

Court of King's Bench of Alberta

Citation: *R v Leeming*, 2022 ABKB 742

Date: 20221110
Docket: 190565747Q1
Registry: Calgary

Between:

His Majesty the King

Crown

- and -

Robert Andrew Leeming

Accused

**Sentencing Reasons
of the
Honourable Mr. Justice K.D. Yamauchi**

I. Introduction

[1] This matter comes before this Court to sentence Robert Andrew Leeming. Mr. Leeming pleaded guilty to the second degree murder of Jasmine Lovett. This Court found Mr. Leeming guilty of the second degree murder of Ms. Lovett's daughter, Aliyah Sanderson ("Aliyah"), after a trial. This Court's decision is reported as *R v Leeming*, 2022 ABQB 56 (the "Conviction Decision").

II. Summary of Facts

[2] Detailed background facts which led to this Court finding Mr. Leeming guilty of Aliyah's second degree murder are contained in the Conviction Decision. This Court sees no purpose in repeating that background and will only provide a summary which will put this sentencing decision into a context.

[3] Jasmine was 25 years old when Mr. Leeming murdered her. Aliyah was 22 months old. Mr. Leeming and Ms. Lovett met through an on-line dating service in September 2018, and they

soon began an intimate relationship. At the time of their deaths, Ms. Lovett and Aliyah lived with Mr. Leeming in his townhouse/row housing residence (the "Residence").

[4] Mr. Leeming and Ms. Lovett, at the time of Ms. Lovett's death, had differing views of their relationship. Ms. Lovett considered Mr. Leeming to be her boyfriend. They were intimate with each other. In December of 2018, Ms. Lovett became pregnant with Mr. Leeming's child. She terminated that pregnancy. It is unclear how Mr. Leeming viewed their relationship, except to say that, while he was living with Ms. Lovett and Aliyah, he began, and was in the middle of another romantic and intimate relationship with another person, KJ, from sometime in February of 2019, through to at least the time he murdered Ms. Lovett and Aliyah.

[5] Mr. Leeming murdered Ms. Lovett on April 16, 2019. The murder was violent. Mr. Leeming testified that he and Ms. Lovett were embroiled in an argument while in the kitchen of the Residence. When Ms. Lovett turned to walk away from Mr. Leeming, he grabbed a hammer and struck Ms. Lovett on the head three times with such force that they could have caused her death: Conviction Decision at para 159. She fell to the floor. As she was lying on the floor, Mr. Leeming went to the garage, and grabbed a .22 calibre rifle. He shot her in the head at such an angle that it went through her brain and imbedded itself in her brain stem. She died instantly.

[6] This Court found that Mr. Leeming also murdered Aliyah. There was some discussion during sentencing submissions that this Court was equivocal as to *when* Mr. Leeming murdered Aliyah. This Court acknowledges that it said it did not "have to determine when Aliyah sustained her injuries": Conviction Decision at para 293. It made this comment in the context of it not having to find definitively how or when Aliyah sustained her injuries. However, for the reasons articulated in the Conviction Decision, and in particular Conviction Decision at para 296, this Court found that "Mr. Leeming committed the unlawful act that caused Aliyah's death sometime after he murdered [Ms. Lovett]." Beyond that finding, this Court still does not know *exactly* when Mr. Leeming murdered Aliyah. See Conviction Decision at para 300. It could have been immediately after he murdered Ms. Lovett, or the next morning, or even when he was in Kananaskis disposing of Ms. Lovett's body. This Court simply does not know. It was convinced beyond a reasonable doubt, however, that Mr. Leeming did commit Aliyah's murder, and he committed that murder after he murdered Ms. Lovett.

[7] Mr. Leeming then took the bodies of Ms. Lovett and Aliyah to the Kananaskis area where he placed them in a thicket, doused them with gasoline, and placed boughs over their bodies. After returning to Calgary, he cleaned his vehicle, disposed of many of their personal belongings, ordered food using Ms. Lovett's cash card, and told the police and media that he knew nothing about their disappearance. Again, the Conviction Decision provides much more detailed reasons.

III. Discussion

[8] Because Mr. Leeming pleaded guilty to the second degree murder of Ms. Lovett, and this Court found him guilty of the second degree murder of Aliyah, this Court is required to sentence him to imprisonment for life: *Criminal Code* s 235(1). That is the minimum punishment: *Criminal Code* s 235(2).

