

CANADA / JUDGMENT

R. v. Tull

2020 BCSC 1860

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Supreme Court of British Columbia

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2020 BCSC 1860 R. v. Tull

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Tull,

2020 BCSC 1860

Date: 20201126

Docket: 29401

Registry: Vancouver

Regina

v.

David Brian Tull

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Before: The Honourable Madam Justice Devlin

Oral Reasons for Sentence

Crown Counsel:

D. Wiedemann

A. Smith

Counsel for the Accused:

J. Narwal

M. Gartner, Articled Student

Place and Date of Hearing:

Vancouver, B.C.

November 23, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 26, 2020

- [1] THE COURT: This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.

Introduction

- [2] On September 4, 2020, David Brian Tull entered a guilty plea to conspiracy to murder Kyle Gianis between January 1, 2017 and September 4, 2018, contrary to section 465(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. An Agreed Statement of Facts ("ASF"), pursuant to s. 655 of the Code, filed as an exhibit at the sentencing hearing, provides a comprehensive account of what occurred during the prolonged plan to murder Mr. Gianis, which included the June 9, 2017 shooting resulting in the death of Tyler Pastuck, an innocent bystander, and serious injury to Mr. Gianis.
- [3] Sentencing submissions took place on November 23, 2020, and today I am imposing a sentence on Mr. Tull with respect to his role in the conspiracy. The statutorily prescribed maximum sentence for conspiracy to murder is life imprisonment. As I will discuss in more detail in these reasons, the Crown submits the appropriate sentence in all of the circumstances is 16 years' incarceration, while the defence submits Mr. Tull should receive a sentence of 8 years.
- [4] As I proceed with my sentencing reasons today, I am mindful of the devastating impact the tragic death of Tyler Pastuck has had on his family. He was a cherished family member - a beloved son, father, brother, and friend. I am also mindful that the sentence I impose today cannot possibly remedy the pain and suffering they have and will continue to endure - no sentence can ever erase the effect of his loss on their lives.

Circumstances of the Offence and Findings of Fact

- [5] The ASF sets out the relevant circumstances of the offence and should be read in conjunction with these reasons for sentence. As I summarize the circumstances below and make findings of fact, I rely on the contents of the ASF. I will then consider my findings of fact in my determination of the appropriate sentence.

- [6] Mr. Tull was involved in the drug trade. He worked together with a small group of friends and associates who communicated with each other over encrypted phone devices that facilitated text communications without a data history. The significance of this feature is that it served to hide their communications about their illegal activity, protecting them from detection by the police.
- [7] In March 2017, Mr. Tull and others, including Person Y and K, agreed to kill Mr. Gianis because he was not adhering to the terms of use regarding a drug line Mr. Tull and Person Y had assisted him in acquiring. Specifically, Mr. Gianis failed to provide monthly compensation from the profits of the drug line to Mr. Tull and Person Y, and failed to obtain his supply of drugs from K and share the profits with him. As a result of this agreement to kill Mr. Gianis, various third parties provided funding for an open contract, or bounty, on Mr. Gianis.
- [8] Mr. Tull was set to benefit financially from the killing of Mr. Gianis, as he intended to either take over the drug line himself or to derive income from having another person take it over. I should pause here to note that I understand the reference to a "drug line" is to a drug distribution line, which is a business model for the distribution of illicit drugs within the criminal milieu.
- [9] In June 2017, Mr. Tull and Person Y learned that the open contract had been taken and their co-conspirator K had arranged for hitmen to travel to the Lower Mainland to carry out Mr. Gianis's murder. In order to facilitate the completion of their plan, Mr. Tull and Person Y were to assist by providing Mr. Gianis's location to K. Significantly, it was Mr. Tull's role to communicate with K to coordinate the hit.
- [10] On June 9, 2017 Person Y arranged to meet with Mr. Gianis at Browns Socialhouse restaurant ("Browns"). As the plan unfolded, Person Y updated Mr. Tull, advising him that Mr. Gianis's girlfriend and Tyler Pastuck would also be with them at Browns. While Person Y was dining with this group he was updating Mr. Tull as to timing and location. Mr. Tull then relayed this critical information to K, and ultimately, that information was provided to the hitmen.
- [11] Ironically, Person Y expressed concern to Mr. Tull that he (Person Y) might be in danger himself of being shot. Mr. Tull shared Person Y's concerns with K, who responded that the shooting would happen and Person Y should stay out of the way. Mr. Tull shared this information with Person Y. Despite this recognition of the inherent risk associated with their plan, there is nothing to suggest that Mr. Tull considered the potentially devastating consequences of his plan with respect to innocent bystanders in this very public location.
- [12] The dinner ended just before midnight, and Mr. Gianis and his girlfriend left the restaurant and went out into the parking lot. Person Y and Mr. Pastuck went to the washroom where Person Y attempted to delay Mr. Pastuck, knowing the hitmen were descending in the parking lot to shoot Mr. Gianis. Unfortunately, Mr. Pastuck left the washroom and exited the restaurant, unknowingly heading into a war zone. Person Y lingered in the washroom in an effort to avoid the shooting and to stay out of the way, as K had suggested. When Person Y

