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R. v. McCormick

2017 BCSC 145

COURT

Supreme Court of British Columbia

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2017 BCSC 145 R. v. McCormick

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. McCormick,

2017 BCSC 145

Date: 20170109

Docket: 166481-2

Registry: Victoria

Regina

v.

Michael James McCormick

Before: The Honourable Mr. Justice MacKenzie

Oral Reasons for Sentence

Counsel for the Crown:

R. Picha

G. Merke

Counsel for the Accused:

M. Daneliuk

Place and Date of Hearing:

Victoria, B.C.

October 31, 2016 and

November 1-3, 2016

Place and Date of Judgment:

Victoria, B.C.

January 9, 2017

- [1] THE COURT: On July 19, 2014, Ms. Pamela Dyer was killed in her home in Sooke, B.C. As a result, her son, Mr. McCormick, who was 34 years of age at the time, was charged with second degree murder.
- [2] Prior to the start of his trial, however, Mr. McCormick entered a plea of guilty to manslaughter. The Crown accepted this plea based on witness statements and psychiatric evidence which established that while Mr. McCormick was not suffering from a true underlying mental illness when he killed his mother, he was suffering from a self-induced crystal methamphetamine psychosis.
- [3] Given the totality of the circumstances and the submissions of counsel, I accepted the guilty plea to manslaughter and found Mr. McCormick not guilty of murder. He is now before the court for sentencing.
- [4] In this regard, it is well settled that the offence of manslaughter covers a wide range of circumstances, moving from cases that approach "near accident" to cases that are closer to murder. As a result, the range of sentence for manslaughter proceeds all the way from a suspended sentence or a brief period of incarceration to substantial penitentiary terms, given the maximum penalty for manslaughter is life imprisonment.
- [5] This reality was summed up by Justice Dillon in *R. v. Bosch* at paragraph 24:
- [24] It is recognized that there is a spectrum of seriousness in the offence of manslaughter, from near murder to near accident or close to self defence. Where a particular situation falls depends upon the balancing of aggravating and mitigating factors. The range of sentence, therefore, is quite broad. The brutality of a killing may place an appropriate sentence at the higher end of the range, notwithstanding mitigating factors ... The ranges of sentence are, however, only a guideline or suggestion because ultimately each case must be decided based upon the circumstances of the offence, the principles of sentencing, and any relevant aggravating and mitigating factors
- [25] Although the maximum sentence for manslaughter is life imprisonment, most cases fall within a range of four to 15 years, as stated by Low J.A. in *Green* at para. 10. The appropriate range of sentence for aggravated manslaughter was said to be 8 to 12 years in *Clarke* at para. 7. However, most manslaughter cases result in a sentence of between 4 to 6 years (*Ansari* at para. 42).