[9] Mr. Leeming is an adult. As a result, he is not eligible for parole until he has served at least ten years of his sentence "or such greater number of years, not being more than twenty-five

years," taking into consideration the factors outlined in *Criminal Code s 745.4: Criminal Code s 745(c)*. *Criminal Code s 745.4* provides, in part:

745.4 ... at the time of the sentencing under section 745 of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender ... 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.

[10] These reasons address the period during which Mr. Leeming will remain imprisoned before he can apply for parole.

[11] This Court is sentencing Mr. Leeming for two murders. Until May 27, 2022, this Court could consider whether it would sentence Mr. Leeming to consecutive periods during which he would be ineligible to apply for parole. This Court may no longer consider consecutive periods because of the Supreme Court of Canada's decision in *R v Bissonnette*, 2022 SCC 23, 414 CCC (3d) 1, 80 CR (7th) 127.

[12] The court in *Bissonnette* provides important observations that everyone must bear in mind concerning the parole process. It says:

There is no guarantee that offenders will be granted parole when their ineligibility period expires ... Offenders must prove to the Board that they no longer represent a danger to society and that it is therefore no longer necessary to keep them in custody ... Parole is a statutory privilege and not a right ...

Bissonnette at para 41 [citations excluded].

[13] What this means is that at the end of the period during which this Court finds Mr. Leeming is prevented from seeking parole, he must convince the Parole Board of Canada that he no longer poses a risk to society. If the Parole Board so finds, it will impose conditions of release that will best facilitate his rehabilitation and his reintegration into the community as a law-abiding citizen. But release is not guaranteed.

[14] The court in *Bissonnette* repeats many of the sentencing principles that the Alberta Court of Appeal outlined in *R v Arcand*, 2010 ABCA 363, 499 AR 1. This Court will summarize those principles, with specific reference to *Bissonnette*:

- Denunciation: requires that a sentence express society's condemnation of the offence that was committed. The sentence is the means by which society communicates its moral values. Denunciation must be weighed carefully, as it could, on its own, be used to justify sentences of unlimited severity: *Bissonnette* at para 46.
- Deterrence: specific deterrence, is meant to discourage the offender before the court from reoffending. General deterrence is intended to discourage members of the public who might be tempted to engage in the criminal activity for which the offender has been convicted: *Bissonnette* at para 47.
- Rehabilitation: this Court has discussed this objective, above.

[15] The court then goes on to provide the "cardinal principle" of sentencing:

But sentencing must in all circumstances be guided by the cardinal principle of proportionality. The sentence must be severe enough to denounce the offence but must not exceed "what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence" (*R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206, at para. 42; see also *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, at para. 37). Proportionality in sentencing is considered to be an essential factor in maintaining public confidence in the fairness and rationality of the criminal justice system. The application of this principle assures the public that the offender deserves the punishment received ...

Bissonnette at para 50. See also *Criminal Code* s 718.1.

[16] *Criminal Code* s 718.2 provides:

718.2. A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, ...

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

...

[17] In *Arcand*, the Alberta Court of Appeal describes "gravity of the offence" as follows:

What is meant by "gravity of the offence"? This concept is directed to what the offender did wrong. It includes two components: (1) the harm or likely harm to the victim; and (2) the harm or likely harm to society and its values. What influences that analysis apart from the degree of injuriousness inherent in the crime itself? The answer lies in s. 718.2. Before exploring that section, though, we turn to the other half of the proportionality principle, the degree of responsibility of the offender, because it too leads to s. 718.2.

Arcand at para 57.

[18] It describes "moral blameworthiness" as follows:

... The severity of sanction for a crime should reflect the overall degree of moral blameworthiness, that is the seriousness, of the criminal conduct. And that is properly measured by two things: the gravity of the offence and the offender's degree of responsibility.

Arcand at para 48.

[19] This Court is mindful of the fact that the length of parole ineligibility is part of the punishment that this Court must impose on Mr. Leeming, as it "forms an important element of sentencing policy," namely denunciation and deterrence: *R v Shropshire*, 1995 SCC 47, [1995] 4 SCR 227 at 240; *Bissonnette* at para 58. It is also mindful of the fact that "denunciation and

deterrence are already attained by imposing the harshest minimum sentence provided for in the *Criminal Code*: imprisonment for life": *Bissonnette* at para 89.

