

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,) <u>Libby L. Standil</u>
) <u>Adam C. Bergen</u>
- and -) for the Crown
)
)
GUNNI ABDI HASSEN,) <u>Evan J. Roitenberg, K.C.</u>
) <u>Laura C. Robinson</u>
accused.) for the accused
)
)
) <u>Judgment Delivered:</u>
) January 16, 2025

MARTIN J.

INTRODUCTION

[1] In September 2024, while describing it as a “close call”, I found Mr. Hassen not guilty of first degree murder. Rather, I convicted him of second degree murder of Abdulwasi Ahmed (***R. v. Hassen***, 2024 MBKB 137). His sentence is life in prison (s. 745(c) of the ***Criminal Code***, R.S.C., 1985, c. C-46 (the ***Code***)).

[2] This decision deals with the question of deciding a fit and appropriate period of parole ineligibility for Mr. Hassen; a 27-year-old man with no prior criminal record, who interrupted his dial-a-dealer crack trafficking to seek out and confront someone with a loaded .40 caliber handgun, and then, in an ensuing gunfight, killed Mr. Ahmed. The difficulty of this question is heightened in assessing Mr. Hassen's character; he was seen as a stellar citizen by family and friends, but as a drug-dealing killer by facts established at his trial.

[3] The discretion I have is to set a period between 10 and 25 years, which Mr. Hassen must serve in prison before being eligible to apply for parole (s. 745(c), 745.4 of the **Code**). The Crown urges a 20-year period of parole ineligibility, while Mr. Hassen asserts 12 years is fit and appropriate.

[4] To reach a just result, I must weigh and consider the nature of the offence, the circumstances surrounding its commission and Mr. Hassen's character, along with all the factors in sentencing an offender as set out in s. 718 of the **Code**, and other principles established at common law.

NATURE AND CIRCUMSTANCES OF THE OFFENCE

[5] I will be relatively brief. The trial was lengthy and key findings, relative to trial issues, are outlined in the verdict judgment.

[6] Mr. Hassen was an associate, or member, of the Money Making Malis (MMM) street gang in Winnipeg, dealing crack cocaine. Mr. Ahmed was an associate, or member, of a rival gang. For several years, both gangs were involved in tit-for-tat violence against each other, including shootings and murder.

[7] Early on a cold Winnipeg winter morning, February 9, 2022, Mr. Hassen was street trafficking as a dial-a-dealer. He was with a friend, Mr. Nkuba, and a driver. Mr. Hassen was calling the shots. They drove around for several hours responding to calls for crack.

[8] Shortly before 03:30, he instructed the driver to drive by the Bar Red Sea on Portage Avenue. People were standing on the street. Mr. Hassen then instructed the driver to drive around the block and park in an area near the Bleachers Sports Bar on Fort Street.

[9] Once parked, the driver and SUV were to wait. Mr. Hassen and Mr. Nkuba walked down back alleys toward a parking lot on the south side of 275 Garry Street. Mr. Hassen possessed a loaded handgun. They crossed the lot toward Garry Street. At the same time, Mr. Ahmed and his group were walking south on Garry Street, a short distance from the Bar Red Sea, past the Ultra Lounge and the adjoining building at 275 Garry Street. Within a moment, at 03:30, where the building and parking lot meet, the two groups came across each other.

[10] Most of Mr. Ahmed's group immediately scattered northbound, while Mr. Nkuba and Mr. Hassen quickly moved back into the main area of the parking lot, close to the path they initially approached from. Shooting started almost immediately.

[11] Mr. Nkuba rapidly fell to the ground, roughly where police later found him shot. Mr. Hassen moved eastward until he stopped near a parked vehicle. Police later found five .40 caliber bullet casings in that vicinity. As these things happened, Mr. Ahmed was standing on the sidewalk, aiming and shooting in the direction of Mr. Hassen, before he collapsed dead from a .40 caliber bullet to the forehead. After the last gunshot is heard

on an audio/video recording, Mr. Hassen ran toward Fort Street. He entered the waiting SUV. He said he had shot someone.

[12] Shortly after, the SUV returned to the driver's residence at approximately 03:43. Ten minutes later, Mr. Hassen left that location in a taxi. He had changed his jacket. The taxi drove him to his apartment, where he is seen on video entering the front lobby at 04:00.

[13] All in, six .40 caliber bullet casings were found in the parking lot and five 9 mm casings were found on the sidewalk in the area where Mr. Ahmed was shooting. It is possible that other casings from additional shots were not found in the snow.

[14] The gunfight took place in a public space, in a commercial area in downtown Winnipeg, very close to the Ultra Lounge and Winnipeg Police Service Headquarters.

