

CANADA / JUDGMENT

## R. v. Omar

2025 BCSC 915

### COURT

Supreme Court of British Columbia

### DECIDED

29 April 2025

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2025 BCSC 915 R. v. Omar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Omar,

2025 BCSC 915

Date: 20250429

Docket: 183813-1

Registry: Victoria

Rex

v.

Mohamed Daud Omar

Before: The Honourable Mr. Justice A. Saunders

Oral Reasons for Sentence

Counsel for the Crown:

M. Feldthusen

Counsel for the Defence:

R. Alberto

Place and Date of Hearing:

Victoria, B.C.

April 10, 2025

Place and Date of Judgment:

Victoria, B.C.

**April 29, 2025**

- [1] On June 21, 2024, Mohamed Daud Omar was convicted by a jury of the second degree murder of John Dickinson. Sentencing has been delayed due to Mr. Omar retaining and then changing counsel, and also on account of delays in the preparation of a report commissioned by the defence for sentencing purposes.
- [2] The sentence for the crime of second degree murder is provided for in s. 745(c) of the Criminal Code. The sentence is imprisonment for life without eligibility for parole until the offender has served at least 10 years of the sentence, or in substitution of that 10-year ineligibility period such greater number of years up to 25 years of parole ineligibility as this Court might determine, pursuant to s. 745.4.
- [3] The function of the sentencing judge is only to determine the period during which an offender who has committed this offence will not be eligible for parole. It is not to determine when parole will be granted. When the parole ineligibility period expires, it will be the parole authorities who will ultimately decide if and when the offender is suitable for release. If the offender is not rehabilitated, the sentence of imprisonment will continue.
- [4] Section 745.4 empowers the presiding judge to substitute for the 10-year minimum parole ineligibility period a higher number of years up to 25 years as deemed fit, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and any recommendation made by the jury.
- [5] Section 746 provides that the period of parole ineligibility is to run from the date the offender was arrested and taken into custody. Mr. Omar was arrested shortly after the offence in the early morning hours of March 1, 2022. The issue, therefore, is whether he will become eligible for parole as of March 1, 2032, or at some later date.
- [6] As I say, that is the sole substantive issue to be decided by me on this hearing.
- [7] In this case, following their delivery of the verdict the jury retired to further consider what recommendation if any they would make concerning the period of parole ineligibility. Nine of the 12 members of the jury declined to make any recommendation. The other three jurors recommended a period of 20 years.
- [8] The Crown seeks an increased ineligibility period of 12 to 13 years.
- [9] Mr. Omar seeks the minimum period of 10 years.

- [10] Although s. 745 and the case law set out specific considerations that are to inform a decision on parole ineligibility, it must be remembered that all aspects of sentencing must be directed towards achieving the fundamental purpose provided for in s. 718 of the Criminal Code, that is, to protect society and to contribute 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.
- [11] The Criminal Code further states certain principles that are to guide sentencing decisions: the principle of proportionality; the principle of restraint; the principle of parity--that is, so far as is possible, that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and, the consideration of all aggravating and mitigating factors.
- [12] As I have said, s. 745 specifically requires the sentencing judge to have regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission.
- [13] *R. v. Shropshire*, [1995] 4 S.C.R. 227, at paras. 19-20 the Supreme Court of Canada confirmed that the "nature of the offence" can include assessing the need for denunciation, that "character of the offender" can include assessment of the future danger the offender poses to society, and that societal condemnation and deterrence are legitimate goals of increasing parole ineligibility beyond the minimum period of 10 years. *Shropshire*, at paras. 26 and 27, is also authority for the proposition that increasing parole ineligibility beyond the 10-year minimum does not require "unusual circumstances", but that 10 years is to be seen as the "general rule".
- [14] In *R. v. Cerra*, 2004 BCCA 594, Justice Donald commented at para. 17 that comparison of decisions from the B.C. Court of Appeal suggests a pattern in broad terms of parole ineligibility greater than 10 years being justified where there was some "particularly aggravating feature", with penalties greater than 15 years requiring "egregious circumstances of a higher order of moral culpability".

