
CANADA / JUDGMENT

R. v. Wong

2013 BCSC 1254

COURT

Supreme Court of British Columbia

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2013 BCSC 1254 R. v. Wong

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Wong,

2013 BCSC 1254

Date: 20130606

Docket: 25608

Registry: Vancouver

Regina

v.

Peter Quon San Wong

Before: The Honourable Mr. Justice Greyell

Oral Reasons for Sentence

Counsel for the Crown:

B. McCabe

D.P. Montrichard

Counsel for the Accused:

P.M. Ferguson

C.S. Johnson

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 1 -2 and June 6, 2013

Place and Date of Judgment:

Vancouver, B.C.

June 6, 2013

Introduction

- [1] THE COURT: On February 23, 2012, following a trial by judge and jury, Peter Quon San Wong was convicted of the first degree murder of Ping Li contrary to s. 231(1) of the Criminal Code, R.S.C. 1985, c. C-46, [Code] and of discharging a firearm at Xing Li contrary to s. 244(1) of the Code.
- [2] On the date the offences were committed, Mr. Wong was a "young person" within the meaning of the Youth Criminal Justice Act, S.C. 2002, c. 1 [YCJA], being 17 years and seven months of age.
- [3] The Crown has applied pursuant to s. 64(1) of the YCJA that Mr. Wong be sentenced as an adult. These reasons follow the sentencing hearing, which occurred May 1 and 2, 2013. The initial hearing was set to proceed in 2012. The hearing was adjourned in order to accommodate representations made by one of Mr. Wong's parents to the authors of the various reports prepared for the purposes of sentencing.
- [4] I am indebted to counsel for their complete submissions. I have relied upon and incorporated portions of those submissions into these reasons where appropriate.
- [5] During argument, I was referred to decisions of this Court, the British Columbia Court of Appeal, the British Columbia Provincial Court and courts of other provincial jurisdictions for the enunciation of principles involved in sentencing under the YCJA. Those decisions also served as examples of sentences that have been handed down in similar circumstances. A list of those decisions is appended to these reasons.

Position of the Crown

- [6] The Crown seeks a judicial determination that the offences committed by Mr. Wong are serious and violent offences within the meaning of s. 42(9) of the YCJA, a determination the defence does not contest. The Crown submits that the maximum youth sentence permitted under the YCJA, which is 10 years with a maximum of six years in custody and the balance of four years under conditional supervision in the community, is not of sufficient length to hold Mr. Wong accountable for his offending behaviour as required under s. 72(1)(b) of the YCJA. It is on this latter position the parties are at dispute and, therefore, upon which these reasons focus.

Position of the Defence

- [7] The position of the defence is that upon a proper application of the principles of sentencing set forth in the YCJA, it is appropriate in the circumstances of this case to sentence Mr. Wong as a young offender.
- [8] The principal difference in the arguments of Crown and defence concerns the significance to be placed on the various factors which the Court is required to consider on this application.

Principles of Sentencing

- [9] First, I turn to the principles of sentencing set out in the YCJA.

- [10] The preamble of the YCJA includes the following:

Canadian society should have a youth criminal justice system that commands respect, takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons

- [11] Section 3(1)(a) sets out the principles that apply in sentencing:

the youth criminal justice system is intended to protect the public by

- (i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,
- (ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and
- (iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour; .

- [12] Section 3(1)(b) of the YCJA provides that the criminal justice system for young offenders must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability inherent in young offenders and must emphasize:

- (i) rehabilitation and reintegration,
- (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
- (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
- (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and

- (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;

[13] Section 3(1)(c) provides that a sentence should, within the limits of fair and proportionate accountability:

- (i) reinforce respect for societal values,
- (ii) encourage the repair of harm done to victims and the community,
- (iii) be meaningful for the individual young person given his or her needs and level of development .

[14] Section 38(1) of the YCJA sets out the purpose of sentencing:

The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

[15] Section 38(2) goes on to set out the principles of sentencing to be applied in conjunction with s. 3. It provides that the court must not impose a punishment that is greater than that which would be imposed upon an adult convicted of the same offence in similar circumstances. The sentence must be similar to the sentences imposed upon similar young persons within the region convicted of the same offences in the similar circumstances. The sentence must be proportionate to the seriousness of the offence and the young person's degree of responsibility. The court must consider all available sanctions other than custody that are reasonable in the circumstances. The court is to consider the imposition of a sentence that is the least restrictive which is still capable of achieving the purpose of s. 38(1). The sentence must be one that is likely to promote rehabilitation, reintegration and a sense of responsibility in the young person while at the same time acknowledging the harm done to the victims and the community by the offence.

[16] Under s. 38(3), the court is required to take into account a number of factors in determining a youth sentence. Those factors are the young person's degree of participation in the commission of the offence, the harm done to the victims and whether that harm was intentional or reasonably foreseeable as well as any reparation that has been made by the young person to the victims or to the community. The court is also required to take into account the time which the young person has spent in detention as a result of the offence, whether there has been any previous finding of guilt with respect to the young person and any other relevant aggravating or mitigating circumstance related to the young person or to the offences.

