SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Hutchinson, 2014 NSSC 155

Date: 20140429
Docket: CRH424091
Registry: Halifax

Between:

Her Majesty the Queen

v.

Christopher Kenneth Hutchinson

Revised Decision:	The text of the original decision has been corrected according to the attached erratum dated May 12, 2014.
Judge:	The Honourable Justice Felix A. Cacchione
Heard:	April 28, 2014, in Halifax, Nova Scotia
Written Decision:	May 1, 2014
Counsel:	Eric Taylor and Tanya Carter, for the Crown Patrick Atherton, for Mr. Hutchinson

By the Court (Orally):

[1] On February 13, 2014 the accused, Christopher Kenneth Hutchinson pled guilty to second degree murder in relation to the death of Tara Lynn Park. The accused had indicated before any evidence was called at the Preliminary Inquiry that he was prepared to plead guilty.

[2] Tara Lynn Park was a 33 year old mother of two young children ages 3 and 10 years old. She died as a result of multiple stab wounds. Ms. Park and the accused were involved in an intimate but confrontational relationship in the days and weeks before her death.

[3] Crown and defence counsel agreed on the facts for purposes of this hearing. The facts agreed to disclose that the relationship between the accused and Ms. Park was filled with bouts of jealousy, name-calling, pleas for forgiveness, threats of suicide and promises of reform. This was noted by friends and in texts from the accused to Ms. Park. Friends of the couple described a volatile relationship where the accused, in the week before the murder, threatened to kill Ms. Park.

[4] The accused regularly carried a hunting/military style knife in a sheath tied around his neck.

[5] The autopsy revealed 53 distinct areas of injury to Ms. Park's body including 15 or 16 sharp force injuries. The autopsy revealed two stab wounds to the forehead, three to the scalp and seven wounds to the chest and abdomen. One stab wound entered through the chest, right lung and grazed the spine. Another went through the chest, diaphragm and liver. Another wound penetrated her liver and heart through to her spine. Stab wounds were also noted to her back and arms. As well multiple cuts, scrapes and bruises were noted on many areas of her body. The autopsy photographs marked as Exhibit S4 confirm those injuries.

[6] Photographs of the scene depict the apartment where this occurred and where Ms. Park was soon to be visited by her 3 year old daughter. Various parts of the apartment and its surrounding areas including the hallway were covered in blood and blood splatters. Blood was found both inside and outside the apartment. The agreed facts indicate that Ms. Park was repeatedly stabbed with a knife. It

would also appear that she was hit with a metal bar taken from the bathroom towel rack.

[7] The case against the accused was a strong one. Not only was his DNA found under Ms. Park's fingernails, in the blood trail leading from the apartment, in bloody items in the apartment, but also the accused's foot and palm prints were found in and around the scene.

[8] A knife sheath capable of holding two knives was found at the scene. One knife was found in the apartment and the second knife, the murder weapon, was found outside the apartment.

[9] The case against the accused was not only strong because of the DNA evidence but also because the accused told a witness that he had killed his girlfriend. He in fact even showed this witness an article on the front page of the Chronicle Herald newspaper that carried the story of the murder.

[10] The accused also told the witness that "he didn't even feel bad about it and that she deserved it". It would appear that the killing was motivated by jealousy and rage because the accused noticed, while going through the deceased's phone, that she had texted other males.

[11] The accused also told the same witness that he would "do something like that again before I go, but I don't hate anybody enough around here".

[12] Section 745(c) of the **Criminal Code** mandates the imposition of a life sentence without parole eligibility for 10 years. This hearing is to determine whether a period of more than 10 years, but less than 25 years should be substituted for the period of parole ineligibility.

[13] Section 745.4 of the **Criminal Code** is applicable. It requires the Court to consider whether, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, a period of more than 10 years, but not more than 25 years should be substituted for the statutorily mandated 10 year period of parole ineligibility.

[14] The Court must determine according to the criteria in s.745.4 whether Mr. Hutchinson should wait a longer period before having his suitability to be released into the general public assessed. The sliding scale of parole ineligibility is intended to recognize that within the category of second degree murder there is a broad range of seriousness reflecting various degrees of moral culpability.

[15] The factors set out in s.745.4 are not to be narrowly construed. Denunciation can be considered under the nature of the offence criterion and future dangerousness can be considered under the character of the offender criterion.