[20] In *Shropshire*, Justice Iacobucci for the court said that extending the period of parole ineligibility from 10 years does not require "unusual circumstances." He went on to say, "the power to extend the period of parole ineligibility need not be sparingly used": *Shropshire* at paras 26 and 31. In the case at bar, Mr. Leeming is not arguing for a 10-year parole ineligibility but is arguing for a 20-year period. To that extent, he recognizes and concedes the seriousness of the offences he has committed and his high degree of moral culpability.

[21] In *R v M (CA)*, 1996 SCC 230, [1996] 1 SCR 500 at para 92, Chief Justice Lamer for the court said:

... [T]here is no such thing as a uniform sentence for a particular crime. ... Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be fruitless exercise of academic abstraction.

[22] In other words, the sentence that a court imposes on an offender is specific to the offender and the offence. Thus, although this Court will refer to cases that the parties presented to it for comparison purposes, sentencing is a very fact-specific exercise. *Criminal Code* s 745.4, to which this Court referred earlier, requires this Court to consider the following:

- (1) the character of the offender,
- (2) the nature of the offence, and
- (3) the circumstances surrounding the commission of the offence.

These are fact-specific factors.

[23] In *R v Kianipour*, 2003 BCCA 703, 181 CCC (3d) 391, the offender fatally stabbed his wife five times, then drove to his wife's house and stabbed to death his wife's mother and father, the latter of whom he stabbed in the presence of his 12-year-old son. Lambert JA for the British Columbia Court of Appeal dismissed the appeal of the sentencing judge's decision, in which he sentenced the offender to life imprisonment on each count without eligibility for parole for 20 years. Aggravating factors that are present in the case at bar are the killing of an intimate partner and the "callous, sober and cowardly killing of innocent and defenceless victims": *Kianipour* at para 8. Although in the case at bar, Ms. Lovett was an innocent and defenceless victim, this aggravating factor is especially present in the case of the killing of Aliyah. Justice Lambert also referred to the sentencing judge's decision when he said:

While the killings were not planned and deliberate, they reveal a cold determination and ... a significant opportunity to reflect before acting. On a scale from manslaughter to first degree murder, this was much closer to first degree murder.

[24] As mentioned earlier in these reasons, this Court does not know exactly when Mr. Leeming killed Aliyah. Whether it was immediately after he murdered Ms. Lovett or a lengthier time after, Mr. Leeming had an opportunity to reflect before acting.

[25] As for mitigating factors, the offender in *Kianipour* turned himself in, pleaded guilty and showed remorse. Mr. Leeming did none of these.

[26] *R v Rushton*, 2016 NSSC 313, has some similarities to the case at bar. In that case, the offender murdered his common law spouse and her daughter. While his common law spouse was out of the home, the offender fatally struck the sleeping child with a baseball bat. When his common law wife returned home, he struck her on the head with a hammer, wrote a note, retrieved a knife, and slit her throat. He then tried to take his own life. The Crown charged him with first degree murder, but he pleaded guilty to two counts of second degree murder. The Crown sought a parole ineligibility period of 15 to 20 years, and the offender sought a period of 13 years.

[27] Justice Wood noted that there was little evidence to explain why the offender killed his victims, the offender could have stopped at any time. He noted that the killings involved a significant breach of trust and the attack on his common law spouse was "domestic abuse in the extreme": *Rushton* at paras 34-37. Although the offender pleaded guilty, he did not do so at the earliest opportunity and there was little evidence of serious remorse: *Rushton* at paras 22 and 41.

[28] Given what was sought by the Crown and defence, Justice Wood held that the offender's parole eligibility would be 18 years. He did note that in the case of *R v Johnson*, 2001 NSSC 119, 196 NSR (2d) 267, 613 APR 267 in which the offender killed his romantic partner and her child, parole ineligibility was found to be 21 years. It is to that case that this Court now turns.