stepped out of the restaurant, he observed a masked person approach and start shooting at Mr. Gianis. Mr. Gianis was shot five times by one shooter, but survived. Person Y fled the scene and destroyed his encrypted phone in an effort to destroy all proof of his involvement.

- [13] As Mr. Pastuck began to run away, he was shot by one bullet fired by a second shooter, who stepped out of the driver's side of the shooters' vehicle. Mr. Pastuck died at the scene.
- [14] The accounts from eyewitnesses who observed the event are chilling. The eyewitnesses described two shooters emerging from a green sedan and opening fire in the parking lot. In total, 11 rounds were fired, some of which shattered the restaurant windows, striking interior walls. At the time, some patrons and staff were still present inside the restaurant. I find this display of open warfare in a public area and the corresponding cavalier disregard of human life in the process to be shocking and intolerable. While Mr. Tull did not pull the trigger, he was ultimately responsible for what unfolded, as he was part of the group that hatched the plan to have Mr. Gianis killed. Mr. Tull did not intend for Mr. Pastuck to be killed, but this death is a direct consequence of his deplorable plan.
- [15] Undeterred by the death of Mr. Pastuck and the aftermath of the public display of extreme violence on June 9, 2017, because Mr. Gianis survived the attempt on his life, Mr. Tull pressed on in his diabolical plan. Indeed, other persons added to the bounty on Mr. Gianis, increasing the motivation for his killing, and the open contract to kill continued.
- [16] After the shooting on June 9, 2017, both Mr. Tull and Person Y received taunting phone calls and messages from Mr. Gianis, stating he knew Person Y and others were responsible for the shooting at Browns. Despite these calls, the plan continued.
- [17] Over 12 months after the shooting at Browns, in intercepted communications with a police agent and others in July 2018, Mr. Tull expressed some reluctance and unwillingness to be involved in a further attempt on Mr. Gianis's life, and tried to discourage others. In other conversations, Mr. Tull stated he preferred to have Mr. Gianis beaten up. However, it is important to note that Mr. Tull did not cease his participation in the plot to locate and harm Mr. Gianis. Instead, in late July and August 2018, he took active steps in furtherance of this plot. As set out in para. 17 of the ASF, on two occasions in July and August 2018 he and Person Y scouted out the area in which they believed Mr. Gianis lived to locate him and share this information with others who were potentially interested in carrying out the contract to kill Mr. Gianis. On another occasion, Mr. Tull suggested that they put a GPS tracker on Mr. Gianis's vehicle in an effort to locate him. Additionally, when Person Y discussed luring Mr. Gianis to a location to beat him with a bat and expressed concern that Mr. Gianis might have a gun, Mr. Tull indicated to Person Y that there was a revolver stored at Mr. Tull's mother's house should Person Y need it. In other words, Mr. Tull's words and actions do not align with his expression of reluctance to continue with the plan.
- [18] The conspiracy, which began in approximately March 2017, only came to an end in September 2018 after the arrest of Mr. Tull, Person Y, and others on an unrelated matter.