[16] The Court must also taken into account the principles of sentencing set out in s.718 to 718.2 of the **Criminal Code**.

Character of the Offender

[17] The accused has a record of 71 prior convictions. Of these, 43 were committed as a youth and 28 as an adult. Seventy of these conviction occurred before the present offence.

[18] The accused is a violent and angry person as evidenced by his prior criminal record which consists, among other things, of 19 convictions for assaults of various forms, 13 convictions for uttering threats, and two robberies. His record for violence extends virtually unabated from 1998 to 2011. The only gap in his record appears to be during the periods when he was incarcerated. As well, his criminal record shows increasing degrees of violence. Even while on remand for this charge the accused has continued his violent ways. Crown counsel indicated that reports from the Central Nova Scotia Correctional Facility show that he has had 30 incident reports since his remand on June 3, 2013. Of these, several involve either assaults, threats or possession of a weapon.

[19] The accused has shown a pattern of repeated violence which has increased in severity over the years. It has gone from common assaults to assaulting a police officer to assault causing bodily harm and then to aggravated assault. The accused's violent and angry character was also shown after his arrest on this charge when he was being interviewed by the police. He assaulted both officers

with his fist and threw a chair at the officers. The next morning while being fingerprinted he again became violent and threatened to kill one of the officers.

[20] Further insight into the character of this offender is gained by examining the circumstances surrounding some of his prior convictions as a youth and as an adult. When he was approximately 12 years old and under the care of the Children's Aid Society, a female staff member asked him to leave the room he was in. That staff member bent over to pick up some medicine and the accused stepped on it. When he was asked to stop he kicked and punched this woman in the face. When another person came to assist her he head-butted that person.

[21] At age 14 when he was living in a group home he punched, kicked and kneed a staff member in order to get the keys to the staff member's vehicle while they were on an outing.

[22] At age 16, while in Youth Court detention he refused to return to his cell when told to do so. He punched the guard in the mouth and threatened to kill another guard.

[23] At age 19 he and four friends hired a taxi. The accused sat in the middle of the rear seat. When the taxi arrived at its destination he lunged forward with a kitchen knife and stabbed the driver in the neck, arm and chest. There was no indication that this aggravated assault was in any way provoked.

[24] In May 2011, two years before the present offence, while in a relationship with a young woman he assaulted her by punching and kneeing her. This assault was precipitated because the accused had been awakened by the victim's cell phone ringing. He later left voice messages on the victim's cell phone and home phone threatening to harm her. Some days later when he was arrested he threatened the arresting officer. He also kicked the officer in the forehead and repeatedly kicked the officer in the leg and hip. He continued his violent behaviour while in the patrol vehicle and had to be subdued through the use of pepper spray. He also made death threats to those officers.

[25] In 2012 while in Provincial Court he screamed a racial profanity at the presiding judge and stated "I can't wait for them to hang you". He then resisted

and threatened sheriff officers leading him away from the courtroom. Among some of the threats was one to "cut up" one of the sheriffs.

[26] Finally, as stated previously, he assaulted the officers who were interviewing him in relation to the present offence.

Nature of the Offence

[27] This was a particularly brutal and savage killing. The autopsy photographs attest to that. The number and depth of the wounds found by the medical examiner show this. An inference can be drawn from the photographs contained in Exhibit S1 that Ms. Park was pursued by her attacker both inside and outside her apartment.

[28] The circumstances surrounding the commission of this murder show that it was not provoked but rather that it had some elements of forethought associated with it. This was made clear by the observations of friends of the couple and in text messages from the accused to Ms. Park. In the week before the murder the accused threatened to kill Ms. Park. The offence was committed on a person with whom he had an intimate relationship.

[29] The accused's criminal antecedents clearly show an escalation of violence in the crimes he has committed culminating with this murder. This escalation in violence leads me to conclude that his capacity for future dangerousness is very high. As stated by Dr. Semrau in the Shrubsall dangerous offender proceedings, "the best prognosticator of future behaviour is past behaviour".

