

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Preeper, 2014 NSSC 284

Date: 20140722

Docket: CRK No. 422519

CRT No. 405563

Registry: Halifax

Between:

Her Majesty the Queen

v.

Dustan Joseph Preeper
and Joshua Michael Preeper

Judge: The Honourable Justice James L. Chipman

Heard: July 16, 2014, in Halifax, Nova Scotia

Oral Decision: July 16, 2014

**Written Release of
Oral Decision:** July 22, 2014

Counsel: Peter Craig, for Her Majesty the Queen
Peter Planetta, for Dustan Joseph Preeper
Brian F. Bailey, for Joshua Michael Preeper

By the Court: Orally

Introduction

[1] In passing sentence today I have accepted the joint recommendations in respect of the accuseds in regard to two horrific crimes, as set out in the agreed statements of fact. The human toll these crimes have taken has been eloquently spoken to by the victims, the family members of the two murdered persons, Melissa Dawn Peacock and Ben Hare.

[2] These were indeed heinous crimes, perpetrated on individuals who in no way deserved the fates that befell them. Two young and promising persons are now gone forever, and all that we have are their memories, memories of who they were and who they might have become.

[3] Sentencing is a complex process. It involves the application of conflicting philosophical approaches. Included are the principles of deterrence, rehabilitation, retribution, and denunciation. Proper sentencing involves a balancing of many circumstances, involving the facts of the offences and the circumstances of the offenders; all go into the principles and purposes of sentencing.

[4] With respect to the purpose of sentencing, the general aim of sentencing is protection of individuals, institutions and values in Canadian society. Sentencing courts see deterrence, reformation and retribution as the means of achieving these aims, and the purpose and principles of sentencing were codified in s. 718 of the *Criminal Code of Canada*. Section 718 provides that the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the rule of law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- a) to denounce unlawful conduct;
- b) to deter the offender and other persons from committing offences;
- c) to separate offenders from society where necessary;
- d) to assist in rehabilitating offenders;
- e) to provide reparations for harm done to the victims and to the community; and

- f) to promote a sense of responsibility in offenders, and to acknowledge the harm done to the victims and to the community.

[5] To repeat, the fundamental principle of sentencing is codified in the *Criminal Code of Canada* in s.718.1:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

This section codifies the principle of retribution or proportional punishment, meaning the punishment must fit the crime. It also refers to punishment based on the moral blameworthiness of the accused. The fundamental principle is that of retribution, which requires that a judicial sentence properly reflect the moral blameworthiness of that particular offender, as well as the gravity of the offence.

Proportionality

[6] Nothing is more important than the proportionality principle. That is because it explicitly mandates a specific sentencing outcome, namely that the sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Therefore, no matter what objectives a sanction is intended to receive, to be a just sanction the sentence imposed must comply with the proportionality principle.

Denunciation

[7] Denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct.

Deterrence, both specific and general

[8] Deterrence refers to a sentence that will specifically deter the offender from committing further offences, as well as generally deter other likeminded individuals from offending.

Rehabilitation

[9] Rehabilitation is an important principle in establishing any sentence, but it is of particular significance when dealing with young people, such as we have here.

Overview

[10] Sentencing requires balancing of competing principles. For example, retribution, as I have gone over earlier, essentially the punishment must fit the crime. Rehabilitation could result in a more lenient sentence or a more severe sentence, depending on the circumstances. These two principles frequently modify each other. There are other sentencing principles mandated by the *Criminal Code*, including aggravating circumstances, set out in s. 718.2(a), and similar or not disparate sentences, s. 718.2(b). Section 718.2(b) provides that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A range of sentences is established for offences which take into account the circumstances of the offence and the offender; the consistency of sentencing for similar offenders is the aim of this provision.

[11] When it comes to second degree murder, the minimum sentence, as has been indicated by all counsel, is life imprisonment, and the minimum parole eligibility, as Mr. Craig and others have spoken to, is ten years. A judge may increase parole eligibility to a maximum of 25 years. With first degree murder, the minimum sentence is life imprisonment. The minimum parole eligibility is 25 years. I have borne these factors in mind, and I have borne in mind the joint recommendation, as I pass sentence on Dustan and Joshua Preeper, and I have borne in mind the joint recommendation for what I have described as horrific and heinous crimes in respect of the deceased, Melissa Peacock and Ben Hare.

[12] As I believe the joint recommendation is sound and founded on valid law, appropriate *Criminal Code* provisions, and the case law that has been alluded to in Mr. Bailey's brief and through the representations of counsel, I have chosen to accept the joint recommendation of these very experienced counsel. Together, they have recommended to the Court, and I have accepted, the following:

Dustan Preeper Sentence

[13] With respect to Dustan Preeper, following his guilty plea to the first degree murder of Melissa Peacock, I will impose what is commonly referred to as the statutory sentence as proscribed by s. 235(1) and 745(a) of the *Criminal Code*, i.e. a life sentence with a minimum parole eligibility period of 25 years. In addition, I will impose what are often called the usual ancillary orders of a lifetime firearms

prohibition, pursuant to s. 109 of the *Code*, and a DNA order, pursuant to s. 487.051 of the *Code*.

[14] Following Dustan Preeper's guilty plea to the second degree murder of Ben Hare, I have decided to impose the mandatory life sentence, as proscribed by s. 235(1) C.C., and fix a parole eligibility period of 12 years, pursuant to s. 745(c) C.C.

Joshua Preeper Sentence

[15] With respect to Joshua Preeper, following his guilty plea to the second degree murder of Melissa Peacock, I have decided, pursuant to the joint recommendation, to impose the mandatory life sentence as proscribed by s. 235(1) C.C. and fix a parole eligibility period of 12 years, pursuant to s. 745(c) C.C.. With this I will also impose the same ancillary orders: a lifetime prohibition in regard to firearms and also the DNA order, as set out in the *Code*.

Conclusion

[16] On balance, it is the Court's view that the joint recommendation is well within the range of reasonable sentences for crimes such as have been perpetrated here, and so I confirm the sentences as enunciated. I also wish to add that, given the submissions of all counsel, I will not impose the victim fine surcharge. I might add that, in my view, it is not a practical imposition because nothing in all likelihood would become of it.

[17] In closing, I want to thank the prosecutor Mr. Craig and his colleague earlier on, Ms. MacDonald, defence counsel Mr. Bailey and Mr. Planetta, as well as Victim Services for their role with marshalling the victim impact statements and, last but not least by any means, the friends and, more particularly, family members of the deceased Melissa Dawn Peacock and Ben Hare. I want to thank those individuals especially who stood in Court today and some who, probably for emotional reasons, could not be here for their contribution with their victim impact statements and in this entire painstaking process which must have been excruciatingly painful. I can say to you that we are at a juncture where this matter will be dispensed with in the courts. If anything can be said about the joint recommendation on top of what I have already said, it is that this unfortunate matter does not have to persist to the point where, I hasten to say, it could cause

potential trauma to not only family and friends but to any jury that would have to have heard such horrific cases.

Chipman, J.