

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Ward, 2010 NSSC 183

Date: 20100401

Docket: CRH 303841

Registry: Halifax

Between:

Her Majesty the Queen

v.

Shane Ward

Judge: The Honourable Justice Felix A. Cacchione

Heard: January 11-14, 18- 21, 26-28, February 1-4,8, 10-15, April 1, 2010, in Halifax, Nova Scotia

Written Decision: May 4, 2010

Counsel: Eric Taylor and John Feehan, for the Crown
Alfred Seaman, for the defendant, Shane Ward

By the Court:

[1] Sentencing an offender is the most difficult task a judge has to perform. No one ever walks away believing that the sentence imposed is a proper sentence. The offender always walks away believing that the sentence is too long. The victim, the victim's family always walk away believing that the sentence is not long enough.

[2] As Mrs. Love stated here this morning, nothing that I do will ever bring Phillip Love back. My function is to impose a fit and proper sentence for the offence committed and to ensure that the public is protected. In doing this I am bound by the law and not public opinion. Shane Ward has already been sentenced to a term of life imprisonment. I am here solely to fix the minimum sentence that must be served before Shane Ward is eligible to apply for parole.

[3] I have had the benefit of reading the pre-sentence report as well as the victim impact statements filed by family and friends of Phillip Love, some of which were read into the record, and the letters of support filed on behalf of Shane Ward. I have considered all of these in arriving at the sentence which I will impose.

[4] The pre-sentence report indicates that Shane Ward is presently 35 years of age, single and has a grade 12 education. As noted previously, his parents separated when he was 8 years old and his mother returned to Nova Scotia and became involved in a common law relationship which continues to this day.

[5] Ms. Wison, Shane Ward's mother, described Shane when he was young as a nice boy who was also very active at home. He was diagnosed with memory sequential learning disability (causing him to have an inability to read). Despite that disability, however, he taught himself how to read. He overcame obstacles with regards to his education and showed a determination to continue his education. His persistence and determination led him to graduate from grade 12.

[6] He apparently, according to Ms. Wison, his mother, is a very determined person who sets high standards for himself and she has described him as an honest person. She did not know what led to this offence and described Phillip Love as becoming part of their family.

[7] Mr. Ward and his brother left Nova Scotia for greener pastures. They worked outside the province in Ontario for approximately 9 years. Mr. Shane Ward returned to Nova Scotia with Phillip Love. He indicated that Phillip Love wanted to get away from problems he was having with drugs. Mr. Ward, his brother Mathew and Mathew's girlfriend and children, all lived together for a time. The unit was too crowded and Shane Ward moved out.

[8] He then lived with Brenda Pichette and her daughter. Mr. Ward was involved in an on and off relationship with Shelly Reagan and she indicated that she remains supportive of him to this day. She described him as a law-abiding citizen who often assumes responsibility for others. She has never known him to use drugs and rarely saw him drinking.

[9] Ms. Reagan indicated in the pre-sentence report that Shane is not someone with malice or who is vengeful and would not inflict injuries unless in self-defence or defence of a loved one. She does not believe that Mr. Ward is responsible for the death of Phillip Love. Ms. Reagan did not have the benefit of sitting through this trial and I believe that her comments are misplaced and inaccurate.

[10] Mr. Ward was a high school wrestler. He had some abilities. He went to the Nationals and tried out for the Canada Games team. He apparently is a very good and hard working drywaller and taper. He denies using drugs and rarely drinks alcoholic beverages.

[11] The probation officer found him to be of average maturity and intelligence, a pleasant person and cooperative. Mr. Ward indicated to the probation officer that he could not remember details of the offence. He thought that Phillip Love said "I'm going to kill you." and he was scared. He also recalled hitting Phillip Love with an unknown object. The evidence led at this trial establishes clearly that that unknown object was an aluminum baseball bat.

[12] He has a prior limited record, but certainly relevant. His record is for offences of violence, assault, possession of a weapon and assault causing bodily harm.

[13] The letters of support that were sent in on behalf of Mr. Ward describe him as someone who is kind, honest and non-violent, a peace-maker according to some. Others indicate that the offence was out of character, that Mr. Ward always puts

the interests of others before his own. That cannot be said of what occurred January of 2007.

[14] Mr. Ward was, according to the information received by the court, responsible for saving the lives of various people whose house was on fire. Mr. Ward is the one who alerted them to the fire and he is to be commended for that.

