
CANADA / JUDGMENT

R. v. Taylor

2016 BCSC 1326

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 1326 R. v. Taylor

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Taylor,

2016 BCSC 1326

Date: 20160624

Docket: 97393

Registry: Kamloops

Regina

v.

Damien Lawrence Wayne Taylor

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Before: The Honourable Mr. Justice Dley

Oral Reasons for Sentence

Counsel for the Crown:

A.D. Janse

Counsel for the Accused:

D.G. Campbell

Place and Date of Trial/Hearing:

Kamloops, B.C.

June 24, 2016

Place and Date of Judgment:

Kamloops, B.C.

June 24, 2016

- [1] THE COURT: On October 14, 2015, a jury found Mr. Taylor guilty of second degree murder. As a result, Mr. Taylor is sentenced to life imprisonment. The only remaining issue is to determine the length of time that Mr. Taylor must serve before he is eligible for parole.

Procedure for Fact Finding

- [2] Section 724 of the Criminal Code sets out the procedure for fact-finding in the case of a jury trial. It states:

Where the court is composed of a judge and jury, the court

- (a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and
 - (b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.
- [3] This court is bound by the express and implied factual implications of the verdict, but if the factual implications are not clear, then a determination must be made of those facts. In making that determination, this court is not to try and follow the jury's reasoning, but may make an independent finding of the relevant facts. A fact that is consistent only with a verdict rejected by the jury must also be rejected: *R. v. Ferguson*, [2008] S.C.J. No. 6 at paras. 15-22.
- [4] The findings of fact do not necessarily require that the accused be given the most favourable view of the evidence: *R. v. Ward*, 2009 BCCA 409.

Findings of Facts

- [5] Mr. Taylor was 20 years old and Ms. Fowler was 15.
- [6] Mr. Taylor and Ms. Fowler had lived together for about six months. They lived with her father in Terrace. The couple had an up-and-down relationship, but generally were inseparable.
- [7] On December 1, 2012, they took the bus to Kamloops. They planned to spend some time with Ms. Fowler's childhood friend, Chyna Sampson. They intended to take drugs and to sell them.
- [8] Over the next few days, Mr. Taylor, Ms. Fowler, and Ms. Sampson binged on crystal meth.

- [9] Mr. Taylor said that when he used crystal meth, he had a tendency to flail and lacked hunger for food. He also said that when coming down from a crystal meth binge, he needed to sleep.
- [10] On the evening of December 4, Ms. Fowler was taken to the hospital. She complained of pressure to her chest. She was examined by a physician who determined that the symptoms were caused by anxiety.
- [11] The examination also revealed that Ms. Fowler was pregnant. Mr. Taylor and Ms. Fowler were calm and content about the news that she was expecting. Ms. Fowler was hungry. She and Mr. Taylor were both given sandwiches at the hospital. While waiting to be examined, they were both sleeping.
- [12] Mr. Taylor and Ms. Fowler bickered over something as they were leaving the hospital. However, those who had contact with them that evening said that they appeared to be a loving couple and supportive of one another. No one who saw them that evening saw any signs of drug use.
- [13] They had bus tickets departing Kamloops for Terrace the next morning.
- [14] The hospital surveillance video showed the couple leaving the hospital at 2:48 a.m. on December 5. Ms. Fowler had indicated that they were headed toward the Guerin Creek area.
- [15] Shortly before noon on December 5, Ms. Fowler's body was found in the Guerin Creek area. She was laying on her back with a large concrete block on her head.
- [16] The pathologist, Dr. Molgat, was of the opinion that Ms. Fowler was likely struck twice, suffered blunt force injury to her neck and head with the result that death occurred from asphyxiation.
- [17] There were no defensive wounds sustained by Ms. Fowler.
- [18] Mr. Taylor was interviewed by the RCMP in Prince George after he arrived on the bus. He denied any knowledge of Ms. Fowler's death. The police searched his hotel room after he had departed and found his socks with blood on them. The blood matched that of Ms. Fowler. The police also found a ticket issued by Greyhound to Ms. Fowler torn and left in the toilet.

