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Docket: CR 21-01-38547
(Winnipeg Centre)
Indexed as: R. v. Gamblin
Cited as: 2023 MBKB 184

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING)	<u>Rustyn W. Ullrich</u>
)	<u>Chantal R. Boutin</u>
)	for the Crown
- and -)	
)	
JESSE JORDAN GAMBLIN,)	<u>Self- represented</u>
)	for the accused
accused.)	
)	
)	<u>Judgment Delivered:</u>
)	December 20, 2023

KEYSER J.

[1] Jesse Jordan Gamblin ("Gamblin") was convicted of the second degree murder of Norma Andrews ("Andrews") on October 5, 2022. The circumstances of the offence are contained in my reasons for conviction (2022 MBKB 187). As a result of the conviction he will be serving an automatic sentence of life imprisonment. I must now decide how many years he should serve before becoming eligible for parole.

[2] The purpose and principles of sentencing are set out in s. 718 of the **Criminal Code** ("**Code**") as follows:

The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[3] I need to start by saying that I have never dealt with a person less likely to ever be rehabilitated. Gamblin is utterly contemptuous of anybody or any institution that tries to interfere in what he wants to do. This sentencing was first set for June 1, 2023. His lawyer, the third on the file, had requested a Pre-Sentence Report ("PSR") with a **Gladue** component. Gamblin refused to cooperate with the preparation of that report and indicated he did not want to continue with the same lawyer. He had earlier refused to come to the video room at the prison where he was being held so that inquiries could be made about the preparation of the PSR. He had also refused to come to Court over outstanding charges in Ontario. His lawyer was allowed to withdraw and a new sentencing date was set for October 10, 2023. Gamblin was told there would be no further adjournments of this sentencing.

[4] Fast forward to October 10. Gamblin again refused to come to Court. He had been transferred to Stony Mountain Institution ("SMI") in anticipation of the sentencing after being transferred from a maximum-security prison in Quebec. He had to be extricated from his cell in SMI, and thus Court did not start until noon. Gamblin then requested another adjournment to get counsel, which was refused. What ensued was disruptive behaviour by Gamblin, when either the Crown or I was talking. Gamblin was upset at the Crown's use of an earlier **Gladue** report and upset that the Crown was referring to the circumstances of his earlier convictions. When asked if he had anything to say to Norma Andrews' family he refused. He insisted he was innocent and that the police had done an unprofessional investigation, and he consistently used foul language in expressing his displeasure. It is apparent that he either has a complete reluctance or complete inability to control himself.

[5] Andrews was brutally attacked and murdered by Gamblin on September 21, 2019. He was arrested and held as of September 24, 2019, when his period of parole ineligibility will start. As set out in s. 745 (c) of the **Code**, a conviction for second degree murder carries with it an automatic life sentence, but the period of parole ineligibility is set at anywhere between 10 – 25 years. The Crown has requested a 20-year period of ineligibility because of Gamblin's background. Section 745.4 of the **Code** sets out the factors to be considered in determining the appropriate period. The applicable factors in this case are the

character of the offender, the nature of the offence, and the circumstances surrounding the commission of the offence.

- [6] As the Court pointed out in ***R. v. Shropshire***, 1995 SCC 47 (at para. 35):

It is not the law that unusual circumstances, brutality, torture or a bad record must be demonstrated before the judge may exercise his discretion to move above the ten years minimum. Nor is there any burden on the Crown to demonstrate that the period should be more than the minimum.

The protection of society is of paramount importance. As was articulated in ***R. v. Oigg***, 2006 MBQB 68 (at para. 11):

The *real emphasis* in determining the fit period of ineligibility is on the “protection of society” by way of specific and general deterrence and denunciation of the offence. The eventual rehabilitation of the offender is of less significance and is better left to be assessed by the parole authorities.

As a result, I will now turn to the factors to be considered by the Court.