[15] There is another side to Mr. Ward. That is a side that can inflict serious violence, as was shown by the evidence at this trial.

[16] Section 745.4 of the **Criminal Code** requires a consideration of the character of the accused, the nature of the offence and the circumstances surrounding the commission of the offence and any recommendation made by the jury pursuant to s.745.2. In this case, the jury offered no recommendation as to parole ineligibility. The minimum period of parole ineligibility is ten years. That may be increased by having regard to the factors which I have set out.

[17] Section 746 requires that in calculating the period of imprisonment to be served for parole ineligibility there must be included any time spent in custody between the date of arrest and detention and the date the sentence is imposed. Here we have a total period of approximately ten months, three weeks. Almost 11 months.

[18] The primary principle of sentencing in cases such as this is the protection of the public. Denunciation and future dangerousness fall within the statutory matters listed in s.745.4. That is, the nature of the offence and the character of the offender and the circumstances surrounding the commission of the offence.

[19] Justice Iaccabucci in the case of **R. v. Shropshire**, [1995] 4 S.C.R. 227 addressed the question of parole ineligibility and he stated:

...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.

[20] The object of determining a fit period of parole ineligibility is to do justice, not to be retributive or punitive, but justice to reflect the accused's culpability and society's repudiation of the accused's conduct.

[21] The law makes me the representative of the public in expressing the view that people who commit horrendous crimes not be permitted back into society for a prolonged period of time. Hopefully this will deter others and will result in greater protection for the public.

[22] Cases which have been provided by counsel and which I have considered are simply a rough guide in identifying the types of aggravating and mitigating circumstances considered by other courts in other cases. In the present case the aggravating factors are Mr. Ward's previous record for violence. He has a conviction for assault on a family member and assault causing bodily harm on a roommate. Both of these offences involved Mr. Ward being intoxicated and persistent in his episodes of violence. It would appear from the evidence led at this trial that Mr. Ward was the least intoxicated of all the persons who were at the residence on Byron Court that evening. It is clear, however, that the violence inflicted that evening was persistent. It was not a one-blow situation.

[23] Another aggravating factor is that Mr. Ward's violence has always been directed towards people that he knows, such as family members, roommates and friends. That is very disturbing.

[24] The nature of the attack in this case is another aggravating factor. This was not an offence committed at a distance with a firearm, which tends to support a less personal approach to the violence. Rather, it was an offence involving repeated blows with both a beer bottle and as best can be determined, a baseball bat. To me that indicates a very personal type of violence. It indicates, contrary to the accused's expressions of friendship toward the deceased, a very personal dislike of the victim.

[25] The number of blows struck and the location of these blows, primarily to the head, attest to the degree of anger and rage of which you are capable, Mr. Ward. This is not simply one or two blows by a bunch of drunken guys, but rather anywhere between nine and 13 blows according to Dr. Bowes, primarily to Phillip Love's head.

[26] The autopsy photos, which no doubt you have seen Mr. Ward, some of which the jury did not see, show Phillip Love's head as being akin to a watermelon that has been dropped from a height. Cracks everywhere. The jury's findings

against your brother, the co-accused, points to the jury's acceptance that the blows which caused Phillip Love's death were inflicted by you. This is not a case, for example, where several persons each inflict a different number of blows which cumulatively lead to a person's death. The jury's verdict and the findings that they would have had to make to reach that verdict point clearly to their acceptance that you were the sole cause of Phillip Love's death.

[27] The evidence presented at trial clearly shows that there were a number of high velocity impacts which occurred when Phillip Love was on the ground or in a low position, perhaps on his knees or perhaps sitting on the ground. Those photographs of the first few steps and the wall next to those steps leading to the upstairs area speak volumes as to the type of violence that was inflicted at that location.

[28] The nature of the injuries, primarily to Phillip Love's head, shows the brutality with which this assault was carried out. There were ten lacerations to his head. His eye socket was fractured. His skull was badly fractured. Those fractures to his skull extended across the skull and the base of the skull.

