

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Leggette, 2015 NSSC 134

Date: 20150429

Docket: Hfx No. 430128

Registry: Halifax

Between:

Her Majesty the Queen

v.

Blake William David Leggette

And

Victoria Lea Henneberry

SENTENCING DECISION

Judge: The Honourable Justice Joshua M. Arnold

Heard: April 29, 2015, in Halifax, Nova Scotia

Written Decision: May 6, 2015

Counsel: Christine Driscoll and Sean McCarroll, for the Provincial
Crown

Terrance Sheppard, for Mr. Leggette

J. Patrick Atherton, for Ms. Henneberry

By the Court (Orally):

[1] This is a sentencing proceeding. Having entered pleas of guilty, Mr. Leggette and Ms. Henneberry will both be sentenced to life in prison.

[2] The *Criminal Code of Canada*, R.S.C., 1985, c. C-46, (the “*Code*”) sets out the punishment for murder. Section 235 of the *Code* states:

235 Everyone who commits first degree murder or second degree murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

[3] Subsection (2) states:

For the purposes of Part XXIII, the sentence of imprisonment for life prescribed by this section is a minimum punishment.

[4] Relevant also are subsections 745(a) and (c) of the *Code*, which state:

745. Subject to section 745.1, the sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be

(a) in respect of a person who has been convicted of high treason or first degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served twenty-five years of the sentence;

...

(c) in respect of a person who has been convicted of second degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least ten years of the sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefor pursuant to section 745.4...

[5] Section 745.4 of the *Code* states:

745.4 Subject to section 745.5, at the time of the sentencing under section 745 of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section 745.2, by order, substitute for ten years a number of

years of imprisonment (being more than ten but not more than twenty-five) without eligibility for parole, as the judge deems fit in the circumstances.

[6] Section 746 of the *Code* states:

746. In calculating the period of imprisonment served for the purposes of section 745, 745.1, 745.4, 745.5 or 745.6, there shall be included any time spent in custody between

(a) in the case of a sentence of imprisonment for life after July 25, 1976, the day on which the person was arrested and taken into custody in respect of the offence for which that person was sentenced to imprisonment for life and the day the sentence was imposed...

[7] Section 718 of the *Code* describes considerations that have to be made when applying sentence. They include denouncing unlawful conduct, deterring the offender and other persons from committing offences, separating offenders from society where necessary, assisting in rehabilitation of offenders, providing reparations for harm done to victims or to the community, promoting a sense of responsibility in offenders, and acknowledgement of the harm done to the victims and to the community.

[8] Section 718.2 states that a court that imposes a sentence must also take into consideration the following principles:

A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstance relating to the offence or the offender ...

[9] In *R. v. Shropshire*, [1995] 4 S.C.R. 227, the Supreme Court of Canada had to consider a variety of issues regarding parole eligibility. I want the record to be clear in this case as to the meaning of each accused's parole eligibility.

[10] At para 23 of *Shropshire, supra*, the Supreme Court of Canada stated:

The only difference in terms of punishment between first and second degree murder is the duration of parole ineligibility. This clearly indicates that parole ineligibility is part of the "punishment" and thereby forms an important element of sentencing policy. As such, it must be concerned with deterrence, whether general or specific. The jurisprudence of this Court is clear that deterrence is a well-established objective of sentencing policy.

[11] At para. 27 the Court went on to say:

In my opinion, a more appropriate standard, which would better reflect the intentions of Parliament, can be stated in this manner: as a general rule, the period of parole ineligibility shall be for 10 years, but this can be ousted by a determination of the trial judge that, according to the criteria enumerated in then s. 744, the offender should wait a longer period before having his (or her) suitability to be released into the general public assessed. To this end, an extension of the period of parole of ineligibility would not be "unusual", although it may well be that, in the median number of cases, a period of 10 years might still be awarded.