- [6] In this particular case, Crown counsel submits that the appropriate range of sentence is between 12 to 15 years, given what the Crown says was a brutal attack upon Mr. McCormick's vulnerable, defenceless, 64-year-old mother, who Mr. McCormick had been aggressive towards and had threatened on prior occasions. As a result, the Crown says these aggravating circumstances are close to murder and warrant a sentence in this range.
- [7] In support of its position, the Crown emphasizes the trial and appellate decisions in *R. v. Green*, where both courts referred to offenders who commit violent offences due to a drug-induced psychosis, as well as several other cases the Crown says are examples of appropriate sentences for aggravated manslaughter, even though the killing of a mother by a son or daughter is a rare occurrence.
- [8] One of these authorities is *R. v. Lindsay*, where, after a guilty plea to manslaughter, a sentence of 10 years was imposed in addition to credit for approximately 11 months on remand. In *Lindsay*, during an argument over money, the accused killed his mother by smothering her with a pillow. What is somewhat unusual is that in *Lindsay*, the crime would not have been detected if the offender had not voluntarily attended the police station and provided an unsolicited confession; clearly a significant mitigating factor and a show of genuine remorse. In addition, the offender had a limited criminal record with no crimes of violence.
- [9] In my view, the circumstances in the present case are more aggravated than in *Lindsay*.
- [10] Conversely, the circumstances in *R. v. Smith* and *R. v. Ahnert*, where sentences of 20 years and 18 years respectively were imposed, were more aggravating than in the present case. As a result, neither defence nor Crown suggest a sentence in this range would be appropriate in the present case.
- [11] On the other hand, the Ontario Court of Appeal decision in *R. v. Clarke* is helpful in determining what is an appropriate sentence in the present case. In *Clarke*, the court noted the frail health and vulnerability of the 47-year-old victim, the "brutal" nature of a knife attack in the victim's own home, and the offender's attempt to divert suspicion away from himself. He was convicted of manslaughter. The court described this as an aggravated manslaughter, due to the vulnerable nature of the victim. The Court of Appeal reduced a 14-year sentence to one of 12 years, reduced further to nine years, giving credit for three years in presentence custody.
- [12] The court noted, as was referred to by Madam Justice Dillon in *Bosch*, that, in its opinion, the appropriate range of sentence for an aggravated manslaughter is eight to 12 years.
- [13] Another case which, in my view, is instructive is again from Ontario, *R. v. Reed*. This case involved Ms. Reed brutally beating and stabbing her 53-year-old mother in her mother's home, again while in the throes of a "high degree of intoxication" by methamphetamines. In addition, Ms. Reed suffered from a borderline personality disorder. Upon a plea of guilty to manslaughter, where Crown and defence agreed an appropriate sentence range was

between 12 and 15 years, the court imposed a sentence of 12 years less time served, concluding that Ms. Reed's "intractable substance abuse problem" warranted a significant period of incarceration.

- [14] While I accept the defence submission that the circumstances in Reed, including 20 stab wounds, as well as many blunt-force injuries to the victim's head, neck, and torso, could be considered more brutal than in the present case, the circumstances of Ms. Dyer's death are, in my view, nevertheless aggravating.
- [15] In addition, the court in Reed noted that the offender killed the only person who cared for her and was there for her, the one person who attempted to assist the accused with her addictions and mental health challenges and who provided shelter and financial assistance to her daughter. Such was Ms. Dyer in relation to her son, Mr. McCormick.
- [16] In *R. v. Green*, which I have already referred to, the offender stabbed a female friend 37 times, then eviscerated her with a shard of glass, while in a cocaine-induced state of psychosis. Green pleaded guilty and was sentenced to the equivalent of a 10-and-a-half-year sentence.
- [17] In contrast to the Crown's position, while realistically acknowledging that a significant sentence is warranted, learned defence counsel submits that in this particular case, a sentence in the range of seven to 10 years would satisfy all the fundamental principles of sentencing.
- [18] At the outset, the defence submits that the circumstances in Green were more aggravated than in the present case, yet the sentence imposed and upheld by the Court of Appeal was only 10 and a half years. At the same time, it must be remembered that Mr. Green had no prior criminal record, always a significant mitigating factor when a court is attempting to craft an appropriate disposition in any given case.
- [19] In support of its suggested range, the defence also refers to *R. v. Laglace*, where Justice Schultes imposed a 10-and-a-half-year sentence less time served. In this particular case, the offender killed his partner by stabbing her 19 times and then attempted to divert suspicion from himself by cleaning the scene. The court said it was near murder and the plea to manslaughter came after completion of the Crown's case.
- [20] I also note one of the authorities that the Crown referred to, *R. v. LaFantaisie*, is in line with the defence submission and is somewhat similar to the present circumstances. Mr. LaFantaisie pleaded guilty to manslaughter when, during a dispute about money and under the influence of crack cocaine and morphine, he strangled his mother in what was called a fit of rage. Even though the nature of the attack was described by the court as near murder, the sentence for manslaughter was eight years less time served. However, it is also important to recognize that, similar to the circumstances in Lindsay, the police only became aware of his mother's death when the accused turned himself in, was "fully cooperative", and confessed to the crime, clearly a significant mitigating factor. The court also noted, "His

early brushes with the law are not particularly significant", and there was again a high degree of remorse, further mitigating factors.

