these stab wounds.
- [18] Mr. Kim had a small knife that had an eight-centimetre blade. Mr. Bentil's knife had a larger blade that was 17-centimetres in length. Two of the fatal injuries were 15 centimetres in depth and two were 17 centimetres in depth. It is a fair inference that Mr. Bentil was the person who inflicted the life-threatening injuries. Nevertheless, Mr. Kim's willingness to come to the aid of Mr. Bentil when summoned by him and his assistance in the attack were significant contributing causes to Mr. Wadden's death.
- [19] As mentioned earlier, this offence occurred in front of a family who happened to be in Crab Park at the time. The family's 16-year-old daughter witnessed the attack from 10 feet away. Three other children were also present. The gravity of this offence and the circumstances in which it was committed are extremely serious.
- [20] Mr. Wadden, who may have started the altercation with Mr. Bentil, was in full retreat from him by the time Mr. Kim arrived on the scene. Mr. Kim was one of two men who attacked a man who was retreating from the altercation. It was clearly a two-on-one attack with both assailants armed with knives.

Impact on the victim

- [21] One of the tragic features of this case is the fact that the Crown was unable to contact Mr. Wadden's family and so no victim impact statements were provided.
- [22] Mr. Wadden was 45 years old at the time of his death. Certainly, regardless of the availability of witness impact statements, it is obvious that no one deserves to die in such a brutal fashion. Mr. Kim's actions contributed to robbing Mr. Wadden of the rest of his life and deprived his friends and loved ones of his presence and support.

Circumstances of the offender

- [23] Mr. Kim is 29 years old. He was 26 years old at the time of the offence. He is originally from South Korea, arriving with his family when he was 10 years old. He is now a Canadian citizen.
- [24] His parents, who were present at the sentencing hearing, and I note they are present today as well, remain supportive of their son.
- [25] They established a family restaurant business in the Lower Mainland when they arrived in British Columbia. Mr. Kim worked at the restaurant in the past, mainly while in school. Mr. Kim went as far as Grade 11 in high school but then dropped out. To his credit, he achieved his Grade 12 education while serving a sentence of imprisonment through 2019 and 2020.
- [26] Mr. Kim has struggled with mental health issues for a number of years. In high school, he made a suicide attempt. He was prescribed painkillers for his depression when he was younger. He has been diagnosed as suffering from depression, anxiety, and a panic disorder. He has had a history of substance misuse that started in his teenage years.
- [27] Mr. Kim has a criminal record. Although the offences were committed in May 2015, he was not identified immediately. Mr. Kim was only implicated in the offences several years after the fact through fingerprint matches. His four convictions relate to two robberies of 7-Eleven stores. Mr. Kim was accompanied by other unknown, unidentified individuals. Both incidents resulted in convictions for robbery and using an imitation firearm in the commission of an offence.
- [28] Guilty pleas a year apart from each other resulted in two sentences of imprisonment. In February 2019, he received a global sentence of 13 months and one year probation. In February 2020, he received another sentence of one year and one day imprisonment.
- [29] Accordingly, there is approximately a seven-year gap between the previous offences and the current offences. However, all of Mr. Kim's criminal offences are violent in nature.
- [30] Mr. Kim appears to have reconciled with his parents and they remain supportive of him. His time in custody has not been easy due to a variety of circumstances which have resulted in him spending a large amount of time in administrative segregation. This has limited his access to programming but, I understand as of today, he has been able to access some programs as outlined in Exhibit 2 filed this afternoon just before I delivered my reasons. Once sentenced, Mr. Kim intends to do everything he can in the way of programming and work to improve himself.
- [31] I accept counsel's characterization of the offence as Mr. Kim initially responding to Mr. Bentil's calls for assistance in the dispute he had with the deceased. However, Mr. Kim's involvement and participation changed the dynamics of the altercation. He and Mr. Bentil failed to stop when Mr. Wadden was trying to retreat.

[32] Mr. Kim has addressed the Court and apologized for his role in this offence. I accept his expression of remorse as genuine.

Governing legal principles

[33] The determination of a just and appropriate sentence is a highly-individualized exercise that goes beyond any mathematical calculation. Many courts have recognized that imposing a just and proportionate sentence in serious cases like this one is one of the most challenging responsibilities that judges must exercise. It involves the careful balancing of a variety of factors in the context of a particular set of circumstances in respect of a particular individual: *R. v. Bissonnette*, 2022 SCC 23 at para. 49.