[29] In *Johnson*, the offender fatally strangled his ex-girlfriend and smothered their two-year old daughter to death. The offender was convicted by a jury. Like Mr. Leeming in the case at bar, Justice Wright noted, "No one except Mr. Johnson knows exactly what happened ...": *Johnson* at para 12. As well, he noted, "The senseless killing of an innocent and defenceless infant is a particularly aggravating factor for the court to take into account": *ibid*. Justice Wright made the following comments:

...The highest increase in the minimum period for parole ineligibility among them is twenty-two years, a sentence imposed by the Ontario Court of Appeal in *R. v. Sarao*, [1995] O.J. No. 1027 (Ont. C.A.). That was a case in which the accused pled guilty to three counts of second degree murder (his wife and in-laws) which involved considerable planning and deliberation. The Ontario Court of Appeal noted in that case that the imposition of the maximum twenty-five year period of parole ineligibility on a charge of second degree murder, as sought by the Crown in the case at bar, is without precedent in Canadian jurisprudence. The court ruled that the maximum ineligibility period for parole of twenty-five years upon a conviction for second degree murder is reserved for the worst offence and the worst offender. The offender in that case fell short of that notorious distinction and life imprisonment without eligibility for parole for twenty-two years was deemed to be a proper and fit sentence.

Johnson at para 17.

[30] Justice Wright also referred to the case of *R v Mitchell* (1987), 203 APR 57, 39 CCC (3d) 141 (NSCA), in which the offender was convicted of sexually abusing and torturing a two-year old child to death. His parole ineligibility period was set at 21 years. The sentencing judge said that the circumstances of that case was "one of the worst he had experienced in his long period on the bench": *Mitchell* at 170 (cited to CCC).

[31] In *R v Elliott*, 2014 BCSC1435, the offender pleaded guilty to two murders; one involving a street worker whom he had hired, and another was a stranger he had hit with his truck. He beat the street worker with a baseball bat and burned her alive. He also beat the stranger with a heavy stick then strangled her with her own brassiere. In both cases, he removed parts of their bodies so that they could not be identified. The court set the offender's parole ineligibility at 20 years. Like the case at bar, Justice Bracken found that the murders were brutal, senseless and callous. Unlike the case at bar, the offender pleaded guilty to both murders (of course, in the case at bar, Mr. Leeming pleaded guilty to Ms. Lovett's murder), he expressed remorse, and, as an Indigenous person, he had *Gladue* factors.

[32] In *R v Berry*, 2019 BCSC 2362, the offender was convicted of second degree murder by a jury in the deaths of his two daughters, age six years and four years. One was struck on the head and stabbed 26 times and the other was stabbed 32 times. He then tried to stab himself. Justice Gropper found that his motivation for killing his daughters was his animosity towards his common law spouse, the children's mother, and to keep her from having her daughters after he was dead. The jury rejected his evidence that someone else had attacked him and killed his daughters. The Crown sought a parole ineligibility period of 21 to 24 years, and the defence sought a period of between 15 and 20 years. Justice Gropper ordered a parole ineligibility period of 22 years. The aggravating factors were that the children were of tender years and the offender abused his position of trust. As well, because the children were murdered in separate bedrooms, this demonstrated "some forethought and deliberate action" *Berry* at para 56. This, to Justice Gropper's mind, showed "conduct demonstrating the highest order of moral culpability": *Berry* at para 70.

[33] A similar situation occurred in *R v Turcotte*, 2018 QCCA 1076, in which the offender murdered his two young children in the midst of marital discord. In that case, the Crown sought a parole ineligibility period of 20 years, while the defence sought a period of 10 to 15 years. The offender was convicted of two counts of second degree murder. He claimed that he was not criminally responsible because of a mental disorder. Like *Berry*, the offender felt deep animosity towards his wife. He murdered his children to make her angry. A nurse in the emergency room who knew the offender, who was a physician, testified that he said to her:

Il m'a dit qu'il voulait la faire chier. Il m'a dit la seule façon qu'il avait trouvé de la . . . excusez les . . . le terme, je reprends les paroles, la seule façon qu'il voulait la faire chier c'est de lui enlever ce qu'elle avait de plus précieux au monde et c'était ses enfants.

...

Il m'a dit : "J'aimerais que tu dises un message à Isabelle pour moi, dis-lui que j'ai fait ça pour la faire chier."

Turcotte at paras 51-52.

[34] He expressed remorse at the end of the sentencing hearing. A forensic report indicated that the offender posed a minimal risk to society, and he had no prior convictions. Accordingly, the sentencing justice found that what the Crown was seeking was too high. The sentencing judge also found that the defence request did not respect the principle of proportionality. In the end, the Quebec Court of Appeal upheld the sentencing judge's 17-year parole ineligibility period.

