

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,	)	<u>Michael G. Himmelman</u>
	)	<u>Eric S.J. Shinnie</u>
- and -	)	for the Crown
	)	
KEITH CAMPBELL,	)	<u>Zachary B. Kinahan</u>
offender.	)	<u>Ashley S. Anderson</u>
	)	for the offender
	)	
	)	Judgment Delivered:
	)	July 7, 2026

GRAMMOND J.

INTRODUCTION

[1] After a trial, I found Keith Campbell (the "Offender") guilty of two counts of second degree murder in the deaths of Jordan Moosetail and Patrick Bighetty (collectively the "Deceased"), who died on January 15, 2023. The reasons for conviction are found at ***R. v. Campbell***, 2026 MBKB 25 (the "Trial Decision").

[2] Pursuant to s. 745(c) of the ***Criminal Code***, R.S.C., 1985, c. C-46, a conviction for second degree murder carries a mandatory sentence of life imprisonment. The issue now before me is what period of parole ineligibility should be imposed upon the Offender.

THE FACTS

[3] The facts of this case are set out in the Trial Decision and I will not repeat all of the details in this decision. In summary, however, the Offender shot the Deceased in a back lane in a residential neighbourhood of The Pas, Manitoba in the early morning hours. The Deceased and the Offender did not know each other previously. Nevertheless, a dispute unfolded between the victim Jordan Moosetail and a group of four individuals including the Offender, as a result of which I found that the Offender shot Jordan Moosetail six times. The Offender then shot the victim Patrick Bighetty in the head while he was walking past the scene of the first shooting.

POSITION OF THE PARTIES

The Crown

[4] The Crown submitted that I should impose a parole ineligibility period of 22 years, because the Offender took two lives, randomly, in a manner that constituted shocking public violence, and represented sustained, intentional killing. As such, and although there is no established range, the offences are among the more serious multiple second degree murder cases.

The Defence

[5] The defence submitted that I should impose a parole ineligibility period of 17 years given that the Offender is a youthful offender, and that significant ***Gladue*** factors apply (see ***R. v. Gladue***, [1999] 1 S.C.R. 688). The defence emphasized that the Offender will be subject to supervision for the rest of his life and that, after the minimum period of parole ineligibility has been served, the Parole Board of Canada is well-positioned to

monitor his progress in custody with a view to determining whether and when he can be released, with regard to the extent of his rehabilitative efforts. If he progresses poorly, the period of time for which he is incarcerated will be extended accordingly.

THE LAW AND ANALYSIS

[6] Section 745.4 of the **Code** sets out the factors to be considered in determining an appropriate parole ineligibility period, as follows:

[The trial judge] may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission . . . substitute for ten years a number of years of imprisonment (being more than ten but not more than twenty-five) without eligibility for parole, as the judge deems fit in the circumstances.

[7] In the leading case of ***R. v. Shropshire***, [1995] 4 S.C.R. 227 (QL), 1995 CanLII 47 (SCC) the court directed that a judge must also take into account the general principles of sentencing found in s. 718 of the **Code** when determining parole ineligibility.

More particularly, the court stated:

[23] The only difference in terms of punishment between first and second degree murder is the duration of parole ineligibility. This clearly indicates that parole ineligibility is part of the "punishment" and thereby forms an important element of sentencing policy. As such, it must be concerned with deterrence, whether general or specific. The jurisprudence of this Court is clear that deterrence is a well-established objective of sentencing policy...

...

[27] ...[A]s 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 [s. 745.4], the offender should wait a longer period before having his suitability to be released into the general public assessed. To this end, an extension of the period of parole ineligibility would not be "unusual", although it may well be that, in the median number of cases, a period of 10 years might still be awarded.

...

[29] ...In permitting a sliding scale of parole ineligibility, Parliament intended to recognize that, within the category of second degree murder, there will be a broad range of seriousness reflecting varying degrees of moral culpability. As a result,

the period of parole ineligibility for second degree murder will run anywhere between a minimum of 10 years and a maximum of 25, the latter being equal to that prescribed for first degree murder.

...

[31] ...[I]t is incorrect to start from the proposition that the sentence must be the statutory minimum unless there are unusual circumstances. ...[A] preferable approach would be to view the 10-year period as a minimum contingent on what the "judge deems fit in the circumstances" ...[T]he power to extend the period of parole ineligibility need not be sparingly used.

[8] In ***R. v. M.(C.A.)***, 1996 CanLII 230 (SCC), [1996] 1 S.C.R. 500, the court stated with respect to the sentencing principle of denunciation:

[81] ...In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. As Lord Justice Lawton stated in *R. v. Sargeant* (1974) ..."society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass". The relevance of both retribution and denunciation as goals of sentencing underscores that our criminal justice system is not simply a vast system of negative penalties designed to prevent objectively harmful conduct by increasing the cost the offender must bear in committing an enumerated offence. Our criminal law is also a system of values. A sentence which expresses denunciation is simply the means by which these values are communicated.