[17] Section 72(1), as it read at the time of the commission of the offences, provided that when hearing an application in accordance with s. 71 the court must consider the seriousness and circumstances of the offence as well as the age, maturity, character, background, previous

record of the young person and any other factors the court considers relevant. It further provided that if the court is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and s. 38 would have significant length and would hold the young person accountable for his or her offending behaviour, the court must order that the young person is not liable to an adult sentence and that a youth sentence must be imposed. However, if the court is of the opinion that a youth sentence imposed in accordance with those purposes and principles would not have a sufficient length to hold the young person accountable for his or her offending behaviour, it must order that an adult sentence be imposed.

- [18] The onus is on the Crown to satisfy the court, based on the factors set out in s. 72(1), that a youth sentence would not have sufficient length to hold the young person accountable for his or her offending behaviour and that an adult sentence should be imposed: s. 72(2). The nature of the onus on the Crown was recently discussed in *R. v. K.B.P.*, 2012 ABQB 135, where Madam Justice Romaine stated at para. 81:

The Crown bears the onus of satisfying the Court that a youth sentence would not have sufficient length to hold the young person accountable for the offences. This is a burden of persuasion or satisfaction, not a burden of proof beyond a reasonable doubt or proof on a balance of probabilities: *R. v. B.(D.)*, 2008 SCC 25; *R. v. D.D.T.*, 2010 ABCA 365. Although this burden is not an onerous one, an adult sentence is warranted only when necessary to fulfill the objectives of the YCJA .

- [19] The British Columbia Court of Appeal discussed the onus on the Crown in *R. v. K.D.T.*, 2006 BCCA 60:

- [59] I would not characterize the onus under s. 72(2) as imposing an excessive burden of proof on an applicant. I find, as did the sentencing judge, that the decision-making process on a transfer hearing under the YOA described in *M.(S.H.)* is the appropriate way to describe the type of onus at issue under the s. 72(2) onus provision in the YCJA. At para. 26 of *M.(S.H.)* McLachlin J. (as she then was), for the majority of the court, wrote:

But it is less helpful to ask oneself whether a young person should be tried in ordinary court "on a balance of probabilities". One is not talking about something which is probable or improbable when one enters into the exercise of balancing the factors and considerations set out in s. 16(1) and (2) of the Young Offenders Act. The question rather is whether one is satisfied, after weighing and balancing all the relevant considerations, that the case should be transferred to ordinary court.

[Emphasis added.]

[60] The sentencing judge's approval of M.(S.H.) is supported by the fact that the YOA was redrafted after M.(S.H.) and the language adopted is similar to that used in M.(S.H.). The applicant's responsibility in a transfer hearing was to ensure the court was "satisfied" that the transfer would be appropriate. Section 72(2) of the YCJA uses similar language: "The onus of satisfying the youth justice court as to the matters referred to in subsection (1) is with the applicant" .

[Emphasis in original.]

[20] It is useful, as well, to refer to the comments of Madam Justice Abella in *R. v. D.B.*, 2008 SCC 25 at para. 41 where she discussed the purpose of the onus of proof resting with the Crown:

What the onus provisions do engage, in my view, is what flows from why we have a separate legal and sentencing regime for young people, namely that because of their age, young people have heightened vulnerability, less maturity and a reduced capacity for moral judgment. This entitles them to a presumption of diminished moral blameworthiness or culpability. This presumption is the principle at issue here and it is a presumption that has resulted in the entire youth sentencing scheme, with its unique approach to punishment.

[Emphasis in original.]

[21] While on the topic of onus, there is similarly an onus resting on the defence to establish facts in support of any mitigating circumstances in the offender's behaviour. As was stated by Mr. Justice Braidwood in *K.D.T.* at para. 62:

The onus described in *M.(S.H.)*, *R. v. Wormell* and s. 72(2) of the YCJA is not one that contains a requirement of proof, nor does it remove the onus on the party bringing forward contested facts to prove those facts. As in any sentencing situation, if the Crown wishes to bring forward evidence of aggravating factors, the Crown bears the burden of proving any relevant facts that are contested. Likewise, contested facts in support of mitigating factors must be proved by the offender. As in all sentencing situations, the aim of the judge is to balance the considerations raised and arrive at an appropriate sentence.

"Accountability"

[22] The concept of "accountability" is central to the court's determination under s. 72 of the YCJA as that provision requires the court consider whether a youth sentence would not have sufficient length to hold the young person accountable for his behaviour. Accountability has been defined as a function of age, maturity and dependency. In *R. v. A.O.*, 2007 ONCA 144, the Ontario Court of Appeal, after referring to ss. 3, 38 and 72 of the YCJA held at paras. 42 and 43:

The combined effect of ss. 72, 3 and 38 is to identify accountability as the purpose that the youth court judge must consider when deciding an application to impose an adult sentence on a young person. Accountability is achieved through the imposition of meaningful consequences for the offender and sanctions that promote his or her rehabilitation and reintegration into society. The purpose of accountability in this context would seem to exclude accountability to society in any larger sense or any notion of deterrence.

