Court of Queen's Bench of Alberta

Citation: R v Perteet, 2019 ABQB 773

Date: 20191129
Docket: 170139893Q1
Registry: Edmonton

Between:

Her Majesty the Queen

Crown

- and -

Carl Blaine Perteet

Offender

Reasons for Sentence
of the
Honourable Mr. Justice J.J. Gill

Introduction

[1] The offender pleaded guilty to the following charge:

> On or about the 5th day of February 2017, at or near Edmonton, Alberta, did cause the death of Donald Carruthers, thereby committing manslaughter, contrary to section 236 (b) of the *Criminal Code of Canada*.

Background

[2] An Agreed Statement of Facts was entered as an exhibit (Appendix 1).

[3] In summary, on the day of the event Mr. Carruthers (the victim) was visiting with several acquaintances who lived in a social housing building in Edmonton. The offender lived in another suite in the same building. Sometime during that day, the offender invited the victim and another person to his suite where they drank beer and smoked cigarettes. At some point the offender asked the victim to leave his suite.

[4] Later in the evening the offender noticed that some of his jewelry was missing. He believed the victim or his friend had taken this jewelry. He was angry and frustrated that his jewelry had gone missing. He went looking for the offender and his friend.

[5] The offender went to another suite and confronted the victim. The two men began to argue. The offender accused the victim of stealing his jewelry and pleaded with him to return it. The offender became increasingly angry and frustrated. He was heard to say "give me my stuff back, I don't want to hurt you". The victim was heard to respond by saying "fuck off".

[6] The victim stepped out of the bathroom and lunged towards the offender. The offender grabbed the victim and threw him against the wall. The offender punched the victim with a closed fist multiple times and also used his knee to strike the victim in the face and head. He threw the victim on the ground and fell on top of the victim. The victim lay motionless on the floor bleeding from his nose. The offender left the suite.

[7] A few hours later, another person returned to the suite and saw the victim lying motionless on the floor. He called 911 and EMS arrived shortly thereafter.

[8] The autopsy report of the Medical Examiner Bannach concluded that the victim died of multiple blunt force injuries caused by the offender. The injuries included: multiple rib fractures and blunt injuries to the face associated with bleeding on the surface of the brain as well as bleeding between the surface of the brain and the inner lining of the skull.

[9] At the time of the offense the offender was 6'1" and weighed approximately 240 pounds. The 66-year-old victim who was 6 foot tall and weighed 145 pounds. The victim was homeless and suffered from an alcohol addiction. The offender also suffered from an alcohol addiction and had lived on the street for many years before he obtained stable housing.

The Offender

[10] The 63-year-old offender has a criminal record with 58 convictions including 13 assault type convictions starting in September 1974 with the most recent conviction being in May 2014.

[11] A Pre-Sentence Report (PSR) and a Psychologists Report (prepared by Dr. Pugh) were entered as exhibits.

[12] Both reports describe the difficult life the offender has experienced. His parents separated and his mother remarried several times. He grew up in impoverished circumstances. As noted in the Psychologists Report, his childhood was marred with instability, violence and abuse. He was sexually abused as a young person. His parents struggled with addictions. He also struggled with a significant alcohol addiction and has lived on and off the streets. He has no relationship with his other family members.

[13] Dr. Pugh described the offender's history of assaults as not psychopathic in nature but more a function of either survival or the frustrations of a dysfunctional common-law relationship. He noted that: "generally, individuals who have been physically and sexually abused are

vulnerable to a variety of outcomes including anxiety, hypervigilance, depression and low self-esteem. Often, they feel frustrated with the unfairness they have endured. They may be, more than most, easily triggered to anger and aggressive responses to perceived incidents of unfair treatment".

[14] The offender also struggled to maintain relationships. He has had some brief intimate relationships but these date back many years. Dr. Pugh interviewed collateral contacts who describe the offender as having pro-social qualities. The offender expressed remorse and regret. He told the psychologist that he was feeling "pretty sad" with respect to the death of the victim and related "I'm so sorry it happened. I think we could've been friends".

[15] The offender suffers from diabetes. He has been on medications for anxiety, depression and high blood pressure. He reported experiencing three or four panic attacks a day. Dr. Pugh diagnosed the offender as severely anxious, with Alcohol Use Disorder and Panic Disorder.