[34] The balancing process occurs within the legislative framework that is informed by common law principles. The legislative framework is set out in ss. 718-718.2 of the Code.

[35] Section 718 of the Code provides that:

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[36] Of the six objectives listed above, in sentencing for manslaughter offences the objectives that receive primary emphasis are retribution, deterrence, and denunciation: *R. v. Ansari*, 2009 BCCA 381 at para. 41.

[37] In *R. v. C.A.M.*, [1996] 1 S.C.R. 500 at para. 80, Chief Justice Lamer defined retribution, going to pains to distinguish it from mere "vengeance":

However, 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."

- [38] In Bissonnette, Chief Justice Wagner addressed the meaning of deterrence and denunciation:
- [46] First of all, the penological objective of denunciation requires that a sentence express society's condemnation of the offence that was committed. The sentence is the means by which society communicates its moral values (*R. v. M.* (C.A.), 1996 CanLII 230 (SCC), [1996] 1 S.C.R. 500, at para. 81). This objective must be weighed carefully, as it could, on its own, be used to justify sentences of unlimited severity (*C. C. Ruby, Sentencing* (10th ed. 2020), at §1.22).
- [47] As for the objective of deterrence, it has two forms. The first, specific deterrence, is meant to discourage the offender before the court from reoffending. The second, general deterrence, is intended to discourage members of the public who might be tempted to engage in the criminal activity for which the offender has been convicted (*R. v. B.W.P.*, 2006 SCC 27, [2006] 1 S.C.R. 941, at para. 2). When this objective is being pursued, the offender is punished more harshly in order to send a message to the public or, in other words, to serve as an example. General deterrence is an objective that must be weighed by a court, but the effectiveness of which has often been questioned. These legitimate reservations notwithstanding, the fact remains that the certainty of punishment, together with the entire range of criminal sanctions, does produce a certain deterrent effect, albeit one that is difficult to evaluate, on possible offenders (*Ruby*, at §1.31; Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach* (1987), at pp. 136-38).
- [39] Section 718 of the Code sets out the proportionality principle which directs that a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the offender. The proportionality principle is fundamental to Canadian law. Thus, whatever weight a judge may wish to accord to the objectives listed in s. 718, "the resulting sentence must respect the fundamental principle of proportionality": *R. v. Nasogaluak*, 2010 SCC 6 at para. 40; see also *R. v. Parranto*, 2021 SCC 46 at paras. 11 to 12, and *R. v. Friesen*, 2020 SCC 9 at para. 30.
- [40] Chief Justice Wagner explained what the proportionality principle means in *Bissonnette*, writing:

- [50] But sentencing must in all circumstances be guided by the cardinal principle of proportionality. The sentence must be severe enough to denounce the offence but must not exceed "what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence" (R. v. Nasogaluak, 2010 SCC 6, [2010] 1 S.C.R. 206, at para. 42; see also R. v. Ipeelee, 2012 SCC 13, [2012] 1 S.C.R. 433, at para. 37). Proportionality in sentencing is considered to be an essential factor in maintaining public confidence in the fairness and rationality of the criminal justice system. The application of this principle assures the public that the offender deserves the punishment received (Re B.C. Motor Vehicle Act, 1985 CanLII 81 (SCC), [1985] 2 S.C.R. 486, at p. 533, per Wilson J., concurring).
- [51] It follows that "a person cannot be made to suffer a grossly disproportionate punishment simply to send a message to discourage others from offending" (Nur, at para. 45). In a similar vein, Vaclair J.A. aptly stated that [translation] "striving for exemplarity to the detriment of evidence of the merit of rehabilitation objectives is incompatible with the principle of individualization" (Lacelle Belec v. R., 2019 QCCA 711, at para. 30 (CanLII), citing R. v. Paré, 2011 QCCA 2047, at para. 48 (CanLII), per Doyon J.A.). Proportionality has a restraining function, and in this sense serves to guarantee that a sentence is individualized, just and appropriate.
- [41] The proportionality principle requires the sentencing court to fashion a fit sentence that properly reflects the gravity of the offence and the moral blameworthiness of the offender. The two concepts have distinct considerations that do not fully cross-pollinate each other. The gravity of the offence is reflected by the potential penalty imposed by Parliament and any specific features of the commission of the offence which may tend to increase or decrease the harm or risk of harm to the community occasioned by the offence. It is not informed by the offender's background or other social context evidence: R. v. Ellis, 2022 BCCA 278 at paras. 82-85.
- [42] On the other hand, the moral blameworthiness of an offender is informed by their background, lived experiences, and broader social context. It has long been the case that an offender's background may properly affect a sentencing court's assessment of moral blameworthiness.
- [43] As Justice DeWitt-Van Oosten noted in Ellis at para. 76, quoting R. v. Morris, 2021 ONCA 680 at para. 75:

75 an offender's life experiences can certainly influence the choices made by the offender, and can explain, to some degree at least, why an offender made a choice to commit a particular crime in the specified circumstances. Those life experiences can include societal disadvantages flowing from systemic anti-Black racism in society and the criminal justice system.

[Emphasis added in Ellis.]

- [44] In *R. v. C.K.*, 2023 BCCA 468, DeWitt-Van Oosten J.A. provided a succinct summary of the relevant factors that are engaged in the assessment of an offender's moral blameworthiness at paras. 71-72. I acknowledge that *C.K.* is a sentence appeal decision in respect of the sentencing of an offender who committed sexual offences against children. Nevertheless, in my view, the relevant factors enumerated therein for the assessment of moral blameworthiness apply across all criminal offences because they relate to the offender-focused branch of the proportionality analysis.
- [45] Justice DeWitt-Van Oosten noted in *C.K.*:
- [71] Assessing an offender's personal responsibility for a crime must consider the offender's state of mind and acts at the time of the offence: *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 79, 1996 CanLII 230. Relevant factors include: the level of planning and/or intentionality brought to the crime; the degree, nature and extent of the offender's personal participation in the offence; the means or method by which the crime was committed; the motive or reasons for the offender's participation; the offender's awareness of the legal and moral wrongfulness of their conduct; their awareness of the actual or reasonably foreseeable harms flowing from their conduct (immediate and long-term); and their persistence in perpetrating the offence despite that awareness. See, for example, *R. v. Okimaw*, 2016 ABCA 246 at para. 85 and *R. v. Vader*, 2019 ABCA 488 at para. 16.
- See also *R. v. Maslehati*, 2024 BCCA 207 at paras. 135-137.
- [46] Section 718.2 of the Code enumerates in a non-exhaustive list a number of other sentencing principles. Pursuant to s. 718.2(a), sentences are to be increased or reduced to account for any aggravating or mitigating circumstances.
- [47] Sections 718.2(c) through (e) promote restraint in sentencing. Sections 718.2(d) and (e) emphasize the need for restraint in resort to imprisonment. These provisions require that an offender not be deprived of liberty if less restrictive sanctions are appropriate in the circumstances. Courts must consider all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with harm done to victims or to the community, with particular attention to the circumstances of Indigenous offenders.
- [48] Section 718.2(b) sets out the parity principle which requires that sentences should be similar for similar offences committed by similar offenders in similar circumstances. While I am mindful of the parity principle, I must also not lose sight of the individualized nature of the assessment of the case before me, an assessment that requires me to weigh the objectives of sentencing in a manner that best reflects the circumstances of this case and of this offender: *Nasogaluak* at para. 43.
- [49] As I have noted, the principles or objectives of sentencing that are of primary importance in manslaughter cases are clearly retribution, denunciation, and deterrence.

- [50] While rehabilitation is an objective to be considered and hoped it will be achieved, Mr. Kim's own personal circumstances suggest that rehabilitation may remain a challenge. Certainly, the fact that Mr. Kim's parents are supportive, he is relatively young, he has engaged in programming, albeit limited given the circumstances of his detention, and he hopes to change his ways, offers some measure of cautious optimism that Mr. Kim might actually turn his life around.
- [51] In *Badhesa*, the Court of Appeal described the breadth of the offence of manslaughter and the challenges courts face in crafting an appropriate sentence:
- [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 CanLII 230 (SCC), [1996] 1 S.C.R. 500 at para. 80; *R. v. Stone*, 1999 CanLII 688 (SCC), [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.
- [52] No one sentencing objective trumps the others. It remains the sentencing judge's responsibility to weigh and determine which objective or objectives warrant the greatest emphasis given the particulars of the case before them: *Nasogaluak* at para. 43; *Ellis* at para. 82.