Victim Impact Statements

- [19] Victim impact statements have been submitted by Tyler Pastuck's father, Ronald Keith Pastuck, and his brother, Tom Pastuck. I have read these statements and they are marked as exhibits on this sentencing hearing. The Pastuck family has lost a beloved son, brother, and friend. A young daughter has lost her father. The relationships among the Pastuck family have been shattered as a consequence of Tyler's death. As Tom Pastuck read his victim impact statement in open court, it was obvious that he is heartbroken. He shared his immense grief and sorrow over the sudden and tragic loss of his brother Tyler. Yet, in a remarkable act of kindness, he acknowledged that Mr. Tull's family has also been impacted by this tragedy. As Tom Pastuck observed, Mr. Tull's actions have changed many people's lives forever.
- [20] In determining the appropriate sentence to be imposed on Mr. Tull, I have taken these statements into consideration.

Circumstances of the Offender

- [21] Mr. Tull is 37 years old and a father of two young daughters. He is currently engaged to be married. I am advised that there was some turmoil in his family life while he was growing up, which resulted in the divorce of his parents. I am also advised that at some point Mr. Tull was diagnosed with ADHD. Mr. Tull did not complete high school and has had sporadic employment through the Teamsters Union. At the time of the offence he was in the midst of divorce proceedings and was experiencing some financial pressures.
- [22] Mr. Tull has a minor criminal record, consisting of a fine for wilfully resisting or obstructing a police officer in 2005 and a twelve-month conditional sentence in 2014 for assault.
- [23] Mr. Tull has made some positive steps while in custody, as demonstrated by the material filed as exhibit #3 at the sentencing hearing. Mr. Tull has obtained his Adult Graduation Diploma from the Ministry of Education, with honours standing. He has also participated in a number of programs, including completing all modules of the Essential Skills to Success program.
- [24] Mr. Tull addressed the Court following the sentencing submissions. He apologized both for his actions and his lack of action. Mr. Tull addressed the members of the Pastuck family and others in the public gallery in a respectful, sincere, and genuine manner. He also apologized to Mr. Gianis, his family, and friends for the pain and fear his actions caused them and wished Mr. Gianis a positive future. Mr. Tull apologized to the staff and guests at Browns for the fear and panic they suffered. In addition, Mr. Tull addressed his own family, some of whom were present in the courtroom. He stated he intends to earn forgiveness through positive actions and wants to exceed expectations for the benefit of his two daughters. I accept Mr. Tull's expression of remorse as sincere.

Position of the Parties

- [25] The Crown submits the appropriate sentence is 16 years' incarceration, as well as some ancillary orders unopposed by the defence. The Crown acknowledges that there are some mitigating factors, including Mr. Tull's relatively early guilty plea and minor criminal record. However, the Crown submits there are numerous aggravating factors, including: the pivotal role of Mr. Tull in the conspiracy; the fact that the plan to kill Mr. Gianis involved a dispute over a drug line and was designed to enforce agreements within the drug trade; the fact that contract killers were used; and, notably, that the plan to shoot Mr. Gianis in the parking lot of a public restaurant demonstrated a complete disregard for the safety of the public and led to the death of an uninvolved person, Mr. Pastuck. In addition, they say a particularly aggravating factor is that despite the death of Mr. Pastuck, the conspiracy continued, undeterred, for an additional 14 months. The Crown submits the principles of deterrence and denunciation are of paramount importance in these circumstances.
- [26] The Crown relies on a number of recent decisions from this Court dealing specifically with sentencing for conspiracy to commit murder in cases involving rival groups within the drug trade subculture: *R. v. Bacon*, 2020 BCSC 1377 [Bacon]; *R. v. Haevischer*, 2014 BCSC 2533 [Haevischer]; *R. v. Holden*, 2017 BCSC 756 [Holden]; *R. v. Le* (December 17, 2013), Vancouver 26472 (BC S.C.) [Le]; *R. v. Lee*, 2013 BCSC 1259 [Lee]; *R. v. McBride*, 2018 BCSC 865 [McBride]; *R. v. Vallee*, 2018 BCSC 2270 [Vallee]; and *R. v. Person Y*, 2019 BCSC 1358 [R. v. Person Y]. While the sentences in many of these cases were joint submissions, the Crown submits they serve to establish the acceptable range of sentence between 11 years to life imprisonment when dealing with sophisticated, coordinated, and ongoing violent criminal activity for profit.
- [27] The defence position is that a sentence of 8 years is appropriate when one considers Mr. Tull's medium level of participation in the conspiracy together with his prospects for rehabilitation and various mitigating factors, including the impact of the pandemic. The defence position is anchored in the parity principle, and defence counsel refers to *R. v. Sinclair*, 2016 ONCA 683; *R. v. Baks*, 2015 ONCA 560, and *Le* in support of his submission on how to calculate Mr. Tull's sentence given the sentence imposed on Person Y after Person Y's co-operation with the authorities.
- [28] Further, Mr. Tull's counsel submits the cases relied on by the Crown are not applicable, as they are at the upper end of the sentencing range for conspiracy to murder and are distinguishable on their facts because they all relate to conflict between various gangs operating throughout BC. In addition, he submits that since many are in the context of joint submissions, they have little to no precedential value. Mr. Tull's counsel submits the appropriate range of sentence is 6-12 years, with reference to *Holden* and *R. v. Person Y*, as well as *R. v. Ferguson*, 2018 BCSC 1523 [Ferguson], *R. v. Van Buskirk*, 2007 BCSC 1925, and *R. v. Darby*, 2016 ABQB 352.