This view of accountability is consistent with the "offender-centric" nature of a youth sentencing decision identified by the Supreme Court of Canada in *R. v. P.(B.W.)*; *R. v. N.(B.V.)* (2006), 209 C.C.C. (3d) 97. In that case, the court held that general deterrence is not a factor in youth sentencing. Speaking for the court at para. 33, Charron J. said the following:

In the same way, when the statute speaks of "accountability" or requires that "meaningful consequences" be imposed, the language expressly targets the young offender before the court: "ensure that a young person is subject to meaningful consequences" (s. 3(1)(a)(iii)); "accountability that is consistent with the greater dependency of young persons and their reduced level of maturity" (s. 3(1)(b)(ii)); "be meaningful for the individual young person given his or her needs and level of development" (s. 3(1)(c)(iii)). Parliament has made it equally clear in the French version that these principles are offender-centric and not aimed at the general public[.] [Emphasis in original.]

[23] The court continued at para. 46:

In our view, accountability in this context is the equivalent of the adult sentencing principle of retribution as explained by Lamer C.J.C. in *R. v. M. (C.A.)* (1996), 105 C.C.C. (3d) 327 (S.C.C.) at paras. 80 and 81 .

[24] The court held at para. 47:

In our view, for a sentence to hold a young offender accountable in the sense of being meaningful it must reflect, as does a retributive sentence, "the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct".

Discussion of Factors the Court is required to consider in Determining Whether to Sentence Mr. Wong as a Youth or as an Adult

[25] I turn next to a discussion of the factors the Court is required to consider in determining whether to sentence Mr. Wong as a youth or as an adult. As stated earlier, those factors are the seriousness of the offences, the circumstances of the offences as well as the age, maturity, character, background, prior record and any other factors the Court considers relevant.

1. Circumstances of the Offences

[26] As this was a jury trial, I do not have before me any express findings of fact upon which the jury relied upon in coming to its verdict. My role is to determine those facts that reasonably flow from the jury's decision and that are necessary to impose a fit and proper sentence: *R. v. J.S.R.*, [2009] O.J. No. 1662, 2009 CanLII 18884 (S.C.) (affirmed 2012 ONCA 568, leave to appeal refused [2012] S.C.C.A. No. 456) at paras. 9 to 10.

[27] In *R. v. Ferguson*, 2008 SCC 6 at para. 16, Chief Justice McLachlin commented on this limited role of the sentencing judge:

This poses a difficulty in a case such as this, since, unlike a judge sitting alone, who has a duty to give reasons, the jury gives only its ultimate verdict. The sentencing judge therefore must do his or her best to determine the facts necessary for sentencing from the issues before the jury and from the jury's verdict. This may not require the sentencing judge to arrive at a complete theory of the facts; the sentencing judge is required to make only those factual determinations necessary for deciding the appropriate sentence in the case at hand.

[28] I must, therefore, do my best to determine the facts necessary for sentencing, drawn from the issues before the jury and from their verdict. The jury in this case found Mr. Wong guilty of first degree murder on the basis of my charge to them -- Mr. Wong committed the murder of Ping Li during the course of confining her against her will contrary to s. 231(1) of the Code and discharged a firearm at Xing Li with intent to wound, maim, disfigure or endanger the life of Xing Li contrary to s. 244(1) of the Code.

[29] From the facts that were led in evidence in this case, I conclude as follows:

¾ Prior to the commission of the offence, Xing Li was operating a brothel in apartment number 2503 within a high-rise residential building located at 2345 Madison Avenue in Burnaby, British Columbia, where the sexual services of Xing Li's female employees, including Ping Li, were offered in exchange for money.

¾ Prior to the commission of the offences, Xing Li advertised the brothel's services on Craigslist, a local Internet service.

¾ Telephone records that were filed as exhibits at the trial indicate that during the afternoon of March 3, 2009, Mr. Wong called a telephone number noted in Craigslist that was associated with the brothel. During that telephone call, Mr. Wong spoke to Xing Li and advised him that he wished to obtain the services of one of the women employed at the brothel.

¾ Shortly after the telephone call, Mr. Wong arrived at the building and gained entry to the apartment.

¾ Upon seeing that there was only one person present, Ping Li, Mr. Wong left the apartment and the building shortly after.

¾ A few hours later, Mr. Wong called Xing Li again and arranged to return to the apartment on the pretext that he wished to obtain the services of the brothel.

