

**THE PROVINCIAL COURT OF MANITOBA**

BETWEEN

Her Majesty the Queen	)	C. Vanderhooft and
	)	M. Lavitt,
- and -	)	for the Crown
	)	
Guido Paul Amsel,	)	A. Synyshyn
Accused	)	M. Cannon
	)	for the Accused
	)	
	)	Judgment delivered:
	)	November 22, 2018
	)	

**TRACEY LORD, P.J.**

**Introduction**

[1] On May 17, 2018, Mr. Amsel was convicted of offences relating to two separate time frames: December 13, 2013 in Narol, Manitoba and July 3-5, 2015 in Winnipeg Manitoba. After an adjournment to allow Mr. Amsel to obtain new counsel, I heard sentencing submissions on October 3, 2018. This is my decision on sentence.

[2] Counsel are in agreement on which counts convictions should be entered, and which counts should be judicially stayed.

[3] They also agree that consecutive sentences should be imposed on the 2013 incident and the 2015 incidents, and that the three 2015 incidents should be considered as one transaction and dealt with by way of a concurrent sentence on all counts.

[4] The Crown and counsel for Mr. Amsel do not agree, on the length of the sentences to be imposed, or the issue of parole eligibility.

## **Purpose and Principles of Sentencing**

[5] The fundamental purpose of sentencing set out in section 718 of the *Criminal Code* 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 certain objectives.

[6] Those objectives include the denunciation of unlawful conduct and the harm done to victims or the community, the deterrence of the offender as well as others from committing offences and the separation of the offender from society when necessary.

[7] A sentence should promote a sense of responsibility in the offender, acknowledge the harm done to victims and the community, and address the reparations required as a result of that harm.

[8] Consideration must also be given to the rehabilitation of the offender.

[9] Some of the additional sentencing principles enumerated in section 718.2 of the *Code* are also applicable in this case.

[10] A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Counsel have referred the Court to a number of cases that have some similarities to Mr. Amsel's case.

[11] The principle of totality requires that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

[12] An offender should not be deprived of liberty, if less restrictive sanctions are reasonable in the circumstances, and all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders.

[13] A court imposing a sentence shall also consider increasing or decreasing a sentence to account for relevant aggravating or mitigating circumstances related to the offence or the offender.

[14] Section 718.2 of the *Criminal Code* deems certain circumstances to be aggravating factors. The Crown argued that two of those circumstances are applicable in this case.

[15] Firstly, the Crown says that Mr. Amsel in committing the offences, abused his spouse, Iris Amsel, and secondly that the impact on the victims in this case was significant having regard to their personal circumstances, including their health and financial situation.

[16] Finally, the overarching or fundamental principle of sentencing is proportionality. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

**December 13, 2013 127 Nicholas Street, Naryl, Manitoba**

[17] A conviction will be entered on the charge of the attempted murder of Iris Amsel. Judicial stays of proceedings will be entered on the remaining counts related to this incident.

[18] Pursuant to section 239(1)(b) of the *Criminal Code* the maximum sentence for an attempt to commit murder is life imprisonment. In the circumstances of this case there is no mandatory minimum punishment.

[19] The Crown submits that a sentence of 15 years incarceration for the 2013 attempted murder of Iris Amsel would take into account the aggravating factors present and appropriately address the purpose and principles of sentencing set out in the *Criminal Code*.

[20] Counsel for Mr. Amsel submits that a sentence of 10 years incarceration is sufficient to address these principles, and in mitigation emphasizes that Mr. Amsel has otherwise been a law abiding citizen with no prior criminal record. He has been a contributing member of society who supports his wife and children.

[21] The device placed at 127 Nicholas Street on December 13, 2013 was designed to be victim activated, and the explosion that occurred was a significant one. While it is not known how the device detonated, it did not explode as designed.

[22] The moral culpability for attempted murder is high. Mr. Amsel's intent was to kill his former wife. The fact that the device did not explode as planned does not lessen his moral blameworthiness.

#### Aggravating and Mitigating Factors

[23] The Amsels were no longer spouses at the time of this incident. As such section 718.2(a)(ii) does not apply to deem the circumstances as aggravating.

