

CANADA / JUDGMENT

R. v. Rashid

2023 BCSC 746

COURT

Supreme Court of British Columbia

DECIDED

21 April 2023

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2023 BCSC 746 R. v. Rashid

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Rashid,

2023 BCSC 746

Date: 20230421

Docket: 31529-2

Registry: Vancouver

Rex

v.

Yasin Jemal Rashid

Before: The Honourable Mr. Justice N. Smith

Oral Reasons for Sentence

Counsel for the Crown:

M.E. Donnelly

Counsel for the Accused:

A.C. Nelson

J.L. Dawkins

Place and Date of Hearing:

Vancouver, B.C.

April 21, 2023

Place and Date of Judgment:

Vancouver, B.C.

April 21, 2023

- [1] THE COURT: As always with oral reasons for judgment, I reserve the right to edit or clarify portions of it should anyone order a transcript, without of course making any substantial changes.
- [2] Mr. Rashid has been found guilty of second degree murder. Sections 235 and 745 of the Criminal Code, R.S.C. 1985, c. C-46, combine to require a life sentence with no eligibility for parole for at least 10 years.
- [3] The only issue on this sentence hearing is whether that period of parole ineligibility should be extended. The Crown seeks a period of 12 years.
- [4] It must always be emphasized that eligibility for parole does not translate into parole necessarily being granted at that or any other time. If parole is granted, it is not the equivalent to freedom. It involves continued conditions and supervision, with the risk of being returned to prison if the conditions are not complied with.
- [5] The facts of this case are set out in my reasons for conviction dated January 25, 2023, and I am not going to repeat them in detail. At trial, Mr. Rashid admitted the essential facts of the offence, and the only issue was whether he met the Criminal Code definition of being not criminally responsible by reason of mental disorder. I found that he had not met the onus of showing, on a balance of probabilities, that he was not criminally responsible, and in particular, he had failed to show that he did not know his action was wrong at the time he committed it.
- [6] Mr. Rashid and the victim, Kyle Gabriel, were both residents of Watson House, a residential facility operated by Vancouver Coastal Health in the West End of Vancouver. It houses up to eight young adults with psychiatric diagnoses and is intended to help them transition from in-patient psychiatric care to more independent living.
- [7] Mr. Rashid's mental health had been deteriorating for several weeks after he stopped a monthly injection of anti-psychotic medications, and he was at least intermittently psychotic during that time, including on the day of the offence. I found that he was in fact suffering from a mental disorder at the time of the offence, but a complete lack of evidence, either directly from him or from witnesses, made it impossible to determine what role that mental disorder played at the precise time he attacked Mr. Gabriel, with whom he appeared to be having a friendly or at least unhostile interaction very shortly beforehand.

- [8] One of the psychiatrists who testified at trial, Dr. Lohrasbe, said it was very unlikely that Mr. Rashid maintained a normal moral compass at the time of the offence, but said he could not comment on the degree of that distortion.
- [9] Section 745.4 of the Criminal Code says that in considering the question of parole eligibility, I must have regard to the character of the offender, the nature of the offence, and the circumstances surrounding the commission of the offence.
- [10] I also must consider the basic purposes and principles of sentencing in ss. 718 and 718.2, although some of the basic purposes set out in s. 718, such as denunciation, deterrence, and separating offenders from society, are already addressed by the mandatory life sentence. Another of those goals--rehabilitation--does remain a consideration.
- [11] There is no dispute about the legal principles to be applied here, and there is little benefit in referring to multiple other cases decided on their particular facts. I do make mention, though, of the Court of Appeal decision in *R. v. O.V.*, 2016 BCCA 454, at paragraphs 8 and 9, because it makes clear that, notwithstanding a finding of criminal responsibility, it is open to me to consider whether Mr. Rashid's moral culpability is diminished by his mental disorder. I may also consider whether that mental disorder raised issues about his future prospects for rehabilitation and his future dangerousness.
- [12] As in any sentencing decision, I must consider aggravating and mitigating factors. One aggravating factor is the very brutal nature of the attack. Mr. Gabriel was stabbed multiple times in his own room, in a facility where he lived for the very purpose of working on recovery from his own apparently longstanding mental health difficulties. It appears, from all the evidence, the attack came suddenly in circumstances that suggest Mr. Gabriel likely had no or very little warning and little, if any, opportunity to prepare to defend himself.
- [13] The victim impact statement by his sister indicates that there was a great deal of hope and optimism about Mr. Gabriel's progress in dealing with his mental health issues, his plans to continue his recovery toward independence, as well as plans for education and reconciliation with his extended family. She says the saddest thing of all is that Mr. Gabriel's death stole away hope. She also points out or recognizes quite rightly that justice can never fully be achieved, because Mr. Gabriel's family can never get back what has been taken from them.
- [14] Turning to Mr. Rashid, I note there have been incidents of violent conduct while he has been in pretrial custody, and it is not clear what medication, if any, he was taking at the time of each of those incidents. That history does indicate a tendency for angry and violent reactions that may not necessarily always be the result of his mental disorder.
- [15] I am told that in recent months at the Forensic Psychiatric hospital, he has been doing much better, but after I pass sentence he will no longer be in that facility, and his placement will be subject to the decisions of the Correctional Service of Canada.