Analysis

- [19] The jury rejected Mr. Taylor's evidence that he was too intoxicated to form the necessary intent for the offence of murder. However, that does not necessarily mean that he was completely free from the effects of crystal meth.
- [20] The evidence is consistent with Mr. Taylor not using crystal meth from the time he and Ms. Fowler were picked up by Mr. Royer at the Greyhound station and taken to the hospital. Dr. Williamson, who has had extensive experience in dealing with drug-affected patients, was of

the view that Ms. Fowler had not consumed drugs for 18 to 24 hours before he saw her. Ms. Fowler was hungry which is consistent with coming down from using crystal meth. She slept at the hospital which is also consistent with coming down from using crystal meth. Mr. Taylor was generally in the same condition as Ms. Fowler. I therefore infer that he, too, had not been doing drugs during that same 18 to 24-hour time period.

- [21] Although the evidence of Dr. Lessing and Ms. Jakus suggests that Mr. Taylor would likely experience symptoms including confusion, distorted perception, paranoia, poor impulse control, and untoward aggressive or irrational and unpredictable behaviours, their testimony indicated that the symptoms would wax and wane.
- [22] The violence directed at Ms. Fowler is not consistent with the earlier observations of the couple which concluded that they were supportive of each other. The calm and content manner of receiving the news of Ms. Fowler's pregnancy is not consistent with any upset over their pending parenthood. Mr. Taylor's text indicating he had good news would tend to confirm that the couple was happy about the pregnancy.
- [23] As a result, I do not find that Mr. Taylor's motive for killing Ms. Fowler was because of her pregnancy.
- [24] Mr. Taylor does not remember what happened. However, it is safe to say that while he was not intoxicated at the time of the killing, drugs likely played a role in his actions. That does not excuse his conduct, but may explain at least partly why he killed the girl that he loved.
- [25] Under s. 745.4 of the Criminal Code, the sentencing judge may increase the number of years before the prisoner is eligible for parole beyond the mandatory 10 years. In making that determination, the court 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).

- [26] In *R. v. Bennight*, 2012 BCCA 461 at para. 18, the court set out some of the principles applicable in parole ineligibility decisions:

- 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, 102 C.C.C. (3d) 193.
- 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 appellate 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.
- [27] The circumstances of this offence require that denunciation and deterrence be emphasized. Protection of society is of overriding importance. In these circumstances, rehabilitation is secondary to denunciation and deterrence, but it can be considered provided public safety is not compromised.
- [28] In imposing a sentence, the court must always exercise restraint.
- [29] The sentence must be fit and specific to Mr. Taylor and the offence that he committed.

Gladue Factors

- [30] Mr. Taylor's biological father was of First Nations descent. A Gladue report was prepared by Mr. Cadwallader.
- [31] The importance of Gladue factors are highlighted in R. v. Ipeelee, 2012 SCC 13 at para. 73:
- [73] First, systemic and background factors may bear on the culpability of the offender, to the extent that they shed light on his or her level of moral blameworthiness. This is perhaps more evident in Wells where Iacobucci J. described these circumstances as "the unique systemic or background factors that are mitigating in nature in that they may have played a part in the aboriginal offender's conduct" (Wells, at para. 38 (emphasis added)). Canadian criminal law is based on the premise that criminal liability only follows from voluntary conduct. Many Aboriginal offenders find themselves in situations of social and economic deprivation with a lack of opportunities and limited options for positive development. While this rarely -- if ever -- attains a level where one could properly say that their actions were not voluntary and therefore not deserving of criminal sanction, the reality is that their constrained circumstances may diminish their moral culpability. As Greckol J. of the Alberta Court of Queen's Bench stated, at para. 60 of R. v. Skani, 2002 ABQB 1097, 331 A.R. 50, after describing the background factors that lead to Mr. Skani coming before the court, "[f]ew mortals could withstand such a childhood and youth without becoming seriously troubled." Failing to take these circumstances into account would violate the fundamental principle of sentencing -- that the sentence must be proportionate to the gravity of the offence and the

degree of responsibility of the offender. The existence of such circumstances may also indicate that a sanction that takes account of the underlying causes of the criminal conduct may be more appropriate than one only aimed at punishment per se. As Cory and Iacobucci JJ. state in *Gladue*, at para. 69:

In cases where such factors have played a significant role, it is incumbent upon the sentencing judge to consider these factors in evaluating whether imprisonment would actually serve to deter, or to denounce crime in a sense that would be meaningful to the community of which the offender is a member. In many instances, more restorative sentencing principles will gain primary relevance precisely because the prevention of crime as well as individual and social healing cannot occur through other means.