- [21] The defence also referred to Bosch, where Justice Dillon imposed a nine-year sentence less time served for an addicted offender.
- [22] R. v. Hanley, where during the fourth week of a trial for second degree murder the accused pled guilty to manslaughter, stabbing her young friend. There was a 10-year sentence imposed less time served.
- [23] In Newton, a 25-year-old offender pled guilty to manslaughter after stabbing a stranger in the neck on public transit, again in a drug-induced psychosis. In that particular case, the court imposed a very modest sentence, in my respectful opinion, a seven-year sentence, even though the offence was described by the court as near murder and the accused had "an appalling criminal record", albeit with no offences involving violence.
- [24] In R. v. Beaulieu, a conviction for manslaughter after trial, while intoxicated by alcohol and crack cocaine, the accused had hit the victim with a heavy bar and then stabbed him 90 times. The sentence there was 10 years less time served.
- [25] There were other cases referred to where sentences of 11 years was imposed for the killing of two individuals, and an eight-year sentence out of the Supreme Court of New Brunswick in MacDonald, where intoxication was a significant factor when the accused stabbed his father.
- [26] In Herman, the accused was convicted of manslaughter after a trial. He killed a woman he was in a domestic relationship with by stabbing her. The accused refused to participate in his sentencing and the court noted no mitigating factors whatsoever. Nevertheless, the court viewed a nine-year sentence less time served appropriate.
- [27] In considering all of these authorities, I fully appreciate defence counsel's submission that it is important to recognize that in some of the authorities, especially those referred to by the Crown, sentences were imposed after trial or where there was a plea after a trial had already commenced, unlike the present case where Mr. McCormick has entered a plea of guilty to manslaughter, again a guilty plea always being a significant mitigating factor.
- [28] Finally, as every decision and the various sentences illustrate, every case is unique and any sentence depends on the particular circumstances of the offence and the court's assessment of the offender's moral blameworthiness.
- [29] I pause here to mention the impact of Ms. Dyer's death upon members of her family and the community. In this regard, several of Ms. Dyer's family and friends have provided victim impact statements that poignantly express their grief and loss as a result of her tragic death. Ms. Dyer was clearly loved in the community and a friendly, contributing member of society. Ms. Dyer's death has understandably had a devastating impact on her family and friends and will undoubtedly have a lasting effect on all of them.

- [30] Turning to Mr. McCormick's personal circumstances, he is now 36 years of age. He is separated from his wife and three children. Due to his addiction and erratic antisocial behaviour over the last few years, he has not seen his children for a considerable period of time. Nevertheless, I am advised by Ms. Daneliuk on behalf of Mr. McCormick that he has recently received some positive news, in the sense that he has been advised that the children's mother, Ms. Earl, is prepared to facilitate a renewal of the relationship between Mr. McCormick and his children in the future, and that at this particular point in time, in fact, they have had communication with their father. In this regard, Ms. Daneliuk points out that this support from his family is significant with respect to Mr. McCormick's rehabilitation and his ability to become a contributing member of society when he is, in fact, eventually released from the sentence that I must impose today.
- [31] Mr. McCormick has a limited education and is, according to one report, functionally illiterate and has had difficulty obtaining and maintaining gainful employment in the recent past. However, before descending into the world of serious drug addiction, Mr. McCormick was apparently a good worker with skills in construction and the like, but as with so many others, once embedded in the world of drug addiction, he has had significant difficulty functioning in a meaningful way in society.
- [32] Mr. McCormick has been involved with numerous illicit drugs for many years, and in the last three years or so prior to the death of his mother has been in the throes of a severe addiction to crystal meth, this addiction being outlined in every presentence report and psychiatric report that has been prepared since 2013, reports that both counsel have referred to and which I have considered in their entirety.
- [33] At present, Mr. McCormick has been in custody on this matter since mid-September 2014, after completing a 90-day sentence that related to threats made to another person on the same day he killed his mother.
- [34] Since being incarcerated, Ms. Daneliuk, in her very able submissions, submits that Mr. McCormick has been a model inmate who has, for the first time in years, given his present structured environment, been receiving and maintaining his proper medication and who, from all accounts, works well within the prison setting. I also accept the defence submission that Mr. McCormick has taken advantage of whatever courses are available to him whilst on remand.
- [35] The objectives of sentencing that must be applied in any criminal case are now outlined in s. 718, 718.1, and 718.2 of the Criminal Code. These include the denunciation of unlawful conduct, deterrence of the offender and others from committing offences, separation of an offender from society where necessary, rehabilitation of the offender, reparation for harm done to victims and the community, and promotion of a sense of responsibility and acknowledgment of the harm done in offenders. However, the overriding principle in sentencing is that the sentence must be commensurate with the gravity of the offence and the degree of responsibility of the offender; that is the principle of proportionality.