[15] In the days after the shooting, Mr. Hassen acquired a new cellphone, apparently replacing one that he may have lost in the parking lot. Thereafter, within about 48 hours of the shooting, on February 11, Mr. Hassen resumed his dial-a-dealer trafficking. Unrelated to the shooting, he was arrested then for trafficking crack cocaine and released.

[16] Mr. Hassen was arrested for the killing in early March 2022.

[17] Mr. Nkuba recovered from his wounds. He did not cooperate with police.

[18] To be clear, as is his right, Mr. Hassen did not testify or lead any evidence. I rejected the defence position that the Crown had not proven Mr. Hassen was the principal shooter, or that the Crown had not negated self-defence or defence of another. However, I did not find Mr. Hassen committed this killing for a criminal organization, or that planning and deliberation had been proven beyond a reasonable doubt.

CHARACTER OF MR. HASSEN

[19] It is fair to say that Mr. Hassen is a chameleon – he changes with the environment. Sentence submissions and a Pre-Sentence Report make that clear.

[20] Mr. Hassen is the second oldest of five children. For the first 11 years of his life, he lived with his family in a refugee camp in East Africa. While no doubt a difficult experience, he was never the victim of any violence or neglect in the family home and did reasonably well at school. In 2008, the family emigrated to Canada, settling in Winnipeg.

[21] He claims that he did not have difficulty adapting to life in a new country. He did well academically, achieving grade 12. He picked up the language quickly. He took up soccer and was described as a “superstar”. There is no suggestion he was a victim of any abuse or personally suffered racism.

[22] Mr. Hassen’s parents separated in 2019. He says he started hanging around with the “wrong people”. He lived with his father in a tense relationship until his father moved to Kenya. At that point, Mr. Hassen moved into a one-bedroom apartment. He was aware that his peers were involved in the drug trade but says he would only “go along for rides”. For a time, he financially supported his mother, until she would no longer take his money.

[23] Mr. Hassen became involved with the Immigrant and Refugee Community of Manitoba (IRCOM), first as a volunteer and then as a full-time paid employee. Many youths looked up to him. Ironically, Mr. Hassen was involved as a facilitator in a gang prevention program. He also managed his younger brother’s soccer team.

People consider him very intelligent. No one in his family, or at IRCOM, suspected he was involved in criminal activity or gangs. Many from his community expressed shock at these charges.

[24] Otherwise, Mr. Hassen is single with no dependents. He does not have any known mental or physical disabilities or addictions, albeit he was a regular cannabis user. He says he does not have anger management issues and planned to become a firefighter.

[25] The Pre-Sentence Report summarized that Mr. Hassen appears to have led two distinct lives in Winnipeg. On the one hand, he was a well-respected role model. On the other, he was actively associating with gang members involved in the drug trade and, in fact, was actively trafficking crack. This was unknown to all except his criminal cohorts.

[26] While in custody, Mr. Hassen's darker character revealed itself in numerous institutional offences, including drugs, other contraband, counselling an assault of another inmate, participating in a disturbance, breaching a no contact order, and possessing sharp weapons. That said, he also displayed his chameleon-like persona in custody; a case manager describing him as a "pleasure to have" on her case load.

[27] Mr. Hassen did not have a criminal record before his arrest in March 2022. Thereafter, he pled guilty to possession for the purpose of trafficking from the February 11, 2022, incident I described earlier. Since then, he was also convicted of mischief for being one of a number of inmates who extensively damaged a jail cell.

[28] In the end, Mr. Hassen appears to be a Jekyll and Hyde character. Even in court, sitting in the prisoner's box, wearing a suit and bow tie, he was well dressed and mannered, revealing no emotion, with a gentle, professorial demeanor. This impression

was opposite the figure shown in his February 11, 2022, police photo, other video and by his criminal lifestyle, which portray a menacing drug-dealer who was able to arm himself with a loaded handgun and, for some unknown reason, chose to confront someone and kill another East African gangster in a wild shootout.

SENTENCING CONSIDERATIONS

[29] A sentence imposed by a judge on an accused for a serious crime should be tailor made in the sense that, mindful of principles of sentencing, it responds appropriately to the circumstances of the offence and the particulars of the offender. The **Code** articulates the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a safe, peaceful society through just sanctions that denounce unlawful conduct; deter persons from committing offences; separate offenders from society where necessary; assist in rehabilitation; provide reparation; and promote a sense of responsibility in offenders.

[30] Further, the **Code** mandates that a judge consider a number of principles, including sections:

- a) 718.1: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender;
- b) 718.2(a): a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender;

- c) 718.2(b): the parity principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- d) 718.2(e): the restraint principle.