[35] *R v Koopmans*, 2015 BCSC 2120, involved an offender who had shot three people. A jury found him guilty of the murder of two of them and attempted murder of the other. Like many cases Mr. Leeming has provided to this Court, in *Koopmans* the court was considering whether to give concurrent or consecutive periods of parole ineligibility. Because of this, these cases are of limited use to this Court. Furthermore, Justice Maisonville discussed the effect of a jury's recommendation on this issue, which is not relevant to the case at bar. In the end, Justice Maisonville, held that the offender would serve concurrent periods of 22 years before being eligible to apply for parole. The 22-year parole ineligibility "accounts for the important aggravating factors of the multiple murders committed in the victim's home" and they were "committed in the senseless and brutal fashion": *Koopmans* at para 106.

[36] *R v Sharpe*, 2017 MBQB 6, involved a case in which the offender murdered his domestic partner and her male friend. A jury convicted him of two counts of second degree murder. The Crown was seeking consecutive terms of 20 years and 15 years, reduced to 30 years to account for the totality principle before the offender could apply for parole. The offender was seeking a 10-year concurrent period. Justice Keyser outlined the aggravating factors when she said:

... Crimes committed against a domestic partner are now statutorily considered to be an aggravating factor when determining an appropriate sentence.

... Sharpe killed two people, including his former domestic partner. The injuries inflicted on them were brutal and extensive. There was some evidence of forethought to his actions and after the killings he tried to stage the scene to make it appear that he had been provoked.

Sharpe at paras 16-17.

[37] She also took note of the mitigating factors, being no documented prior incidents of domestic abuse, no prior criminal record, and the offender turned himself in and confessed. As a result, she held that the offender would not be allowed to apply for parole until he had served 22 years of his life sentence.

[38] In *R v Salehi*, 2019 BCSC 698, the offender pleaded guilty to two counts of second degree murder in connection with the deaths of his former girlfriend and her romantic partner. He stabbed both to death in his former girlfriend's home. He then tried to conceal what he had done. The Crown sought a period of parole ineligibility of 21 years, and the defence sought a 12-year period. Justice Devlin found the nature of the wounds to be aggravating, along with the fact that the offender entered his former girlfriend's home uninvited and attacked them while they were sleeping. She found that the offender's desire for revenge was an aggravating factor. She went on to say:

... the killing of more than one person reflects a higher degree of moral blameworthiness. I clarify that it is not simply a count of the number of persons Mr. Salehi killed, it is the context, the motivation, the brutality and the attempts to disassociate himself from his crimes that makes these multiple homicides deserving of significant condemnation.

Salehi at para 47.

[39] She also found as mitigating the fact that the offender had pleaded guilty and expressed remorse. He also had no criminal record and his prospects for rehabilitation were good: *Salehi* at paras 48-49. She held that he would serve a period of 20 years before he could apply for parole.

[40] In *R v Kionke*, 2018 MBQB 71, the Crown was seeking a parole ineligibility period of 25 years and the defence was seeking a period of 15 years. In that case, the offender stabbed to death two individuals in their home because of an apparent disturbance going on in their suite. The stab wounds were numerous. After the murders the offender engaged in post-offence conduct to point blame away from him. At the sentencing hearing, he asked the victims' families for forgiveness. Justice Keyser found as appropriate a period of parole ineligibility of 20 years.

[41] *R v McKinnon*, 2019 ONSC 3436 was a case in which the offender pulled a gun and shot a number of victims, two of which died. He was convicted of two counts of second degree murder. The court held that the offender would not be eligible for parole for 22 years. The circumstances of the offences and those of the offender in that case are so different from the case at bar, that this case is not helpful to this Court.

[42] *R v Machell*, 2003 BCCA 688, involved a situation in which the offender was charged with first degree murder in relation to the murder of his wife and mother-in-law. He pleaded guilty to the second degree murder of each, and there was a joint submission for parole ineligibility to be set at 20 years. This distinguishes that case from the case at bar. As well, the court found that there was considerable planning and forethought, which distinguishes that case from the case at bar.