- ¾ At approximately 8:00 p.m. on the evening of March 3, 2009, Mr. Wong arrived at the front door of the building. He used the building's intercom system to contact the occupants of the apartment.
- ¾ Xing Li and Ping Li viewed the closed circuit surveillance camera attached to the building's intercom system on a television set located within the apartment and then Xing Li granted Mr. Wong access to the building and to the apartment.
- ¾ Upon reviewing Mr. Wong's image on the television set, Ping Li remarked to Xing Li that it was the same male who had attended the brothel earlier that day.
- ¾ Mr. Wong entered the apartment and immediately went into one of the bedrooms with Ping Li.
- ¾ Within moments of doing so, he came out of the bedroom holding a handgun to Ping Li's head.
- ¾ Mr. Wong told Xing Li this was a robbery and that he wanted money. In response, Xing Li offered Mr. Wong all of the money that he had on his person, a relatively small amount.
- ¾ Mr. Wong then ordered Xing Li to get down on the floor. Mr. Wong kicked at Xing Li as he was getting down and said words to the effect, "Do you think this gun is a fake?" and called him an Asian pig.
- ¾ Mr. Wong then demanded that Xing Li give him the access code to the building so that Mr. Wong could let an unidentified male accomplice into the building and the apartment. Xing Li refused to provide the access code and stood up.
- ¾ When he did, Mr. Wong shot at Xing Li twice with the handgun.
- ¾ One bullet missed Mr. Li. The other hit him in the shoulder area.
- ¾ Xing Li collapsed to the ground. Xing Li then heard Ping Li begging for her life and offering Mr. Wong all of her money.
- ¾ Apparently, and without saying anything to Ping Li in response (Xing Li heard no response), Mr. Wong used the handgun to shoot Ping Li twice in the torso.
- ¾ Mr. Wong then immediately fled from the apartment and exited the building where he left the area in a white sedan that was being operated by an unidentified male accomplice.
- ¾ In his haste, Mr. Wong left a cellular telephone behind in the apartment.
- ¾ At approximately 8:03 p.m., the Burnaby detachment of the RCMP received a 911 call regarding an apparent home invasion and shooting that had occurred at the apartment.
- ¾ Shortly after, paramedics and an ambulance arrived at the building and Ping Li was taken to Vancouver General Hospital where she was pronounced dead shortly after her arrival.
- ¾ Xing Li was transported to Royal Columbian Hospital where he was placed in a medically induced coma. He remained in that state until March 14, 2009.

¾ After emerging from the coma, Xing Li subsequently identified Mr. Wong in a photo pack presentation that was conducted by the RCMP.

¾ During the RCMP's investigation of the offences, A.W., Mr. Wong's sister, was interviewed by the RCMP. She identified Mr. Wong on surveillance footage that had been recovered from the building as being the person who entered the building on the afternoon of March 3, 2009 and again that evening at about 8:00 p.m.

2. Gravity of the Offences

[30] Both offences for which Mr. Wong was found guilty are at the most serious end of the spectrum of offences. First degree murder involving a finding of intention to kill during the course of a confinement carries an adult minimum sentence of life imprisonment. The offence of discharging a firearm with intent to wound, maim, or disfigure carries a minimum adult sentence of five years in the case of a first offence and a maximum adult sentence of 14 years imprisonment.

[31] I must note, however, that given the offender-centric nature of the assessment which must be made in these proceedings, it is necessary to keep in mind the comments of Mr. Justice Johnston of this court in *R. v. Wellwood*, 2011 BCSC 690 at para. 15, where he noted:

It is important in a case that is as terrible as this one is to bear in mind that there are other factors that I must consider, and to not allow revulsion against the circumstances of the offence to overwhelm the sentencing process.

[32] In this case, the defence says Mr. Wong's conduct was not planned and deliberate, that an attempt at robbery turned into the murder of Ping Li within a matter of seconds. Instead, the evidence suggests Mr. Wong panicked. Hence, the defence submits that the facts are not as egregious as the Crown makes them out to be.

[33] The Crown's case was not premised on the basis that Mr. Wong planned to and deliberately murdered Ping Li. The evidence supports a conclusion, however, that Mr. Wong planned to rob Xing Li and Ping Li and that he took a loaded firearm with him for that purpose. He held the firearm to Ping Li's head while attempting to coerce money from Xing Li. The jury concluded he intended to kill Ping Li when he shot her twice and that he intended to wound, maim or disfigure Xing Li when he shot him.

3. Age, Maturity, Character, Background and Previous Record of Mr. Wong

(i) Age

[34] Mr. Wong has no previous record. He was born July 30, 1991. On the date of the offences, he was 17 years and seven months old.

[35] In *R. v. Pratt*, 2007 BCCA 206 at para. 57, Madam Justice Saunders noted the correlation between the age of the young person covered under the provisions of the YCJA and sentence imposed: the closer a young person is to what was described as the cut-off age in the definition of "young offender," the less a sentence may be moderated as a consequence of age, subject always to the individual circumstances of the offender and the offence.