[12] At para. 29 the Court said:

29 Section 742(b) of the Code provides that a person sentenced to life imprisonment for second degree murder shall not be eligible for parole "until he [or she] has served at least ten years of his sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefor pursuant to section 744". In permitting a sliding scale of parole ineligibility, Parliament intended to recognize that, within the category of second degree murder, there will be a broad range of seriousness reflecting varying degrees of moral culpability. As a result, the period of parole ineligibility for second degree murder will run anywhere between a minimum of 10 years and a maximum of 25, the latter being equal to that prescribed for first degree murder. The mere fact that the median period gravitates towards the 10-year minimum does not, *ipso facto*, mean that any other period of time is "unusual".

[13] The Supreme Court of Canada went on to say at para. 31 of *Shropshire*, *supra*:

31 If the objective of s. 744 is to give the trial judge an element of discretion in sentencing to reflect the fact that within second degree murder there is both a range of seriousness and varying degrees of moral culpability, then it is incorrect to start from the proposition that the sentence must be the statutory minimum unless there are unusual circumstances. As discussed *supra*, a preferable approach would be to view the 10-year period as a minimum contingent on what the "judge deems fit in the circumstances", the content of this "fitness" being informed by the criteria listed in s. 744. As held in other Canadian jurisdictions, the power to extend the period of parole ineligibility need not be sparingly used.

[14] Finally, at para. 34, the Court said:

34 On another note, I do not find that permitting trial judges to extend the period of parole ineligibility usurps or impinges upon the function of the parole board. I am cognizant of the fact that, upon the expiry of the period of parole ineligibility, there is no guarantee of release into the public. At that point, it is incumbent upon the parole board to assess the suitability of such release, and in so doing it is guided by the legislative objectives of the parole system...

[15] These comments set the tone of what we are talking about when we discuss life in prison and parole eligibility or ineligibility.

[16] More recently in *R. v. Hawkins*, 2011 NSCA 7 at paras. 2 and 3, the Honourable Justice Duncan Beveridge, speaking for the Court, explained:

2 Life imprisonment is the maximum sentence of incarceration in Canada. Since the abolition of capital punishment, the only penalty for any accused convicted of murder is life imprisonment. Subject to a grant of clemency from the executive, the offender will always be subject to this sentence for the rest of his [or her] natural life.

3 Parole is a possibility. For an offender convicted of first degree murder, there is no eligibility for parole prior to serving 25 years incarceration. Offenders convicted of second degree murder must serve a minimum period of ten years before being eligible to apply for parole. However, a sentencing judge is required to consider whether that minimum period of ten years should be increased by some number up to a maximum of 25 years.

[17] At para. 53 of *Hawkins*, *supra*, the Court went on to say:

53 In my opinion, a trial judge is required to consider the principle that a sentence order being imposed be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances....

[18] In both *Hawkins*, *supra*, and in *R. v. Beaver*, 2014 NSSC 10, the Court reviewed various cases dealing with parole ineligibility for second degree murder. There is no need to review the facts of various murder cases in this setting with so many of Loretta Saunders's friends and family members present. Suffice to say I

have read them carefully. They assist in providing a range of sentence appropriate for Ms. Henneberry. Mr. Leggette's sentence will be automatic.

LORETTA SAUNDERS

[19] I am advised that the victim, Ms. Saunders, was born August 25, 1987 and was 26 years of age when she was killed. She was an aboriginal woman whose family resides in Happy Valley-Goose Bay, Labrador. Her parents are Clayton and Miriam Saunders. Her brothers are Edmund, Clayton, Jr., James, Michael and Garrett. Her sisters are Delilah and Audrey.

[20] Loretta Saunders had a bright and hopeful future ahead of her at the time of her murder. She was in the early stages of pregnancy. She was in her fourth year of the Undergraduate Honours Criminology Program at St. Mary's University. Incredibly, considering the circumstances of this case, she had done a thesis proposal on missing and murdered indigenous women in Canada. She had some courses to complete but was hoping to graduate in May 2014. She had plans for further higher education and at the time of her murder was considering a number of programs, including a Masters Degree or law school. She was an important member of Canadian society whose death has impacted many.