To this statutory list are a number of common law principles that have developed over many decades of jurisprudence.

[31] The Supreme Court of Canada's decision in ***R. v. Shropshire***, 1995 SCC 47, remains the key starting point in understanding the discretion afforded to a sentencing judge in considering parole ineligibility. Critically, the court recognized that second degree murder comprises a broad range of seriousness and varying degrees of moral culpability, hence the sliding range from 10 to 25 years, with 25 years being equal to that prescribed for first degree murder. Specific and general deterrence, along with denunciation, are relevant criteria. Further, the power to extend the period of parole ineligibility need not be sparingly used. Finally, it is proper to take into account the absence of an explanation or attenuating factors. If a convicted person seeks the least severe sentence commensurate with the conviction, i.e., 10 years, "it is incumbent upon that person to play a somewhat active role in the process" (at para. 42).

[32] Otherwise, it is also clear that the prevalence of a crime in the community, or perhaps its absence, is a factor that may be considered, and a court is not constrained by precedent or a range, provided the sentence is fit and just. In ***R. v. Lacasse***, 2015 SCC 64, the Supreme Court of Canada made these and other important comments

respecting sentencing by trial judges and review by appellate courts. Specifically:

[58] ... The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside of a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case. LeBel J. commented as follows on this subject:

A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred. (*Nasogaluak*, at para. 44)

and,

[89] Even though the ***Criminal Code*** applies everywhere in the country, local characteristics in a given region may explain certain differences in the sentences imposed on offenders by the courts. The frequency of a type of offence in a particular region can certainly be a relevant factor for a sentencing judge.

[90] Although the fact that a type of crime occurs frequently in a particular region is not in itself an aggravating factor, there may be circumstances in which a judge might nonetheless consider such a fact in balancing the various sentencing objectives, including the need to denounce the unlawful conduct in question in that place and at the same time to deter anyone else from doing the same thing. It goes without saying, however, that the consideration of this factor must not lead to a sentence that is demonstrably unfit.

(emphasis added)

[33] The Crown and Mr. Hassen each provided two precedents. In ***R. v. Marjanovic***, 2019 MBQB 183 at para. 27, I referred to the Crown's precedent from the British Columbia Court of Appeal in ***R. v. Bennight***, 2012 BCCA 461, in commenting on its assessment of the general range of parole ineligibility in second degree murder cases (at para. 18):

[18] The following principles apply to the decision to impose an extended period of parole ineligibility:

....

- The general sentencing principles of denunciation and deterrence and the judge's assessment of the offender's future dangerousness are relevant factors: *R. v. Shropshire*, [1995] 4 S.C.R. 227, 102 C.C.C. (3d) 193.
- Parole ineligibility greater than 10 years is justified when there is some particularly aggravating feature: *Cerra*, at para. 17 (per Donald J.A.).
- There are two broad groupings of cases where parole ineligibility is extended beyond 10 years: parole ineligibility periods from 12 to 15 years and parole ineligibility periods from 15 to 20 years. The latter group of cases relates to cases at the highest order of moral culpability or dangerousness: *Cerra*, at para. 26 (per Donald J.A.).
- The possibility of a parole ineligibility period greater than 20 years remains in exceptional circumstances: *Cerra*, at para. 36 (per Ryan J.A.).

...

While these guidelines have not been formally endorsed by the Manitoba Court of Appeal, the sentiments, read with the *Shropshire* commentary, accurately reflect the general jurisprudential guidance today.

[34] *Bennight* was also referenced in the Crown's second precedent, *R. v. Brass*, 2021 MBQB 272. In all three, *Bennight*, *Brass* and *Marjanovic*, the courts imposed 18 years as the fit and just period of parole ineligibility for those second degree murder convictions. Not surprisingly, none of those cases are fully analogous to this one, although *Marjanovic* comes close but for the brutality of that killing, although there are other aggravating factors here.

[35] Mr. Hassen's counsel relied on two Ontario cases. The first, *R. v. Grant*, 2016 ONCA 639, was noted as an aggravating case of gun crime, where the sentencing judge exceeded the Crown's recommendation, and failed to give any real weight to the appellant's relative youth, or other mitigating considerations or real consideration to the accused's character. Recognizing that gun crime in Toronto was a scourge, the Court of

Appeal nonetheless focused on Mr. Grant's absence of record (except for one simple assault), his extensive family support, the prison parole authorities saying he had excellent prospects for rehabilitation, and having taken every opportunity to prove himself, as demonstrating he had a real prospect for rehabilitation. In the end, they imposed parole ineligibility of 14 years. The second Ontario case was ***R. v. Kozuch***, 2024 ONSC 815, where the accused received a period of parole ineligibility of 12 years for "a highly unusual case, almost bizarre, with a unique set of facts" (at para. 82). This was a case of second degree murder that had no element of planning. Again, despite the scourge of gun violence in Toronto, the court emphasized Mr. Kozuch started to take steps to turn his life around, showing hope for rehabilitation through mitigating circumstances (at para. 104), including clear statements of remorse.

