IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Lavoie, 2008 NSSC 51

Date: 20080219
Docket: Cr 255409
Registry: Halifax

Between:

Her Majesty the Queen

and

Antonio Edward Lavoie

Judge:	Chief Justice Joseph P. Kennedy
Heard:	February 19, 2008, in Halifax, Nova Scotia
Written Release of Decision:	February 25, 2008
Counsel:	Frank P. Hoskins, Q.C. and Mark Heerema for the Crown Brian Church, Q.C. for the Accused

By the Court:

[1] The time has come to sentence Mr. Lavoie. The matter has been going on for too long. Bear with me for a moment. There are a number of matters that I have to speak to before I finalize this matter.

[2] Relevant sections of the Criminal Code are as follows: Section 745 reads:

> ... the sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be
>
> (c) in respect of a person who has been convicted of second degree murder, that the person be sentenced to imprisonment for life without the 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;

[3] It is section 745.4 that we are dealing with today. It reads:

> ... at the time of the sentence under section 745 of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender ... 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, ... substitute for ten years of imprisonment ... without eligibility for parole as the judge deems fit in the circumstances.

[4] So we start with ten years without eligibility and the judge has the opportunity to substitute for that period of time depending on a number of factors that are set out. And as indicated, it is that process, the determination of the eligibility for parole that we are dealing with today.

[5] In **R. v. Shropshire**, [1995] S.C.J. No. 52, [1995] 4 S.C.R. 227, in that matter that Court reviewed the principles of sentencing with regard to parole ineligibility. And apart from those matters that are statutorily mandated, that Court, the Supreme Court of Canada stated that denunciation and future dangerousness fall within the statutory matters of the nature of the offence and the character of the offender. In other words, when I consider the nature of the offence and the character of Mr. Lavoie, I can also consider denunciation and future dangerousness and I will say

that denunciation and future dangerousness are central to this court's sentencing in this matter.

[6] I am familiar with and I have considered the decision of Hallett, J. Of the Court of Appeal in a case called **R. v. Muise** (1995), 124 N.S.R. (2d) 105. He spoke of the ranges of ineligibility for parole with respect to second degree murder. One of those ranges he referred to was a high range between 20 and 25 years of ineligibility. And I can tell you the history of sentencing in this Province in second degree murder, that certainly is the high range. Recent Nova Scotia Court of Appeal decision **R. v. Johnson** (2004), N.S.C.A. 91, 225 N.S.R. (2d) 22, which was cited to me, Justice Oland of that Court reviewed the caselaw in respect to the range of parole ineligibility in this Province. She found that there have been cases in which a 20 - 21 year range, that high range, had been imposed, notwithstanding that it was one person who had been murdered in each of those cases. Those cases included **R. v. King** which was a 1985 decision Doc. S.C.C. 01055 (N.S.T.D.), **R. v. Smith** 1986, 72 N.S.R. (2d) 357 (N.S.C.A.), **R. v. Laidlaw** (1989), 93 N.S.R. (2d) 333 (N.S.C.A.), **R. v. Francis** (1994), 127 N.S.R. (2d) 1, all decisions of Nova Scotia courts. I am also familiar with the case cited involving Mr. Justice Laskin who is a justice of the Ontario Court of Appeal. **R. v. Olsen**, [1999] O.J. No. 218 (Ont.C.A.) in which he suggested that it would be helpful to the trial courts to consider the worst group of offences and the worst group of offenders when determining whether we are into high range. So that's what I'll do.

[7] Let me speak of the offence in this matter. This was a sudden, unprovoked brutal murder. No motive, no rationale, no explanation. Violence for the sake of violence. Resulted in the taking of the life of a completely innocent woman. A woman who had the terrible bad luck to have encountered this dangerous man. There are victims and there are victims in the criminal law. Sharon Hatch was the ultimate victim. Element of denunciation in this matter is paramount.

[8] Let me speak of this accused, Antonio Edward Levoie. He has a criminal record. Some of which involves drugs, a theft, but particularly he has a record that discloses a propensity for violence. Aggravated assault in 1991 and I heard the Crown speak of that offence against that 16 year old girl in her own home, that gave him five years. He was convicted in a 1991 robbery and we heard what that was all about, he dragged that woman off of Spring Garden Road. Fortuitous, there was intervention on the part of citizens. He received four years consecutive for a combined sentence of nine years in a federal institution. Antonio Levoie has been convicted of two

serious assaults against women prior to the meeting with Sharon Hatch. He had been sentenced to nine years in a federal institution as a result. There is a clear propensity for unprovoked violence in the extreme. Possibility of future dangerousness is real. There is no question about it.

[9] Let me speak about the victim for a moment. As I indicated I read those victim impact statements. I heard them reread before me today. They are honest, articulate testaments to the damage that this man has done to the living. The harm that he continues to cause those people day after day and year after year. They speak of the life of Sharon Hatch, this talented young woman. The quality of the life that has been lost. And I know whatever the justice system does in this matter, no matter what I address, no matter what statutes we talk about, of what precedent we cite, whatever caselaw is relevant, no matter if I give a proper sentence in law, it will not reconcile this loss.

[10] I heard the use of the term "closure" - closure is an oft used word. I don't think we have closure here. Closure is too complete a word. How do you find an answer for irrationality? I do wish the family, the friends of Sharon Hatch, at least the comfort of knowing that this process is over. I don't question, I am sure, that there are victims in the Lavoie family. They too perhaps will get some satisfaction that this sentencing is accomplished, that it is complete, that there will be no more days in this courtroom.

[11] I have been provided with a joint recommendation made by both the Crown and the defence. They have done so after much consideration. Let me tell you that both the Crown and the Defence in this matter are represented by experienced members of this profession. When they make recommendations I take those recommendations seriously. The recommendation made by the Crown and the defence is one that I am satisfied addresses the issues and concerns that this sentencing process must address. That I must consider and I am prepared to accept the recommendation.

[12] Stand please Mr. Levoie.

[13] I gather he has spoken through you Mr. Church, is that correct?

[14] Mr. Church - yes.

[15] He has spoken through his counsel. I hereby sentence Antonio Edward Levoie on the charge of second degree murder. I sentence you sir to life in a federal institution without eligibility for parole for a period of 20 years. I will sign the two orders that have been provided to me by the Crown, they are virtually consent orders, one in relation to arms and ammunitions for life time, prohibition, the other DNA.

Chief Justice Kennedy