[21] Victim Impact Statements were received by the Court from: Grace Saunders, Loretta's grandmother; Miriam Saunders, Loretta's mother; Clayton Saunders, Loretta's father; Delilah Saunders, Loretta's sister; Edmund Saunders, Loretta's brother; Garrett Saunders, Loretta's brother; James Saunders, Loretta's brother; Audrey Saunders, Loretta's sister; Peggy Blake, Loretta's aunt; Gail Pilgrim Saunders, Loretta's aunt; Barbara Coffey, Loretta's aunt; Linda Saunders-McLean, Loretta's aunt; Lisa White, Loretta's cousin; Natalie Fillier, Loretta's cousin, Sybilla Engram, Loretta's aunt; Melissa Newman, Loretta's cousin; and, Bev Austin, a friend of the family.

[22] All those who knew Loretta Saunders describe her as a caring and wonderful person who was determined to make the best of her life and to help those around her. Her family was shattered by the actions of Mr. Leggette and Ms. Henneberry on February 13, 2014. On that day, Mr. Leggette and Ms. Henneberry introduced a foul poison into their lives that destroyed their innocence, their sense of security, their trust in others and have left them crushed, broken-hearted and empty. They cannot fathom how a young bright life was snuffed out so grotesquely.

THE FACTS

[23] The two Agreed Statement of Facts relating to Mr. Leggette and Ms. Henneberry have been made exhibits and have been read into the record. There is no utility in repeating them here this afternoon. I have attached them to this decision as Appendices.

[24] Very generally, without repeating all of the specific details, Mr. Leggette and Ms. Henneberry were subletting an apartment from Loretta Saunders. They could not afford to pay the rent. Ms. Saunders was brought to or lured into meeting with them in the apartment ostensibly to receive rent. She was deceived into sitting on a couch while expecting payment. She was then murdered. The pair used her vehicle to drive to Ontario. This was despicable, horrifying, cowardly and pointless.

BLAKE LEGGETTE

[25] We have a small window into Blake Leggette's perspective from his own writings. I am referring to writings seized from his prison cell and those given to his cell mate, all written as a draft for a book. In *R. v. Leggette and Henneberry*, 2015 NSSC 112, I ruled those writings admissible in Mr. Leggette's trial. In those writings, Mr. Leggette not only describes how he killed Ms. Saunders but infers that he enjoyed killing her and has some plans to kill again. This is either true and, if so, is disturbing at the highest level or, instead, is something that Mr. Leggette wrote either for dramatic effect to increase his own misguided sense of importance or in an effort to try to boost sales of a book he and his cellmate were planning on writing. Possibly those comments were written for some other reason that I cannot fathom.

[26] In any event, Mr. Leggett writes in part:

Dear Darcy:

... As it stands, the only family I have is the organization of the Hells Angels, or at least that is what her uncle told me, that I am considered family, if that still stands. If it doesn't then I am alone in this world, and have the option to start a new life, and control it as I see fit.

My old family and friends are dead to me, and they will never hear from me again. In the end, I murdered a woman, and even now as I did that day, it does not bother me, I think I wanted to do it, as much as Victoria wanted me too.

If it wouldn't have been Loretta Saunders, it would have been someone else, and she probably won't be the last, I struck a nerve that afternoon, a thirst, it will never be a woman, that I can promise, it will be someone who deserves it, and that someone knows who it is, someone who has moulded me into the person I am today. Darcy says I put the wrong one in the bag, but I think she will hurt more, knowing after everything she has done to me, I've done this to her.

[27] A similar sentiment was repeated in other writings of Mr. Leggette that he gave to his cellmate wherein Mr. Leggette first describes the murder of Loretta Saunders by his own hand and then says:

I remember thinking I must be crazy because I felt relieved, stress free, all my anger from my childhood, and the last 2 years with Victoria all disappeared. I felt happy.

BLAKE LEGGETTE'S BACKGROUND

[28] I have received some self-reported information in relation to Mr. Leggette that may provide some further insight into his personality.

