

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Gowen*, 2011 NSSC 249

Date: 20110607

Docket: Ken No 339306

Registry: Kentville

Between:

Regina

v

Kyle Gowen

Judge: The Honourable Justice Suzanne M. Hood

Heard: June 7, 2011 at Kentville, Nova Scotia

Written Decision: June 23, 2011 (*Written release of Oral Decision June 7, 2011*)

Counsel: **Jillian Ryan** and **Alison Brown**, Crown attorneys
Brian F. Bailey, counsel for the accused

By the Court:

[1] Kyle Gowen has entered a plea of guilty to second degree murder of Dillon Jewett.

The Facts

[2] The facts have been set out in Mr. Bailey's written submissions and in Ms. Ryan's written submissions. I will attach those as an appendix to my decision. They have been read in to the record this morning and I accept those as the facts of the case but I do not intend to repeat them, except briefly as part of the decision.

[3] The *Criminal Code* imposes a life sentence for second degree murder. Although much has been said and more will be said about 15 years of parole ineligibility, let there be no misunderstanding. This is a life sentence.

[4] The *Criminal Code* also sets out the range for parole ineligibility; a range of 10 to 25 years. What that means is that is the period within which Kyle Gowen cannot ask for or be considered for parole.

[5] As Justice Beveridge said in the recent decision of *Her Majesty the Queen v Hawkins*, 2011 NSCA 7:

It must be remembered that the appellant will forever be subject to a sentence of imprisonment. He may never be released on parole. Whether his risk of re-offending is such that he be permitted to be released conditionally will be up to the Parole Board. If he is released, it is only on his satisfactory compliance with whatever conditions the Board places on him to ensure his respect for a peaceful and safe society.

[6] The *Criminal Code* and the case law tell me to consider the offender, the nature of the offence and the circumstances surrounding the offence. I must also give serious consideration to the fact that this is a joint recommendation.

[7] Serious consideration, as I say, must be given to a joint recommendation such as this. It is only to be departed from by a sentencing judge if I come to the conclusion that it is not within an acceptable range. That is, that it is not fit.

[8] A sentencing judge should only refuse to accept a joint recommendation for sound reasons.

[9] We have heard the impassioned statements of Dillon's mother, aunt and cousin. They are understandably grieving and angry.

[10] Nothing we do here today can lessen their grief or give Dillon back to them.

[11] Words almost fail one in trying to understand why Dillon Jewett died. To say it is horrible, senseless and tragic; those are just words that cannot capture the devastation that has been caused by his death.

[12] The victim impact statements give the Court a better understanding of the person that Dillon was and the terrible impact his death had on those who loved him. None of us who have not felt that loss can begin to fully understand their pain and their loss, but hearing from them helps us to appreciate their grief and their loss.

[13] My role is to consider what is the appropriate period of time Kyle Gowen must spend in prison before he even has the right to ask for parole. I must consider the nature of his crime and his circumstances and I must consider Kyle Gowen himself. This is what the case law tells me I must do.

[14] Kyle Gowen is 23 years of age. He has one prior conviction for possession of marijuana for which he received a conditional discharge and six months probation. He has no criminal history of violence or weapons related offences. He was working and taking courses at a community college. He was in a relationship with Amanda Greene. He is a youthful offender.

[15] Kyle Gowen expressed his remorse to the Court this morning for the damage and pain he has caused to the mother, brother, aunt, cousin and friends of Dillon Jewett. He apologized to his own family, his friends and his brother, as well as Amanda Greene, and I accept that his remorse is sincere.

[16] The nature of the offence speaks for itself. It is murder; the murder of Dillon Jewett, who was lured to a secluded area and killed. The circumstances have been described by counsel.

[17] Kyle Gowen's plan was to beat Dillon up but he took a sawed off shot gun with him and, after an accidental shot, he shot him twice more. After Dillon's death, Kyle Gowen and others misled the police about the events of that night and their whereabouts.

[18] Ultimately, Kyle Gowen confessed to the police. He has saved everyone the additional trauma of a trial by his guilty plea this morning. That is significant to the Court.

The Case Law

[19] It is unpleasant to think of murder on a scale. All murder is horrific; it is final. The case law which has been cited to me shows the types of offences and offenders for whom various ranges of parole ineligibility have been found to be fit. No two cases are alike but the cases do provide some guidance.

[20] In *R v Blundon*, 2011 NLTD(G) 19, 12 years of parole ineligibility was found to be fit for a young man who shot another on a hunting trip, not accidentally, then concealed the body.

[21] In *R v Panghali*, 2011 BCSC 421, a decision from British Columbia, the offender strangled his pregnant wife and then desecrated her remains. Parole ineligibility of 15 years was ordered.

[22] In the recent case of *R v MacRae*, (2011, unreported) the offender murdered his wife while his young child was in the house and then he moved the body, only confessing in a sting operation a number of years later. Fifteen years was the period of parole ineligibility that was ordered.

[23] In *R v Boudreau*, 2009 NSSC 30, a mother murdered her own child and hid her body. Parole ineligibility in that case was set at 20 years.

[24] The longest period of parole ineligibility in this province is in the case of *R v Johnson*, 2001 NSSC 119, where a man murdered his girlfriend and

her two month old baby. Twenty-one years was the period of parole ineligibility.

[25] Considering the authorities which have been cited to me and the case law in addition to that which was referred to in those cases, I conclude that a period of 15 years of parole ineligibility is within the acceptable range in this case and I accept the joint recommendation.

[26] Kyle Gowen, please stand.

The Sentencing

[27] It is the sentence of this Court that you serve a sentence of life imprisonment with no parole eligibility for a period of 15 years commencing on October 30, 2010.

[28] In addition, I order a firearms' prohibition for life and order you to submit a DNA sample. That concludes my decision.

MR. BAILEY: One other aspect, My Lady.

THE COURT: Yes

MR. BAILEY: Waiver . . .

[29] I also order that the victim surcharge be waived.

MR. BAILEY: Thank you, My Lady

[30] Thank you counsel. Please take the offender away.

Hood, J.