[9] In ***R. v. Mafi***, 2000 BCCA 135, the court stated:

[20] Setting the period for parole ineligibility is in some respects unlike sentencing for other crimes. One must suppose that the Parole Board is doing its job and that it will continue to do so...

[21] So the purpose of increasing the period of parole ineligibility beyond ten years is to prevent the Parole Board from considering the question of parole for that person and, if he or she is rehabilitated, granting parole, and if he or she is not rehabilitated then maintaining the confinement, perhaps for life. . . To put the matter starkly, the effect, therefore, of increasing the period of parole ineligibility is to keep someone in prison who has been entirely rehabilitated, as far as it is possible to tell, in order to go on denouncing that person, and claiming retribution from that person, for what may well have been an impulsive act committed more than ten years before.

[emphasis in original]

[10] In ***R. v. Nelson***, 2009 MBCA 76, the court cited with approval the following passage from The Honourable Mr. Justice E.G. Ewaschuk, ***Criminal Pleadings & Practice in Canada***, 2d ed., looseleaf (Aurora: The Cartwright Group Ltd., 2009) vol. 3 at paragraph 18:0820:

[31] ...

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.

[emphasis in original]

[11] In ***R. v. Kyle Sparks MacKinnon***, 2019 ONSC 3436, the court stated:

[45] The fundamental purpose of sentencing "is to contribute... 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 [six] objectives." Those objectives include the denunciation of unlawful conduct, deterrence of the offender and others who might be similarly tempted, separation of the offender from society where necessary, rehabilitation, and the promotion of a sense of responsibility in the offender. Whatever sanction is imposed must comport with the fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In addition, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Further, the circumstances of Aboriginal offenders and the principles enunciated in *R. v. Gladue* must be considered.

...

[60] ...In accordance with the principle of proportionality, one would expect that the range of parole ineligibility for causing multiple deaths would be higher than the range for causing a single death.

...

[78] If Mr. Sparks MacKinnon were facing sentence for one murder, I would have concluded ...that a period of parole ineligibility of 16 to 18 years would have been appropriate. However, he is to be sentenced for two murders, and the principle of proportionality requires that the total period reflect the fact that he killed two people.

[12] The law is clear that determining an appropriate period of parole ineligibility is a highly fact-specific exercise. In this case, both the Crown and the defence provided cases

for my review. The Crown argued that the cases relied upon by the defence are distinguishable from the case at bar, and the defence argued that the cases relied upon by the Crown reflect an insufficient connection to the applicability of ***Gladue*** factors. I note that the cases filed by the defence reflect the imposition of periods of parole ineligibility ranging from 15 to 20 years, while the cases relied upon by the Crown reflect the imposition of periods of parole ineligibility of 18 and 22 years.

Character of the Offender

[13] The Offender's family provided a letter that was read in at the sentencing hearing, noting, *inter alia*, that the Offender was raised in an environment of drugs, alcohol, instability, and trauma from a very young age. He did not receive the love, support, guidance, or care that children deserve, and was subjected to an unstable home life and early unhealthy influences, though his life also included positive events such as participation in sports, spending time outdoors, and attending community events with family and friends. The Offender's family believes that there is good in him and that he can become better, if given a chance at growth, rehabilitation, and redemption.

[14] The pre-sentence report prepared in this matter (the "PSR") reflects that the Offender has some family support, and that he was involved in his young daughter's life prior to his incarceration.

[15] The Offender's criminal record includes convictions for resisting arrest, assault, personation, and possession of a prohibited device (a machete), as well as 14 convictions on his adult and youth records for either failing to comply with different forms of court orders, or for failing to attend court. The Crown submitted that although the Offender's

record does not reflect a history of entrenched violence, it does reflect a chronic pattern of non-compliance and repeated failures to abide under supervision, which are relevant to an assessment of his character, his prospects for rehabilitation under supervision, and his respect for the administration of justice. The defence submitted that the Offender has good prospects for rehabilitation.

[16] While in custody, the Offender's behaviour has been both positive and negative. According to the PSR, he has completed a variety of programs that have been made available to him and that he has sought to enhance his education. Having said that, he has also received disciplinary sanctions for threatening and abusive behaviour towards correctional staff and other inmates, and possession of contraband items. I agree with the Crown that the Offender's negative behaviour in custody is suggestive of an ongoing risk of violence.

[17] The PSR reflects that the Offender reported joining a known criminal organization in 2019 when he was incarcerated, but that he has since sought to end that gang affiliation, without success. The Offender's cousin advised the PSR author that the Offender belongs to a "family group" with the same name as a known criminal organization and is not part of any criminal organization. On this point, I accept the Offender's own version of the facts over that of a relative, despite the assertion of the defence the Offender does not have gang ties.