- [15] As to the nature of the offence and the circumstances of its commission, the jury heard evidence from several eyewitnesses. Broadly, the narrative that emerges from their testimony is that Mr. Omar on the night in question was at the Lucky Bar on Yates Street in Victoria. At some point in the evening, Mr. Omar became involved in some sort of altercation with another patron, Mr. Dickinson. Initially, it appears their altercation was verbal, though Mr. Dickinson did put his hands on Mr. Omar and began to lead him towards the exit, saying words to the effect of, "You can get this guy out." One of the bar's security guards escorted Mr. Omar out and told a second guard to keep Mr. Omar outside while he went in to speak with Mr. Dickinson. The second guard described Mr. Omar as seeming calm but focussed, and he heard Mr. Omar muttering under his breath, "I'm going to fuck this guy up." Mr. Omar went back into the bar briefly, had another verbal exchange with Mr. Dickinson, and then left. When Mr. Dickinson and his girlfriend exited shortly after that, Mr. Dickinson saw Mr. Omar, yelled at him, and rushed at him. The two of them tussled and then tripped or fell with Mr. Dickinson on top. The two security guards had been attempting to intervene. At some point, while they were down, Mr. Omar stabbed Mr. Dickinson twice in the torso. The larger of the two stab wounds transected Mr. Dickinson's aorta and mesenteric artery, resulting in massive blood loss. The guards separated them and one guard brought Mr. Dickinson to his feet. Mr. Dickinson then collapsed, and did not regain consciousness.
- [16] Mr. Omar fled the scene on foot to an Airbnb room he was renting in Victoria West. He telephoned 9-1-1 to say that he had stabbed someone outside a bar downtown, that he had had a knife in his pocket and had dropped the knife in front of the bar where the stabbing had occurred. He claimed he had acted in self-defence. Police officers attended and arrested him. He has been in custody ever since.
- [17] The knife in question was found at the scene. It was a replica combat knife with a fixed blade, 12-and-a-half centimetres long.
- [18] Mr. Omar did not testify. His state of mind and motivation for stabbing Mr. Dickinson are unknown.
- [19] It is implicit in the jury's verdict that the jury was satisfied beyond a reasonable doubt either that Mr. Omar did not act in self-defence, or if he did that his actions were not reasonable in the circumstances. It is also implicit that the jury found beyond a reasonable doubt that Mr. Omar either intended to kill Mr. Dickinson or intended to cause him bodily harm and was reckless as to whether death would ensue.
- [20] John Dickinson was 29 years old. From the Victim Impact Statements of his mother, Dorraine, his sister, Jasmine Bauer, his sister, Chelsea Middleton, and his friend Angelo Wilhelm, we can see that Mr. Dickinson was a kind, compassionate, generous, thoughtful young man. His senseless death has had a devastating impact and has left a terrible void in the lives of his family and friends.

[21] Mr. Omar was born August 1, 1994, making him 27 years old at the time of the offence. He was born in Toronto to Somali immigrant parents. His father died before he was born and he was raised by his mother. He is black and a Muslim. His circumstances are set out in some detail in three reports admitted into evidence, a Pre-Sentence Report or PSR prepared by a probation officer; an In-custody Psychiatric / Psychological Assessment Report by a psychiatrist with Forensic Psychiatric Services, Dr. Breitman; and an Impact of Race and Culture Assessment or IRCA report by a social worker, Ms. Sackey.

[22] The IRCA provides information as to the social context of Mr. Omar's upbringing. Such evidence can potentially be relevant to assessing an offender's moral blameworthiness.

[23] Mr. Omar's mother no doubt would have been traumatized by the events of the Somali civil war and the circumstances that led to both his parents becoming refugees. In this respect Mr. Omar may have suffered what is termed intergenerational trauma. Ms. Sackey writes:

The impact of a parent caregiver's post-traumatic stress on a non-traumatized child like Mr. Omar is significant and may lead to adverse development and mental health outcomes.

[24] In addition, as a child Mr. Omar suffered directly from bullying and racism on the part of his classmates and witnessed racist microaggression directed at his mother. He was ostracized by his classmates. He reports having felt invisible, unsupported by his teachers, "I felt like an outcast due to the colour of my skin and my religion." He began drinking daily and using cannabis to cope with anxiety and stress and began skipping classes. He completed grade 10, but left high school during grade 11.

[25] Defence counsel in submissions did not invite me to place any great weight on the IRCA report. Recently, in *R. v. Otchere*, 2025 BCCA 98, the B.C. Court of Appeal reminded us at para. 94 that:

[t]here is no need to establish a causal link between the offending behavior and social context evidence before that evidence can properly be used, but there must be "some connection" between the systemic racism identified in the community and the circumstances of the event that are said to explain the offending behaviour.