- [16] Mitigating factors here include the lack of a criminal record, although there was a conditional discharge for an offence, and Mr. Rashid was still subject to conditions at the time of this offence.
- [17] It is impossible to say how large a role mental disorder played in this offence, if any. This is due in large part to Mr. Rashid's consistent refusal or inability to tell anyone exactly what was in his mind--what happened and why at the critical time. The evidence at trial was that psychotic symptoms wax and wane, and a person suffering from psychotic symptoms can still be capable of rational actions unaffected by that mental condition.
- [18] However, in view of the nature of the symptoms he was exhibiting in the hours and days preceding the offence, and the sudden unexplained nature of the attack, I find it more likely than not that his underlying mental disorder must have played at least some contributing role.
- [19] But mental disorder--to use what I recognize to be an entirely unfortunate metaphor in these circumstances--is for Mr. Rashid a two-edged sword. His history of violent behaviour cannot be shown to have always flowed from his underlying mental condition. I presume he will get treatment for that condition while he is in the care of the Correctional Service of Canada, but I do not know what that treatment will be, how effective it will be, or how its benefits may be counteracted by other less-helpful influences and experiences in the prison environment.
- [20] Prior to trial, the ability to get a clear psychiatric picture of Mr. Rashid was complicated by the fact he was found to be unreliable in the histories he provided, by language barriers, and by cultural issues.
- [21] Mr. Rashid was born in Ethiopia and came to Canada at the age of 14. At least in the period before the offence, he had little family support or other social supports in Canada. Some of those confounding factors may also affect the efficacy of any future treatment he receives.
- [22] So there is a great deal of uncertainty about the prospects for rehabilitation and for achieving fully successful long-term treatment of his mental disorder. The easy solution in those circumstances would be to leave that judgment to the National Parole Board at the time it considers an application for parole, but the law is clear that I cannot fully delegate that responsibility; that the trial judge still has a role to play.
- [23] In *R. v. Shropshire*, [1995] 4 S.C.R. 227 at paragraph 34, the Supreme Court of Canada said that a key component of the parameters to be considered by the National Parole Board is the trial judge's determination of when the period of parole eligibility starts to run. The system is geared to function with complementary yet distinct input from both the judiciary and the parole administrators.

[24] Balancing all the considerations in this case, including some diminished moral culpability on the part of Mr. Rashid, and balancing these considerations as best they can be balanced in these tragic circumstances, I find that concerns about the possibility of rehabilitation and future dangerousness outweigh any diminished moral culpability arising from his mental disorder, and the Crown has demonstrated a need for an extended period of parole ineligibility.

[DISCUSSION WITH COUNSEL]

[25] Mr. Rashid, I must sentence you to life imprisonment with no eligibility to apply for parole for a period of 12 years.

[26] There will also be a mandatory lifetime weapons prohibition under s. 109 of the Criminal Code, and a mandatory order under s. 487.051(1) for the taking of a DNA sample.

[27] I decline to order any victim surcharge which Mr. Rashid would have no realistic prospect of being able to pay.

[28] Thank you, counsel. Yes?

[29] CNSL M.E. DONNELLY: One more matter that my friend and I were discussing, s. 743.2 speaks of the court having to -- and it is a mandatory "shall" send, first of all, copies of decisions, but also copies of relevant exhibits.

[30] THE COURT: Yes.

[31] CNSL M.E. DONNELLY: And so my friend and I are suggesting that the following exhibits be sent: so Dr. Iskander's report, Exhibit 9; Dr. Lohrasbe's report, Exhibit 7; and the copy of the -- Julia Gabriel's victim impact statement as well.

[32] THE COURT: All right, and the reasons for judgment on conviction.

[33] CNSL M.E. DONNELLY: Yes, of course, the reasons -- reasons for conviction and the reasons on sentencing as well, yes.

[34] THE COURT: All right.

[35] CNSL M.E. DONNELLY: Thank you.

"N. Smith J."

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