[16] A number of certificates were entered as exhibits showing that the offender completed programs while in custody. These included an AA program, courses on prevention of family violence, parenting, life management, release planning, and computer skills training.

Victim impact statements

[17] Two victim impact statements were filed. The victim's son described the emotional, and physical impact his father's death has had on him. He is deeply disturbed by the violence that his father experienced. A friend of the deceased described the shock of finding the victim dead in her apartment and the difficult emotions she has had to deal with.

The Crown

[18] The Crown is seeking a period of incarceration of 8 to 10 years, a mandatory DNA, a lifetime weapons prohibition ban and a forfeiture of seized items.

[19] The aggravating factors are:

1) The extensive criminal record which include contraventions in relation to the administration of justice, numerous substantial offences including drug and property offences and numerous assault convictions including domestic violence;
2) The nature of this attack. The offender committed a brutal attack on an elderly, frail, smaller victim. Significant violence was involved resulting in the victim suffering extensive injuries as described in the medical examiners report. The medical examiner indicated that the degree of force involved in the assault was consistent with injuries that are suffered in the motor vehicle accident or a fall from several stories;
3) After the assault the offender left the injured victim and did not call for assistance.

[20] The guilty plea is a mitigating factor, although it came after the preliminary inquiry. The offender accepts responsibility and experienced remorse. However, as noted in the PSR, the offender partially blamed the victim.

[21] The sentence has to be proportional to the gravity and degree of moral blameworthiness. The Crown submits the degree of moral blameworthiness falls within the mid-range described in

the Alberta Court of Appeal case of ***R v LaBerge,*** 1995 ABCA 196.The offender knew his actions created a risk of bodily harm or death. The Crown suggests that the Psychologist Report and PSR should attract little weight as they are mainly based on self reporting. There is little collateral information to support the findings. Both reports show that he has issues with authority. He manipulated placement into the medical unit while in the hospital. He also continues to blame the police for an alleged voice-box injury.

[22] The offender also has significant anger management issues as noted in the PSR. He has a belligerent attitude, fights with other inmates and harbours hostility.

[23] Denunciation and deterrence are the relevant sentencing objectives. The offender needs to deal with his underlying issues and needs to be separated from society. While he acknowledges harm, he does not accept responsibility.

[24] The Crown referred to 2 cases. The Alberta Court of Appeal case of ***R v Guitar,*** 2001 ABCA 58**,** where the court imposed a sentence of 10 years for manslaughter**.** In that case, the victim had shared drinks in the bar with the offenders shortly before they brutally beat him to death in a random act of violence. The Court of Appeal upheld the trial judge's determination that the degree of moral blameworthiness fell in the midrange as set out in ***LaBarge***.

[25] ***R v Johnson***, 2017 ONSC 3512, is a 2017 decision of the Ontario Superior Court of Justice. After trial the offender was convicted of manslaughter and sentenced to 8 years. He had assaulted his roommate during an altercation, injuring his spleen. The victim bled to death. The victim had been friends with the victim for 20 years. The offender had a lengthy criminal record including previous violent offenses.

[26] The Crown submits that the cases put forward by the defence which suggest a much lower sentence are distinguishable.

[27] The Crown notes that the offender has been in custody since February 2017 and is entitled to credit at a rate of 1.5 days per day of custody.

Position of the Defence

[28] The Defence submits that a fit and proper sentence is four years.

[29] The Defence refers to the following mitigating circumstances:

1) The guilty plea which should be considered an early guilty plea as it took place shortly after the conclusion of the preliminary hearing;
2) The offender has expressed remorse and sadness;
3) There is a positive psychological assessment;
4) The offender is 63 years old and not in good health. He has experienced significant negative health effects as a result of being held in the Remand Centre for 31 months; and
5) Although the offender is guilty, there are mitigating factual elements. Firstly, there was some element of provocation. The victim told the offender "to fuck off". Secondly, the offender believed some personal items had been stolen and this combined with alcohol resulted in him losing control of his emotions.

[30] The moral blameworthiness analysis in ***Laberge*** has to take into account the overall context of the offence and the offender. This offender had a very challenging background. He grew up in difficult circumstances. As noted in the psychologist report, he suffers from Alcohol Use Disorder and Panic Attack Disorder. He is an African Canadian, who grew up in an impoverished background and has mental health issues as outlined in the Psychologist Report. Also, of significance, is that he pleaded with the victim before the confrontation escalated to a fight.