[29] I am advised that Mr. Leggette just turned 27 on April 1, 2015. His father was not in his life for his first seven years. At age two he was taken from his mother and placed into foster care. He did eventually return to the care of his mother. They lived in various provinces over the next number of years: Quebec, New Brunswick, and Alberta. Mr. Leggette's mother re-partnered with a number of men and he has two step-siblings from two different step-fathers.

[30] At the end of the summer following grade nine, Mr. Leggette's father packed him up and drove to Ontario. Eventually Mr. Leggette's father and his step-mother left for Europe. Mr. Leggette was left bouncing around Canada until his father could get paperwork and bring him to Europe. Mr. Leggette moved to Europe at the age of 15, and stayed there for the next three years. He did not attend school but did various manual labour jobs. When he first moved back to Canada, he resided in Nova Scotia with a childhood friend. Eventually he moved to Alberta where he initially lived with his mother, then with his father once he returned from Europe, and eventually just drifted from place to place.

[31] During his childhood, Mr. Leggette says he suffered sexual abuse, physical abuse, mental abuse and neglect at the hands of his foster parents, step-parents and biological parents.

[32] Since being incarcerated at the Central Nova Scotia Correctional Centre on February 18, 2014, he has taken courses designed to improve himself, including one-on-one counselling for anger management.

[33] The Crown advises that Mr. Leggette has a very limited criminal record consisting merely of a conditional discharge with nine-months probation for charges pursuant to sections 129 and 403 of the *Code*, entered June 4, 2010.

[34] Mr. Leggette took the highly unusual step of entering a guilty plea to first degree murder. He saved Loretta Saunders's family and friends the agony of hearing testimony in this case. He took responsibility. He has apologized to the family in court today. Of course, Mr. Leggette created the endless and daily agony Loretta Saunders's friends and family must suffer because of her loss and because of the nature of her death.

VICTORIA HENNEBERRY

[35] Similarly, Ms. Henneberry has entered a guilty plea to murder. She also saved Ms. Saunders's family and friends the agony of hearing testimony in this case. She also apologized today. Of course, she also created the endless and daily agony Ms. Saunders's friends and family must suffer because of the loss of Loretta Saunders and because of the nature of her death.

[36] Ms. Henneberry also has a very limited criminal record consisting merely of convictions in May 2014 for charges contrary to sections 264 and 145 of the *Code*, for which she received a total of 30 days in jail.

VICTORIA HENNEBERRY'S BACKGROUND

[37] I also have very little background in relation to Ms. Henneberry except for that which her counsel provided and which is generally self-reported. Additionally, I was provided part of a psychological assessment.

[38] I am advised that Ms. Henneberry was born September 15, 1985, in Halifax but raised mainly in Ontario. Her biological mother was a substance abuser and addict, was criminally active and relinquished Ms. Henneberry's care at a very early age. Ms. Henneberry describes a tumultuous childhood and a history of behavioural problems starting prior to adolescence and persisting through adolescence including lying, truancy, cheating and stealing. She further describes significant behavioural issues in school resulting in suspensions. Ms. Henneberry

was eventually placed in a variety of group homes and became involved in substance abuse. She describes a history of having been sexually abused. There also appears to be a history of substance abuse on her part as an adult tempered only by a lack of finances.

[39] Ms. Henneberry's adult life reflects an unsettled lifestyle with employment, residential and relationship instability. By her own self-reporting, she has lived a parasitic existence with a history of manipulation of others. Duplicity, dishonesty and a lack of responsibility seem to be integral to her interaction with people.

[40] According to material provided to me by her counsel, Ms. Henneberry may have a borderline personality disorder as well as an antisocial personality disorder.

THE CRIMES

[41] Murder in Canada is considered the most serious of crimes. The treachery of Mr. Leggette's and Ms. Henneberry's actions has polluted so many lives: Loretta Saunders's family; her friends; residents of Happy Valley-Goose Bay; St. Mary's University students; residents of Halifax; residents of Nova Scotia; members of the Inuit Community; the Aboriginal Community; and, Canadian society as a whole. These groups have all been affected by her murder.

