

SUPREME COURT OF YUKON

Citation: *R. v. Murphy*, 2009 YKSC 71

Date: 20091117
S.C. No. 08-01518
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

ALICIA ANN MURPHY

Before: Mr. Justice R.S. Veale

Appearances:

Noel Sinclair
Gordon Coffin and David Christie

Counsel for the Crown
Counsel for the accused

REASONS FOR SENTENCING

INTRODUCTION

[1] Alicia Murphy has been convicted of second degree murder for the death of Evangeline Kris Billy on June 22, 2008.

[2] The sentence for second degree murder is life imprisonment. Alicia Murphy is required to serve a minimum of 10 years of her life sentence before eligibility for parole. Eligibility for parole is determined by the Parole Board, not this Court. There is no guarantee of release after the expiry of the period of parole ineligibility.

[3] However, s. 745.4 of the *Criminal Code* provides that the judge who presided at the trial may substitute for 10 years, a period of parole ineligibility that is more than 10 years but not more than 25 years.

[4] In deciding the period of parole ineligibility, the judge must have regard to the following circumstances:

1. the character of the offender;
2. the nature of the offence; and
3. the circumstances surrounding the offence.

[5] The judge may also take into account the recommendation of the jury. In this case, the jury declined to make a recommendation.

[6] The Supreme Court of Canada has stated in *R. v. Shropshire*, [1995] 4 S.C.R. 227, at para. 27 that:

“... as a general rule, the period of parole ineligibility shall be for 10 years, but this can be ousted by a determination of the trial judge that, according to the criteria enumerated in s. 744, the offender should wait a longer period before having his [or her] suitability to be released into the general public assessed. ...”

[7] The Supreme Court of Canada recognized that there is a broad range of seriousness within second degree murder reflecting different degrees of moral culpability from a minimum of 10 years to a maximum of 25 years, the latter being the period of parole ineligibility for an offender convicted of first degree murder. The court has said that the power to extend the period of parole ineligibility “need not be sparingly used.”

[8] Implicit in the circumstances set out in s. 745.4 are the principles of denunciation of the conduct, deterrence of the offender and other persons from future offending, as well as rehabilitation of the offender.

[9] The British Columbia Court of Appeal has stated in *R. v. Cerra*, 2004 BCCA 594, at para. 26, that “there are two broad groupings, from 12 to 15 years and from 15 to 20

years, the latter relating to cases at the highest order of moral culpability or dangerousness.” At para. 17, the court specified:

“... parole eligibility greater than 10 years is justified when there is some particularly aggravating feature; for a penalty of greater than 15 years, egregious circumstances of a higher order of moral culpability are present. So in this case, the savage and prolonged beating raises the penalty above 10 years eligibility. ...”

[10] These categories are not to be taken as rigid but require the exercise of discretion on a principled basis based upon the decisions in similar cases.

[11] In *Cerra*, there was a brutal beating death of a young woman involved in a petty drug dispute. The beating was severe and prolonged. The victim would have died from head injuries but her death was caused by drowning. The period of parole ineligibility was set at 20 years.

[12] In this case, the Crown is seeking a period of parole ineligibility of 14 to 16 years and the defence submits 10 to 12 years would be more appropriate.

THE CIRCUMSTANCES

[13] The murder of Evangeline Kris Billy, was a brutal and violent act. Ms. Billy was severely intoxicated in the early morning of June 22, 2008. She had a blood alcohol reading of 338 milligrams percent, a level that can cause death in an inexperienced drinker. A chronic drinker would still be alive but vulnerable at such an acute level of intoxication. Evangeline Billy received a blunt force injury to her head of sufficient force and damage to cause disorientation or unconsciousness. Two of the scalp lacerations were lengthy and penetrated to the surface of her skull. She ultimately died of drowning with the head injury and severe intoxication being contributing factors.

[14] There is no doubt that Alicia Murphy was addicted to alcohol and crack cocaine and had spent from Friday, June 20 to Monday, June 23, 2008, drinking and using crack cocaine.

