

CANADA / JUDGMENT

R. v. Nguyen

2024 BCSC 508

COURT

Supreme Court of British Columbia

DECIDED

15 February 2024

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2024 BCSC 508 R. v. Nguyen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Nguyen,

2024 BCSC 508

Date: 20240215

Docket: 92509-2

Registry: Abbotsford

Rex

v.

Van Chau Nguyen

Before: The Honourable Justice Tammen

Oral Reasons for Sentence

Counsel for the Crown:

C.M. Yamashiro

B.G. Oros

Counsel for the Accused:

G.M. Ng

A. Vo

T.C. Au

Place and Date of Hearing:

Abbotsford, B.C.

February 15, 2024

Place and Date of Judgment:

Abbotsford, B.C.

February 15, 2024

- [1] THE COURT: The accused, Van Chau Nguyen, has pleaded guilty to two charges on Indictment no. 92509-2.
- [2] With respect to Count 1, a charge that on or about August 8, 2020, at or near Mission, BC, he did commit the first degree murder of Vien Bui, contrary to s. 235 of the Criminal Code, R.S.C. 1985, c. C-46, Mr. Nguyen has entered a plea of not guilty to first degree murder, but guilty to the lesser included offence of second degree murder.
- [3] Count 4, that on or about August 8, 2020, at or near Mission, BC, in committing assault of Tuan Anh Bui, Phat Tien Bui, Lan Thi Pham, and Man Vinh Vuong, he did carry, use, or threaten to use a weapon, contrary to s. 267(a) of the Criminal Code.
- [4] As noted, both those offences occurred on August 8, 2020, in the early morning hours. The guilty pleas were entered on May 5, 2023, prior to a trial scheduled to commenced on May 29, 2023. I must now impose sentences for both offences.
- [5] Count 1 requires the imposition of a mandatory sentence of life imprisonment. However, I must determine the appropriate period of parole ineligibility between 10-25 years. That period of parole ineligibility will run from the date of Mr. Nguyen's arrest on these charges, October 2, 2020.
- [6] The sentence on Count 4 will run concurrently with the life sentence. Thus, the important and difficult decision I must make is determining an appropriate period of parole ineligibility.
- [7] The basic facts are set out in Exhibit 1, an agreed statement of facts ("ASF"), and my earlier reasons following a hearing to determine if the Crown had proven beyond a reasonable doubt that the accused set the fire that destroyed the premises in which the crimes took place.
- [8] In brief compass, the facts are these, as succinctly set out in the ASF and the Crown's written submissions at this hearing.

- [9] The deceased, Mr. Bui, was the manager of a marihuana grow operation facility located at 30819 Gunn Avenue in Mission (the "Property"). Mr. Bui worked at the Property and often stayed overnight at the main residence, including on the date of his death. Mr. Nguyen had been a worker at the Property and stayed at the main residence for several months. Mr. Nguyen stopped working and residing at the Property approximately one month prior to the date of the offences.
- [10] In the early morning hours of August 8, 2020, Mr. Nguyen entered the main residence. He wore dark clothing, including a raincoat. Mr. Nguyen carried a machete, a knife, and bear spray. Once inside the residence, the accused attacked and killed Mr. Bui by cutting off his left hand and right foot with the machete. The accused also used weapons and zip ties to assault and confine the other victims. The accused threatened to stab the victims and forced them to remain inside a bathroom. The accused closed the bathroom door and remained in the living room with Mr. Bui.
- [11] The accused intentionally set the main residence on fire using gasoline. He fled the scene and discarded evidence along the way, including the machete, knife, and bear spray. The fire quickly consumed the main residence. The victims confined inside the bathroom escaped the premises by jumping out a second-storey window. Several of them sustained injuries in the process. Mr. Bui did not escape. Firefighters located his severely burned remains on the grounds of the main residence later that morning.
- [12] The accused was 60 years old at the time of the offences. He is now 63 years old. He has been in the Surrey Pretrial Centre since his arrest in October 2020. The accused suffers from Hepatitis B and requires a daily regimen of medications to treat that disease.
- [13] The accused has a wife and adult children who remain supportive of him and have written letters of support on his behalf, as have others.
- [14] The accused has a minor dated criminal record. There are no crimes of violence disclosed in that record. The accused has expressed remorse, both to friends and family, as documented in some of the letters of support and through counsel at this hearing.
- [15] I have read the two victim impact statements filed by Crown counsel.
- [16] Lan Pham, one of the occupants of the premises, suffered injuries both from the machete (directly caused by the accused), and a broken back from jumping from the bathroom window. She describes the prolonged impact on her, both physically and psychologically.
- [17] Jenny Bui, the adult daughter of Mr. Bui, poignantly describes the impact on her of her father's untimely death by homicide.
- [18] Many principles of sentencing are now codified in ss. 718, 718.1, and 718.2 of the Criminal Code, all of which I have read and considered. For all homicide offences, denunciation will be an important consideration. In many cases, the need to separate the offender from society will be at the forefront.