- [29] Counsel put a number of sentencing authorities before me and I have read them. During submissions, counsel took me through some of these cases and drew my attention to both the similarities and distinguishing features of those cases to this one. I do not consider it necessary to discuss each of these authorities at length in these reasons, as ranges of sentence are guidelines and not rules: See *R. v. Lacasse*, 2015 SCC 64 at para. 60 and *R. v. Smith*, 2017 BCCA 112 [Smith] at para. 35. As Newbury J.A. stated in *Smith*, sentencing ranges are "not 'straightjackets' [they] are not hard and fast categories and do not preclude lesser or greater sentences if the circumstances or applicable principles in a particular case warrant." (at para. 35). However, I will discuss a few of the cases I found the most informative and of assistance in my task to craft the appropriate sentence.
- [30] I do not agree with Mr. Tull's counsel's submissions that the cases referred to by the Crown are of limited assistance because they involved more aggravated circumstances. Nor do I agree that they are of limited value because most are joint submissions. Rather, I found the facts in the Crown's cases to be hauntingly similar to those in the case before me. While I acknowledge that Mr. Tull did not belong to a specific criminal organization as defined in the Code, I find as a fact that he was engaged in a sophisticated illegal enterprise involving the distribution of illicit substances through drug lines which generated profits for his benefit. I acknowledge that there are significant distinctions to be drawn from the Bacon, Le, and Haevischer cases based on the facts that arise in the matter before me. However, there are also some important similarities.
- [31] In Bacon, the conspiracy to murder Mr. Lal arose because Mr. Lal refused to pay a "tax" and refused to surrender his drug line to Bacon and Le's criminal organization. As a consequence of his defiance, a decision was made that Mr. Lal had to be killed. In my view, this "twisted logic and perverse code of the criminal gang milieu" wherein there is "a zero-tolerance policy for displays of disrespect and defiance" (Bacon at para. 15) is precisely the same approach adopted by Mr. Tull and his criminal associates. In both cases, the person who displays disrespect or defiance has to be killed. In both cases, "[a]varice, power, control, loyalty, intimidation and violence are the governing currency" (Bacon at para. 31).
- [32] In Lee, members of the UN gang, who were a group of drug traffickers in the Lower Mainland, were sentenced for their role in a conspiracy to murder the Bacon brothers and their associates, who were their rivals in the lucrative drug trade. As a consequence of this conspiracy, an innocent man was murdered in error, yet the plan continued, uninterrupted, just as the plan to kill Gianis continued after Mr. Pastuck was tragically killed.
- [33] In McBride, the brazen daytime shooting outside the Delta Grand Hotel in Kelowna was conducted by members of one drug trafficking group (the Dhak group) in retaliation for the shooting of one of their members in 2011 by members of the Wolfpack, a rival group of drug traffickers. Remarkably, no members of the public who were at or near the scene were injured or killed.