[24] Counsel for Mr. Amsel submitted that the relationship should be viewed as one more akin to that of estranged business partners rather than domestic in nature and as such is not an aggravating circumstance.

[25] Despite the fact that the Amsels were no longer married, there is still a domestic context to the circumstances. I find it aggravating that the offence was committed shortly after the conclusion of ongoing family court proceedings decided in favour of Ms. Amsel.

[26] In terms of the impact of this event, Ms. Amsel did not provide a victim impact statement. I did however hear her testimony about the incident during the trial.

[27] While I don't have specific information about the impact of this incident on Ms. Amsel such that it would be deemed an aggravating factor, this incident would without a doubt, have been an extremely unsettling event, for her, particularly in light of the fact that nobody was held responsible for it at the time. I find that nonetheless to be aggravating.

[28] While Mr. Amsel's intent was to kill his former wife, it is aggravating that another person, Mr. Block was also put in the same physical danger as Ms. Amsel. Had the device exploded as designed, it would have been Mr. Block and not Ms. Amsel who triggered it.

[29] The fact that property damage was the only result of the explosion is not a mitigating factor, but rather a lack of an aggravating factor.

Case Law

[30] I have reviewed the cases provided by counsel involving the sending or planting of explosive devices. Some of the cases also involve a domestic or family context and in combination provide guidance as to a broad range of sentence for this type of incident.

[31] In *R. v. Davis* 2003 BCCA 679, the accused was convicted of two counts of intentionally causing an explosion likely to cause bodily harm and two counts of sending an explosive device with intent to cause bodily harm. Mr. Davis mailed one bomb to his former spouse and mailed another to her former lawyer.

[32] The Police intercepted the first device and disposed of it using a water cannon. The device sent to the lawyer was delivered to a community mailbox where it was picked up and opened by the target. The device exploded, injuring the lawyer's wife. Mr. Davis received a sentence of 6 years incarceration. Of note, this was not a case dealing with a conviction for attempted murder, and there was no indication of whether Mr. Davis had a prior record, or if he demonstrated remorse for his actions.

[33] In *R. v. Carter*, [1998] B.C.J. No.1902, the accused who had some mental health difficulties, hired two others to plant a bomb under the house where his ex wife lived with her daughter and family. The device exploded causing extensive damage but no injury to the four people within the residence. Mr. Carter was convicted of conspiracy to commit murder, counselling to commit murder and attempted murder. He had no prior record and showed no remorse for his actions. After 21 months of pretrial custody, he was sentenced to 8 ½ years imprisonment.

[34] In *R. v. Lim and Nola*, [1990] O.J. No. 949, the two accuseds were convicted in two separate incidents of one count of attempted murder and one count of causing an explosion with intent to cause bodily harm. The accuseds placed bombs in the vehicles of both targets. The first target was the boyfriend of Nola's sister, the second target was the sister herself.

[35] Both accused individuals had served 11 months in pretrial detention prior to sentencing. On the attempt murder of the boyfriend, the accuseds were both

sentenced to 10 years imprisonment. This explosion caused extensive but not long lasting injuries to the victim.

[36] On the conviction for causing an explosion with intent to cause the bodily harm of Nola's sister, a one year consecutive sentence was imposed. Neither accused had a prior criminal record, neither indicated remorse for their actions and both had significant mitigating factors in their favour.

[37] Finally, in *R. v. Pelkey*, [1987] N.B.J. No.251, the accused was convicted of attempted murder for placing a bomb in his daughter's vehicle. The device was designed to explode when she turned on the radio. Mr. Pelkey was involved in an incestuous relationship with his daughter and when she refused to end her relationship with a boyfriend he tried to kill her.

[38] The device exploded in a public parking lot causing the victim severe injuries. When sentencing the accused to 20 years incarceration, the trial judge noted,

“Mr. Pelkey was oblivious to the safety of others who might have been either killed or injured when the radio was turned on. This could have occurred either, as it did, in the parking lot or on the highway. Fortunately no one else was injured.” (para. 7)

[39] And further at paragraph 8 “Mr. Pelkey has shown no remorse. His rehabilitation is doubtful because he still does not acknowledge that he has done anything wrong.”