CHARACTER OF THE OFFENDER

[7] Gamblin was 20 at the time of this murder and is now 24 years of age. Filed by the Crown at the sentencing, as Exhibit S1 is background material on Gamblin. Exhibit S2 were the victim impact statements (“VIS”) of Andrews’ father, Larry Andrews and her step-mother, Amber Scott. They were not even psychologically able to be in the courtroom for the sentencing and instead watched the proceedings via an internet connection. In the VIS, they both described mental health issues such as anxiety and panic attacks that were affecting every aspect of their lives including their employment. The pain is evident through their words.

[8] Tab 1 of Exhibit S1 is the criminal record of Gamblin. It includes 11 convictions for crimes of violence. Tabs 2, 3, 4 and 5 of the materials are

sentencing proceedings for a number of those past offences. I agree with the Crown that when you read those respective proceedings, the murder of Andrews seems almost predictable.

[9] Tab 2 of Exhibit S1 contains the sentencing proceedings from convictions entered on December 16, 2015. In addition to some breaches, he also pled guilty to aggravated assault, assault cause bodily harm, and assault. The aggravated assault involved Gamblin stabbing his brother Alex, who ended up with a punctured lung. Alex had intervened in a domestic dispute when Gamblin was assaulting his pregnant girlfriend. After he stabbed Alex, Alex ran off and Gamblin grabbed Alex's girlfriend, threw her on the ground and stomped on her head several times. He received a custodial sentence for those matters as a youth.

[10] Tab 3 of Exhibit S1 involves a sentencing of Gamblin that occurred on May 16, 2017. He pled guilty to possessing an unauthorized firearm and possessing a firearm while prohibited. In addition to time already served on those matters, Gamblin received more custody. He had been on probation at the time of the commission of these offences.

[11] Tab 4 of Exhibit S1 are sentencing proceedings from October 28, 2020. At that hearing, Gamblin was sentenced for an aggravated assault and assault causing bodily harm. The aggravated assault was on a woman named Leah Cook ("Cook") who was attacked with a machete and who Gamblin also tried to strangle before she managed to escape. She had invited him to stay at her place and he attacked her while she slept. She was only able to escape through a broken

window. The circumstances of this attack are eerily similar to what happened to Andrews. The charge of assault cause bodily harm involved an attack by Gamblin on a correctional officer at Brandon Correctional Institution ("BCI"). Gamblin elbowed the officer, knocking him unconscious, and then delivered 11 more headshots to him. The officer suffered a broken nose and blurred vision. Gamblin was sentenced to a total of eight years for those offences minus time already served. He was on bail for the machete attack on Cook when he murdered Andrews.

[12] Tab 6 of Exhibit S1 is a Correctional Service of Canada Corrections Plan for Gamblin. Not unsurprisingly, he has shown little insight or inclination to change his behaviour. He shows no remorse for what he has done. His recalcitrance and reluctance to change are apparent throughout this document. He refused to sign a waiver to be transferred to SMI to serve his first federal term of incarceration as he had debts he wanted to collect from other inmates. He had engaged in numerous acts of violence against other inmates while in provincial custody. He demonstrated no remorse for the aggravated assault on Cook and tried to blame the attack on a deceased friend. At page 10 of the Plan, it noted that Gamblin showed disregard for rules placed on him, a gang mentality and was disrespectful toward females and authority figures. This has certainly continued to the present day.

[13] Gamblin at this moment is also facing trial for the attempted murder of another correctional officer in Millhaven, who was allegedly attacked by Gamblin

and stabbed in the neck with a shank. He had been transferred to Millhaven after the attack on the corrections officer in BCI. As a result of this second attack, he was transferred to the Special Handling Unit ("SHU") in Quebec, on November 5, 2021, the day after the attack. While there he has been caught with contraband including blades, metal plates and shanks and has made a very realistic dummy. The psychological risk assessment has concluded that there is a high risk of violent repeat offences by Gamblin.