- [53] Sentencing judges are afforded a wide discretion in the sentence they craft and impose. However, judicial discretion is not unfettered. Rather, it is informed by the caselaw and general ranges of sentences for particular offences. And yet, while the courts must consider ranges, the jurisprudence from the Supreme Court of Canada is clear that ranges are guidelines and "not hard and fast rules" or "straitjackets": Friesen at paras. 37, 108.
- [54] Ranges have been referred to as more in the realm of navigational buoys or places where judges can begin their thinking: Parranto at paras. 16, 205.
- [55] 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: Nasogaluak at para. 44; R. v. Lacasse, 2015 SCC 64 at paras. 56-72; Friesen at paras. 37-38, 108; Parranto at paras. 42-54, 205.
- [56] In R. v. Kehoe, 2023 BCCA 2, Justice Marchand, as he then was, sagely noted:
- [45] Sentencing is a difficult process that often requires balancing competing principles and objectives. Will protection of the public be best achieved by a deterrent sentence or one focused on rehabilitating the offender? Where in the sentencing range does a particular offender belong when they have committed a serious offence but have a reduced level of moral blameworthiness? To what degree are aggravating features of the offence offset by mitigating circumstances?
- [57] The above are but some of the questions engaged in sentencing Mr. Kim.

Joint Submissions

- [58] The Court must also consider another set of legal principles in determining the sentence imposed in this case. Here the parties advance a joint submission that Mr. Kim be sentenced to a term of imprisonment of 14 years, less credit for time spent in custody awaiting trial and now sentencing. As such, the principles enumerated by the Supreme Court in R. v. Anthony-Cook establish the analytical framework the sentencing judge must apply in determining whether to 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 risk 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.
- [59] I am well familiar with the principles, having written on their application in R. v. Bacon, 2020 BCSC 1377 at paras. 61-71, and again in R. v. McKnight, 2021 BCSC 2542 at paras. 21-29. As I noted in both Bacon at para. 71 and McKnight at para. 29:

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 repute 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.

[60] My last examination of the principles for considering joint submissions is found in *R. v. Bouthillette*, 2024 BCSC 1491:

[55] As Justice Moldaver, writing for the Court, noted in *Anthony-Cook* at para. 1, "[r]esolution discussions between Crown and defence are not only commonplace in the criminal justice system, they are essential". It is an accepted and entirely desirable practice for counsel to agree to a joint submission on a 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. They ensure a conviction for the Crown. They eliminate the uncertainty and risk of proceeding to trial and they minimize the stress and numerous costs associated with taking matters to trial.

[56] 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, 35-40.

[57] Indeed, as Moldaver J. noted in *Anthony-Cook* at para. 40, "our justice system would be brought to its knees, and eventually collapse under its own weight" without joint submissions.

[58] 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 very circumscribed.

[59] In the decision of *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.

[60] 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.

- [61] Here the parties have jointly recommended a sentence for Mr. Kim. As explained in *R. v. Manca*, 2019 BCCA 280:
- [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": *R. v. Dunkers*, 2018 BCCA 363 at para. 38, citing *R. v. Anthony-Cook*, 2016 SCC 43 at para. 32.
- [62] As I noted at the outset of these reasons, a joint submission is entitled to considerable deference and is not to be rejected lightly.

Relevant authorities from the jurisprudence

- [63] In support of the joint submission, counsel provided the Court with four sentencing decisions that support their position that a 14-year sentence is within the range of sentence for manslaughter. They reviewed these cases in their submissions and I have reviewed them since the sentencing hearing. It is not necessary to outline the facts of these cases for the purposes of my reasons for sentence or to canvass the personal antecedents of the offenders that inform the length of sentence imposed in those cases. I will simply refer to the cases provided and the global sentence imposed:
- *R. v. Friedrich*, [1994] B.C.J. No. 2774, 15 years' imprisonment;
 - *R. v. Barton*, 2003 BCCA 206, an effective sentence of 14 years' imprisonment reduced for presentence custody to 11 years' imprisonment;
 - *R. v. Ahnert*, 2014 BCCA 212, an effective sentence of 18 years' imprisonment reduced to 13 years once the presentence custody credit was applied; and
 - *R. v. Devries and Purdy*, 1998 CanLII 14109 (BC SC), an effective sentence of 12 years and seven months reduced to 10 years once the presentence custody credit was applied.
- [64] All four cases involved at least two accused overpowering one victim or, to put it in more colloquial terms, a two-on-one situation. Three of the offences involved the use of weapons; the fourth was a prolonged and senseless attack on a 67-year-old man unable to defend himself.