[36] However, again as Justice Dillon pointed out in Bosch at paragraph 21:

in sentencing for manslaughter where the voluntary consumption of cocaine is involved, the principles of denunciation and deterrence remain at the forefront. Low J.A. stated for the British Columbia Court of Appeal in Green at para. 19:

[19] In the present case, general deterrence and denunciation are the most important factors in determining the proper sentence. I do not accept the argument that deterrence is not a significant factor because people on cocaine binges are unaware of their conduct and cannot be deterred. In my opinion, deterrence is not aimed at violence per se, but is aimed at the highly irresponsible conduct that leads to the violence. Those who might emulate the lifestyle of the appellant that led to the killings must know that serious crimes done while under the influence of self-administered, mind-altering substances will attract substantial terms of imprisonment: the more horrific the circumstances of the crime, the higher the sentence.

[37] Crown and defence both agree that the offence of matricide, again the killing of one's mother, is, as I have noted, a relatively rare crime, and as we have seen, there are few precedents with respect to sentencing for this specific offence. There is no question, however, that the commission of this offence brings into play the statutorily mandated aggravating factor that this is a breach of trust offence. There is no dispute on this point, as the relationship is obvious.

[38] Moreover, as both counsel have acknowledged, the tragedy is amplified by the fact that Ms. Dyer was the only person who was truly attempting to offer her son emotional and financial support during the last three years.

[39] The Crown also says that according to a statement from one witness, a Ms. Fleming, Mr. McCormick threatened to kill his mother the night before he actually did so. Mr. McCormick vehemently denies making any such threats. In addition, the defence submits Ms. Fleming is not a credible witness and her statements are contradicted by the statements of other witnesses, such that it would be unsafe to rely on her statement. On this issue, given the disagreement between Crown and defence on this point, and in the absence of actual evidence being heard, I am unable to accept the Crown's submission as to what I agree would otherwise be an aggravating factor.

[40] Be that as it may, there is no doubt that prior to her death, Ms. Dyer was concerned for her safety due to Mr. McCormick's erratic, bizarre, and aggressive behaviour towards her when in the throes of his crystal meth addiction.

[41] On this point, the Crown says that where persons such as Mr. McCormick voluntarily consume illicit drugs to such a degree that the result is a drug-induced psychosis and aggressive and violent behaviour, especially when they are or should be aware of the adverse effects these drugs will have on them, this conduct is an aggravating factor, as emphasized by the Court of Appeal in Green.