[14] After the attack with the machete on Cook that ultimately led to his first federal period of incarceration, he was granted bail to The Behavioural Health Foundation presumably to address his addiction issues, however, he did not even wait around to do the intake assessment and promptly left the facilities. Two weeks later Andrews was murdered. Nothing deters Gamblin while he is on probation or under supervision or for that matter in custody.

[15] Tab 5 of Exhibit S1 is the PSR from the Cook machete attack sentencing. It is apparent that Gamblin has huge **Gladue** factors in his background. He was raised in a pro-criminal family and was subject to violence and alcoholism and drug abuse from a very early age. His parents were seriously affected by the 60's Scoop and the Residential school experience.

[16] The Crown was correct when she described his background as depriving him of any realistic chance to grow up in a prosocial environment. Nonetheless, that does not decrease his moral culpability nor does it decrease his overall dangerousness.

[17] After he was transferred to the SHU, it was apparent that he was not interested in taking any programming available at the institution and showed low levels of accountability. The progress reports from Corrections Canada show that he has not made any progress while in the various institutions and shows no interest in taking any programming. In addition, his file is replete with institutional misconduct. He has been involved in numerous acts of violence while incarcerated towards fellow inmates as well as correctional officers, he has been in possession of razor blades and has used intimidation tactics against inmates and staff.

NATURE OF THE OFFENCE AND CIRCUMSTANCES SURROUNDING ITS COMMISSION

[18] Gamblin's attack on Andrews was targeted. She was sleeping in a well-known meth house, when he entered, called her a rat and commenced assaulting and strangling her. She was beaten with a baseball bat and attacked viciously with a machete. Several of her fingers were amputated. This involved planning and was done even though others were present in the room as though to send a message to them. Multiple weapons were used on her and gas was poured over her after her death.

[19] There are very few mitigating factors in Gamblin's case. Gamblin was only 20 at the time of the murder and he has extensive **Gladue** factors. However, there are substantial aggravating factors as follows:

1. Gamblin has an extensive criminal record replete with convictions for violence. The only surprising element is that Andrews is the first person he has actually murdered;
2. He expressed absolutely no remorse to the Andrews family and defiantly sees himself as the victim. The VIS of Andrews' father and step-mother set out their ongoing struggles to cope with what occurred;
3. The attack on Andrews was vicious and involved the use of multiple weapons. She was smaller than Gamblin and asleep at the time the assault commenced. He thought she was a "rat" and wanted to send a message to others that this would not be tolerated;
4. This was not an impulsive action but a planned attack. It was a murder that came close to being classified as first degree murder and thus deserving of a raised period of parole ineligibility;
5. Gamblin was on bail for the machete attack on Cook at the time of Andrews' murder. He was also prohibited from possessing weapons at the time of the murder; and
6. Any attempts at rehabilitation to date have been unsuccessful because of his lack of interest in changing his life. Gamblin's lack of insight into his behaviour is amplified by his behaviour while in jail and in the courtroom.

[20] It bears repeating that Gamblin is utterly contemptuous of any attempts to control him or his behaviour. He is undeterred by bail or probation conditions, by

prohibition orders or by courtroom etiquette. He is dangerous to domestic partners, family members, others in the community, other inmates, and correctional officers.

[21] The Crown's restrained request for parole after 20 years, in my view, reasonably accounts for Gamblin's age and **Gladue** factors. Were those not present, I would have been inclined to order an even longer period of parole ineligibility. As a result, Gamblin's parole ineligibility will be set at 20 years. If his behaviour and attitude does not change, then I doubt Gamblin will ever be considered a viable candidate for parole. However, that choice will be up to him.

[22] In addition, there will be a primary DNA order pursuant to s. 487.051(1) of the **Code** for collection and storage of samples of bodily substances required for DNA analysis. Finally, pursuant to s. 109(1) of the **Code**, there will be an order prohibiting him from possessing any firearms, crossbows, prohibited weapons, restricted weapon, prohibited devices, ammunition, prohibited ammunitions, and explosive substances for life.

J.