- [19] In sentencing for murder, the mandatory life sentence addresses both of those considerations in the most robust manner permitted by Canadian law. The accused may never be released from prison. If he is granted parole, it will likely be some years after any period of ineligibility I impose. The release will likely be via some form of gradual reintegration into society, cascading through escorted temporary absences, unescorted temporary absences, day parole, and then full parole.
- [20] If granted full parole, the accused will remain supervised by the Corrections Services of Canada ("CSC") for the rest of his life. Even minor misbehaviour could lead to parole revocation.
- [21] I respectfully adopt the extremely thoughtful comments of Justice Lambert in *R. v. Mafi*, 2000 BCCA 135, at paras. 20-21:

Setting the period of parole eligibility is in some respects unlike sentencing for other crimes. One must suppose that the Parole Board is doing its job and that it will continue to do so, though, of course, it is an extraordinarily difficult job and involves the taking of some risks in trying to achieve the aims of a just society. Accordingly, if the minimum period of ten years of parole ineligibility is set, what that means is that if the Parole Board considers that full rehabilitation has been achieved in ten years then the prisoner may be released, but if the Parole Board does not consider that rehabilitation has been achieved then the prisoner will not be released, and will perhaps remain in prison for the remainder of his or her life.

So the purpose of increasing the period of parole ineligibility beyond ten years is to prevent the Parole Board from considering the question of parole for that person and, if he or she is rehabilitated, granting parole, and if he or she is not rehabilitated then maintaining the confinement, perhaps for life. There is no need to consider the person who is not going to be rehabilitated, where, at the end of the parole ineligibility period, parole would be refused and confinement would be continued. That convicted person will spend the remainder of his or her life in prison unless rehabilitation is ultimately achieved. It is the person who is going to be rehabilitated in ten years who must be the focus of our concern. To put the matter starkly, the effect, therefore, of increasing the period of parole ineligibility is to keep someone in prison who has been entirely rehabilitated, as far as it is possible to tell, in order to go on denouncing that person, and claiming retribution from that person, for what may well have been an impulsive act committed more than ten years before.

[Emphasis in original.]

- [22] Both Crown and defence rely on the following distillation of some of the important principles which impact the decision to impose a period of parole ineligibility beyond the statutory minimum, from *R. v. Bennight*, 2012 BCCA 461 at para. 18:
- Under s. 745.4 of the Criminal Code, the sentencing judge must consider the character of the offender, the nature of the offence, the circumstances surrounding the commission of the offence, and the recommendation of the jury (if any).

