

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

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)	
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- and -)	<u>RENÉE D. LAGIMODIÈRE</u>
)	for the Crown
)	
CODY DON SAUNDERS,)	<u>JOHN McAMMOND</u>
)	<u>JOSHUA F. ROGALA</u>
accused.)	for the accused
)	
)	JUDGMENT DELIVERED:
)	September 9, 2022

KROFT J.

I. INTRODUCTION

[1] On December 8, 2021, a jury found Cody Don Saunders guilty of second degree murder for fatally strangling Karen Jane Letniak. This decision relates to sentencing.

II. MATERIAL CONSIDERED AT SENTENCING HEARING

[2] In addition to hearing oral submissions, including from Mr. Saunders himself, I have read the parties' casebooks, the Crown's Book of Sentencing Material containing victim impact statements prepared by the victim's father, sisters and close friend, a pre-sentence report dated January 26, 2022, and a handwritten letter dated August 12,

2022 from Mr. Saunders' mother. I have considered this material in the overall context of the facts that were essential to the jury's finding of guilt, some of which are referenced commencing at paragraph 7 of these reasons.

III. SOME LEGAL PRINCIPLES

[3] A conviction of second degree murder carries with it a mandatory sentence of life imprisonment with no right to apply for parole until *at least* ten years have been served. See sections 745(c) and 745.4 of the ***Criminal Code***. The cases often refer to these ten years as the "minimum parole ineligibility period", or words to that effect.

[4] Section 745.4 of the ***Criminal Code*** grants discretion to the court to extend the parole ineligibility period beyond ten years. This discretion recognizes second degree murder cases will vary in terms of seriousness and moral culpability. When the court contemplates exercising its discretion, section 745.4 instructs it to have regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, of the jury with respect to the number of years that the accused must serve before the accused is eligible for release on parole. The court may also consider the purpose and principles of sentencing set out in sections 718 to 718.2 of the ***Criminal Code***, particularly denunciation and deterrence. The goal is to arrive at a fit and proper sentence. Unusual circumstances do not have to exist to extend the parole ineligibility period. See ***R. v. Overby***, 2019 MBQB 102 at paras. 20–21, 31, 36; ***R. v. Harper***, 2019 MBQB 82 at paras. 1–3; ***R. v. Assi***, 2021 MBQB 217 at paras. 18–20; ***R. v. Boyede***, 2020 ONSC 7493 at para. 55.

IV. POSITIONS IN RESPECT OF PAROLE INELIGIBILITY PERIOD

[5] The Crown submits a parole ineligibility period of sixteen years is fit and proper in this case. Mr. Saunders submits the minimum parole ineligibility period of ten years should apply.

V. CONSIDERATION OF THE SECTION 745.4 FACTORS

[6] Because this was a jury trial, I was not the initial finder of fact. However, as I address the section 745.4 factors and refer to facts, I am mindful of section 724(2) of the *Criminal Code* permitting the court to accept as proven all facts, express or implied, that were essential to the jury's verdict of guilty. That section also permits the court to find any other relevant fact that was disclosed by evidence at the trial to be proven.

A. Nature of the Offence

B. Circumstances Surrounding the Commission of the Offence

[7] I intend to deal with these factors first, and together.

[8] As noted at the outset, Mr. Saunders strangled Ms. Letniak. This fact was admitted. Pathology confirmed Mr. Saunders used his hands (or perhaps arm) and a ligature, eventually cutting off oxygen flow to Ms. Letniak's brain. This was evidenced by, among other things, external and deep internal neck trauma as well as brain injury. The murder took place in Ms. Letniak's home. Ms. Letniak was found lying naked on her side, near the front door. She was a small, slight woman in her late forties. In contrast, Mr. Saunders was a tall, heavy man in his mid twenties.

[9] Mr. Saunders was a stranger to Ms. Letniak, but he had gone to her house to engage in sexual activity for which he agreed to pay. The meeting was initiated by

Mr. Saunders around midnight while at a nearby bar from which he took a taxi to Ms. Letniak's residence, stopping momentarily en route to purchase condoms and cigarettes.

[10] The murder occurred following some sexual activity in the course of which Mr. Saunders experienced a degree of dysfunction. Despite having a recollection of strangling Ms. Letniak, Mr. Saunders testified he had no memory of what led up to the choking. The Crown asks me to find that the specific impetus for Mr. Saunders' rage and the murder of Ms. Letniak was his sexual dysfunction. I am not able to make that finding based on the evidence.

[11] At some point after killing Ms. Letniak, Mr. Saunders attempted to take his own life by cutting his wrist, arm and neck. This attempt was unsuccessful. Mr. Saunders made a second attempt—this time by calling the police, and, upon their entry into Ms. Letniak's house, lunging towards them with a knife, intending to provoke the firing of fatal gunshots. This attempt also was unsuccessful.

[12] Mr. Saunders' principal defence was that, at the relevant time, he was too intoxicated from alcohol and cocaine to form the intent required to prove murder. Clearly, the jury rejected that defence.

C. Character of the Offender

[13] Much of the evidence about Mr. Saunders, "the person", is derived from the pre-sentence report. I note the author of the report comments that Mr. Saunders was not forthcoming during the interview process.

