**SUPREME COURT OF YUKON**

Citation: *R. v. Murphy*, 2016 YKSC 48

Date: 20160415

S.C. No.: 08-01518A

08-01518C

Registry: Whitehorse

Between:

**HER MAJESTY THE QUEEN**

Respondent

And

**ALICIA ANN MURPHY**

Applicant

Before Mr. Justice L.F. Gower

Appearances:

Noel Sinclair Counsel for the Crown

Paul Battin

Michael Dineen Counsel for the Defence

**REASONS FOR SENTENCE**

1. GOWER J. (Oral): Alicia Ann Murphy has pled guilty this morning, with the Crown's consent, to the lesser included offence of the charge of manslaughter and has acknowledged her responsibility for the homicide of Evangeline Kris Billy on or about June 22, 2008, in Whitehorse.
2. The Statement of Agreed Facts was read into the record by Mr. Sinclair, the Crown prosecutor, and has also been made an exhibit on this proceeding, as well as a supplementary Statement of Agreed Facts regarding a breach which occurred while Ms. Murphy was temporarily on release from pre‑sentence custody. Because those facts have been recently read, I do not think there is any point in me going through them again. The members of the public who are present, and Ms. Murphy in particular, will be familiar with them.
3. Let me say that I agree with what Mr. Sinclair said in terms of the aggravating and mitigating circumstances in this case, and, again, because those circumstances were mentioned by him only a few minutes ago, I do not think there is any point in going over them again for the record. The members of the public and particularly the members of Ms. Billy's family will be familiar with what he said. I agree with him entirely that this was a brutal and violent beating, followed by the drowning of a vulnerable victim, and my heart goes out to the members of the family who have attended and who have provided victim impact statements talking about the pain and suffering that this tragedy has caused the family.
4. However, a sentencing is not a one-sided story. I also have to take into account the circumstances of the accused, as well as the circumstances of the offender. The sentence which I impose, no matter how long or how short it is, is never going to be enough to bring Evangeline Billy back to the family, so I would ask you to bear that in mind. There are limits to what the court can do.
5. The circumstances of Ms. Murphy are that she was 28 years old at the time of the offence, she is now 35 years old, and is a member of the Champagne and Aishihik First Nations and the Carcross Tagish First Nation. Her mother, Joanne Murphy, is Métis by birth, but was adopted into a First Nations family in Haines Junction and is now a member of the Champagne and Aishihik First Nations. Ms. Murphy is very close to her adoptive grandparents. Her father, Patrick James, is a Carcross Tagish First Nation member and a residential school survivor. He is also a former chief of the Carcross Tagish First Nation and a former grand chief of the Tlingit Nation. He has had experience with alcohol, drug and family counselling and has been a member on the National Parole Board. Although Ms. Murphy's mother did not attend residential school, she grew up in Haines Junction, which is a community that suffers from the effects of residential school.
6. Ms. Murphy’s mother has steady employment with the Yukon government and has been alcohol-free for many years and drug-free for over a decade. Ms. Murphy was periodically apprehended for child protection concerns and resided in foster homes in Whitehorse and Edmonton. She only attended school up to grade 11. Between the ages of 13 and 17, she was in a relationship with an older man who abused her emotionally and physically. In retrospect, the accused realizes she was taken advantage of by this man, who also introduced her to drugs and alcohol. She eventually became addicted to both. Ms. Murphy has also experienced sexual abuse. She has only been employed very sporadically. At the time of her arrest, she was a relying on social assistance. Also at that time her youngest child was nine months old and her oldest child was five years old.
7. It is acknowledged that Ms. Murphy has had difficulties with her time in pre‑sentence custody. These difficulties were mentioned before me at the time of her application for bail in 2014. There were references to assaults on correctional officers and other inmates and other acts of threats and intimidation and so on, but, in addition to that, there were some positive notes. In particular, Ms. Murphy has responded well to what is referred to as dialectical behaviour therapy. The official's report at that time noted that she has made gains in her understanding of herself and others each time she has participated in that therapy. She is described as intelligent and has been described as having improved her control over her attention and having acquired an ability to experience anger and embarrassment without the need to act out on those feelings, and has made a lot of progress and worked hard to incorporate positive changes in her life.
8. She has also had long periods of remaining clean and sober while in custody. She has been described as a hard worker, with no behavioural concerns. And in addition to making positive progress in the DBT program, she also completed an Aboriginal Women's Engagement program, which is one of the suite of programs meant to reduce Ms. Murphy's overall risk to offend generally and/or violently.
9. I take those matters into account in terms of the amount of credit that I am going to give to Ms. Murphy for her pre‑sentence custody. I note in this regard that the Crown has indicated that the sentence sought jointly by Crown and defence of nine years in jail is satisfied by the total amount of pre‑sentence custody time, although not all of that time can be credited at the rate of 1.5:1.
10. I agree with defence counsel, Mr. Dineen, that it is sufficient, according to the Supreme Court of Canada in *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575, that exceptional circumstances are not required to make the 1.5:1 credit, that evidence does not need to be led, that I am able to rely on the submissions of counsel that credit is appropriate based on the loss of opportunity for earned remission, and I do, for the sake of simplicity in this case, give Ms. Murphy credit for the 6 years and 24 days that she has served in pre‑sentence custody, which is eligible for credit of more than 1:1, and I impose that credit of 1.5:1 for those reasons.
11. It is also implicit in what I just said that I am, in addition, accepting the joint submission that a nine-year sentence is appropriate, that it is within the range according to the authorities filed by counsel. In addition to that, I agree that a three-year probationary period is appropriate. I will preface that three-year period by, because I have given full credit to Ms. Murphy for her pre‑sentence custody as being equivalent to the nine-year sentence, imposing a one-day sentence which is deemed to be served by her attendance in court here today, which will then authorize me to add the three-year probationary period to the sentence of incarceration.
12. The conditions of the probation period will be as set out in the report of Dahn Casselman. I will read them into the record:

1. To keep the peace and be of good behaviour and appear before the court when required to do so.

2. Report to a probation officer immediately upon release from court and thereafter as and when directed by the probation officer.

3. Reside as approved by your probation officer and not change that residence without prior approval of your probation officer.

4. Abstain absolutely from the possession or consumption of alcohol and controlled drugs and substances, and provide a sample of your breath or urine for the purposes of analysis upon request or demand by a member of the RCMP or your probation officer who has grounds to believe that you may have failed to comply with in condition.

5. Do not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol.

6. Abide by a curfew of 11 p.m. to 6 a.m., except with the prior written permission of your probation officer, or if you are in the direct presence of Patrick James, Joanne Murphy or Shawna Murphy, or any other person approved by your probation officer.

7. Take such psychological assessment, counselling and programming as directed by your probation officer and provide your probation officer with consents to release information with regard to your participation in any assessments, counselling and programming that you have been directed to do pursuant to these terms.

1. Now, Ms. Murphy, you have indicated, through your counsel, that you have nothing to say to this Court before sentence is finally passed, and that is your right. I am advised by your counsel that you have plans to begin living immediately in a sheltered environment which has some rules and structure associated with it, and that as of May 1st you will be attending a 28-day residential alcohol and drug treatment program. I am also advised by your counsel that after you have been in the community for a further period of six months, you will be attending a second related substance abuse treatment program.
2. I wish you all the best in your treatment and your endeavours to remain clean and sober. I think you can see from your criminal record, and what has occurred in this offence, that your problem is an addictive problem. If you can get that problem under control and remain clean and sober one day at a time, then the rest of your life does not have to mirror what has gone on in the first half of your life up until now.
3. I encourage you to work very, very hard in trying to maintain your sobriety. I also encourage you to attend programs such as Alcoholics Anonymous and Narcotics Anonymous. Do your best to maintain control of your addiction one day at a time, and if you can do that, then your future looks brighter; if you cannot, you know where you are going to end up, and that is back in jail.
4. There are other conditions and terms which will be part of this sentencing. There will be a DNA order. There will also be a lifetime firearms prohibition under s. 109 of the *Criminal Code*.
5. Counsel, have I omitted anything else?
6. MR. SINCLAIR: I just want to confirm that the indictment will be annotated with the information about the breach charge being read in, pursuant to s. 725(b.1).
7. THE COURT: So noted.
8. MR. SINCLAIR: And the Form 33 endorsement on the recognizance.
9. THE COURT: So noted.
10. MR. SINCLAIR: Thank you.
11. And, lastly, the Crown directs a stay of proceedings on the 08-01518C Information, that being the breach of recognizance.

[DISCUSSIONS]

1. THE COURT: In the circumstances, the victim surcharge is waived.

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GOWER J.