- The general sentencing principles of denunciation and deterrence and the judge's assessment of the offender's future dangerousness are relevant factors: *R. v. Shropshire*, [1995] 4 S.C.R. 227.
- Parole ineligibility greater than 10 years is justified when there is some particularly aggravating feature: *Cerra*, at para. 17 (per Donald J.A.).
- There are two broad groupings of cases where parole ineligibility is extended beyond 10 years: parole ineligibility periods from 12 to 15 years and parole ineligibility periods from 15 to 20 years. The latter group of cases relates to cases at the highest order of moral culpability or dangerousness: *Cerra*, at para. 26 (per Donald J.A.).
- The possibility of a parole ineligibility period greater than 20 years remains in exceptional circumstances: *Cerra*, at para. 36 (per Ryan J.A.).
- Orders extending the period of parole ineligibility are highly discretionary and are part of the sentence pursuant to s. 673 of the Criminal Code. Such orders are therefore appealed pursuant to s. 687(1). An appellant court should only interfere with a trial judge's sentencing order if the court is convinced it is not fit or it is clearly unreasonable: *Shropshire*, at paras. 47-48.
- The wide discretion granted to sentencing judges is fettered by the case law and general ranges of sentences for particular offences. However, while courts must consider ranges, they are guidelines rather than strict rules. A sentence outside the regular range is not necessarily unfit, if it is in accordance with the principles and objectives of sentencing: *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206 at para. 44.
- Similarly, the two groups of parole ineligibility cases described in *Cerra* are intended as guidelines, not as binding categories within which a particular case must be placed: *R. v. White*, 2011 BCCA 328 at para. 24.

[23] That summary is extremely helpful and I likewise adopt it.

[24] Both counsel have provided various sentencing decisions in the main from other trial courts which are of limited utility in determining a fit sentence for this accused. I accept the primary principle to be gleaned from some of the defence cases that I should consider the somewhat advanced age and health difficulties of the accused when I fix the period of parole ineligibility.

[25] Crown relied on the following cases: *R. v. Brush*, 2017 ONSC 664; *R. v. Ramsay*, 2016 BCSC 1207; *R. v. Roy*, 2016 NBQB 007; *R. v. Ryle*, 2018 MBQB 32; *R. v. Ebrahimian*, 2022 BCSC 2290; *R. v. Dosanjh*, 2018 BCSC 2302.

[26] All of those cases are of extremely limited assistance for various reasons. Some were joint submissions. Some were sentences following jury verdicts. Several had aggravating factors far worse than the present case. Dosanjh was not a murder case, but rather a case of sentencing for manslaughter.

[27] In this case, there are aggravating factors which make an extended period of parole ineligibility appropriate. The main aggravating circumstances are these:

- a) the brutal nature of the killing, including the partial dismemberment of Mr. Bui;
- b) the intentional arson, which destroyed evidence and subjected Mr. Bui's body to further indignity;
- c) the evidence of some planning and forethought, in particular the fact that the accused armed himself with multiple weapons; and
- d) the confinement of both the primary and secondary victims.

[28] The main mitigating circumstances are these:

- a) first and foremost, the entry of a guilty plea;
- b) an expression of genuine remorse made by the accused;
- c) the accused is 63 years old and will be past 70 at the time he is eligible for any parole consideration; and
- d) the accused has some health issues which will likely render his custodial time more onerous than a younger, healthier inmate.

[29] Returning to the principles outlined by Justice MacKenzie in Bennight, I observe as follows:

- a) I believe it is unlikely that the accused will present a danger to the public at such time as the Parole Board deems him fit to be released into the community; and
- b) in my view, this accused fits comfortably within the first grouping of offenders identified by Donald J.A. in Cerra (i.e., those whose parole ineligibility should be fixed between 12-15 years.)

[30] Due to the advanced age of the accused and his health difficulties, I set the period of parole ineligibility at 12 years.

[31] Mr. Nguyen, would you please stand, sir. On Count 1, I sentence you to life imprisonment without eligibility for parole for 12 years. On Count 4, I sentence you to three years' imprisonment concurrent. You may be seated, sir.