[14] At the time the pre-sentence report was prepared, Mr. Saunders was 28 years old. He has a grade 12 education plus one year of community college. Until his arrest, he was regularly employed. He has no record of prior criminal convictions.

[15] Mr. Saunders is not married and has no children. At the time of the murder, he was not in a romantic relationship and had not been in one for at least seven years.

[16] Mr. Saunders' immediate family consists of his mother, father and half-brother. He was raised by his mother and has a distant relationship with his half-brother. He did not meet his father until about the age of five years, though he described the relationship between him and his father as "positive", at least up to the time of his arrest. He considers himself to have a good relationship with his mother's current husband.

[17] Although finances were "tight", growing up, Mr. Saunders was cared for and provided for. He was not subjected or witness to abuse or violence. He described his childhood as "stable".

[18] Family members interviewed for the pre-sentence report were shocked to learn of the murder of Ms. Letniak. They continue to describe Mr. Saunders as "kind", "a gentle giant" and "non-combative". To them, Mr. Saunders' violent behaviour was out of character.

[19] Mr. Saunders' mother attended residential school as a child. The trauma of the experience caused her to struggle at times when Mr. Saunders was a child and has affected her family's life. Growing up, Mr. Saunders had little connection to his Indigenous culture. Since the age of eighteen years, Mr. Saunders has been a regular user of alcohol and drugs and has never sought treatment therefor.

[20] The pre-sentence report assesses Mr. Saunders as a high risk for reinvolvement in criminal activity.

[21] Mr. Saunders briefly addressed the court at the sentencing hearing. He apologized for his actions, acknowledging words are never enough.

D. The Jury Recommendation

[22] After delivering the verdict, the jurors were asked for their recommendations in respect of the parole ineligibility period. The recommendations ranged from ten to twenty-five years. Seven of them were in the range of fifteen to twenty-five years.

VI. VICTIM IMPACT STATEMENTS

[23] The victim impact statements were read at the sentencing hearing. They reflect Ms. Letniak's importance to others. Ms. Letniak was a much loved child, sibling and friend. The statements underscore that her loss has caused profound mental and physical trauma to those surviving her. The trauma is exacerbated by lingering memories of the manner in which Ms. Letniak was killed and left, for hours, lying naked on the floor of her own home. The trauma is, and will continue to be, felt every day. Mr. Saunders has inflicted permanent damage on the lives of those close to Ms. Letniak.

VII. DECISION

[24] This is a case where the parole ineligibility period should exceed ten years. That said, sixteen years, as suggested by the Crown, is too long. In my opinion, a parole ineligibility period of thirteen years is fit and proper.

[25] My decision was arrived at after balancing the following:

- Aggravating factors:
 - Death by strangulation inflicted using hands and a ligature is particularly brutal.
 - The murder occurred in Ms. Letniak's own home.
 - Ms. Letniak's vulnerability was enhanced due to Mr. Saunders' physical size relative to hers.
 - Ms. Letniak's vulnerability also was heightened as a person apparently engaged in the sex trade. See ***R. v. Douglas***, 2007 ABCA 321 at para. 18; ***R. v. Barton***, 2021 ABQB 603 at para. 84.
 - Ms. Letniak was left, for hours, lying naked on the floor despite Mr. Saunders' having the presence of mind to orchestrate his own situation.
 - There is an absence of any real explanation for the killing.
 - Mr. Saunders was not forthcoming in his answers to the author of the pre-sentence report.
 - Mr. Saunders abused alcohol and drugs for a decade or so prior to the murder and sought no treatment in respect thereto.
 - The pre-sentence report indicates that, as of now, Mr. Saunders is assessed as a high risk for reinvolvement with criminal behaviour.
- Mitigating factors:
 - Mr. Saunders has no record of prior criminal convictions.

- He had a stable and supportive upbringing.
 - He has a positive relationship with his mother, stepfather and cousin.
 - He has a history of regular employment.
 - He expressed remorse at the sentencing hearing.
 - Statements from his mother, stepfather and cousin suggest Mr. Saunders' actions were surprising and out of character.
- Despite Mr. Saunders' stable and supportive upbringing, his family was not immune from the intergenerational effects of colonization and residential schools.
 - The recommendations of the jurors (as described in paragraph 22 hereof)
 - The victim impact statements (as described in paragraph 23 hereof)
 - The need to protect society and maintain confidence in our justice system
 - The purpose and principles of sentencing prescribed in sections 718 to 718.2 of the ***Criminal Code***, mindful that in cases such as this one, denunciation and deterrence must be front and centre.
 - Mr. Saunders committed one of the most serious of crimes, and the mitigating factors in his case do not go so far that they offset the high degree of moral culpability he must bear.

[26] In addition to these points, I considered the cases referenced in paragraph 4 hereof as well as ***R. v. Allen***, 2018 MBQB 105, ***R. v. Cassan (E.R.)***, 2012 MBCA 46, ***R. v. Monkman, Tavares and Ponce***, 2010 MBQB 72, ***R. v. Schuff***, 2021 MBCA 54, and ***R. v. Watt***, 2022 MBQB 21. While this case ultimately turns on its own facts, I am

satisfied my finding in respect of the parole ineligibility period is in line with those decisions.

VIII. CONCLUSION

[27] The parole ineligibility period applicable to Mr. Saunders' mandatory sentence of life imprisonment will be thirteen years.

_____J.