[40] In that regard, Mr. Amsel is similar. He does not accept responsibility for the device and its explosion at 127 Nicholas Street on December 13, 2013. Without an acceptance of responsibility and accompanying remorse his rehabilitation is doubtful and becomes less significant than other sentencing principles.

[41] I am taking into account the applicable sentencing principles, the aggravating and mitigating factors and sentences imposed in other similar cases.

[42] With respect to the attempted murder of Iris Amsel on December 13, 2013, I have concluded that a sentence of 15 years is fit and appropriate.

**July 3- 5, 2015 Winnipeg, Manitoba**

[43] With respect to the explosion of July 3, 2015, convictions will be entered on the counts of the attempted murder of Maria Mitousis, causing an explosive device to explode, and mischief endangering life by sending an explosive via mail. Judicial stays of proceedings are entered on the remaining counts.

[44] With respect to the events of July 4, 2015, a conviction will be entered on the count of the attempted murder of Iris Amsel and a judicial stay of proceedings is entered on the count of sending an explosive with intent to cause bodily harm to Iris Amsel.

[45] Similarly, with respect to the events of July 5, 2015, a conviction will be entered on the count of the attempted murder of George Orle and a judicial stay of proceedings is entered on the count of sending an explosive with intent to cause bodily harm to George Orle.

[46] The Crown submits that a sentence of life imprisonment is a fit sentence for the cumulative events of July 2015, and that a life sentence is the only sentence that adequately addresses the aggravating factors present and the purpose and principles of sentencing.

[47] Counsel for Mr. Amsel submits that the maximum sentence is not required in the circumstances and that the necessary sentencing principles can be addressed by a sentence in the range of 20 – 25 years incarceration.

**Aggravating and Mitigating Factors**

[48] The explosion at 252 River Avenue was significant and potentially lethal. The evidence at trial established that had the packages at 280 Stradbrook Avenue and 591 Washington Avenue been opened as intended the explosions would also have been significant and potentially lethal.

[49] The July 2015 incidents were a very public kind of violence. Collectively they created several layers of risk. That is very aggravating.

[50] During these events, the police were on high alert addressing an increase in reports of suspicious packages and the public was in a state of fear and uncertainty.

[51] Many individuals in the community had contact with the packages and were unknowingly placed at physical risk.

[52] The Court heard evidence about the manner in which the packages would have been processed by Canada Post and the numerous employees who would have handled them.

[53] At each of the targeted locations several people either handled the packages or were near them when they were being handled. This includes the staff and potential clients at both targeted law firms, James Automotive and Ollie's Auto.

[54] It is aggravating that Ms. Mitousis and Mr. Orle, as legal counsel, became targets simply for doing their jobs. The proper discharge of their professional responsibilities within the justice system was taken and distorted by Mr. Amsel to fit neatly into the conspiracy he already believed about his ex wife, and resulted in what can only be described as a personal vendetta against them.

[55] It is aggravating that the package sent to Ms. Mitousis contained a personalized invitation designed to entice her to press the play button causing the bomb to explode.

[56] It is also aggravating that the package sent to 597 Washington Avenue was the second attempt made by Mr. Amsel to kill his former wife.

[57] It is aggravating that the three devices sent by Mr. Amsel in July 2015 were sent in close proximity to one another, and if not for intervening circumstances, would have been opened by the three targets very close in time. If this had occurred there would have been little opportunity for warning.

[58] As it happened, the timing of the explosion at 252 River Avenue allowed for the other two packages to be identified and dealt with by the police before others were physically impacted. This warning was entirely coincidental.

[59] Ms. Amsel and Mr. Orle declined to submit victim impact statements. While specific impact to them as a result of the events of July 2015 is not before me, I do note from their evidence at the trial that impact was felt.

[60] In the case of Ms. Amsel, one can only imagine the impact of knowing that a former spouse has tried to kill you not once, but twice.

[61] Ms. Mitousis submitted a detailed victim impact statement and read it at the sentencing hearing October 3, 2018. Throughout the trial process she conducted herself with strength and resilience.

[62] Ms. Mitousis' life was altered in every respect by the events of July 3, 2015. Her sense of personal safety and security, previously a given, are no longer assumed.