[43] As well, the case of *R v Bains*, 2015 BCSC 2145, involved a case in which the offender pleaded guilty to one count of manslaughter and two counts of second degree murder. Justice Maisonville sentenced the offender to 10 years for the manslaughter count and life imprisonment with no chance of parole on each of the second degree murder counts of 18 years to be served concurrently. These sentences were the result of a joint submission, which distinguishes that case from the case at bar.

[44] The case of *R v McLeod*, 2018 MBQB 73, is also distinguishable, as the offender was an Indigenous individual, who had been drinking heavily just before the incident that resulted in his killing two individuals. In that case, the offender armed himself with a knife and "jumped" the victim. There were *Gladue* factors of which Justice Martin took account. Justice Martin held that the offender could not apply for parole until the passage of 19 years.

[45] It might be worthwhile to look at some of the cases in which the maximum period of parole eligibility was found to be appropriate. In *R v Klatt*, 1995 ABCA 156, 165 AR 388, the Alberta Court of Appeal upheld the 25-year parole ineligibility period that Justice Sulatycky applied. The Alberta Court of Appeal recognized that "A 25-year parole ineligibility period is an extraordinary direction in second degree murder cases": *Klatt* at para 2. In that case, the offender stabbed a homeowner to death when the homeowner discovered the offender in his home. In addition to the "stark horror" of the crime, the offender had a lengthy criminal record. What appeared to elevate the parole ineligibility was the "character of the offender." He denied involvement in the victim's death and during the trial, he tried to intimidate witnesses to testify falsely.

[46] In *R v Olsen* (1999), 131 CCC (3d) 355, 22 CR (5th) 80 (Ont CA), the offender violently shook the six-month old victim over a period of time, which resulted in broken bones that lead to her death by pneumonia. The offender was on parole for a similar incident that left another child permanently disabled. Laskin JA for the court upheld the sentencing judge's imposition of the maximum period of parole ineligibility. In so finding, Justice Laskin found that the nature of the offence "falls within the worst group of offences and [the offender] falls within the worst group

of offenders": *Olsen* at para 50. He found that the child was repeatedly and brutally abused over a period of time. It was not a single, spontaneous act of violence. The child ultimately suffered a slow and painful death. It was an offence of "extraordinary cruelty and inhumanity": *Olsen* at para 51.

[47] As for the character of the offender, Justice Laskin took note of the brutality to which the offender subjected another child. As well, he was on parole at the time he murdered the six-month old. He showed no remorse and his "prospects for rehabilitation are poor to non-existent": *Olsen* at paras 53-54.

[48] In *R v Ulayuk*, 2006 NWTSC 10, the offender was on parole from a sentence of life imprisonment for murder. The victim was his parole officer. She prearranged a meeting with the offender at his apartment. While she was seated on the couch, the offender approached her from behind and struck her on the head with a hammer five times. He then strangled her to death with some twine. Thereafter, he removed her clothing and had sexual intercourse with her. Chief Justice Richard described this murder as "brutal and vile." The circumstances surrounding the parole officer's death were similar to offender's first murder. The offender pleaded guilty to second degree murder in relation to the parole officer's murder. The 25-year parole ineligibility period was the result of a joint submission.

[49] In *R v Douglas*, 2006 ABQB 620, aff'd 2007 ABCA 321, 417 AR 236, the offender savagely beat the female victim to death, and left her body near an abandoned building. She was attacked in more than one location. Watson J, as he then was, described the "character" of the offender as having no mitigating factor arising out of his mental state, and that he was essentially a career criminal. Justice Watson said, "You have spent a fair amount of time in prison, but you have spent a fair amount of time in prison for things that you deserve to spend a fair amount of time in prison for": *Douglas* at para 61. He found the offender to be a dangerous person and society needed to be protected from him. He had no prospects of rehabilitation. The Crown sought a period of parole ineligibility of 20 years. Justice Watson elevate that to 25 years, which the Alberta Court of Appeal upheld. Justice Watson concluded by saying, "That is the maximum sentence which is allowed by law, and you deserve it" *Douglas* at para 68.

[50] Although Mr. Leeming pleaded guilty to Ms. Lovett's death, in the Conviction Decision, this Court described in detail the nature of the offence as it related to her death. As well, based on the forensic evidence and the other circumstantial evidence, this Court described the nature of the offence and circumstances surrounding its commission in relation to Aliyah's death. Suffice it to say that Mr. Leeming ruthlessly attacked Ms. Lovett from behind and viciously struck her on the head with a hammer. Although he tried to make it sound as though he wanted to put her out of her misery quickly, the fact is he went to his garage, retrieved a gun, pointed it at her head and pulled the trigger to make sure she was dead.