- [34] As these brief summaries illustrate, these cases possess several common characteristics. Each case involves a planned and deliberate attack with indifference to the magnificent risk to innocent persons and the unintended consequences which could stem from such violent, public acts. In some cases, like in the case at hand, this resulted in the tragic murder of an innocent bystander. As Madam Justice Ker observed at para. 44 of Bacon, some of the common denominators in these cases include "the avaricious desire to control the lucrative drug trade, the casual resort to dangerous firearms to assist in ensuring and enforcing that control, and the cavalier disregard of human life in the process." These common underlying traits seem readily apparent in the case at hand.
- [35] The sentences in these cases (i.e., in cases for conspiracy to commit murder, in a drug-related context, where the accused is not present at the scene, and where a person is severely injured and/or killed) range from 11 years (Lee) to life imprisonment (Vallee), and reflect the role each individual played within the conspiracy and their moral blameworthiness, having regard to their intentional risk taking and the consequential harm of that risk taking (Haevischer at para. 14). While some of these cases involved joint submissions (Bacon, Lee, and McBride) they are within the range of sentences imposed in other cases for the offence of conspiracy to commit murder. In Holden, Madam Justice Arnold-Bailey imposed a 10-year sentence based on a joint submission. In doing so, she found that in conspiracy to murder cases, the range of sentences imposed is between 8 and 14 years. As I stated earlier, it is important to recall that sentencing ranges are guidelines, not rules.
- [36] In some exceptional circumstances, where the accused agrees to co-operate with the investigation and prosecution, a sentence may reflect a considerable discount. For example, the 12-year sentence imposed in Le and the 8-year sentence imposed in R. v. Person Y were highly exceptional, and were in consideration for the co-operation of those accused with the investigation and prosecution.

The Principles of Sentencing

- [37] Sections 718 - 718.2 of the Code set out the fundamental principles and purposes to be considered by the courts in sentencing.
- [38] Section 718 provides that the fundamental purpose of sentencing is "to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions" with reference to six objectives. These objectives include: denunciation of unlawful conduct; deterrence of the offender and other persons from committing offences; separation of offenders from society, where necessary; assistance in the rehabilitation of offenders; provision of reparations for harm done to victims or to the community; and the promotion of a sense of responsibility in offenders and acknowledgement of the harm done to victims or to the community.

- [39] Pursuant to s. 718.1, a sentence must also be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [40] Section 718.2 sets out a number of specific principles that a court must take into consideration in sentencing. An important principle is that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender (s. 718.2(a)). Another important principle is parity of sentence, which requires that a sentence imposed should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (s. 718.2(b)).

Application of the Sentencing Principles to the Present Case

- [41] I turn now to an application of the relevant legal principles to the particulars of this case. I begin with a consideration of the mitigating and aggravating factors.

Mitigating Factors

- [42] In terms of mitigating factors, I have considered Mr. Tull's guilty plea, which indicates his acceptance of responsibility for his actions. Mr. Tull expressed remorse when he addressed the court and those family members in the public gallery. I found Mr. Tull was both sincere and genuine in his apology. While I do not consider the timing of his guilty plea to be exceptional, it does result in significant savings both in terms of time and resources for the overall administration of justice. I agree this fact is of particular importance, given the impact of the pandemic on the administration of justice and the added challenges in dealing with a jury. In addition, it alleviates the need for family members of those impacted by this offence to attend a lengthy trial.
- [43] I have also considered that Mr. Tull has a relatively minor criminal record. While he is certainly not a naïve, youthful offender, as in *Ferguson*, prior to his arrest on this offence he had not spent any significant amount of time in custody.
- [44] Before I move on to the aggravating factors, I will address the impact of the pandemic. Counsel for Mr. Tull has raised the impact of the pandemic on Mr. Tull's corrections experience as a factor to consider when determining a fit and appropriate sentence. In support of his position, he has referred to a number of case authorities, primarily from Ontario, including *R. v. Hearn*, 2020 ONSC 2365. I acknowledge that the pandemic has impacted all members of society to some degree, wherever they reside, including those in a custodial setting. However, with respect to the impact that the pandemic may have upon Mr. Tull's correctional experience post-sentence, I adopt the approach set out by Mr. Justice Crabtree in *R. v. Greer*, 2020 BCSC 1131 [Greer] and endorsed by Mr. Justice Schultes in *R. v. Zhao*, 2020 BCSC 1552. As stated by Crabtree J. at para. 53 of Greer, we do not know for how long any restrictive conditions related to the pandemic may continue or in what form. It appears speculative to assess the impact of the pandemic at this point, as we do not know whether conditions may improve, worsen, or remain the same. Therefore, as stated in Greer

at para. 54, any impact that the pandemic may have upon the accused and his sentence is best left in the hands of the parole authority.