[63] The physical impact of the explosion has been life changing in many ways for Ms. Mitousis; ways that according to her, she deals with every waking moment.

[64] She continues to have lingering pain and has had to relearn many skills that she previously took for granted. She has endured numerous surgeries, lives with visible scars and continues with rehabilitation even now.

[65] Her injuries have impacted her ability to work and she now has a new found fear of what the future may hold.

#### Additional Case Law Applicable to July 3-5, 2015

[66] In *R. v. Wenn*, [1984] B.C.W.L.D. 2109, the accused was convicted of attempted murder for planting a bomb in the victim's car. The device was discovered prior to detonating and successfully dismantled by the police. This was a second attempt on the same victim's life by the accused. Mr. Wenn had a lengthy criminal record and was sentenced to life imprisonment for the one incident.

[67] At paragraph 14, the Court of Appeal affirmed the trial judge's description of Wenn's actions as:

“an act of indiscriminate terrorism, which was committed with wanton and reckless disregard for the life and safety of other persons who might have entered Ford's vehicle or been in the vicinity when the vehicle exploded.”

[68] There is also a dated unreported Manitoba case that was not referenced by counsel. *R. v. John Rogers* is a Court of Queen's Bench case heard in Winnipeg in 1975. Mr. Rogers was convicted after trial of the attempted murder of the Chief Court Clerk Mr. Gilraine.

[69] The accused, Rogers, was dissatisfied with the way his civil court case was dealt with and as a result sent a bomb to the Winnipeg Court House as retribution. The device was made using a clock and was disguised as a gift. When the Chief Clerk plugged the clock in, it exploded. His face was badly injured by the explosion and he lost one of his hands.

[70] In sentencing Mr. Rogers, Chief Justice Dewar noted that the incident was "a planned one, executed with the utmost deliberation." (Reasons for sentence February 28, 1975, page 34, lines 8-10)

[71] The court emphasized the sentencing principles of deterrence and denunciation and found Mr. Rogers to bear a high degree of moral responsibility for his actions.

[72] Mr. Rogers had a lengthy criminal record and some history of mental health difficulties. He was sentenced to life imprisonment for the one incident.

[73] Ms. Amsel, Mr. Orle and Ms. Mitousis were targeted simultaneously in three separate locations with explosive devices designed to be lethal.

[74] Mr. Amsel's plan was extremely calculated, and as in the *Rogers* case was executed with cold deliberation. He showed not only a callous and vengeful intent toward the specific targets of the devices, but also an indiscriminate disregard for the lives and safety of others in the community. As such, he bears a high degree of moral responsibility for his actions.

[75] Mr. Amsel is not remorseful. He has not taken responsibility for his actions and continues to deny involvement in the offences. Moreover, he has attempted to place responsibility on others for these offences and alleges corruption at all levels of the justice system as an explanation for his present circumstances. His rehabilitation is questionable at best.

[76] In these circumstances the sentence imposed must emphasize the principles of deterrence and reflect society's denunciation. In *Lim and Nola, supra*, the trial judge, Justice Doherty as he then was said at paragraph 12:

In my view, the appropriate principle in this case requires that I consider the planned and deliberate nature of the offences, their inherently dangerous nature and the extreme repugnance with which the community views this kind of violence. The community must be assured that those who take the steps that were taken in this case to vindicate some personal sense of wrong will not be tolerated. The community must rest assured that this kind of public violence will be met sternly by the courts. In my view, that kind of consideration is paramount in this case.

[77] In addition to the principles of deterrence and denunciation, the sentence I impose must also address the seriousness of the circumstances and Mr. Amsel's high degree of moral responsibility.

[78] I have concluded that the appropriate sentence for the events of July 2015 is one of life imprisonment. The life sentence will be served consecutively to the sentence for the attempted murder of Iris Amsel in 2013.

#### Totality Principle

[79] Section 718.2(c) requires the Court when imposing consecutive sentences to consider their totality to ensure that the total sentence is not excessive for the offender as an individual. (*R. v. Draper*, 2010, MBCA 35)

[80] If the total sentence is excessive, it should be adjusted appropriately so as not to exceed the overall culpability of the offender, and their degree of moral blameworthiness.