[30] The accused has demonstrated from a very young age a high degree of pent up anger that explodes into uncontrollable rage and violence. He has also shown a complete lack of empathy for his victims and remorse for his actions. As well, he has proven through his continued recidivism that his prospects for rehabilitation and reformation are virtually non-existent. His disregard for community based sanctions also attests to this. The accused has shown no remorse for what he did as evidenced by his statement to a proposed witness that he did not feel bad about killing Ms. Park and that she deserved it. His capacity for future violence and dangerousness was reflected in his statement to the same person that he would do something like this again.

[31] Our Court of Appeal in **R. v. Hawkins**, [2011] N.S.J. No.33 reduced a 20 year period of parole ineligibility to 15 years. Unlike the accused in **Hawkins** who had a consistently strong work ethic and a substance abuse problem, Mr. Hutchinson has no drug issues that the Court has been made aware of and no employment history. Mr. Hutchinson has a history of violence, unlike Mr. Hawkins who had no such history.

[32] The Court in **Hawkins** set out three time frames for parole ineligibility. The first being 10 to 15 years which is reserved for offenders for whom the prospects of rehabilitation appear good and for whom little would be served by extending this period other than to further the sentencing objectives of denunciation and retribution. The second time frame is 15 to 20 years and the third is 20 to 25 years of parole ineligibility. The latter category is reserved for the worst of offenders in the worst of cases. The 15 to 20 years time frame is for those offenders falling between the first and third categories.

[33] In **R. v. Nash** 2009 NBCA 7 leave to appeal refused [2009] S.C.C.A. No. 131 the accused was convicted of murdering his brother by shooting him twice. He received 20 years parole ineligibility which was reduced on appeal to 12 years. Robertson JA, speaking for the Court set out the three categories I have referred to at paragraph 54. At paragraph 56, Robertson JA described what the "worst of offenders for the worst of offences" meant by stating:

> ...These are the offenders who commit brutal murders and who have a criminal record involving brutal or violent crimes. Typically, cases in which the period of parole ineligibility has been fixed at 20 to 25 years involve offenders with criminal records involving violence and, hence, are considered to be a threat to public safety...

[34] In the **Nash** case the accused had four prior assault convictions. The last of which occurred 10 years prior to the murder which was the subject of the appeal. Nash's other convictions were mostly motor vehicle offences under the **Criminal Code**.

[35] The Court in **Nash** was not prepared to draw the inference that the accused's prior record demonstrated a propensity for violence. It also took into

account the gap in Nash's record - a period of 10 years between his last assault conviction and the murder.

[36] The Crown's recommendation in this case is that a period of between 15 and 17 years be set for parole ineligibility. The defence requests that the parole ineligibility period be set between 12 and 15 years.

[37] I have considered all of the cases cited by counsel in their briefs, together with the following cases: **R. v. Smith** (1986), 72 N.S.R. (2d) 359 (AD) an accused with a substantial criminal record received a 20 year period of parole ineligibility which was upheld by the Court of Appeal.

[38] **R. v. Johnson** (WD) (2004), 225 N.S.R. (2d) 22 (C.A.). The accused was convicted of murdering his girlfriend and her child. He was 25 years old and had 21 prior convictions including crimes of violence against his previous girlfriend. Twenty-one years of parole ineligibility was upheld in that case.

[39] In **R. v. Boudreau** 2009 NSSC 30 a joint recommendation of 20 years was accepted in the second degree murder of the accused's 12 year old daughter.

[40] Counsel for Mr. Hutchinson cited **R. v. Chareka** 2013 NSSC 320 in support for his recommendation of a 12 to 15 year parole ineligibility period. The accused in that case received 13 years, however he had no prior criminal record.

[41] The **Hardy** case 2012 NSSC 2009, referred to by counsel for Mr. Hutchinson, involved an offender with a prior record and a history of violence and also a mental illness. A period of 14 years ineligibility was imposed on that offender. The accused in **Hardy** confessed and was remorseful.

[42] I have considered as well our Court of Appeal decision in **R. v. Ward**, [2011] N.S.J. No. 481 where a 16 year period of parole ineligibility was reduced to 13 years. In **Ward**, over which I presided, the accused had a history of employment, was drunk at the time of the offence and hence the Court of Appeal reduced the sentence.

[43] In **R. v. Borbely**, [2013] O.J. No. 2593 a 17 year period of parole ineligibility was imposed after the accused's conviction for beating his wife to

death. The accused in that case had no prior criminal record and steady employment.