Aggravating Factors

- [45] I find that there are several aggravating factors that must be considered when determining a fit sentence.
- [46] Firstly, the nature of the offence was a planned and calculated plot by Mr. Tull, Person Y and others to kill Kyle Gianis. Mr. Tull's motivation was pure greed and a desire to exert power and control over those engaged in the drug trade. With Gianis dead, Mr. Tull and Person Y would take over the drug line or reap profits from having someone else take it over.
- [47] This was a sophisticated and sustained operation in which an open contract (or bounty) had been taken, and hitmen were recruited to carry out the murder of Mr. Gianis. Communication among the group was over encrypted phone devices, which would assist in insulating them from detection.
- [48] This conspiracy included a planned and deliberate attack in a public place, executed with utter disregard to the foreseeable risk to members of the public. Ironically, when Person Y raised concerns about his own safety during this attack, he was told to stay out of the way. The shocking disregard displayed by those involved for those who might be caught in the crossfire resulted in Mr. Pastuck's tragic death.
- [49] The role of Mr. Tull in this conspiracy is also an aggravating factor. Mr. Tull was part of the agreement to kill Mr. Gianis from the moment of inception of the diabolical plan. Indeed, he was one of the architects of the plan, and was an active participant in it. With respect to the June 9, 2017 incident, Person Y and Mr. Tull were to assist by providing Gianis's location to K, who would then pass on this information to the hitmen. Person Y arranged to meet Gianis at Browns and advised Mr. Tull of their location. Mr. Tull remained in communication with Person Y throughout the evening and shared the location of Gianis with K, who then coordinated with the hitmen. The fact that Mr. Tull was not present when the shooting took place does not serve to minimize his role. Indeed, I find that Mr. Tull's role was instrumental to the shooting that took place on June 9, 2017, because he was the conduit of the information about Gianis's location between Person Y and K, who arranged the hitmen.
- [50] Another aggravating factor is that Mr. Tull was not deterred after the failed shooting on June 9, 2017. The fact that Mr. Pastuck had been gunned down in the Browns parking lot had no impact on Mr. Tull's commitment to have Mr. Gianis killed, as evidenced by his subsequent actions. Mr. Tull had an opportunity to remove himself from this murderous plot after the botched assassination of Gianis, but he chose to continue in the manhunt. This fact demonstrates Mr. Tull's brazen indifference to killing people and an utter disregard for the safety and security of the public. His chilling conduct was both selfish and anti-social.

- [51] Further, Mr. Tull engaged in active steps to locate Mr. Gianis near the end of July and into August 2018. Although he expressed some reluctance and unwillingness to be involved in a further attempt on Gianis's life, and tried to discourage others, he continued to take active steps to locate Gianis. As set out in para. 17 of the ASF, on two separate occasions, Mr. Tull, along with Person Y, went to the municipality in which they believed Gianis was residing in an effort to locate him and to provide that information to others potentially interested in carrying out the contract on Gianis's life. Mr. Tull also suggested they put a GPS tracker on Gianis's vehicle. Finally, when Person Y expressed the need for a gun if he met up with Gianis, Mr. Tull informed Person Y that there was a revolver stored at his mother's house if Person Y needed it. I find that despite Mr. Tull's verbal contentions that he did not want to be part of another attempt on Gianis's life, his actions were incontrovertibly in furtherance of the conspiracy.
- [52] The duration of the conspiracy is also an aggravating factor. The conspiracy was a sustained effort by Mr. Tull and his co-conspirators over a prolonged period of time. The conspiracy spanned from approximately March 2017 until the arrest of Mr. Tull, Person Y, and others in September 2018. As stated earlier, despite the failed attempt to kill Gianis in June 2017, Mr. Tull continued to engage in the conspiracy, undeterred by the tragic death of Mr. Pastuck. I note as well that the conspiracy only ended upon the arrest of the relevant parties. There was no decision arrived at by Mr. Tull to end it or his involvement in it when he was still free to do so.
- [53] Another aggravating factor is the impact on the community. The victim impact statements reveal the long lasting and devastating impact on the Pastuck family. In addition, the actions of Mr. Tull to gain control within the lucrative drug trade placed unsuspecting, law abiding citizens at extreme risk. This type of display of open warfare on the streets creates fear among law abiding citizens, which Ker J. aptly described as the fear "that someone we love may unwittingly be caught and killed in the cross-fire as rival factions take their turf wars to the streets and residences of our community." (Bacon at para. 47). I echo the sentiments of Ker J. at para. 46 of Bacon that events like this are "an affront to the community's sense of safety and security. They are an anathema to a just, peaceful and safe society."