[31] The offender's criminal record contains many minor offences including numerous offences related to drugs. He is described in the reports as being remorseful. He acknowledged his responsibility by pleading guilty. In the reports he is described as being honest and direct. He has spent 31 months in the Remand Centre using that time to take courses, obtain certificates and AA meetings. His criminal record can be grouped into periods and there are significant gaps in his record.

[32] When one takes into account all of these factors the offender's level of moral culpability is lower. He fits in the lower end of the midrange in ***Laberge.*** His actions cannot be escribed as "near murder" which put an offender in the 8 to 12 range. The offender was not looking for a fight. Rather he was trying to recover his personal items when he approached the victim. There was some provocation in the victim's response. His actions were a spontaneous response during a physical altercation. No weapons were involved.

[33] The Defence also raises questions concerning the cause of the injuries. This was not necessarily a vicious beating. The injuries could have been caused by the bigger, heavier offender falling on the frail older victim. The victim was frail and as noted by Dr. Bannock, his ability to absorb blows or a fall were more limited. He was tall and had very thin bones. Not every single injury required a separate impact. Also, one has to take into account the blood alcohol content of the victim which could have caused internal bleeding.

[34] In ***R v Shevchenko,*** 2018 ABCA 31, the Alberta Court of Appeal noted that one has to take into account the offender's mental illness in assessing his moral blameworthiness. In this case, there is confirmation of the offender's mental illness. Taking into account all of the circumstances including the offender's anxiety, the history of trauma, the spontaneous, unplanned nature of the incident this case falls onto the borderline of level I/level II ranges in the ***Laberge*** case. It is distinguishable from the cases referred to by the Crown.

[35] An appropriate sentence is not in the 8 to 10 year range suggested by the Crown but rather in the 3 to 4 range. While he is not entitled to application of *Gladue* factors, he is a racialized Canadian who has experienced significant hardship. A four-year sentence is fit and appropriate. The Defence referred to a number of cases which are summarized below.

The Offender

[36] The offender addressed the court. He said he was very sorry for what happened and for what he did. Under other circumstances he could have been a friend with the victim.

Analysis

[37] The relevant sentencing objectives are deterrence and denunciation.

Aggravating and Mitigating factors.

The aggravating factors

1) This was a very violent assault on a frail, defenceless and vulnerable victim. The offender was significantly larger than the victim. The offender admitted to punching the victim with a closed fist, using his knee and throwing the offender to the ground; and

2) The offender has a lengthy criminal record which includes including numerous previous convictions for assault.

The mitigating factors

1) The guilty plea;

2) The expression of remorse; and

3) The offenders physical and mental health problems.

[38] Taking into account all of the circumstances I find this case falls in the mid-range of the ***Laberge*** analysis. The actions of the offender viewed objectively were likely to subject the victim to serious bodily harm. In coming to this conclusion, I note both the admitted details of the assault and the injuries documented by the Medical Examiner. The victim sustained a significant number of blows both from closed fists and a knee. The foreseeability of serious bodily harm was clearly present.

[39] What is a fit and appropriate sentence? The Crown suggests 8-10 years and the Defence 3-4 years. Both have provided cases to support their position. In terms of setting a range of sentence, the ***Guitar*** case *supra* is instructive.

[40] The cases referred to by the Defence are all somewhat distinguishable**. *R v Valente,*** 2012 ABQB 151 (4 years) involved circumstances where the victim was pushed, fell back and hit his head. Here we have where multiple injuries caused by the actions of the offender.

[41] The assault in ***R v Bissonnette,*** [2012] AJ 653 (5 years) was caused by several offenders. Mr. Bissonnette's role in the assault and his criminal record were less serious than in this case. In ***R v Wesley,*** [2017] AJ 864 (3 ½ years), the aboriginal offender had taken significant steps to deal with this alcohol addiction and had no previous criminal record.

[42] ***R v Larson,*** [2017] AJ 122 case, (5 ½ years) involved a consensual fight. ***R v Friday,*** [2012] AJ 580 (4 years) involved a stabbing after a day of heavy drinking. The aboriginal offender had health issues.

[43] ***R v Wahpistikwan,*** [2018] AJ 492 (6 years) involved a stabbing. The use of a knife and the number, placement and depth of the stab wounds were aggravating factors. The offender had a lengthy, related record. The Court placed significant emphasis on the offender's mental deficiencies, guilty plea and the *Gladue* factors.