- [32] The *Gladue* factors must be considered before a court imposes a sentence. That does not mean that the *Gladue* factors override all other factors. The *Gladue* factors are only one of the factors that must be considered. Systemic and background information provide the necessary context to enable the court to set a fit and proper sentence: *Ipeelee* at para. 83. The rationale for a *Gladue* report is succinctly set out in *R. v. Jensen*, [2005] O.J. No. 1052 at para. 28:
- [28] We observe that neither *Gladue*, nor s. 718.2(e) of the Criminal Code, mandate better treatment for aboriginal people when they are being sentenced for a criminal offence; rather, *Gladue* directs sentencing courts to discretely consider the serious and unique social issues pertaining to aboriginal people. However, there is no reason not to consider the *Gladue* principles when deciding parole ineligibility. Accordingly, while there is no doubt that the appellant was convicted of an extremely serious offence, we do not agree that this removes the requirement to consider the *Gladue* principles when determining the period of parole ineligibility.
- [33] The *Gladue* report does touch on the history as it relates to Mr. Taylor.
- [34] Mr. Taylor is 24 years of age. He is the only child of Leticia Taylor, a woman of non-Aboriginal lineage, and Mr. La Glace, a member of the Sauteau First Nations.
- [35] Mr. Taylor was unaware generally of his mother or father's background. He was raised by his maternal grandparents until he was eight, after which, his mother returned to Prince George and he returned to her care. Mr. Taylor did not have any contact or relationship with his father until 2014 when they exchanged correspondence. At that time, Mr. La Glace was in custody as was Mr. Taylor.
- [36] Mr. Taylor's mother described Mr. La Glace as a violent man and that, while in the relationship, he was addicted to drugs and later diagnosed with schizophrenia. He was violent and abusive to Leticia Taylor.
- [37] Ms. Taylor reported that she was unaware that she was pregnant for approximately the first two-and-a-half months and continued to consume alcohol and other substances. After that period of time, she abstained. During her pregnancy, she continued to be physically

assaulted and abused by Mr. La Glace. When Damien was approximately six months old, Ms. Taylor alerted her family to the violence that she was undergoing. Her mother stepped in and took custody of Damien and Ms. Taylor left Mr. La Glace. Ms. Taylor began working and travelling with a fair; she left Prince George.

- [38] Damien was then brought up by his maternal grandmother and grandfather. He was raised in a large rural farm located about 45 minutes outside of Prince George. He was raised alongside his grandmother's youngest child who was 15 months older than Damien. The two formed a lasting brotherly bond. The family attended church on a regular basis and both boys were often involved with the church youth group or other approved activities.
- [39] When Damien was eight, Ms. Taylor returned to Prince George. She commenced a relationship with Mr. Chadderton who eventually became Damien's stepfather. During that time, he was involved in air cadets and the family spent much time camping and fishing. Mr. Taylor says that in spite of those activities, he felt he did not belong and did not form a strong emotional bond with either of his parents.
- [40] Mr. Taylor has said that when he was nine or 10 years old, he started puffing or inhaling diesel and gasoline and, in his teens, began consuming alcohol and smoking marihuana. At the age of 16, he had a disagreement with his mother because she had given away his dog. Mr. Taylor struggled in school. He quit school and moved in with his maternal aunt. He stopped going to church and became involved with others in the downtown Prince George area. He began abusing drugs - cocaine and crystal meth.
- [41] Damien spent some time living in the men's hostel in Prince George and, while he was staying at the hostel, he met Ms. Fowler.
- [42] Ms. Fowler had come to the hostel looking for her biological father who lived there occasionally. They began to date and, eight months into their relationship, relocated to Terrace and lived in a basement suite with Ms. Fowler's stepfather, Glen Wilson. They both misused substances. They were never violent towards one another and remained virtually inseparable until Mr. Taylor killed her.
- [43] Mr. Taylor has reported that he had no awareness that he was of First Nations blood until he was seven years old and informed by his grandmother about his biological father. Mr. Taylor said that he had no connection or involvement with either his father or the Sauteau First Nation while growing up. He did not self-identify himself as Aboriginal.
- [44] During the course of counsel's submissions, I expressed my concern with respect to this particular Gladue report.
- [45] The purpose of a Gladue report is to assist the court in understanding an Aboriginal offender's background so that an evaluation can be made with respect to the appropriate sentence.