Analysis

- [65] As I mentioned previously, the overall animating principle of sentencing is that the sentence must be proportionate to the gravity of the offence and degree of responsibility of the offender. In terms of gravity of the offence, the offence that Mr. Kim has pled guilty to is an exceedingly serious offence and the manner in which the offence was committed, insofar as the objectively dangerous nature of his conduct is concerned, places the offence at the upper end of the spectrum of seriousness. It is a gravely serious offence.
- [66] A man retreating from two others pursuing him was savagely attacked, beaten, and stabbed. He was overwhelmed and clearly unable to fend for himself. The harmfulness and wrongfulness of an offender's conduct must be closely examined, because it informs the gravity of the offence and the offender's moral blameworthiness or culpability.
- [67] Assessing moral blameworthiness requires consideration of the offender's state of mind and acts at the time of the offence. Therefore, more broadly, assessing the degree of responsibility of an offender also requires a consideration of such factors as the intentional risk taking of the offender, the harm caused by the conduct, and the normative character of the conduct. Under this head of the analysis, Mr. Kim and his co-accused pursued a man who was retreating from the conflict. They clearly overreacted to whatever affront the deceased may have offered to Mr. Bentil that instigated the whole situation. While this may have started as a heated confrontation between Mr. Bentil and the deceased, Mr. Kim's willingness to join the fray, pursue an individual in retreat, and tackle him to the ground, rendering him extremely vulnerable to two men armed with knives, places Mr. Kim's degree of moral blameworthiness at the higher end of the spectrum. His personal circumstances and lived experience no doubt had considerable influence on the choices he made that morning and can explain, to some degree, why he committed this offence.
- [68] Section 718.2(a) of the Code directs that when imposing a sentence, the court shall take into consideration the aggravating and mitigating circumstances that relate both to the offence and to the offender. Counsel have fairly summarized the aggravating and mitigating factors in this case. I find the aggravating factors in respect of this offence to include:
- a) This was not a near-accident. This was an intentional, brutal, and unprovoked assault and is more properly placed at the near-murder end of the spectrum. While Mr. Kim did not possess the requisite intent for murder, his participation in a two-on-one stabbing was inherently dangerous and any reasonable person in his position would have appreciated that his actions carried a substantial risk of causing Mr. Wadden's death.
 - b) The assault was largely unprovoked. While Mr. Wadden and Mr. Bentil had been arguing before Mr. Kim's arrival, that argument ended several minutes prior to the stabbing. Significantly, Mr. Wadden was walking away from Mr. Kim and Mr. Bentil at the time of the offence.

- c) This was a cowardly two-on-one assault of an individual who was attempting to disengage from the conflict and retreat.
- d) Mr. Kim's actions were, to some extent, purposeful. He certainly had an opportunity to consider his actions as he followed Mr. Wadden over the bridge and an opportunity to disengage. He did not.
- e) Both Mr. Kim and Mr. Bentil used knives to stab Mr. Wadden. This is not a case where multiple individuals assaulted a victim and one individual used a weapon to inflict a fatal wound. Rather, in this case, Mr. Kim played a significant role in Mr. Wadden's death, both directly by stabbing him and indirectly by tackling him to the ground, leaving him vulnerable to the fatal blows inflicted by Mr. Bentil.
- f) Mr. Kim fled the scene and made no attempt to obtain medical assistance for Mr. Wadden.
- g) Mr. Kim has a history of committing serious criminal offences involving violence and the use of weapons.

[69] I find the following to be mitigating factors in this case:

- a) Mr. Kim's guilty plea is indicative of his acceptance of responsibility for attacking Mr. Wadden. Although not an early guilty plea, it simplified the Crown's case against the co-accused resulting in some savings of court time.
- b) Mr. Kim showed genuine remorse, as evidenced in his comments to the Court at the sentencing hearing.