[29] I also consider as an aggravating factor the fact that Mr. Ward, after an initial confrontation with Phillip Love, and I must say that it would appear that Phillip Love's anger at that time, was directed towards Bradley Martin, it did turn and became directed to Mr. Ward. There was an altercation in Bradley Martin's bedroom. There was an involvement of others in that room. But that culminated with what I would think the jury found, which is that you got a beer bottle and smashed him over the head with it, and that caused a fair amount of damage. He was on the floor and you left. You went out, sat in the car. And you know if it had been left at that, Phillip Love would still be alive and you would not be going to jail for life. But you did not. I do not know why. No one will ever know why. Perhaps it was the urging of others. Perhaps it was your anger. It may have been fuelled by alcohol, but I do not accept that you were impaired to the degree that your brother was. Certainly video taped statements that I saw of your interview with the police, although not admissible, showed that you were in control of your faculties. It is unfortunate that we cannot roll back the hands of time.

[30] The uncontested statements made by you to others after the offence are, in my mind, evidence that you knew what you were doing, that you were not intoxicated to the point of not knowing what you were doing, and that you meant

to cause the injuries to Phillip Love which you knew would cause his death, or you knew would cause him such harm that his death was likely and you just did not care about it.

[31] Your comments to David Carr - "I'm in a lot of trouble. The cops are looking for me for manslaughter. I had to do what I had to do. He was trying to kill me." I think the last comment that you made to David Carr was the most accurate, and that was "You know how it is Yogi, three strikes and you're out." You just struck out Mr. Ward.

[32] Comments that you made to Glen Oatway - "I hope the guy dies".

[33] This offence was not an impulsive act fuelled by alcohol or drugs. It was a savage attack on a person who was already wounded, carried out by someone who did not care at that time about the consequences of his actions. The offence and the nature of its commission demonstrate that you, Shane Ward, are at times incapable, of controlling your anger and that this uncontrolled anger can have and did have fatal consequences. You have not learned to control your anger, despite being ordered in the past by a court to submit to anger management counselling. That was 12 years ago.

[34] It would appear that your mother's description given back in 1998 in the presentence report is accurate. You tend to keep things built up inside until things blow. You have a difficult time with your temper. Those statements were accurate back in 1998. They have played out as accurate again in 2010.

[35] Although Mr. Ward is considered by family and friends as a good person, his actions on the night in question speak against this. Some have said that this offence is out of character for Mr. Ward. Those persons have obviously seen only one part of his character. The part they have not seen or they have chosen to ignore is the part which is angry and violent.

[36] Given what I have read about Mr. Ward, his past offences and the circumstances of the present offence I cannot conclude that he is unlikely to re-offend. Mr. Ward has shown no insight into his past violence or violent behaviour, nor has he demonstrated any ability to contain his anger and violent behaviour. I am not persuaded that a minimum period of parole ineligibility is appropriate in

this case considering the character of the accused, the nature of the offence and the circumstances surrounding the commission of the offence.

[37] As stated previously Mr. Ward has a character which contains both anger and an ability to use violence, whether under the influence of alcohol or not. The nature of this offence is that it was brutal and senseless. It involved multiple high velocity blows to the head of the deceased with an object that any right thinking person would know would cause someone's death. The violence inflicted was in no way proportionate to anything that Mr. Ward may have suffered as a result of the confrontation with Phillip Love.

[38] The circumstances surrounding the commission of the offence involved a woman, Brenda Pichette. Had she kept her mouth shut that evening, perhaps we would not be here. There is something underlying the situation between Ms. Pichette, Mr. Love and Mr. Ward. I do not know what it is and I am not going to speculate. It would appear that it was a triangle. Mr. Love was incensed by something said by Ms. Pichette and he went upstairs to confront Bradley Martin. Things took a turn for the worse.

[39] The bottom line is, Mr. Ward, that society must be protected from those who use violence as a means of expressing their displeasure at the behaviour of others.

[40] I have considered the recommendations made by the Crown in their closing argument and their brief. I have considered the representations made by your counsel in his oral argument and his written brief, the cases referred to, victim impact statements read and not read, the pre-sentence report and I am satisfied that the period of parole ineligibility must be higher than a minimum of ten years.

[41] I have also taken into consideration the time that you have spent in custody which amounts to a little less than 11 months. I recognize that you were under house arrest for a considerable period of time, however that house arrest did allow you to be outside your residence for employment and medical reasons. It was not a house arrest in the sense of a conditional sentence house arrest. If you would stand please Mr. Ward.

[42] I am fixing the period of parol ineligibility in this case, having regard to all the comments that I have made, at 16 years. I am sentencing you to a period of

two years concurrent for possession of a weapon and of four years concurrent for assault with a weapon.

[43] There will be a firearms prohibition for life and you will be required to give a DNA sample.

Felix A. Cacchione