- [42] On this point, I do recognize Dr. Miller's note in January 2014 that Mr. McCormick lacks "insight into his need to abstain from stimulants", but I am not persuaded Mr. McCormick failed to appreciate his violent behaviour was directly related to his consumption of narcotics, especially crystal meth which he described as his "medicine". Indeed, in Mr. McCormick's September 2014 statement to the police, he described crystal meth as "a horrible drug", such that he had been in full psychosis in the past when under its influence.
- [43] On this particular point, the defence submits that it is difficult to agree that a person such as Mr. McCormick can truly voluntarily consume a narcotic when, because of a severe addiction, he has little control over his desire for drugs, and that this submission underestimates the nature of a severe drug addiction. Whilst I appreciate the spirit in which the submission is made, nevertheless when combined with Mr. McCormick's rejection of any suggestions for drug treatment or therapy leading up to the death of his mother, in my view, Mr. McCormick is the author of his own misfortune. In this regard, the Crown points out that in November 2013 and January 2014, Dr. Miller, an experienced psychiatrist, encouraged Mr. McCormick to get treatment, but that Mr. McCormick was not interested.
- [44] On this latter point, I appreciate again the defence suggestion that Mr. McCormick's residence in Sooke made attendance at treatment programs somewhat problematic. Nevertheless, there is little evidence to suggest Mr. McCormick was even remotely interested in participating in any counselling programs even though, in my view, it is apparent that he recognized even then that his risk of committing violent offences is elevated when he consumes crystal meth and other illicit substances.
- [45] In addition, the Crown says the nature of the attack upon Ms. Dyer is an aggravating factor, saying this was a brutal beating administered to a defenceless, vulnerable, 64-year-old woman by a large 220-pound young man, and that the multiple rib fractures and the blows to the face and head support the Crown's submission that this was not a quick death, but rather a prolonged and severe beating. The Crown says the blood spatter evidence supports its submission.
- [46] The Crown also says the indignity to Ms. Dyer's body with food items thrown about while she is prone and bleeding profusely is an aggravating factor, as is Mr. McCormick's post-offence conduct where he attempted to cover up the crime by washing his top with bleach and disposing of his jeans in the bush across the road.
- [47] In addition to these aggravating factors, the Crown points out that Mr. McCormick is not before the court as a first offender and was on probation at the time he committed this offence. In this regard, since February 2013, Mr. McCormick has had approximately nine prior convictions for breaches of court orders, including six earlier breaches of probation; the equivalent of a 30-day sentence for threatening his mother in June 2014, about a month before her death; five convictions for obstructing, resisting, or assaulting a police officer; and the equivalent of a 60-day jail sentence for his assaulting his then-girlfriend, Ms. McIntyre, in June 2013, this in addition to the 90-day jail sentence he received for

threatening the other person shortly after killing his mother.

- [48] As far as mitigating factors are concerned, both the Crown and defence quite properly point out that Mr. McCormick has entered a guilty plea to the offence of manslaughter, thereby alleviating the necessity of embarking upon a six-week trial. On this point, Crown counsel has also fairly acknowledged that almost from the outset, the defence had offered a plea to manslaughter, but until medical evidence was obtained to support such a plea, the Crown was not able to entertain this offer until shortly before the trial was set to commence. Nevertheless, Mr. McCormick's guilty plea is clearly a mitigating factor and must be taken into consideration when determining what is an appropriate sentence.
- [49] Remorse and the acceptance of responsibility for one's criminal conduct is also always a mitigating factor. The issue of remorse here is, however, subject to different points of view from Crown and defence. The Crown acknowledges that Mr. McCormick has said he is truly sorry for committing this terrible crime, apologized in open court to members of Ms. Dyer's family and had counsel read a statement to the court that he prepared with the assistance of another person.
- [50] However, the Crown suggests Mr. McCormick's professed remorse is somewhat self-serving and insincere. The Crown highlights the fact that after Mr. McCormick admitted to the police he had killed his mother, after his earlier denials of causing her death, he almost immediately inquired if it would be possible to have a plea to manslaughter accepted as opposed to being tried on a murder charge, acknowledging "something snapped in me", even though he then said, "I was convinced it was not Mom."
- [51] In response, the defence submits that after being in custody from late July 2014, serving his 90-day sentence for threatening, and probably considering his predicament, even though he was not charged with his mother's murder until September 17th, when he admitted causing her death, the fact that Mr. McCormick wanted to ascertain the extent of his jeopardy and find out whether a manslaughter plea would be possible does not mean he was not sincere when he advised the police and eventually Dr. Zoffmann, a psychiatrist retained by the defence, that he was remorseful for his actions on the night in question, at the same time realizing that no matter what he said, this would not alter the fact that he had killed his mother.
- [52] In any event, the fact of the matter is Mr. McCormick has pled guilty, thereby accepting responsibility for his actions.
- [53] Given these circumstances, the defence submits its suggested range of seven to 10 years would be appropriate, as Mr. McCormick's guilty plea, accepting responsibility for taking the life of his mother, and Dr. Zoffmann's conclusion that Mr. McCormick was very remorseful and did not attempt to evade responsibility "for taking drugs in the first place" militates in favour of a sentence in this range.