[70] As noted earlier in these reasons, the 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.

[71] The decision in Anthony-Cook establishes at para. 5 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.

[72] As I noted in Bouthillette:

[76] As summarized in Anthony-Cook, 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.

- [77] 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.
- [78] 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 cases presented in court. In light of the potentially contentious nature of a joint submission, the decision in Anthony-Cook provides guidance for sentencing judges where the joint submission raises concern:
- a) 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 (para. 51);
 - b) sentencing judges should apply the public interest test when they are considering "jumping" or "undercutting" a joint submission (para. 52);
 - c) 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 (para. 53);
 - d) 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 (para. 58);
 - e) 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 (para. 59); and
 - f) finally, sentencing judges should provide clear and cogent reasons for departing from the joint submission (para. 60).
- [73] Bearing those principles in mind, I note the following: First, I am satisfied that the cases that counsel have provided in support of the joint submission, which I have reviewed, delineate that the proposed sentence is properly within the accepted range of sentence for these offences.
- [74] 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 repute of the administration of justice: Bouthillette at para. 81.
- [75] Counsel have outlined in brief compass the risks that they weighed in their discussions and the benefits to each side of the certainty of a plea to manslaughter in this case. In light of those submissions, I am satisfied that this joint submission represents a very carefully calibrated outcome for a case that seemingly had risks for both sides.

- [76] Third, 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 be 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 this offence, with the primary emphasis on retribution, deterrence, and denunciation.
- [78] 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.
- [79] On the contrary, I am of the view that such a reasonable and informed person would regard the 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.

Disposition

- [80] Mr. Kim, would you stand up, please.
- [81] The offence you committed was a brutal, violent attack on a man who was retreating from a confrontation. You took him to the ground, rendering him defenceless to the two-on-one attack that you and Mr. Bentil administered to him. You were both armed with knives. Mr. Wadden did not stand a chance.
- [82] The injuries he sustained in that attack caused his death.
- [83] While you may not have inflicted the fatal stab wounds, you certainly stabbed him and incapacitated him. This was a cowardly, cruel, and senseless attack. You will have to live with the consequences of your actions for the rest of your life. I accept that you are truly remorseful for your conduct in committing this offence and that you will be forever haunted by the consequences of your conduct.
- [84] Having considered the circumstances of this offence, the gravity of it, your role in it, your personal circumstances, the applicable principles of sentencing, the authorities provided, and the careful and comprehensive submissions of counsel, I have concluded that imposing the proposed sentence outlined in the joint submission would not bring the administration of justice into disrepute and is not contrary to the public interest.

- [85] For the offence of manslaughter contrary to s. 236 of the Code, I sentence you to 14 years' imprisonment.
- [86] I must also factor into that sentence the credit to your presentence custody. As discussed earlier in these reasons, I have determined that you are entitled to a credit of 1,704 days of presentence custody to be deducted from your sentence. Therefore, taking into account your pretrial custody credit that is to be applied against the 14 years or 5,110-day sentence, your net or additional sentence will be 3,406 days. This translates to nine years and 119 days.
- [87] You can have a seat, Mr. Kim.

Ancillary orders

- [88] I also make the following unopposed ancillary orders.
- [89] DNA orders are mandatory for manslaughter convictions, as outlined in s. 487.04 of the Code, and so pursuant to s. 487.051 of the Code, Mr. Kim will provide the number of samples of bodily substances that are reasonably required for the purposes of forensic DNA analysis and inclusion in the National DNA Data Bank.
- [90] Next, I make an order pursuant to ss. 109(1) and (3) of the Code. Mr. Kim has previously had a firearms prohibition order and so the order in this instance is for life. Mr. Kim is prohibited from possessing any firearms, cross-bow, restricted weapon, prohibited weapon, ammunition, and explosive substances for life.
- [91] I waive the victim surcharge under s. 737 of the Code. I am satisfied that imposing it would constitute undue hardship upon Mr. Kim as that term is defined in s. 737(2.2) of the Code. Mr. Kim's financial circumstances are precarious. He is unemployed, has no assets, struggles with substance use and mental health issues, and has just had a lengthy sentence imposed upon him.
- [92] Finally, pursuant to s. 743.2 of the Code, I order that a copy of these reasons for sentence, once transcribed, be forwarded to the Correctional Service of Canada.
- [93] Is there anything else from counsel's perspective?
- [94] CNSL B. McCABE: No, thank you very much.
- [95] CNSL L. MYERS: No, thank you, Justice.
- [96] THE COURT: All right, then let me please conclude by expressing the Court's gratitude to counsel for their extremely professional and helpful conduct of this case. You have helped the Court immeasurably, and I do thank you.
- [97] Mr. Kim, good luck to you. We are adjourned.
- [98] CNSL B. McCABE: Thank you, Justice.
- [99] CNSL L. MYERS: Thank you, Justice.