[18] The Crown expressed concerns about the Offender maintaining relationships with criminal associates, particularly given that the murders involved group-based escalating aggression. I note that at the time of the murders, the Offender was in the company of

three of his cousins, and it is unclear whether any of them were or are members of any criminal organization.

[19] The PSR reflects that the Offender maintains a criminal attitude, externalizes blame, and lacks insight into his behaviour, which the Crown submitted enhances his chances for future dangerousness, impairs his prospects for rehabilitation, and underscores the need for a substantial period of incarceration before supervised release can be considered safely.

[20] The PSR provides that the Offender completed grades 1 to 8 in his home community and that the highest level of education he completed successfully was grade 10. He has expressed an interest in completing his grade 12 education and pursuing carpentry as a trade.

[21] The PSR reflects that the Offender first tried alcohol at age 11 and began to consume alcohol regularly at age 14 or 15. He used alcohol to cope after an injury in 2019 prevented him from playing hockey or soccer which he enjoyed previously. He advised the PSR author that prior to his arrest he consumed alcohol daily and that he did so at the time of the murders. As noted in the Trial Decision, the Offender was intoxicated at the time of his arrest on the night of the murders, although his consumption did not appear to interfere with his recollection of the events to which he testified.

[22] The PSR reflects that the Offender began smoking marijuana when he was 14 years old and began using cocaine at age 17. At age 19, he began using crack-cocaine daily, and did so until his arrest. The PSR also reflects that the Offender said he “was not really into the drugs” and has never attended treatment. The Crown acknowledged

that the Offender's substance dependency was a major contributor to his offending trajectory, combined with unresolved trauma, emotional volatility, and impulsivity. The Crown also argued that when the Offender is intoxicated the risk of future violence is significant.

[23] With respect to ***Gladue*** factors, the PSR contains conflicting information, in that the Offender reported that his grandfather and other family members attended residential schools, were abused, and were not allowed to live their culture. The Offender's cousin, however, reported that none of their family members attended residential schools.

[24] The defence submitted that the Offender's family has indeed suffered the negative impacts of colonialism, such that significant ***Gladue*** factors are present and must be considered in assessing the appropriate period of parole ineligibility. More specifically, the Offender's family was impacted by residential schools, substance abuse, and intergenerational trauma which has impacted the Offender in a significant way.

[25] The PSR reflects that the Offender grew up in poverty, often without food and other basic necessities. His mother was single and experienced difficulties, including substance abuse, arising from colonialism and from the death of her mother. The family struggled financially and his mother was not always present, such that the Offender was once apprehended by Child and Family Services for approximately one month. At other times he was raised by his older siblings and grandfather. When his mother was present, other people often frequented their home, and the Offender was sexually abused at age 5, approximately. The Offender did not meet his father until he was 12 years of age.

[26] The defence noted that despite the Offender's struggles he exhibits a positive attitude, has expressed a strong desire to forgive, and feels that he was well-provided for. He has a good relationship with his mother (who did not participate in an interview with the PSR author), and with his siblings and extended family, although most of his family members are involved criminally. The defence noted that the Offender did not have a stable family or peer group while growing up and felt isolated.

[27] The Offender reported that he was involved in traditional Indigenous activities while growing up, including Pow Wow, Sundance, Smudging and Sweat ceremonies and that he understands some Cree words. He would like to become reacquainted with his culture and pass on his knowledge to his children.

Nature and Circumstances of the Offences

[28] The circumstances surrounding the murders are disturbing.

[29] As referenced above, the Deceased were shot in a residential back lane in the early morning hours, and as I found in the Trial Decision, the shootings represented an escalation of the threatening behaviour exhibited by the Offender and/or his cousins earlier that night. More specifically, I found that the Offender, who was carrying a concealed firearm, followed his younger cousins to the scene of the murders to protect them or to act as their "back-up". There was no apparent reason or threat that caused him to be carrying a firearm, yet he and his cousins were looking for a fight.

[30] I found that an altercation took place involving the victim Jordan Moosetail, who was smoking in the back lane next to his yard, and that the Offender shot him six times. As such, the shooting was not momentary, and reflected persistent and deliberate

violence. I also found that after shooting Jordan Moosetail, the Offender quickly crossed the back lane and shot Patrick Bighetty in the temple, which was a separate, deliberate act of targeted and purposeful violence.

[31] The Deceased's deaths were random and senseless, there being no prior relationship or history as between them and the Offender, and the harm caused was significant, including for the Deceased's families. In addition, the Offender's actions exposed the broader community to risk and lethal danger, and the evidence reflects that the community was very concerned and felt unsafe after the murders, particularly prior to arrests being made.