[36] Otherwise, a review of other precedents demonstrates that a judge's discretion in setting parole ineligibility is a highly individualistic analysis depending on many aggravating and mitigating circumstances, and other factors, which may, in weighing and balancing, take on more or less significance depending on the specific case.

ANALYSIS

[37] The aggravating factors in this case are serious and material. They include:

- the shooting arose when Mr. Hassen switched from dealing crack cocaine that night to confronting someone with a loaded .40 caliber handgun. This conscious, sober decision was his alone;
- to do so, he gave specific instructions to his driver on where to park, and to wait until he returned. Mr. Nkuba went with him. The location was the street

over, and about a city block's distance, from where he seemingly planned to confront the person;

- in the next minute, he went to the shooting location through back alleys. The place he parked and where he walked was designed to ensure he would not be seen, either when arriving or when he escaped. Otherwise, if his plan to confront was less dangerous or harmful, he could easily have parked at the place where he was going;
- I inferred, from all the circumstances, that Mr. Hassen meant to use the handgun in the confrontation. Given the legal elements for proving planning and premeditation for first degree murder, I nonetheless found him guilty of second degree murder. But, to borrow language from the Manitoba Court of Appeal in ***R. v. St. Paul***, 2021 MBCA 31, "the circumstances are within a whisker of first degree murder" (at para. 10);
- the shooting took place in a public area, a parking lot, diagonally across from police headquarters. He was approaching an area at the Ultra Lounge. He saw the other group scatter. He knew people, other than his target, would be moving about when he went there, and when he started shooting;
- a brief, but wild, brazen shootout followed, in which many shots were fired, six from Mr. Hassen;
- it is common that handguns are not precise instruments of death, except perhaps at a very close range. Only one of his shots hit Mr. Ahmed; the rest missed and are unaccounted for. Shooting as he did was incredibly dangerous

to innocent people, whether bar patrons or others. I note some of Mr. Ahmed's shots struck a building a city block over;

- post offence, Mr. Hassen escaped, as he planned, to the waiting SUV. Shortly after, he changed his jacket to avoid detection while returning by taxi to his home; and
- within days, he returned to drug dealing; just gang business as usual.

[38] As to victim impact, of course Mr. Ahmed is dead; that is as serious as it gets. Perhaps not surprisingly, considering his apparent gang-related lifestyle, no one spoke of Mr. Ahmed, but one friend attended court to recognize his loss. That said, Mr. Ahmed's character is not a factor to consider. In these circumstances, Mr. Hassen's moral culpability is not lessened because a "bad guy" was the victim.

[39] Mitigating circumstances are few. Mr. Hassen was 25 years old at the time of the killing, had no prior criminal record and was well thought of by his family and community, albeit they had no idea of his drug dealing or gang affiliation.

[40] Mr. Hassen has expressed no remorse or responsibility for anything that night; not even any compassion for Mr. Ahmed's death. No explanation, or attempt at justification, for the shooting was offered by counsel or Mr. Hassen during sentencing submissions. These are not aggravating factors, but neither can he expect a degree of leniency that often is afforded given the potency of contrition.

[41] In response to the Ontario cases presented by the defence, the Crown raised the issue of the prevalence of shootings in Winnipeg over the last number of years. Gun

crime is markedly on the rise. Fatal gun shootings rose from three in 2018, to 16 in the year Mr. Ahmed was killed.

[42] Notionally, according to a Statistics Canada report (Samuel Perreault, *Firearms and violent crime in Canada, 2022*, released January 30, 2024), in Canada, handguns accounted for 63 percent of homicide shootings in 2022, while the rate of firearm-related homicide increased 130 percent between 2013 and 2022.

[43] I also received evidence from a gang expert on the trial. While I did not find Mr. Hassen committed this offence at the direction of, or for the benefit of, or in association with a criminal organization, I did find he was an associate, or member, of MMM, and Mr. Ahmed of a rival gang. The expert evidence shows about 11 shootings in Winnipeg since 2019 to this murder in 2022, where a member or associate of one, or the other gang, was injured or killed. In some instances, the shooter was brought to account, and in others they were not. Regardless, by any measure, just by looking at what has happened to members of these gangs, let alone the collateral impact on the community, it is highly troubling.