(ii) Maturity, Character and Background

[36] The information relating to these factors is mainly derived from the reports prepared for the Court to assist in sentencing, including the presentence reports prepared by Youth Probation Officer Ms. Kim Marcotte, dated June 7, 2012 and April 26, 2013, the psychosocial assessments of Psychiatric Social Worker Ms. Kristine Nordahl, dated May 28, 2012 and April 25, 2013, the psychological reports of Dr. Mark Bodnarchuk, a counselling and clinical psychologist, dated May 25, 2012 and April 25, 2013 and the psychiatric reports prepared by Dr. Emlene Murphy, dated May 24, 2012 and April 24, 2013.

Discussion:

[37] As noted, the first set of reports was prepared in May and June 2012. It was contemplated at the time that sentencing would proceed shortly after the court received those reports. This sentence proceeding, however, was adjourned as a result of Mr. Wong's parents, and particularly his mother, requesting to give further information to the authors of the reports about Mr. Wong's social history. Accordingly, a second set of interviews were scheduled. Mr. Wong's parents and Mr. Wong were interviewed again.

[38] On my reading of the reports, there is a clear difference in the tenor of the two sets of reports. The set of reports produced in May and June of 2012 seem to project a reasonably normal upbringing and a caring, nurturing family relationship between Mr. Wong, his parents and siblings. The second set of reports note a history of family conflict. Mr. Wong described physical abuse he had sustained at the hands of his mother and family conflict between his mother, father and sisters. He was physically assaulted for poor school grades and behaviour. His father is described by the mother as belittling and unsupportive of the mother, and this was the central cause of much family friction. The mother also asserted that the father failed to enforce stricter standards of behaviour that she sought to impose on Mr. Wong. The latter reports suggest that Mr. Wong was often left at home alone while his parents worked to earn a livelihood.

[39] Mr. Wong is the youngest child of three in his household. He has two older sisters. His parents emigrated from China to Quebec, where Mr. Wong was born. The family moved to British Columbia when Mr. Wong was young. Mr. Wong's parents have both worked hard to provide for their family. As stated, the reports filed with the Court, particularly the 2013 reports, suggest considerable family conflict over school achievement and Mr. Wong's activities as a teenager. Mr. Wong fell into the company of friends who his parents did not know, leading to a concern about Mr. Wong's association with those persons and his whereabouts in the evenings.

[40] The reports suggest that Mr. Wong was a good student in elementary school, where he received good grades. He was admitted to an accelerated academic program in grade 8. He appeared well adjusted until he was about the age of 15 and he entered grade 10. At this time, truancy and marks became an issue. He appears to have rebelled against his parents' authority, perhaps resulting from abuse, although it is unclear from the reports. He stopped attending school on a regular basis. He would stay at home, play computer games and then go out with friends and stay out late, perhaps not coming home at all. It was also about this time that he started to associate with a negative peer group. He described this group as a "more bad crowd" with whom he "developed a stronger affiliation". He also said these people were "the wrong people known to do bad things." Mr. Wong refused to discuss the particulars of these "bad things" with those who interviewed him. Some indication of the activities Mr. Wong was involved with may be gleaned from the following contained in Dr. Bodnarchuk's report of April 25, 2013 report:

Peter reported he desired being accepted by this peer group and he would participate in alcohol use and unspecified criminal activities.

- [41] Mr. Wong shared that he obtained money through engaging in these activities to the point where he had spending money and fashionable clothes. He felt at times the activities he was engaging in were dangerous. He found some things exciting, but at times he found them scary. He would not say whether he ever broke into buildings or homes.
- [42] The duration of Mr. Wong's association with these criminal peers was approximately two years. He reported being loyal to these peers. Mr. Wong said he had to engage in some of these dangerous activities because he would be mocked or called names. His peers also threatened his safety as well as the safety of his family if he refused. Mr. Wong admitted to carrying bear mace as a weapon and of living in fear of being stabbed. On one occasion he was shot at.
- [43] Mr. Wong did not graduate with his school classmates. While on bail, he took and completed some secondary school courses but due to nonattendance, he failed others. Since his incarceration following conviction, he has now completed grade 12.
- [44] Mr. Wong has been tested and is of average to above-average intelligence. The reports the Court has received indicate no evidence of a mental disorder, psychosis or depression.
- [45] I do note Mr. Wong was released on bail after his arrest on the charges and that he reported consistently to his probation officer and to the police on the some 114 curfew checks conducted between December 18, 2009 and February 23, 2012.
- [46] The reports filed with the Court note that both during the earlier set of interviews and the later set of interviews, Mr. Wong refused to discuss his involvement in the two offences on the advice of his counsel. There are several comments contained in the reports which I have referred to that, in my view, bear relevance to this sentencing process. I will cite some portions of those reports that raise some concern with the Court.

[47] In Ms. Murphy's review of the factors to be considered in the prediction of violence in her May 24, 2012 report at page 4, she commented:

There are few of the usual antecedents to criminal behaviour which are usually seen in youth who have serious offences.