Parity of Sentence

- [54] As stated earlier, it is a principle of sentencing that a sentence should be similar to sentences imposed on similar offenders for similar offences in similar circumstances. Section 718.2(b) of the Code requires that I consider the principle of parity. As I stated earlier, I am mindful that sentencing ranges are merely suggestions or guidelines, and my task as a sentencing judge is to craft an appropriate sentence for this particular offender with regard to the circumstances both of the offender and the offence, together with the principles of sentencing I referred to earlier.

- [55] Counsel for Mr. Tull submits that in accordance with the parity principle, Mr. Tull should receive a sentence of 8 years, as his role in the conspiracy was less significant than that of Person Y. He also submits that Person Y had a substantial criminal history, whereas Mr. Tull has a minor criminal record. I do accept that there is a qualitative difference between the two with respect to their criminal histories. However, I cannot ignore the significance of Person Y's co-operation in the investigation and prosecution of this matter.
- [56] I see no merit in the submission that Mr. Tull was a lesser player in the conspiracy. Both Mr. Tull and Person Y agreed that Mr. Gianis had to be killed because of his defiance. Both Mr. Tull and Person Y played a role in coordinating the shooting in June 2017, which resulted in the death of Mr. Pastuck. While Person Y arranged to dine with Gianis, it was Mr. Tull who coordinated between Person Y and K regarding timing and location. It was through Mr. Tull that K knew where to direct the hitmen. As I stated earlier, Person Y's presence at the shooting does not elevate his role above that of Mr. Tull. Indeed, it was Person Y who was exposed to the risk of being shot while Mr. Tull and K were insulated from that risk.
- [57] Further, neither Mr. Tull nor Person Y were deterred from their pursuit of Gianis after the murder of Mr. Pastuck. They both continued to engage in the manhunt, and only stopped upon their arrest. As I stated earlier, while Mr. Tull may have expressed some reluctance to continue with the plan, his actions showed contrary intent, as he continued to take steps to locate Gianis along with Person Y, and provided Person Y with information as to where he could get a gun.
- [58] Counsel for Mr. Tull invites this Court to engage in speculation as to what sentence Person Y would have received if he had not cooperated with authorities. In my view, that approach would have this Court engage in some sort of mathematical calculation which has no place in determining a fit sentence. I agree that the absence of co-operation is not an aggravating factor. However, co-operation such as that engaged in by Person Y is a mitigating factor, along with his guilty plea, which underlie the basis for the joint submission of 8 years in Person Y's case.
- [59] Given my findings of fact with respect to Mr. Tull's role in this plot, and considering the exceptional circumstances that underlie the joint submission of 8 years in Person Y's sentencing matter, there is no unjustified disparity in sentencing Mr. Tull to a term of imprisonment different from that of Person Y.
- [60] I also note the comments of Mr. Justice Wagner (as he then was) at para. 58 of *R. v. Lacasse*, 2015 SCC 64:
- [58] There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on

its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case.