[44] The alarm among city, provincial and federal elected officials, and others, about the rise of gun crime, and the seemingly more casual, shameless and foolhardy recourse to shooting, particularly without care for bystanders, is loud. They are saying enough is enough; more deterrence is needed through exemplary sentences that, while weighing all factors, lean more heavily on denunciation and deterrence.

[45] Turning to Mr. Hassen, within the limitations of the information provided, it is important to come to some understanding of his character, of who he is. It is not

necessary that I agree with the Crown that Mr. Hassen, in effect, plays to his audience, or with his counsel that, like everyone, Mr. Hassen is simply multidimensional. His history demonstrates his intelligence, which has been commented upon by others. He can do good but he has also shown a strong pro-criminal attitude and behavior. He had good opportunities in Winnipeg but, fully aware of the harm, risks and consequences of the drug subculture, he chose to play both sides of the street.

[46] Even though he had not been convicted of any crime before he killed Mr. Ahmed, it is plain Mr. Hassen was involved in MMM gang life and drug dealing in a real way. I accept this clear evidence from the trial. I reject Mr. Hassen's minimizing his actions to the probation officer about only going "along for rides" with drug dealers; his drug conviction belies this. As the probation officer noted, he was careful to deny participation in any criminal activity. On the night of the killing, he was actively drug dealing, had access to a handgun, and showed a deliberate, if not keen, readiness to use it. Coldly, within days of killing Mr. Ahmad, he was drug dealing again. While in custody, his claim to not be a gang member because he cut ties with other members, although he had not told them, is disingenuous, bordering on manipulative. According to Probation Services, he is validated as a member of a known gang. Whether strictly gang related or not, he became involved in a number of serious institutional offences of drugs, weapons and assault while awaiting trial. Overall, he has shown a sustained allegiance for gangster life and a propensity to dangerous conduct.

[47] Against this backdrop, Mr. Hassen has not voiced any explanation for any of his criminal or gang involvement, let alone this killing. As noted, he expressed no

compassion, remorse or acceptance of responsibility. While he is fully entitled to remain silent - - this is not an aggravating factor - - his silence is deafening when it comes to helping me, as a sentencing judge, see a real and credible chance for rehabilitation. I recognize, and take into account, his character-reference's view that Mr. Hassen "is not beyond redemption", "[h]e is not a lost cause". In saying this, the reference acknowledges he cannot reconcile the two different personas but emphasizes "the complexities of [Mr. Hassen's] humanity".

[48] In the end, all I can conclude is that Mr. Hassen simply has two sides: one good, one immoral. I am left relying on a general belief that he, like almost all people, including killers, deserves a chance to reform. However, I cannot ignore the clear immoral side of his character, even if it co-exists with the good. He remains a danger. I cannot see that specific deterrence or rehabilitation will realistically be accomplished by the sentence sought by his counsel, or that it is otherwise fit and just.

[49] I will not belabour or reiterate the circumstances of this offence, or Mr. Hassen's character. His moral blameworthiness for this crime is very high. Denunciation for this type of intentional second degree murder with a handgun, related, at least temporally, to his drug trafficking activities, is a key factor. So too is general deterrence. Despite what one might consider the efficacy of general deterrence, if there ever is a place for it, it is for this nature of crime. Gun-toting drug dealers are aware of the risks of harm to themselves and others. Guns, especially handguns, have become common tools of the drug trade. The likelihood of getting caught and imprisoned for a long time should have a salutary effect. Mr. Hassen was a mature 25-year-old man who made a sober, and to

him, a seemingly lucid decision to confront another using a handgun. The circumstances I found were just shy of first degree murder. The prevalence of this type of crime in Winnipeg and Canada is too high. Parliament has set a range, with the maximum parole ineligibility for second degree murder as it is for first degree murder; 25 years. However, I bear in mind that I did not convict him of first degree murder, and he should not be punished as if I did. Further, despite his silence and my assessment of his character and future dangerousness, the sentence should allow for the prospect of rehabilitation, which the parole board will no doubt take into account in due course. Without some prospect of rehabilitation flowing from the mitigating circumstances and apparent good side of his character, the parole ineligibility I set would be higher.

CONCLUSION

[50] Weighing and balancing all the factors and sentencing objectives I must in reaching a fit and just sentence, for the second degree murder of Mr. Ahmad, I sentence Mr. Hassen to life in prison with no possibility of parole for 18 years. The usual ancillary orders for DNA and a lifetime ban on weapons are also imposed.

_____. J.