[26] As was said by the Ontario Court of Appeal in *R. v. Morris*, 2021 ONCA 680, at para: 97:

Absent some connection, mitigation of sentence based simply on the existence of overt or institutional racism in the community becomes a discount based on the offender's colour. Everyone agrees there can be no such discount.

That passage, I note, was cited with approval by the B.C. Court of Appeal in *R. v. Ellis*, 2022 BCCA 278, at para. 83.

- [27] Given the lack of evidence as to Mr. Omar's motivation and state of mind, and in particular the complete absence of any explanation for why Mr. Omar had chosen to arm himself with a deadly weapon, it is difficult to relate the offence to the racism and discrimination Mr. Omar has experienced throughout his life.
- [28] I will add that even if such a connection could properly be found, I consider the gravity of the offence and the danger to society posed by Mr. Omar, as I will describe, to be such that the impact of those factors on assessing Mr. Omar's moral blameworthiness would be slight at best.
- [29] Continuing with his background, after he left school Mr. Omar worked in a succession of jobs as a labourer. His substance abuse escalated beginning in about 2013, primarily alcohol but also abuse of zopiclone; the intermittent use of cough syrup containing codeine; and MDMA. This drug use affected his mental health. He experienced drug-induced psychosis and was hospitalized for a time. He also became involved with the criminal justice system. In June 2013, he was convicted of assault, and in December 2013, convicted of breaking and entering and uttering threats. There were further convictions through 2015 to 2017 for possession of a weapon, assault of police officers, assault with a weapon, theft of a motor vehicle, mischief and probation order breaches.
- [30] In 2017, Mr. Omar spent about a year in Somalia. He says this was a transformative experience. On his return to Ontario in 2018, he appears to have made a real effort to turn his life around. He obtained his high school equivalency and then a diploma in tourism from a community college. In 2020, he moved here to Victoria to study Global Tourism Management at Royal Roads University. He experienced social isolation at that time due to COVID and says that his mental health began declining. He began drinking a lot, consuming between four and eight beer or mixed drinks a day, and then in 2021 he resumed using cannabis. He initially denied to Dr. Breitman recognizing any negative effects on his mental state related to his resumption of cannabis use. However, Dr. Breitman also records Mr. Omar acknowledging that his increased use of alcohol, cannabis and other substances including hallucinogens "likely contributed to increasing irritability, anger and potentially symptoms of psychosis".
- [31] Although defence counsel attempted to paint a rosy picture of Mr. Omar's supposed transformation in the years 2017-2020, and argued that the decline in Mr. Omar's mental health was linked to the challenges he faced on moving to British Columbia, the psychiatric report notes that Mr. Omar did in fact have contact with mental health services at the Peterborough Regional Hospital in Ontario, in January 2020, prior to his move, and that he had previously presented to the hospital emergency department there complaining of poor sleep, depression, feeling that he was being watched, and hearing negative voices in his head.

[32] In February 2022, Mr. Omar was arrested on charges of serious, violent crime. Those charges are still before this Court. Mr. Omar was released from custody. His release order, dated February 23, 2022, included terms of observing a curfew by being in his residence between the hours of 11:00 p.m. and 5:00 a.m., refraining from possessing or consuming alcohol, drugs or intoxicated substances, and not being in possession of weapons including in particular any knife. Those bail terms were in effect six days later when Mr. Omar committed the murder of Mr. Dickinson.

[33] The PSR author notes that since being remanded into custody Mr. Omar "has been involved in physical fights with other inmates, has been disciplined for making a weapon, and has disobeyed staff direction". The contrast between, on the one hand, this description of Mr. Omar's conduct and the explanation for the need for his movements and access to areas of the jail to be restricted as given by Corrections authorities, and, on the other hand, his own version of events where he blames others and paints himself as a victim of racial and religious prejudice, demonstrates his inability or unwillingness to take personal responsibility for his actions.

[34] Dr. Breitman opines:

Mr. Omar's history supports serious problems with violence which have resulted in severe physical harm to victims, with violence occurring in multiple contexts, present across developmental stages, targeting strangers with use of weapons, and information available suggests that acts of violence have been reactive and deliberate.

Dr. Breitman goes on to comment that there is a "history of significant problems with other antisocial behaviour". He notes that Mr. Omar appears to have some insight into his substance abuse and that he acknowledges his use of substances has been linked with problems with mental health, including psychosis and anger. However, his understanding of his risk for violence appears limited, though Dr. Breitman acknowledged this could not be fully assessed due to Mr. Omar's reluctance to discuss the murder of Mr. Dickinson.