Deterrence, Denunciation, and Public Protection

- [61] The principles of deterrence and denunciation along with the need for public protection are of paramount importance in this particular case.
- [62] It is important for this Court, through the sentencing process, to denounce this conduct. Sophisticated, coordinated, and ongoing violent activity, including engaging in contracted killing motivated by sheer greed, cannot and will not be tolerated by law abiding members of society. It is conduct to be denounced and condemned in the strongest of terms. As stated by Associate Chief Justice Holmes at para. 3 in *R. v. Person Y*, "Members of our community deserve better than to be at risk from stray bullets shot by greedy or vindictive drug traffickers." The sentence I impose today must serve to communicate society's condemnation of this despicable crime, which was motivated by protecting and furthering the illegal drug trade that does abhorrent and tragic harm within our community.
- [63] In terms of general deterrence, members of the public must understand that this type of underworld justice will not be tolerated and that those who engage in such egregious behaviour will receive severe penalties.
- [64] This is a case in which there is a demonstrated need to separate Mr. Tull from society in order to protect the public. Mr. Tull's actions revealed an utter disregard for the lives and safety of others.

Rehabilitation

- [65] While deterrence and denunciation are of paramount importance, I must also consider the principle of rehabilitation. Counsel for Mr. Tull referred to Mr. Tull's efforts to rehabilitate himself while in custody as evidencing his commitment to making a positive change. I agree that the prospect of rehabilitation cannot be overlooked when crafting an appropriate sentence, but it is of secondary importance when dealing with the type of case before me.
- [66] In my view, the particularly aggravating features of this case speak to Mr. Tull's moral blameworthiness as an offender, and the risk he presents to the public.
- [67] However, Mr. Tull has expressed a desire to change and to remove himself from the criminal lifestyle he has been immersed in. Mr. Tull, you are no doubt aware your actions have jeopardized any opportunity you may have to become involved in the life of your own two young children. Perhaps this particular fact may motivate you to make the necessary changes in your lifestyle going forward.

DISPOSITION

- [68] As stated earlier, crafting the appropriate sentence in this particular case is a difficult exercise. It involves a careful examination of the circumstances of the offence, the nature and severity of the conduct of the offender, together with his personal aspects.
- [69] In determining an appropriate sentence in this case, I have considered the guilty plea and expression of remorse by Mr. Tull. Balancing all of the relevant factors, I am of the view that a sentence of 14 years is a proportionate, fit, and proper sentence. This sentence serves to denounce Mr. Tull's conduct and to deter him and others from engaging in such pernicious conduct in the future.
- [70] Mr. Tull please stand.
- [71] For the offence of conspiracy to murder Kyle Gianis, I sentence you to 14 years' imprisonment.
- [72] I must also factor into the sentence the credit for your pre-trial custody. I have determined that you are entitled to credit for 565 days in custody, which, at a rate of 1.5:1, yields a total credit of 848 days. Therefore, your sentence will be 11 years and 237 days (or 4,262 days).
- [73] In addition, there will be the following ancillary orders:
- a) Pursuant to s. 487.04 and s. 487.051(1) of the Code, I make an order authorizing the taking of a sample of bodily substance from you, for the purpose of forensic DNA analysis and inclusion in the national DNA databank.
 - b) Pursuant to s. 109(2) of the Code, you are prohibited from possessing any firearm, cross-bow, restricted weapon, ammunition, and explosive substance for 10 years after release from your term of imprisonment.
 - c) Under this same section, you are prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life, running from the date of this order.
 - d) Pursuant to s. 743.21 of the Code there will be a non-communication order prohibiting you from communicating directly or indirectly with Person X, Person Y, Kyle Gianis and Brandon Teixeira.
 - e) Pursuant to s. 491(1) of the Code there will be an order that the firearm and ammunition seized by the RCMP be forfeited to Her Majesty to be disposed of as the Attorney General directs.

- f) Pursuant to s. 737(1) of the Code, I order that you pay a victim surcharge in the amount of \$200. Further, I exercise my discretion to make the \$200 victim fine surcharge payable forthwith. Acknowledging no payment, I will impose two days in default of payment of the surcharge to be served concurrently with the sentence I imposed. No warrant of committal and no time to pay.
- [74] Finally, pursuant to s. 743.2 of the Code, I order that a copy of these Reasons for Sentence as well as a copy of Exhibit #1 (Agreed Statement of Facts) be forwarded to the Correctional Service of Canada.

"Devlin J."

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