[44] In **R. v. McKnight**, [1999] O.J. No. 1321 the accused, who was both a lawyer and a doctor, was convicted by a jury in the killing of his wife with a knife. The attack lasted 10 to 15 minutes and the victim had numerous injuries. A 17 year period of parole ineligibility was upheld by the Ontario Court of Appeal. The accused in that case suffered from major depression and it would appear from my reading of the case that he also had no criminal record.

[45] The British Columbia Court of Appeal in **R. v. Purdy**, [2012] B.C.J. No. 1245 dismissed the appeal of a 19 year parole ineligibility sentence imposed on the accused for the multiple stabbing death of his wife. The accused in that case had no prior criminal record, was gainfully employed and was described as a good and loving parent and husband. The Court in **Purdy** confirmed that the offender's prospects for rehabilitation is a legitimate consideration in determining the period of parole ineligibility.

[46] As stated by Iacobucci in **R. v. Shropshire**, [1995] 4 S.C.R. 227 at para. 48

> ...sentencing is not an exact science; it is anything but. It is the exercise of judgment taking into consideration relevant legal principles, the circumstances of the offence and the offender...

[47] I have considered the victim impact statements filed by the biological father of Brooklyn Park Cooper, the deceased's three year old daughter. Mr. Cooper described the loss of a good mother who loved her daughter unconditionally, the loss of special events such as birthdays, graduations and other special moments in his and Brooklyn's life. He indicated that the child does not understand why her mother is not there and the hurt caused by her absence has made the child act out. He points to the fact that this trauma will continue as the child grows older and becomes more aware of what actually happened.

[48] I have also considered the victim impact statement of Tara Lynn's parents which was read into the record. It described the pain and suffering associated with an untimely death and their pain in imagining how their child suffered and died alone. It also points to the pain of seeing their child's body look like something

out of a horror flick because of all the bruising and swelling that could not be disguised despite the best efforts of the embalming staff.

[49] The aggravating factors in this murder are that this murder was committed upon the accused's intimate partner; in her residence. He abused his position of trust. These are statutory aggravating factors pursuant to s. 718.2(a)(ii) and (iii).

[50] Another aggravating factor is that Mr. Hutchinson's actions deprived two young children of the love, care and attention of their mother. The lives of these children and those of Ms. Park's parents and grandparents will forever be scarred by his actions.

[51] The accused's lengthy criminal record for offences of violence is also an aggravating factor. As well his violation of a conditional sentence order which he was on at the time of the killing is also an aggravating factor.

[52] The sole mitigating factor is the guilty plea which was entered before any witnesses were required to testify.

[53] There is no question that sentences of parole ineligibility for 20 years and more are reserved for offenders who have established patterns of violence in their lives from which it can reasonably be inferred that they present a high risk to re-offend in a violent manner. I am satisfied based on the accused's record and the increasing violence of his assaults in the past culminating in this murder that he is such a person. He has shown a blatant disregard for the law and for obeying court orders. He has demonstrated by his past behaviour that he is prone to sudden unprovoked explosive violent behaviour. He is a danger to the public at large and a dangerous person to anyone who may confront him.

[54] Society must be protected from individuals such as Mr. Hutchinson. In this case I am of the opinion that neither of the proposed periods of parole ineligibility advanced by the Crown and defence are sufficient to reflect the nature of this offence, the circumstances of its commission and the character of this accused.

[55] Taking into consideration the principles of sentencing as set out in s.718 to 718.2, the factors set out in s.745.4, the cases referred to by counsel and those

referred to by the Court, I fix Mr. Hutchinson's parole ineligibility period at 21 years.

[56] There will be a prohibition order under s.109 of the **Criminal Code** prohibiting the accused from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substances for life.

[57] A DNA order under s.487.051(1) of the **Criminal Code** will also issue.

[58] There will be a restitution order under s.738(1)(b) of the **Criminal Code** in the amount of $2,878.37.

[59] The victim fine surcharge is waived.

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Cacchione, J.

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Written Decision:	May 1, 2014
Counsel:	Eric Taylor, for the Crown Patrick Atherton, for Mr. Hutchinson

Erratum:

Counsel for the Crown should read: Eric Taylor and Tanya Carter