

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Madam Justice Karen I. Simonsen
Madam Justice Lori T. Spivak

BETWEEN:

<i>HER MAJESTY THE QUEEN</i>	)	<i>R. T. Amy</i>
	)	<i>for the Appellant</i>
)	
<i>Respondent</i>	)	<i>R. N. Malaviya</i>
	)	<i>for the Respondent</i>
)	
<i>- and -</i>	)	<i>Appeal under r 45 of the</i>
	)	<i>Manitoba Criminal Appeal</i>
	)	<i>Rules; and r 37.3 of the MB,</i>
	)	<i>Court of Appeal Rules</i>
)	
<i>JOHN PAUL OSTAMAS</i>	)	<i>Joint written submissions filed:</i>
	)	<i>August 22, 2022</i>
<i>(Accused) Appellant</i>)	
	)	<i>Judgment delivered:</i>
	)	<i>September 1, 2022</i>

On appeal from 2016 MBQB 136

CHARTIER CJM (for the Court):

[1] This is a sentence appeal.

[2] The accused pled guilty to three counts of second degree murder committed in 2015. In 2016, he was sentenced to life imprisonment and, pursuant to section 745.51 of the *Criminal Code*, was ordered to serve the 25-year periods of parole ineligibility consecutive on all three counts, such that there was no possibility of parole for 75 years. At the time, section 745.51 permitted

consecutive parole ineligibility periods of 25 years in cases involving multiple murders.

[3] On May 27, 2022, the Supreme Court of Canada, in *R v Bissonnette*, 2022 SCC 23, declared section 745.51 unconstitutional as it breached section 12 of the *Canadian Charter of Rights and Freedoms*.

[4] On June 20, 2022, this Court granted the accused's request to extend the time to file an appeal of his sentence.

[5] The accused now seeks leave to appeal his sentence, arguing that, given that section 745.51 has been found to be unconstitutional, the total parole ineligibility period of 75 years is an illegal sentence. He asks that the three 25-year periods of parole ineligibility be made concurrent rather than consecutive.

[6] The Crown joins the accused in seeking leave and, if granted, requests that his sentence be varied as he proposes in order to conform to the Supreme Court's decision in *Bissonnette*. Moreover, both parties agree that this appeal may be determined on the basis of written materials filed, without an oral hearing being held (see r 37.3 of the MB, *Court of Appeal Rules*, MR 555/88R).

[7] In *Bissonnette*, the Supreme Court declared section 745.51 unconstitutional. It held that this provision "authorizes a court to order an offender to serve an ineligibility period that exceeds the life expectancy of any human being, a sentence so absurd that it would bring the administration of justice into disrepute" (at para 7). Interestingly, it referenced this very case, *R v Ostamas*, 2016 MBQB 136, as an example of someone being "sentenced to die in prison" (at para 78; see also para 79). The Supreme Court also struck down section 745.51 retroactively to its enactment in 2011 (see para 143). As a result, it reduced the

sentence in *Bissonnette* to the maximum period of parole ineligibility of 25 years.

[8] We are all of the view that, in order to conform to the law as it is now understood, leave to appeal sentence is granted and the appeal is allowed. The sentence is varied to make the three maximum 25-year periods of parole ineligibility concurrent to one another. All other aspects of the sentence remain the same.

Chartier CJM

Simonsen JA

Spivak JA