[48] With regard to his upbringing, she found:

there are no indicators in Mr. Wong's early life that would predict these offences.

[49] She concluded at page 5:

His motivation and planning are unknown. His social adjustment at the time is also unknown. His upbringing and life history, from what is known of it, would not have predicted these events.

[50] Ms. Murphy also commented at page 6:

Given that [Mr. Wong] would not share his experiences, cognitions, or affect either before, during, and after his offences, it is not possible for me to determine what psychological processes might have been involved in these offences. In a similar vein, it is not possible for me to make a thorough assessment of his risk or to recommend any interventions that might be helpful to him. It is important to note that choosing to not discuss very serious offences does not mitigate his risk for violence in the future, and if he maintains this stance in the future, it will be difficult to provide treatment services or other interventions.

[51] In her report of April 24, 2013, Ms. Murphy noted the following comments from Mr. Wong at page 2:

[Mr. Wong] was asked his ideas about what the Court needs to know about sentencing him. He stated that the courts should know that he was seventeen at the time, that he was not mature at the time and that he did not think that far ahead just in the moment. He states his bail record has been perfect. He states that when he was growing up he wanted to rebel and that this rebellious period lasted up to age seventeen.

[52] Ms. Murphy also made the following observations at page 1:

[Mr. Wong] has a full understanding of his legal situation and he explained that if he is sentenced as a youth (which he understands to be six to ten years), he will "not have a life tag". His understanding is that an adult sentence will be ten years to life. On reflecting back on his original charge, he stated he was "in shock" that he was arrested. He had not expected to be charged.

[53] In her summary, she concluded:

There is no new information which changes the risk of future violence or which changes our previous conclusions. His parents tried their best to discourage his behaviour when he was living with them and was staying out all night, and also when the police were bringing him home and when they suspected that he was engaged in criminal activity.

We cannot identify any reason for therapeutic involvement. If it is needed, it can be accessed in either the youth or adult correctional services.

[54] Dr. Bodnarchuk commented in his May 25, 2012 report on Mr. Wong's remorse as follows at page 9:

I did not note any sign of remorse with Peter regarding his offences. It is possible that he has experienced some remorse or misgivings about his actions, but because he would not discuss anything about or related to his offences, it is not possible to assess remorse in this case. I am not aware that Peter experienced any prominent signs of being troubled by his actions, such as engaging in significant substance abuse after committing the offences, seeking mental health services or consulting with his physician, having sleep disturbances, or having spontaneous emotional outbursts.

[55] In his report dated April 25, 2013, Dr. Bodnarchuk wrote he had no further comments to make as Mr. Wong would not answer questions about the offence. He noted that according to Ms. Nordahl's report, Mr. Wong had told his parents he did not commit the crime for which he was charged. As a result, they believed he was innocent. It was Dr. Bodnarchuk's impression that Mr. Wong was "putting effort into limiting the information he shared about himself and his experiences."

[56] According to Dr. Bodnarchuk, it appeared Mr. Wong "had difficulty answering questions to assess his personal qualities that might lead to or mitigate against problematic behaviour." Dr. Bodnarchuk noted at page 1:

The results of my 2012 psychological assessment are largely unchanged.

[57] At page 7 he further noted:

Peter revealed a greater amount of antisocial behaviour than he did in the first assessment. However, as he would not answer some questions about his behaviour during adolescence, it is not possible to determine if he would have met criteria for Conduct Disorder. As he would not discuss his offence, I cannot make any further comments.

Section 38 of the YCJA

[58] I now turn to consider the factors enumerated under s. 38 of the YCJA.

[59] First, with regard to the degree of participation in the offence, Mr. Wong was the sole person involved in the actual commission of both offences. He was found guilty of the intentional murder of Ping Li and the intentional shooting of Xing Li.

[60] Second, with regard to the harm done to the victims and whether that harm was intentional or reasonably foreseeable, as I have stated, the harm occasioned to Ping Li and Xing Li was found by the jury to be intentional.