- [54] The defence also submits that the pathology report and Dr. Straathof's evidence at the preliminary hearing undermine to a certain extent the Crown's submission that this was a prolonged, brutal beating, saying this is one of the hallmarks of sentences at the higher end of the range. The defence submits the medical evidence supports its position that the cause of death was sustained pressure on Ms. Dyer's torso, rather than a significant number of individual blows to her chest, thereby preventing her from breathing, and was the probable cause of death, as opposed to any specific trauma to her head or other parts of her body. The defence submits this is significant, because it is directly related to Mr. McCormick's moral blameworthiness and is relevant when the court is determining what is an appropriate disposition.
- [55] Nevertheless, given the pathology report noted substantial bruising and injuries to Ms. Dyer's head, neck, arms, and legs, as well as the multiple rib fractures, I reiterate my view that even with the somewhat equivocal evidence as to the actual cause of death, the circumstances here are aggravated, even with the probable cause of death being sustained pressure to Ms. Dyer's chest.
- [56] The defence also points out that in a statement to the police, while Ms. Dyer expressed concern for her safety, she advised the police Mr. McCormick had never before physically assaulted her and, in fact, notwithstanding his crystal meth psychosis in the hours before her death, she did not feel the need to call the police due to any aggressive behaviour on the part of Mr. McCormick the evening before her death. As a result, the defence says his mother's death was not predictable, notwithstanding the many times the police had been involved with Mr. McCormick prior to her death and Ms. Dyer's concerns about her own safety.
- [57] At the same time, what is clear from the medical reports and the circumstances of this offence is that if it were not for Mr. McCormick's addiction to crystal meth and the resulting psychosis, as Dr. Zoffmann said, in her opinion, if it was not for crystal meth, Mr. McCormick would not have killed his mother.
- [58] The defence also submits that Mr. McCormick has reasonable prospects for rehabilitation, as evidenced by his "exemplary" behaviour at Wilkinson Road jail since July 2014, confirmed to a significant degree in a letter from the deputy warden. Moreover, as Dr. Zoffmann writes:
- He seems at present to have a very clear idea how dangerous methamphetamine is for him as he is very vulnerable to developing psychosis with this drug.
- [59] Conversely, the Crown has significant doubts about Mr. McCormick's potential for rehabilitation, noting that the medical reports have indicated he is able to quickly "clear his mind" of any drug-induced psychosis once he refrains from using drugs, which he is capable of doing, but that his past history of an almost immediate return to the ingestion of crystal meth and other narcotics after a brief spell in prison does not bode well for his future rehabilitation.