[51] As for Aliyah's death, she suffered blunt force trauma to three specific areas of her head: the left side of her face and neck, the right side of her head, and the back of her head. This force caused bleeding to the surface of the brain and caused bleeding to the soft tissue between the scalp and skull. These injuries were fatal. This Court found, beyond a reasonable doubt, that Mr. Leeming assaulted Aliyah, he intended to commit the assault, and that his assault caused her death.

[52] No one asked this Court to obtain a pre-sentence report, so it knows little about Mr. Leeming, other from his evidence and what his counsel advised this Court during his sentencing

submissions. Mr. Leeming was born on December 17, 1984, so on the date he committed the murders, he was 34 years old. On the date of the sentencing, he is 37 years old. He was born in Berlin when his father, who is in the British military, was stationed in Germany. His parents are English. Mr. Leeming was raised primarily in England. He has two educated siblings. One resides in the Netherlands, the other lives in Geneva, Switzerland.

[53] Mr. Leeming left England in March of 2013. He arrived in Toronto, stayed in Toronto for about six weeks then arrived in Calgary. He has lived in Calgary since that time. He is a heavy-duty mechanic and has worked in that field since arriving in Calgary.

[54] He met a Canadian woman while he was still in England. They married in 2013. She wanted to return to Canada, which the reason Mr. Leeming ended up here. They have one child, who was three years old on the date Mr. Leeming murdered Ms. Lovett and Aliyah and is now seven years old. Mr. Leeming parted ways with his spouse in 2018 and divorced in 2020.

[55] Mr. Leeming has no criminal record. Mr. Leeming did plead guilty to three offences under the *Animal Protection Act*, RSA 2000, c A-41. Although cruelty to animals might lead to an inference that Mr. Leeming has no respect for life of any kind, this Court chooses not to make that inference. The Crown provided this information to this Court to show that, although he pleaded guilty to those charges, he downplayed the offence itself and the reason why he committed it. Mr. Leeming had tethered a dog to a tree on an abandoned acreage, with no food or water, about 200 metres from the roadway. The owner of the acreage happened upon the dog and called bylaw enforcement. A chip in the dog's ear traced the dog to Mr. Leeming and his then wife. When the court asked Mr. Leeming how he thought that tethering a dog to a tree was a humane decision, Mr. Leeming responded by saying:

He would have chewed, like, should have chewed through it. He chewed through everything else, He ate half the house.

Transcript of Proceedings, August 15, 2018, p 5, ll 16-17.

[56] The court, in that case, found Mr. Leeming's response to be "ridiculous": Transcript of Proceedings, August 15, 2018, p 5, l 23.

[57] In the case at bar, Mr. Leeming pleaded guilty to murdering Ms. Lovett. The Crown argues that, like his treatment of his dog, he downplayed his murder of Ms. Lovett, so this Court should give little weight to his guilty plea. The following exchange took place during the Crown's counsel's cross-examination of Mr. Leeming:

Q What, in fact, happened that day is that you murdered Jasmine Lovett, didn't you?

A Yes.

Q That took a while too. You know what I mean by "murder"; correct?

A Right.

Q You intentionally killed Jasmine.

A Not in -- yes.

Q Sorry, what? You said "not" and then "yes"?

A I said "yes."

Q Because, of course --

A It was not intentional in the way that you're saying it is. It was --

Q Okay.

A -- a reactionary thing --

Q I see.

A -- that had --

Q So you are saying you struck -- well, your evidence is that you struck Jasmine Lovett twice with a hammer; correct?

A Right.

Transcript of Proceedings, October 27, 2021 (Afternoon Session), p 17, ll 39-40, p 18, ll 1-21.

[58] A guilty plea is a mitigating factor. The Crown argues that this exchange shows that even after it had led its entire case, and Mr. Leeming's counsel had examined Mr. Leeming in chief, he still tried to minimize his own culpability in Ms. Lovett's murder by suggesting it was a "...reactionary thing..." Accordingly, even though he pleaded guilty, that plea does not have the same mitigating force as it might have had, had Mr. Leeming unequivocally taken full responsibility for her death. Despite this, a guilty plea is still a mitigating factor, as the Crown did not have to prove Mr. Leeming's guilt beyond a reasonable doubt and, to some degree, he took responsibility for Ms. Lovett's murder.