[81] Counsel for Mr. Amsel submits that the sentence imposed should not exceed a total of 25 years. He does so in the context not only of the sentences themselves but also in conjunction with the Crown's request to have Mr. Amsel's eligibility for parole delayed on the life sentence.

[82] In the *R. v. Zinck*, [2003] 1 SCR 41, paragraph 29, the Supreme Court of Canada made it clear that prior to considering the issue of parole eligibility, the sentencing judge must first determine the appropriate punishment for the crime. The issue of parole ineligibility is not considered at this stage.

[83] Given the life sentence being imposed for the 2015 incidents I will reduce the 15 year sentence imposed on the 2013 incident to one of 12 years for totality.

[84] Mr. Amsel has as of today 1238 days of time in custody. He is entitled to enhanced credit for those days at a rate of 1.5:1 for a total of 1857 days, which is the equivalent of 5 years and 32 days. For the attempted murder of Iris Amsel on December 13, 2013, Mr. Amsel will serve 2523 days going forward which is just under 7 years.

[85] The concurrent life sentences I am imposing for the 2015 incidents will be served consecutively to that 12 year sentence for the December 2013 incident.

#### Parole Ineligibility

[86] Section 120 of the *Corrections and Conditional Release Act* provides for the calculation of parole in the usual course of an offender serving a sentence. If applied to Mr. Amsel's life sentence, this section would allow for Mr. Amsel to be eligible for parole after serving 7 years of the life sentence.

[87] It is the Crown's position that with respect to the life sentence for the July 2015 incidents that Mr. Amsel's parole ineligibility should be increased to 10 years. Counsel for Mr. Amsel is opposed to such an increase.

[88] Section 743.6 of the *Criminal Code* gives the Court the power to delay parole eligibility if the Court is satisfied, having regard to the circumstances of the commission of the offence and the character and circumstances of the offender, that the expression of society's denunciation of the offence or the objective of specific or general deterrence so requires, order that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or ten years, whichever is less.

[89] After determining the appropriate sentence, the analysis shifts to the exercise of the power to delay parole. The judge must once again apply the sentencing factors. In this part of the process, however, the addition of s. 743.6(2) requires that, in the course of this second balancing, priority be given to the factors of general and specific deterrence, and of denunciation. (*R. v. Zinck*, para. 30)

[90] At paragraph 31 of the *Zinck* decision the court went on to say :

The judge must satisfy himself or herself that the order is needed to reflect the objectives of sentencing, with awareness of the special weight ascribed by Parliament to the social imperatives of denunciation and deterrence. Nevertheless, at the end of this intellectual process, the sentencing decision must remain alive to the nature and position of delayed parole in criminal law as a special, additional form of punishment.

[91] In the *R. v. Smith*, 2008 SKCA 20 at paragraph 72 the court noted that:

Where denunciation and deterrence are the primary objectives, s.743.6 is to the sentencing exercise what the totality principle is to the length of sentence. While the totality principle is about fairness to the offender, s. 743.6 is about fairness to society. It affords the court the opportunity to step back and consider the larger picture-to ask itself “knowing what I know about the parole process, does this sentence sufficiently express society’s denunciation and interest in deterrence?”

[92] I am satisfied that the objectives of deterrence and denunciation and the character and circumstances of Mr. Amsel require that his eligibility for parole be delayed until he has served 10 years of his life sentence.

### **Ancillary Orders**

[93] I am prohibiting Mr. Amsel pursuant to section 109 of the *Criminal Code* for period of 10 years on the 2013 charge and for 10 years on the 2015 charges consecutive to each other.

[94] It is mandatory pursuant to section 487.051 of the *Criminal Code* on the Attempt Murder convictions that I order Mr. Amsel to provide a sample of his DNA to be placed on the National DNA Data Bank.

[95] Pursuant to section 743.21(1) of the *Criminal Code*, I am ordering that Mr. Amsel have no contact or communication with Iris Amsel, James Block, George Orle, and Maria Mitousis.

[96] Given the sentence that I have imposed I am prepared to order that Mr. Amsel have no time to pay the applicable costs and surcharges. He will serve the default time in lieu of payment as calculated by statute concurrently with his sentence.

“Original signed by”

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**TRACEY LORD, P.J.**