- [32] I must now impose various ancillary orders. The first of those is a mandatory order pursuant to s. 487.051(1) of the Criminal Code, that is an order requiring the accused to provide to the authorities a sample of his DNA suitable for repository with the DNA data base. I make that order.
- [33] Pursuant to s. 109 of the Criminal Code, I must impose a weapons prohibition. I make that order pursuant to s. 109(3), which will be a lifetime prohibition from possessing any firearms, cross-bow, restricted weapon, ammunition, and explosive substances.
- [34] Pursuant to s. 491(1)(a), that is an order of forfeiture. What is that in respect of, Ms. Oros, in this case?
- [35] CNSL B. OROS: That would be with respect to the machete, the knife, and the bear spray, the weapons involved.
- [36] THE COURT: All right. All of those items you say are clearly weapons, which are the first items set out in s. 491(1)(a). I did not ask earlier for any submissions on this. I take it there is no issue about forfeiture of those items?
- [37] CNSL G. NG: No, there's no issue with the forfeiture. The only thing I was going to rise, when the Court got there, was to victim surcharge.
- [38] THE COURT: I do not need to hear you on that.
- [39] CNSL G. NG: Okay, thank you.
- [40] THE COURT: I will make an order then that those items are forfeited pursuant to s. 491(1)(a), and that is the machete, knife, bear spray.
- [41] Pursuant to s. 743.21(1) of the Criminal Code, I am going to make a non-communication order for the custodial period of Mr. Nguyen's sentence. He is to have no communication with the following individuals: Tuan Anh Bui, Phat Tien Bui, Lan Thi Pham, Man Vinh Vuong, Lai Van Pham, Tuan Phan, and Thang Luu.
- [42] Because I have imposed a sentence of life imprisonment, I am waiving the victim fine surcharge.
- [43] I think those are all the ancillary orders that were sought by the Crown. Is that right?
- [44] CNSL B. OROS: Yes, Justice.
- [45] THE COURT: All right. And the final order I must make is with respect to s. 743.2 of the Criminal Code. Pursuant to s. 743.2, I make an order that the reasons I have just given shall be transcribed and transmitted to the CSC to assist in administering the sentence. In my view, I should also order that some of the exhibits that have been filed be transmitted for that same purpose. I am certainly prepared to hear counsel on any of those, but I think that perhaps Exhibit 1, the admissions of fact, would be something that would be helpful.

- [46] CNSL G. NG: Yes, I agree.
- [47] THE COURT: Okay, so Exhibit 1 shall be transmitted to the CSC pursuant to s. 743.2. And I am in counsel's hands with respect to any of the other exhibits.
- [48] CNSL B. OROS: Yes, I think we would suggest the Crown book of materials, as well as the admissions refer to items in that book.
- [49] THE COURT: So that was Exhibit 2, filed earlier in May?--
- [50] CNSL B. OROS: Yes, yes.
- [51] THE COURT: Okay, any objection to that?
- [52] CNSL G. NG: No objection, Mr. Justice, and I was going to suggest Exhibit 8, the defence book of documents, in case the letters of support may be of assistance as well for community support determination.
- [53] THE COURT: All right, so Exhibit 2, which was the Crown book of materials filed back in May that accompanied the admissions of fact, that as well will be transmitted to the CSC. Finally Exhibit 8, which was the defence book of materials, will also be transmitted to the CSC.
- [54] All right, anything else?
- [55] CNSL B. OROS: No, Justice, not from the Crown perspective.
- [56] CNSL G. NG: I don't think so, I think that's it. Thank you, Mr. Justice.
- [57] THE COURT: All right. And what about Counts 2, 3, and 5 on the indictment? I do not recall that they have been dealt with.
- [58] CNSL B. OROS: No, so the Crown will direct a stay with respect to the remaining counts on the indictment.
- [59] THE COURT: Thank you, we will adjourn.

"Tammen J."

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