[15] In March 2008, prior to the murder of Evangeline Billy, Alicia Murphy pled guilty to a charge of assault with a weapon on her common-law husband and mischief on December 17, 2007, when she stabbed her husband twice in the leg and cut the telephone cord in the house. At the time of the murder of Evangeline Billy, on June 22, 2008, Alicia Murphy was in the Domestic Violence Treatment Option program in the Territorial Court. She was released on conditions to keep the peace, abstain from alcohol and drugs, and stay away from bars. She was in breach of these conditions during the weekend of the murder of Evangeline Billy. She knew that there was a warrant for her arrest.

[16] I conclude that the following matters are aggravating circumstances:

1. the murder was a brutal and violent beating and drowning of an incapacitated victim;
2. there was an attempt to make the murder scene look like a rape to avoid detection;
3. Alicia Murphy was in the course of a three-day binge on crack cocaine and alcohol;
4. she pled guilty to stabbing her spouse on December 17, 2007 and was placed in the Domestic Violence Treatment program;
5. Alicia Murphy was in breach of a DVTO court order to keep the peace, abstain from alcohol and drugs, and not to attend at any bars;
6. she had multiple reporting breaches in the DVTO program;
7. she has a criminal record for youth court offences which included assault and uttering threats in 1996. She was convicted of assaulting a peace

officer as an adult in 1998 and received a two-month conditional sentence and 18 months probation;

8. she has been remanded into custody since June 23, 2008 at the Whitehorse Correctional Centre. She has been described as being “a handful” with findings of guilt for 11 internal violations involving disruptive behaviours, passing contraband, property damage and fighting. As a result, she had to be separated from visitors and spent time in the segregation unit.

[17] There are also a number of mitigating factors to consider. Ms. Murphy is a 29-year-old aboriginal woman who has the support of her family. She has two children aged 6 and 2 with whom she has a good relationship. They are presently residing with the paternal grandparents who have expressed their concerns over having to look after the children for a long period of time, particularly as they are at an age where they were looking forward to some freedom from the full-time job of raising children.

[18] Ms. Murphy has had some traumatic life experiences. Her father committed suicide when she was 2 years old. She resided out of the Yukon until age 10 when she came to Carcross to live with her stepfather. She moved to Whitehorse in 1991 to live with her mother. She has also been a ward of the state when her parents were unable to care for her. She has experienced bullying, belittling and denigration based on her cultural background. She became a ward in 1986 and has been in and out of care. She has been exposed to drugs and alcohol and experienced feelings of insecurity, depression and abandonment. She had a particularly traumatic experience with a male boyfriend. He introduced her to drugs and alcohol at age 13 and when she was 17, he was charged and convicted of assaulting her sister while he lived with her family. Her addictive lifestyle began at age 13 and she was fully into her alcohol and crack cocaine

addictions by age 17 and she has not been able to control her addictions despite her supportive family.

[19] To her credit, she took a 28-day residential treatment program in March 2008, which was obviously not successful but indicates some potential for rehabilitation.

[20] I also note that there is no suggestion that Alicia Murphy suffers from fetal alcohol syndrome or any other disorder. I observed that she testified in a clear, coherent and intelligent manner.

[21] The family of Evangeline Billy has been devastated by the loss of their daughter, sister and mother. They have provided moving victim impact statements portraying their anguish and the depth of their loss.

ANALYSIS

[22] By their verdict of second degree murder, the jury were satisfied beyond a reasonable doubt that Alicia Murphy had the necessary intent to cause Evangeline Billy's death or that she meant to cause her bodily harm that she knew was likely to cause death and was reckless whether death ensued or not. The jury is not required to state its finding of fact, and the jurors do not have to agree on the same intent so long as they are satisfied that one or the other has been proven beyond a reasonable doubt. Both Crown and defence suggested that the distinction is important as a finding of intent to cause death could put the offender in the egregious as opposed to the aggravating category. I am not persuaded that the different intents, either of which results in a conviction of second degree murder, should be the focus. The degree of moral culpability is more reliably determined from the circumstance of the offender and the offence.