- [61] The harm that was caused by Mr. Wong was extremely serious and, in the case of Ping Li, it is a harm that cannot be remedied. The harm that was caused was both intentional and reasonably foreseeable. In the case of Ping Li, her death resulted from being shot twice in the torso; her death was a near certainty. The victim impact statements of Qi Li and Wei Ming By, Ping Li's parents, dated February 10, 2012, details some of the harm Mr. Wong has caused to them. They must now live with the pain of having lost their only child. There are no known reparations or attempts to provide reparations.
- [62] I next consider the time Mr. Wong has spent in detention. Mr. Wong was in pretrial custody from the date of his arrest, October 26, 2009, to the date on which he was granted judicial interim release, on December 18, 2009. That is some 54 days. To the date of the sentencing hearing, he has been in custody since the date of his conviction for some 433 days.
- [63] As noted, there are no previous findings of guilt. There is no prior criminal record.
- [64] I will now review the aggravating and mitigating circumstances. Mr. Wong engaged in a high level of premeditation and planning with respect to committing the robbery using a firearm. He attended the premises in the afternoon to determine whether the circumstances were right for him to carry out his intentions of robbery. He later returned that evening with a loaded gun to carry through with his intent to rob the occupants. Mr. Wong's victims were defenceless and were compliant. As stated, the offences here involved the highest level of moral culpability. There are no apparent relevant mitigating circumstances apart from Mr. Wong's age and his lack of a criminal record.
- [65] Section 38 of the YCJA requires the sentencing judge take into account any other relevant factors. Counsel for Mr. Wong filed a number of letters in support of Mr. Wong from family members and friends, many of whom have known him for a considerable length of time. Most have expressed shock and surprise that Mr. Wong was charged with these offences. All say the conduct was atypical to what they would expect. All have offered support to help Mr. Wong get his life back on track and make a new start. Mr. Wong's immediate family members, his father and two sisters, say they have noticed a change in Mr. Wong since his arrest and incarceration, that he is more open, talkative and wants to start his life anew.
- [66] If sentenced as a young offender, Mr. Wong would serve a maximum of six years' incarceration followed by four years of community service pursuant to s. 42(2)(q)(i) of the YCJA. If sentenced as an adult, Mr. Wong would be sentenced to a life sentence with incarceration for 10 years without eligibility for parole. He would be subject to supervision in the community for life after release from incarceration. If sentenced as an adult, Mr. Wong would receive credit for the 487 days he has spent in custody since the date of the offence before being released on bail. These 487 days will be different today and would require a recalculation. By operation of s. 746(a) of the Code, should he be sentenced as an adult, he will spend eight years and eight months subject to that adjustment in custody before being eligible for parole. If Mr. Wong is sentenced as a youth, s. 746 of the Code does not apply. Rather, pursuant to s. 38(3)(d) of the YCJA, the Court is given broad discretion to

take into account time spent in detention in determining a fit sentence. As noted by counsel for Mr. Wong, the Court can impose a maximum sentence under the YCJA.

- [67] One of the other significant factors the Court must take into account is the protection of the public.
- [68] While length of incarceration of Mr. Wong may be roughly the same whether he is sentenced as a young offender or as an adult, there are significant differences between the two regimes once the period of incarceration has concluded. Under an adult sentence, Mr. Wong would continue to be monitored and the National Parole Board would determine when it would be appropriate for Mr. Wong to reintegrate into society.
- [69] In my view, the words of Mr. Justice Nordheimer in *R. v. Todorovic*, [2009] O.J. No. 3246 (S.C.) at paras. 73 - 75 are apposite in this case:

One can argue in this case, as was done in *R. v. Logan*, [2009] O.J. No. 1935 (C.A.), that there is some similarity in the end result between a youth and an adult sentence in terms of the ultimate period of incarceration and, for that reason, the youth sentence should prevail. What that argument fails to appreciate, however, is that in the case of an adult sentence, the National Parole Board will determine when it is appropriate for Melissa [the young person in that case] to reintegrate into our society and not, as in the case of a youth sentence, solely through the passage of time.

Of more importance, however, is the issue of monitoring. Ultimately, in this case, we are left with a horrific event caused by a young person for reasons that are still unfathomable. The evidence of the psychiatrists, fairly taken, is that there is some risk of a repetition of this conduct. While the precise degree of risk is unknown, the nature and extent of Melissa's role in this incident is cause for grave concern.

The concept that a young person would ultimately be left free of supervision where there has yet to be an accurate diagnosis of the problem, nor any effective treatment program developed, is as contrary to the need for the public's protection as one could imagine. Someone must be charged with the task of at least making an effort to follow Melissa's progress so that if a risk should again present itself there may be some hope of interrupting its path. A youth sentence fails to provide the needed level of protection that an adult sentence does. As MacPherson J.A. said in *Logan*, at para. 20:

Such supervision is entirely consistent with the overarching sentencing goal of protecting the public from violent criminal conduct.

- [70] I adopt Justice Nordheimer's comments as applying to the circumstances before me.
- [71] I conclude the Crown's application must be granted and Mr. Wong must be sentenced as an adult. It is, in my view, the only sentence that properly reflects the principles of accountability and retribution, given the nature of the two offences, the planning underlying the attendance at the apartment, the attendance with a firearm, the risk-taking, which must

be considered high, the harm caused to Xing Li and Ping Li, the extreme nature of Mr. Wong's conduct and the apparent lack of recognition of the consequences of his conduct. Mr. Wong has not displayed any obvious signs of remorse. He has also refused to discuss the offences with the mental health professionals who interviewed him, resulting in the inability of those professionals to conduct any real risk assessment.