[32] I have concluded that the circumstances in which the murders were committed must be denounced, and as such those circumstances support a lengthy period of parole ineligibility.

Aggravating & Mitigating Factors

[33] There are a number of aggravating factors that apply in this case, as follows:

- a) firearms were used;
- b) the Deceased Jordan Moosetail was shot six times;
- c) the Deceased Patrick Bighetty was shot in the temple, such that his shooting was an execution, apparently because he was a potential witness to the murder of Jordan Moosetail;
- d) both of the Deceased were unarmed;
- e) the shootings took place in a residential back lane;

- f) the Offender made callous and boastful remarks about the shootings in electronic messages, and then attempted to have those messages deleted;
- g) at the time of the murders, the accused was on a release order and has shown previously and repeatedly that he has difficulty obeying court orders;
- h) the Offender fled the scene immediately after the shootings; and
- i) the Offender has been assessed as a high risk to re-offend.

[34] The mitigating factors in this case are as follows:

- a) the Offender was twenty years of age at the time of the murders, such that he is a youthful offender; and
- b) as referenced above, *Gladue* factors apply.

ANALYSIS

[35] The law is clear that no two cases are alike, and that sentencing is a highly individualized process, despite the application of parity as a sentencing principle (*R. v. Cassan (E.R.)*, 2012 MBCA 46, paragraph 85).

[36] As set out in *Nelson*, the most important sentencing principles in this case are general and specific deterrence and denunciation. Rehabilitation is of less significance. Having said that, the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Protection of the public is also important.

[37] As was the case in *R. v. Mohamed*, 2021 ONSC 7615, I must consider the fact that the Offender killed a second person who may have witnessed the killing of the first victim. In my view, if the offender had killed only Jordan Moosetail, it is likely that the appropriate period of parole ineligibility would have been between 15 and 17 years. The

law precludes the imposition of consecutive life sentences, and as such the sentence for the killing of Patrick Bighetty must run concurrently to the sentence imposed for the killing of Jordan Moosetail. As referenced above, the fact that Patrick Bighetty appears to have been killed because he was a potential witness to the first shooting is a significant aggravating factor.

[38] I have also considered the nine victim impact statements provided by the Deceased's family members. It is clear that both Jordan Moosetail and Patrick Bighetty were held dear by their respective families, and that their losses have had a significant emotional, spiritual, physical, and financial impact upon their family members. In particular, the families have suffered considerable trauma, pain, and grief, negative health and employment consequences, and a loss of feeling safe and secure, to the point that some family members were afraid to return to or remain in The Pas. I have considered and weighed these impacts within the framework of the other applicable sentencing principles.

[39] I recognize that, as referenced above, the Offender was raised in regrettable circumstances and that as an Indigenous man he and his family have suffered the intergenerational effects of the experiences of their people, including sexual abuse, neglect, substance use, and financial struggles. I must consider these unique circumstances, and I accept that these experiences can be traced to systemic disadvantage and impoverishment dating back generations. I agree that the Offender was disadvantaged and that ***Gladue*** factors are relevant to his sentence.

[40] Having said that, there is no indication that the Offender has attempted to separate himself from a criminal milieu, and there is no indication of remorse or insight into his involvement in the murders. I agree with the Crown that the electronic messages sent by the Offender after the murders reflect that he understood the gravity of his actions and expected to be incarcerated as a result. As such, and in particular given his poor behaviour in custody, the Offender does not present as an ideal candidate for rehabilitation and it is very difficult to know whether he can be rehabilitated, and if so to what extent, and when. To succeed, he will have to make major changes in both his attitude and his behaviour.

[41] As I have stated, these murders were committed in extremely egregious circumstances, and if my decision were based upon only the nature of the offending, I would agree with the Crown that a period of parole ineligibility of 22 years is appropriate.

[42] Similarly, when I consider the Offender's character and the relevant aggravating factors, I have concluded that his moral blameworthiness is high. Having said that, given the applicable mitigating factors, and in particular the ***Gladue*** factors, the period of parole ineligibility must be tempered accordingly. I have concluded that the appropriate period of parole ineligibility in this case and that will be imposed upon the Offender for each count of murder is 20 years, to be served concurrently.

[43] In coming to this decision, I have considered the principle of proportionality, and I am satisfied that this sentence complies with that principle. Since no two cases are identical, none of the precedents referenced by counsel are on all fours with this case, but nevertheless on the whole I am satisfied that a 20-year period of parole ineligibility

is fit and appropriate for the Offender. Although this sentence reflects the gravity of the offences, it is not a crushing sentence, because the Offender will be eligible for parole at age 40.

[44] There will also be a mandatory DNA order pursuant to s. 487.051(1) of the **Code** and a mandatory weapons prohibition pursuant to s. 109(2) of the **Code**. Costs and surcharge are waived.

_____ J.