- [46] It is readily apparent from the report that Mr. Taylor's Aboriginal heritage played little or no part in formulating his behaviour. Nonetheless, Mr. Cadwallader has provided 41 pages of information and data which do little to assist in understanding the underlying causes of Mr. Taylor's conduct.
- [47] The report can only be viewed as advocacy designed to influence the court in setting the sentence. That is not the purpose of a Gladue report.
- [48] Gladue reports are expected to be reliable; they are routinely relied upon by the courts. The report is expected to be objective and informative with respect to the specific offender. That has not occurred in this case. Much of the report is simply a cut-and-paste that bears no resemblance to what is required or requested for the purposes of the sentencing. The result is that I place little weight on the recommendations made.
- [49] In making the comments about the report, I do not place any blame on counsel nor do I criticize counsel's request for the report. However, I emphasize that if Gladue reports are to be meaningful, they must be responsive to the circumstances of the specific offender.

Parole Eligibility

- [50] I have been provided with a number of authorities by Crown and defence. The authorities are helpful in setting out the ranges that are applicable and the principles that apply to setting the parole eligibility time period. However, as helpful as the cases are, sentencing is very much an individualized process specific to the offender's unique circumstances within which the sentence is to be determined.
- [51] In setting the parole eligibility period, I must consider the mitigating and aggravating circumstances.
- [52] The mitigating circumstances are:
- a) Mr. Taylor is a young man and has reasonable prospects for rehabilitation and successful reintegration into the community;
 - b) Mr. Taylor recognizes that his drug use needs to be treated before he can be considered to be a non-danger to the community;
 - c) Mr. Taylor's record does not contain any entries for violence;
 - d) Mr. Taylor has some cognitive deficits; and
 - e) Mr. Taylor has expressed remorse for his actions.
- [53] The aggravating factors are:
- a) Ms. Fowler was in a domestic relationship with Mr. Taylor;
 - b) Ms. Fowler was 16 years old, pregnant, and vulnerable;

- c) the brutality of the killing and the evidence indicative of no defensive reaction results in a finding that it was an unprovoked and unexpected attack; and
 - d) Mr. Taylor attempted to destroy evidence such as disposing of the cellphone and attempting to mislead the investigator to other suspects.
- [54] Hilda Fowler provided a victim impact statement to the court. She was devastated to learn of her daughter's death. Although she had forgiven Mr. Taylor, it is apparent that C.J. Fowler's death has caused immense distress and pain to friends and the community. The loss of a precious child has left a never-to-be-filled void.
- [55] The sheer brutality and the savagery of this killing raise the aggravating factors in this case to where the protection and safety of society is paramount. It therefore requires that the eligibility for parole be increased from the minimum of 10 years.
- [56] Mr. Taylor needs time to benefit from the rehabilitation services he will receive in prison. He is a young man who understands his need to rehabilitate and conquer the demons associated with his drug use. That will not be an overnight process and, hence, the need to provide sufficient time to allow for Mr. Taylor's successful reintegration into society.
- [57] In considering the appropriate time before Mr. Taylor is eligible for parole, I find the comments in *R. v. Miller*, [1989] O.J. No. 3330, to be practical, compassionate and helpful, at paras. 6, 8, and 9:
- [6] The sentence I impose is one required by law. Mr. Miller is sentenced to life imprisonment. He will never be a free man again. At best, he will be at large on parole.
- [8] I cannot bring myself to regard Mr. Miller as an evil man, or as a man who has chosen to live outside the law. But rather, I see him as a man who did one very evil thing. His act must attract the strongest denunciation which the law requires, but the man himself is more to be pitied than feared or disposed.
- [9] Mr. Miller has murdered someone he loved, and he will live with that self-imposed punishment for as long as he lives.
- [58] I am mindful that, regardless of all other factors, the principles of denunciation and deterrence are to be the overriding factors. Keeping that in mind, Mr. Taylor, you are sentenced to life imprisonment without eligibility for parole until 12 years have expired from when you were taken into custody.
- [59] Pursuant to the provisions of s. 109 of the Criminal Code, you are subject to a lifetime firearms ban.
- [60] This is a primary designated offence for which you are required to provide a sample of your DNA for registration into the national databank. That is to be done within 30 days.

[61] I also direct that the exhibits at the sentencing hearing be attached to the warrant of committal.

"S.D. Dley J."

DLEY J.

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