- [60] The Crown says it is more than likely that upon his release from whatever sentence is imposed, Mr. McCormick will revert to the consumption of narcotics due to his addictions, given he has rejected treatment in the past.
- [61] The Crown says it is clear this is the basis for Dr. Miller's opinion that Mr. McCormick is a moderate to high risk to reoffend due to his antisocial personality disorder, narcissistic traits, and severe addiction to crystal meth, as well as his past resistance to any treatment programs. In this regard, Dr. Zoffmann confirms what is all too obvious, that Mr. McCormick's rehabilitation, as well as the risk for violent recidivism, are dependent on whether or not he relapses into drug addiction.
- [62] Notwithstanding this relatively pessimistic view of Mr. McCormick's ability to stay free of drugs in the future, the court must be alive to Mr. McCormick's rehabilitation. On this point, I agree with the defence submission that it would be contrary to the fundamental principles of sentencing to impose a sentence that would be of such duration that it would eliminate any hope for Mr. McCormick's rehabilitation.
- [63] On this particular point, I have already referred to the latest information I received from defence counsel with respect to Mr. McCormick's wife and children hoping to reunite with him and offer him support in the future, and I accept that that is a relevant factor with respect to the prospects of Mr. McCormick's future rehabilitation and ability to become a contributing member of society in the future.
- [64] In determining what is an appropriate sentence in this particular case, I have considered all of the authorities counsel have referred to, and of course accept all the general principles enunciated therein, recognizing again that sentencing options for manslaughter are wide-ranging. At the same time, as mentioned, a range of sentence is only a guideline that the court considers in an attempt to achieve some consistency and predictability although, as these past decisions illustrate, when it comes to sentencing for manslaughter, these can be elusive goals.
- [65] In this determination, I agree with Crown counsel that the Court of Appeal decision in *Green* is especially instructive, not so much because of the actual sentence that was imposed, but because Justice Low unequivocally emphasized that persons who commit violent crimes while in the throes of a drug-induced psychosis can still expect to receive serious sentences because the principle of general deterrence plays a paramount role.
- [66] At the same time, this pronouncement does not mean that deterrence and denunciation can inappropriately overwhelm rehabilitation in the sentencing process, because in any criminal case the court must consider the traditional principles of general and specific deterrence, denunciation, and rehabilitation, as well as the other now-codified principles of sentencing.

[67] Given the totality of the circumstances, the nature of this offence, Mr. McCormick's prior criminal history and personal circumstances, I am unable to accept the defence submission that seven to 10 years for causing the death of his mother would satisfy the relevant fundamental principles of sentencing, given what I find to be a high degree of moral blameworthiness. In this regard, I agree with Crown that this manslaughter can be classified as near murder.

[68] In this regard, as the court said in Lindsay:

The killing of a parent by a child is a rare occurrence. In imposing sentence the court must express society's outrage at this type of offence and reflect society's concern for the sanctity of life.

[69] Even saying this, there is no doubt that some members of the public, especially perhaps Ms. Dyer's family, would conclude the suggested sentences by both Crown and defence are inadequate. However, I am required to consider these past decisions when determining an appropriate disposition in the present case, especially sentences that have been imposed at the appellate level.

[70] As a result, balancing all of the relevant fundamental principles of sentencing, I am persuaded the appropriate sentence in this case should be in the range suggested by the Crown. The sentence is therefore one of 12 years.

[71] I am required to deduct from this sentence the time Mr. McCormick has been in custody awaiting disposition. This calculation begins as of September 17, 2014. The Crown and defence have also agreed that Mr. McCormick is to be given credit on a 1.5-to-one basis, the result being that Mr. McCormick has, in effect, served the equivalent of 1,266 days or, according to counsel's calculations which I appreciate I received prior to today, 42 months and one week in custody.

[72] Therefore, the 12-year sentence will, in effect, be a sentence of eight and a half years less one week.

[73] In a moment, if I have made a mistake with my arithmetic, counsel can let me know.

[74] In addition, there will be the requested ancillary orders. There will be an order that Mr. McCormick provide a DNA sample as soon as is practicable. There will be an order that there is a lifetime prohibition of all the items referred to in s. 109 of the Criminal Code, given the prior 10-year prohibition that was imposed on an earlier occasion.

[75] As far as the victim surcharge is concerned, Crown and defence also have agreed that, given the length of this sentence, it is clearly appropriate to order that there be no time to pay the surcharge and that Mr. McCormick serve a concurrent two-day sentence, and I so order.

[76] Ms. Daneliuk or Ms. Picha, eight and a half years less one week, is that correct? I believe it is.

- [77] MS. DANELIUK: I believe so, sir, yes.
- [78] MS. PICHA: I believe so, thank you.
- [79] THE COURT: Okay. Is there anything else?
- [80] MS. DANELIUK: No, thank you, My Lord.
- [81] MS. PICHA: No, thank you.
- [82] THE COURT: Okay, thank you very much.

"B.D. MacKenzie, J."

The Honourable Mr. Justice B.D. MacKenzie

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