[42] In relation to Mr. Leggette, there was evidence of planning and deliberation in relation to the murder of Loretta Saunders. Mr. Leggette confessed to first degree murder in his own seized writings. Mr. Leggette is the person who physically murdered Ms. Saunders. He has pleaded guilty to first degree murder. He has taken responsibility for first degree murder and that is proper.

[43] In relation to Ms. Henneberry, the Agreed Statement of Facts describes her as being a party to murder, that is, knowing that Mr. Leggette meant to kill Loretta Saunders, intended to kill Loretta Saunders, lying to Ms. Saunders to keep her in place so that Mr. Leggette could kill her, helping with the clean-up, the cover-up and the escape, but not being involved with Mr. Leggette in the pre-planning and the deliberation. The case against Ms. Henneberry also had significant evidence of after-the-fact conduct that supports the second degree murder plea.

[44] Mr. Leggette planned and deliberated the murder of Loretta Saunders. The Crown accepts that Ms. Henneberry was not involved in such planning and deliberation.

[45] A significant mitigating factor has been presented to me regarding Ms. Henneberry in that she has entered a guilty plea. Crown counsel and defence counsel are very experienced lawyers. They have considered the evidence, the Crown disclosure, the various positions, the strengths and the weaknesses of the case. The details of the evidence are something that counsel know intimately, having prepared for this trial. Counsel agree that the joint recommendation between Crown counsel and defence counsel for Ms. Henneberry of life in prison with no parole eligibility for ten years is within the range of sentences for this crime and is the appropriate disposition based on these facts for Ms. Henneberry.

[46] Our Court of Appeal has repeatedly stressed that a true negotiated guilty plea, if not contrary to the public interest, should be followed by the sentencing judge. Ms. Henneberry spared the need for a murder trial. As the Court of Appeal said in *Hawkins, supra*,:

The imposition of life imprisonment without parole for at least 10 years carries with it a significant element of denunciation and general deterrence.

[47] The agreed-upon facts to which Ms. Henneberry pled guilty, describing her more limited involvement, support the second degree murder plea. Based on the information presented to me by counsel, particularly the strengths and weaknesses of the case, along with Ms. Henneberry's own personal circumstances, parole eligibility as set in other cases of a similar nature, and the fact that this is a true negotiated guilty plea, I find that life in prison with a parole eligibility start date of ten years for Ms. Henneberry is appropriate.

[48] I accept the joint recommendation between experienced counsel for the Crown and experienced counsel for Ms. Henneberry and set parole eligibility at ten years.

CONCLUSION

In accordance with what I am mandated to do by the *Criminal Code of Canada*, I sentence Mr. Leggette to life in prison. His parole eligibility as delineated by the *Code* is set at 25 years. The time frame starts from the date of his arrest, February 18, 2014. Along with the mandatory sentence, I will impose a primary DNA Order and a weapons prohibition Order for ten years pursuant to section 109 of the *Code*, as recommended by counsel.

[49] In accordance with the joint recommendation between Crown counsel and Ms. Henneberry's counsel upon which the negotiated guilty plea was based, I sentence Ms. Henneberry to life in prison. I set her parole ineligibility at ten years. That is ten years before she can apply for parole. The time frame starts on the date of her arrest, February 18, 2014. Additionally, I order a primary DNA Order and a weapons prohibition Order for ten years pursuant to section 109 of the *Code*, as recommended by counsel.

[50] In imposing these sentences I keep in mind the words of the Honourable Justice Duncan Beveridge in *R. v. Hawkins, supra*, that Mr. Leggette and Ms. Henneberry will be subject to a sentence of imprisonment forever. They may never be released on parole. Whether their risk of re-offending is such that they will be permitted to be released conditionally will be up to the Parole Board. If they are released, it will only be on their satisfactory compliance with whatever conditions the Parole Board places on them to ensure their respect for a peaceful and safe society.

Arnold, J.