- [72] An adult sentence, in my view, will address the issue of public safety. It will also provide an avenue for Mr. Wong to address and deal with the underlying causes of this most violent episode, which will ultimately, hopefully, lead to his reintegration into the community in a more timely manner than the sentence parameters set out in the YCJA. It is to be hoped that now faced with the knowledge he is being sentenced as an adult, Mr. Wong will become more candid with those who are prepared to offer treatment to him and to talk about what motivated him to engage in the incidents leading to these charges.
- [73] Mr. Wong, would you stand, please.
- [74] You have heard my reasons. I sentence you to life imprisonment with no eligibility for parole for 10 years. You will receive credit for the time which you have served.
- [75] In addition, you will provide a sample of your DNA pursuant to s. 487.051(1) of the Code.
- [76] You will be prohibited from firearms for life pursuant to s. 109 of the Code.
- [77] There will in this case be no victim surcharge.
- [78] You may be seated.
- [79] Counsel, are there any comments?
- [80] MR. MCCABE: My Lord, with respect to the ban on publication which has been in place pursuant to s. 110(2)(a) of the YCJA, that ban is lifted given that Mr. Wong has now been sentenced as an adult. It is under --
- [81] THE COURT: Yes, are there --
- [82] MR. MCCABE: It is under s. 110(2)(a) of that YCJA and, from Crown's reading of that --
- [83] THE COURT: 110?
- [84] MR. MCCABE: Sub (2)(a).
- [85] THE COURT: Mr. Johnson.
- [86] MR. JOHNSON: Two things, My Lord. Firstly, I think we have, amongst us, an agreed calculation that the time served up to today's date is 524 days. So I just put that on the record.
- [87] THE COURT: Thank you.

- [88] MR. JOHNSON: I believe that Your Lordship ought to impose a sentence with respect to the other charge that Mr. Wong was convicted of, which would be concurrent to the sentence that you have just imposed.
- [89] THE COURT: Yes, thank you.
- [90] MR. JOHNSON: One moment, sorry, My Lord.
- [91] THE COURT: Thank you.
- [92] MR. MCCABE: In the circumstances, My Lord, s. 244(2) of the Code, the count to which Mr. Wong was found guilty by the jury, has a mandatory minimum of four years and a maximum 14 years. In the circumstances, with Your Lordship's finding with respect to the murder of Ping Li, the Crown is asking for a concurrent period of incarceration of four years for the discharging a firearm.
- [93] THE COURT: To run concurrently with the --
- [94] MR. MCCABE: Yes, that is correct, yes.
- [95] THE COURT: -- ten years. I apologize for the oversight, counsel.
- [96] Mr. Wong, would you stand, sir.
- [97] On Count 2, the charge of discharging a firearm at Xing Li, of which you have been found guilty, I sentence you to four years in prison and that sentence will run concurrently with the sentence of life imprisonment on Count 1.
- [98] Mr. Johnson, lifting of the publication ban, it would not appear there is discretion in the court.
- [99] MR. JOHNSON: I do not have any submissions on that.
- [100] THE COURT: Thank you.

"Greyell J."

Appendix A

1. R. v. D.B., 2008 SCC 25;
2. R. v. M. (S.H.), [1989] 2 S.C.R. 446;
3. R. v. A.O., 2007 ONCA 144;
4. R. v. K.D.T., 2006 BCCA 60;
5. R. v. Ritchie, 2006 BCSC 1579;
6. R. v. Arrieta, 2010 BCPC 87;
7. R. v. B.C.F., 2008 SKPC 98;

8. R. v. Wellwood, 2011 BCSC 690;
9. R. v. Pritchard, 2002 BCSC 1387;
10. R. v. Pratt, 2007 BCCA 206;
11. R. v. D.L.S., 2012 MBQB 177;
12. R. v. M.M., 2012 ABPC 153;
13. R. v. S.M., 2012 ONSC 5078;
14. R. v. A.A., 2011 ABQB 598;
15. R. v. I.C., 2010 ONSC 3359;
16. R. v. J.J.T., 2010 MBQB 216;
17. R. v. McKenzie, [2009] O.J. No. 1068 (S.C.);
18. R. v. Casavant, 2009 ABQB 672;
19. R. v. Bagshaw, [2009] O.J. No. 4123 (S.C.);
20. R. v. Todorovic, [2009] O.J. No. 3246 (S.C.);
21. R. v. M.B.W., 2007 ABPC 292;
22. R. v. C.K., 2006 ONCJ 283;
23. R. v. P.K., 2005 ABPC 190;
24. R. v. J.M., 2004 ONCJ 100;
25. R. v. J.S.R., [2009] O.J. No. 1662 (S.C.);
26. R. v. B.S.A., 2013 BCSC 75;
27. R. v. B.W.P.; R. v. B.V.N., 2006 SCC 27;
28. R. v. Q.B., [2003] O.J. No. 354, 63 O.R. (3d) 417 (C.A.);
29. R. v. T.B., [2006] O.J. No. 584, 78 O.R. (3d) 721 (C.A.);
30. R. v. J.R.L., 2007 NSCA 62;
31. R. v. K.B.P., 2012 ABQB 135; and
32. R. v. Ferguson, 2008 SCC 6.

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