[44] The ***R v Gray,*** [2003] AJ 676 case, (5 years) involved a stabbing during a fight. The offender in that case was much younger and had a minor record. Rehabilitation was a factor.

Conclusion

[45] I find the range of sentence suggested by the Defence does not adequately address the aggravating circumstances in this case. Nor do the circumstances support a sentence as high as 10 years, as suggested by the Crown.

[46] I find that sentence of 5-8 years is an appropriate range. Taking into account all of the aggravating and mitigating circumstances, which include the significant violence involved, the offender's criminal record and his mental disorders I find a fit and appropriate sentence to be 6 1/2 years.

[47] I also impose the additional conditions requested by the Crown being a mandatory DNA, a lifetime weapons prohibition ban and a forfeiture of seized items. The offender will receive credit for the time spent in custody at the rate of 1.5 per day of custody.

Heard on the 30th day of September, 2019.
Dated at the City of Edmonton, Alberta this 29th day of November, 2019.

J.J. Gill
J.C.Q.B.A.

Appearances:

Susanne Thompson
for the Crown

Jordan Stuffco
for the Offender

Appendix 1

Indictment No.: 170139893Q1

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and -

CARL BLAINE PERTEET

Accused

AGREED STATEMENT OF FACTS

Pursuant to the provisions of Section 655 of the *Criminal Code of Canada*, the following numbered paragraphs contain facts which are alleged by the Crown and admitted by the Accused, for the purpose of dispensing with formal proof thereof. The facts admitted will apply to the following offence:

> **On or about the 5th day of February 2017, at or near Edmonton, Alberta, did cause the death of DONALD CARRUTHERS, thereby committing manslaughter, contrary to section 236(b) of the *Criminal Code of Canada*.**

1. Elaine GLADUE (GLADUE) and Derek QUINN (Quinn) lived in low-income social housing at Suite #209 10119 – 151 street, Edmonton, Alberta (Suite #209). GLADUE and QUINN were in an intimate relationship. They had moved into GLADUE's suite together in January, 2017. GLADUE and QUINN both suffered from alcohol and drug addictions and struggled with homelessness.

2. Donald CARRUTHERS (CARRUTHERS) was a long-term friend of QUINN's. They had known each other since QUINN was young. GLADUE and QUINN referred to CARRUTHERS as "Uncle Donny." In February, 2017, CARRUTHERS was 66 years old, was 6 feet tall and weighed 145 pounds. CARRUTHERS was homeless, and suffered from an alcohol addiction. CARRUTHERS had occasionally stayed with GLADUE and QUINN prior to February 5, 2017.

3. Carl PERTEET (PERTEET) lived in low-income social housing at suite #302 10119 – 151 street, Edmonton, Alberta (Suite #302). PERTEET lived alone. In February 2017, PERTEET was 59 years old, was 6 feet and 1 inch tall, and weighed approximately 240 pounds. PERTEET suffered from an alcohol addiction. After living on and off the streets for many years, PERTEET obtained stable housing at the address noted above.

J.S. C.P.

4. In the ~~evening~~ early afternoon of February 4, 2017, GLADUE came to 10119 – 151 street after being away from Suite #209 for several hours. GLADUE had lost her keys and could not get into Suite #209. CARRUTHERS was taking shelter in the lobby of 10119 – 151 street. GLADUE had a shopping cart, several bags, and a bin filled with belongings. GLADUE placed her

belongings under the stairs in the lobby. GLADUE and CARRUTHERS sat under the stairs of the lobby together. GLADUE was waiting for QUINN to return so that she could get into Suite #209. GLADUE and CARRUTHERS waited under the stairs for several hours.

5. At approximately ~~9:30~~ 2:00 PM, while GLADUE and CARRUTHERS waited for QUINN, PERTEET came into the lobby. PERTEET appeared to know CARRUTHERS and gave him a hug. PERTEET then hugged GLADUE. PERTEET invited GLADUE and CARRUTHERS to Suite #302. GLADUE hauled some of her things up the stairs to Suite #302. GLADUE and CARRUTHERS went into Suite #302 with PERTEET. All of them drank beer and smoked cigarettes while they were in Suite #302. There was no history of any animosity or violence between the parties.