[23] There are two recent parole ineligibility decisions in Yukon to consider. In *R. v. Boucher*, 2006 YKSC 53, Boucher was convicted of second degree murder and sentenced to life imprisonment with no eligibility for parole for 15 years. In that case, Boucher was a 33-year old aboriginal. He committed a brutal and senseless beating of an older man because he lost his temper and craved drugs. His main source of income was drug trafficking. He did not provide medical assistance and attempted to conceal the deceased's body. He had a very dysfunctional upbringing and was exposed to violence, sexual abuse and substance abuse. He attended a residential treatment program a month before the murder. He had family support. He voluntarily turned himself into the police before the police suspected his involvement in the murder and attempted to assist the police in finding the body. He was a well-behaved inmate.

[24] In the case of *R. v. Rodrigue*, 2008 YKSC 92, the offender was a 39-year old aboriginal woman who was a friend of the deceased. The murder occurred when she contacted the deceased to borrow money to buy more drugs and alcohol. She had been drinking alcohol and using cocaine that day. She fatally stabbed the deceased and tried to cover up the killing.

[25] She had a significant criminal record and a problem with alcohol and drugs. She was exposed to alcohol and violence at an early age. Her children were taken away from her and she led a life of alcohol and drugs. At the time of sentencing, she had been in custody for several years and the judge remarked that she was a changed person, implying an improvement. The offender acknowledged her responsibility for the death of Gerald Dawson by offering to plead guilty to manslaughter. She also expressed remorse. The jury recommended a period of parole ineligibility from 10 to 15 years.

Crown counsel asked for the minimum. The trial judge sentenced Rodrigue to the minimum 10-year period. It should be noted that this was the second trial for Ms. Rodrigue. Her first conviction was set aside on appeal.

[26] Vertes J. also commented on the offender's aboriginal background at para. 22:

“In my opinion, this is a case where the offender's aboriginal background, while certainly relevant, does not justify a sentence other than what would be imposed on any other offender with this offender's background and in the circumstances of this offence. Generally speaking, the more serious and violent the crime, the more likely it will be as a practical matter that the sentence will be the same for similar offences and offenders, be they aboriginal or non-aboriginal.”

[27] I am in agreement with this approach which was expressed in *R. v. Gladue*, [1999] 1 S.C.R. 688, at para. 79, and again in *R. v. Wells*, [2000] 1 S.C.R. 207, at para. 42. I must consider what period of ineligibility is appropriate for this offence, committed by this offender in this community.

[28] Alicia Murphy has been convicted of a senseless and brutal murder. She committed the murder while she was under court order not to consume alcohol or drugs. She was on a three-day alcohol and crack cocaine binge. It is disturbing that while she is sober and clean as a result of being in custody, it has had a minimal impact on her behaviour which remains defiant and troublesome. In some respects, the circumstances of this offender and this offence are at the lower end of the egregious category, requiring a period of parole ineligibility of 15 to 16 years as submitted by the Crown to ensure the appropriate level of denunciation and deterrence. Nevertheless, she is a young person that may have potential to rehabilitate herself providing that she can remain drug and alcohol free and undertake the treatment required to turn her life

around. However, for the safety of the community and her own rehabilitation, I find that a period of 14 years of parole ineligibility is appropriate. I repeat what I have said earlier. Alicia Murphy will be entitled to apply for parole after she serves 14 years in prison but she is not automatically released from prison unless the Parole Board is satisfied that it is suitable to release her and she will not be a danger to the community. She will remain under mandatory supervision for the rest of her life.

DECISION

[29] I sentence you to life imprisonment with no eligibility for parole for a period of 14 years.

[30] I also sentence you to one year in jail for the conviction of assault with a weapon and one day for the conviction of mischief, both to be served concurrently.

[31] I also order, pursuant to s. 109(3) of the *Criminal Code*, that you are prohibited from possessing any firearms, cross-bow, restricted weapon, ammunition and explosive substance for life.

[32] I further order that you provide samples of bodily substances for the purpose of forensic DNA analysis under s. 487.051 of the *Criminal Code*.

[33] Pursuant to s. 746 of the *Criminal Code*, your sentence is deemed to have commenced on the date of your arrest, which is June 23, 2008. You will be eligible for parole on June 23, 2022.

[34] There will be no victim surcharge fine.

VEALE J.