"Ker J."

Appendix "A" - Admissions of Fact[1]

Pursuant to Section 655 of the Criminal Code, the accused herein, Eric Kim ("KIM"), by his counsel, hereby admits the following facts alleged against them for the purpose of dispensing with the proof thereof:

General

1. Andrew Wadden ("WADDEN") is the deceased in the Indictment before the Court.
2. The events in this Agreed Statement of Facts occurred on May 7, 2022, in Vancouver, British Columbia unless otherwise specified.

Pursuit of WADDEN

4. At 10:12:12 AM, KIM received a phone call from a phone belonging to David BENTIL ("BENTIL"). The phone call lasted 2 minutes and 2 seconds.
5. When KIM received the call, he was on the west sidewalk of Main Street, in Vancouver, B.C. Upon receiving the call, KIM hurried northbound along Main Street towards Crab Park (located at 101 East Waterfront Road).
6. At 10:15 A.M., KIM encountered BENTIL and WADDEN on the Main Street Overpass (the "Overpass"). BENTIL and WADDEN were on the east sidewalk of the Overpass, and KIM was on the west sidewalk.
7. WADDEN walked northbound over the Overpass, followed by BENTIL and KIM. KIM crossed the road to walk beside WADDEN. CCTV footage shows KIM walking beside WADDEN and apparently speaking with him and gesturing towards him with his right hand inside his jacket pocket, while BENTIL follows from a short distance away. BENTIL, KIM and WADDEN leave the CCTV camera's field of view at 10:16:52 AM, heading towards Crab Park.

Assault of WADDEN

8. Shortly after leaving the camera's field of view, WADDEN started to run. BENTIL and KIM pursued WADDEN for a short distance, then KIM tackled WADDEN to the ground. A brief physical altercation ensued wherein BENTIL and KIM assaulted WADDEN. WADDEN did not fight back.
9. In the course of assaulting WADDEN, KIM used a black folding knife with an 9-centimeter blade (the "Knife") to stab WADDEN.
10. The assault took place between 10:16:52 AM and 10:19:55 AM.
11. WADDEN died at the scene as a result of stab wounds sustained during the assault.

12. KIM did not intend to cause WADDEN's death. The stab wounds inflicted by KIM were not the proximate cause of WADDEN's death.
13. In the course of assaulting WADDEN, KIM sustained cuts to the thumb and index finger of his right hand.

Post-assault of WADDEN

14. Following the altercation, KIM ran eastbound along a trail which runs from Crab Park to Tymac Launch Service ("Tymac"), located at N Ft Main, Vancouver, B.C. Tymac employees observed KIM use a hose to rinse his head and face. At approximately 10:24 AM, KIM left Tymac and proceeded westbound on East Waterfront Road, before turning around and going up the stairs leading to the Overpass. KIM then walked southbound over the Overpass towards Alexander Street. At the south end of the overpass, KIM was arrested by police. KIM was arrested at 10:28 AM.
15. The Knife was in the right-hand pocket of KIM's jacket at the time of his arrest. KIM's blood was on the blade and handle of the Knife. WADDEN's blood was on the handle of the Knife.

Jail Calls

16. Following his arrest on May 7, 2022, KIM was incarcerated at North Fraser Pretrial Centre. On May 19, 2022 at 7:35 AM, KIM placed a call to an unknown male. This call was recorded.

Autopsy

17. On May 10, 2022, Dr. Eric Bol ("Dr. Bol") performed an autopsy of WADDEN.
- [1] References to exhibits attached to the Admissions of Fact have been removed from this published version of the Admissions of Fact in order to make the document more readable.

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