6. After a short period of time, GLADUE left Suite #302. GLADUE left Suite #302 to try and find QUINN. When GLADUE left, CARRUTHERS and PERTEET were drinking beer and smoking cigarettes. When GLADUE left Suite #302, CARRUTHERS appeared to be uninjured. GLADUE left 10119 – 151 street and went to the residence of a friend.

7. At approximately 10:00 PM, PERTEET wanted to leave Suite #302. PERTEET became frustrated because CARRUTHERS was not leaving, and GLADUE had left several items behind. PERTEET threw CARRUTHERS and GLADUE's items out of Suite #302.

8. At approximately midnight, QUINN returned to 10119 – 151 street. QUINN went to Suite #209 to use the bathroom. When QUINN came out of the bathroom, CARRUTHERS was in Suite #209. CARRUTHERS had no visible injuries when he entered Suite #209. QUINN invited CARRUTHERS to stay and get some sleep. CARRUTHERS went into the bathroom of Suite #209. QUINN prepared to leave Suite #209.

9. Shortly after midnight on February 5, 2017, PERTEET noticed that some of his jewelry was missing. PERTEET believed CARRUTHERS or GLADUE had taken his jewelry while they were in Suite #302. PERTEET started walking around 10119 – 151 street looking for CARRUTHERS and GLADUE. PERTEET came to the lobby of 10119 – 151 street at 12:17 PM and ran into Monti BRAUN (BRAUN). PERTEET asked BRAUN to accompany him.

10. PERTEET was angry and frustrated that his jewelry had gone missing. PERTEET believed GLADUE or CARRUTHERS had taken his jewelry, which was special to him. PERTEET and BRAUN made their way to Suite #209 and knocked on the door. QUINN answered. PERTEET asked where GLADUE and CARRUTHERS were. QUINN lied and told PERTEET that GLADUE and CARRUTHERS were not in Suite #209, when in fact CARRUTHERS was in Suite #209. QUINN then left Suite #209 in a hurry. When QUINN left Suite #209, CARRUTHERS appeared to be uninjured.

11. BRAUN stayed near the doorway of Suite #209. PERTEET entered Suite #209 and confronted CARRUTHERS while CARRUTHERS was inside the bathroom. BRAUN heard at least two other male voices inside Suite #209. BRAUN did not see the people to whom the voices belonged. CARRUTHERS and PERTEET began to argue while CARRUTHERS was still inside the bathroom. PERTEET accused CARRUTHERS of stealing his jewelry. PERTEET pleaded with CARRUTHERS to please return his jewelry. PERTEET became increasingly angry and frustrated, believing CARRUTHERS had taken his jewelry. BRAUN heard PERTEET say to CARRUTHERS "give me my stuff back. I don't want to hurt you."

BRAUN heard CARRUTHERS respond by saying "fuck off." BRAUN saw CARRUTHERS step out of the bathroom and make a lunge motion towards PERTEET. BRAUN left Suite #209 when the argument began to escalate. When BRAUN left Suite #209, CARRUTHERS appeared to be uninjured.

12. As CARRUTHERS stepped out of the bathroom and made a lunge motion toward PERTEET, PERTEET grabbed CARRUTHERS and threw him against the wall. PERTEET punched CARRUTHERS with closed fists multiple times and also used his knee to strike CARRUTHERS in the face and head. PERTEET threw CARRUTHERS to the ground and fell on top of CARRUTHERS with his knee. CARRUTHERS lay motionless on the floor, bleeding out of his nose. PERTEET saw two other males inside Suite #209. PERTEET did not know the two males. PERTEET left Suite #209.

13. Shortly after 5:00 AM on February 5, 2017, QUINN returned to Suite #209 and saw CARRUTHERS laying motionless on the floor. QUINN attempted CPR to resuscitate CARRUTHERS. 911 was called and arrived shortly thereafter.

14. Attached as Exhibit 1 is the autopsy report and as Exhibit 2 is preliminary hearing transcript of Dr. Bernard BANNACH. Dr. BANNACH concluded that CARRUTHERS died of multiple blunt force injuries. All of CARRUTHERS' blunt force injuries included in Dr. BANNACH's report were caused by PERTEET.

The above facts as alleged are admitted as proven.

Susanne Thompson
Crown Counsel

Jordan Stuffco
Counsel for the Accused

Carl Blaine Perteet
Accused