[35] Dr. Breitman concludes his report by assessing Mr. Omar as being at an elevated risk of violence compared to other offenders. The factors leading to this assessment include:

- a) a significant history of violence;
- b) a significant history of other antisocial behaviour;
- c) a serious history of problems with substance use;
- d) evidence of problems with personality disorder; and
- e) serious problems with compliance with treatment and supervision.

I accept this evidence.

- [36] Mr. Omar addressed the Court at the conclusion of sentencing submissions. He apologized to Mr. Dickinson's family and friends. Nothing in what he said, however, demonstrated that he has any insight into why he committed this terrible crime, nor that he accepts his responsibility for it.
- [37] Of the comparator cases put forward by the Crown for consideration, both *R. v. Arroyo*, 2005 Carswell 8409 ONCA, and *R. v. Mollins*, 2021 NBQB 91, support parole ineligibility periods in the range sought by the Crown. A third case, *R. v. Kim*, 2014 ONSC 2043, which resulted in a 12-year ineligibility ruling, involved an offender with no criminal record who committed a particularly brutal murder with evidence of some planning and deliberation and steps taken by the offender to cover up his crime.
- [38] None of those cases involved the aggravating factor of the offender having been under bail conditions at the time of the offence.
- [39] Of the cases relied on by the defence, the circumstances of *R. v. Aristor*, 2020 ONSC 6070, have some similarity to the present case in that it involved a stabbing following an altercation at a nightclub between strangers. A 10-year parole ineligibility period was imposed. The offender in that case, unlike Mr. Omar, had no criminal record and no history of violence.
- [40] Likewise, in both *R. v. Barry*, [2013] B.C.J. No. 1099, and *R. v. Yilruuse*, 2011 B.C.J. No. 384, 10-year periods were imposed, but in both cases the Courts expressed some optimism for the offender's prospects for rehabilitation. Sadly, I do not have such optimism in Mr. Omar's case.
- [41] I accept the Crown's submission that both the breach of bail terms and the circumstances of the offence, in particular the fact of Mr. Omar having brought with him to a public place a concealed combat knife, and having used it in a fight with an unarmed man, are what were referred to in *Cerra* as the sorts of particularly aggravating features that justify an ineligibility period greater than 10 years. Also justifying a period longer than the 10-year minimum in order to further the protection of the public are Mr. Omar's criminal history and his propensity for violence.
- [42] In terms of mitigation, there are Mr. Omar's history of mental health issues apparently due to substance abuse, and his experience of racism and discrimination. However, as there is no evidence explaining Mr. Omar's state of mind or motivation that engages these factors, finding a connection between them and the murder of Mr. Dickinson would require conjecture or speculation. I cannot find that those factors appreciably impact Mr. Omar's blameworthiness.

- [43] The 20-year recommendation made by three of the 12 jurors cannot be followed as this case, as tragic as it is, did not involve the sorts of "egregious circumstances of a higher order of moral culpability" spoken of in Cerra as being necessary to found an ineligibility period of 15 years or more. Their recommendation, however, does indicate that these jurors who were acquainted with all the evidence of the circumstances of the offence viewed it as particularly serious.
- [44] I find a 13-year parole ineligibility period is required in this case to meet the sentencing objectives prescribed in the Criminal Code.
- [45] Mr. Omar, will you please stand.
- [46] Mohamed Daud Omar, I sentence you to imprisonment for life with no eligibility for parole for a period of 13 years.
- [47] Further, you will be subject to the following ancillary orders:
- a) A mandatory 10-year prohibition under s. 109(2)(a) on the possession of any firearm, other than a prohibited firearm or restricted firearm and any crossbow, restricted weapon, firearm part, ammunition and explosive substance; and under s. 109(2)(b) a lifetime prohibition on the possession of any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition;
  - b) A mandatory order under s. 497.051 in Form 5.03 authorizing the taking of samples of bodily substances for forensic DNA analysis;
  - c) An order pursuant to s. 743.21 that during the custodial portion of your sentence you are prohibited from communicating directly or indirectly with Alysha Bitze, Dorraine Dickinson, Jasmine Bauer, Chelsea Middleton or any other member of John Dickinson's family.
- [48] You may be seated.
- [49] Finally, the murder weapon, the knife, will be forfeited under s. 491.

"A. Saunders J."

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