[59] To this point in these reasons, this Court has discussed Mr. Leeming's background. In *R v Ryan*, 2015 ABCA 286, 329 CCC (3d) 285, 607 AR 47, Wakeling JA differentiated between a person's "background" and their "character," although he said that "background information is helpful when considering the offender's 'character'": *Ryan* at para 106. Justice Wakeling goes on to say:

Webster's presents this definition of character: "the complex of accustomed mental and moral characteristics and habitual ethical traits marking a person". Oxford provides a similar definition: "The sum of the moral and mental qualities which distinguish an individual ...; the individuality impressed by nature and habit on man ...; mental or moral constitution". In the context of a s. 745.4 analysis, "the character of the accused" directs a sentencing court to assess the choices an offender has made in his or her life and the impact they have made on his or her law abidingness. For this reason a person's criminal record is an important consideration. Reference to the past allows a court to make an informed assessment about whether the offender will choose to comply with the law in the future.

...

... A guilty plea is evidence that an offender recognizes that his unlawful acts adversely affect others, including the victim and participants in the administration of justice.

Ryan at paras 107-08.

[60] As mentioned, Mr. Leeming does not have a criminal record, although he does have a conviction under the *Animal Protection Act*. Does this mean that this Court must consider Mr. Leeming as having an unblemished character? Such a conclusion would be preposterous in the view that he pleaded guilty to murdering Ms. Lovett in a particularly vicious and cowardly way, and he made sure she was dead by shooting her in the head. He then cleaned up the mess that he had created, he planned how he would dispose of her body, he drove around for a couple of days with her corpse in his vehicle, he took her to the forest and doused her body with gasoline before covering it with tree boughs and other debris, and then he left Ms. Lovett's body there. Oh yes, he also murdered Ms. Lovett's toddler daughter and disposed of her body in the same way. Then he denied murdering them to the police and the press, and then he went on with his normal life sharing a fire and bed with his new girlfriend and using Ms. Lovett's bank card to order food.

[61] We must remember that this Court's consideration of Mr. Leeming's character is not intended to decide whether he will be granted parole. It is intended to assist this Court in deciding the time he must serve his carceral sentence before he is eligible to apply for parole.

[62] *Criminal Code* s 745.4 then says that this Court may consider the "nature of the offence." In *R v Wenarchuk*, [1982] 3 WWR 643, 15 Sask R 240 at para 17 (Sask CA), Chief Justice Bayda said:

... I am not entirely sure of the significance of considering the nature (as distinct from the circumstances) of the offence. The nature of every offence of second degree murder is a killing of a human being, and that nature does not vary from one offence to the next. In short, a killing is a killing. What distinguishes one second degree murder from another and categorizes the offences according to degrees of seriousness are the circumstances of each offence.

[63] In *R v H (RA)*, 2011 ABCA 91, 44 Alta LR (5th) 275 at para 31, 505 AR 17. Watson JA said:

... since the basic "nature of the offence" under s. 745.4 of the *Code* is always murder, Parliament must have recognized and intended that the nature and gravity to be addressed as to parole eligibility under s. 745.4 of the *Code* would sometimes involve such aggravating circumstances. ... [T]he differential between forms of murder is grounded in moral culpability.

[64] This takes us back to a consideration of the moral blameworthiness and gravity of the offence itself, which this Court has described in the immediately preceding paragraphs.

[65] The other matter that *Criminal Code* s 745.4 says this Court may consider is the "circumstances surrounding" the commission of the offence. Although this might entail a repetition of what this Court has already described, Justice Wakeling in *Ryan* broadens the scope of this consideration by saying that this criterion "allows a court to consider the reasons why the offender committed the crime, the offender's relationship to the victim, the amount of deliberation which preceded the crime and other factors which may account for the commission of the crime": *Ryan* at para 113 [citations excluded]. In the case at bar, this Court has no idea why Mr. Leeming killed Ms. Lovett, or the amount of deliberation which preceded her murder. He suggests that it was a "reactionary thing," but what prompted a reaction to take another person's life? The fact that he provides neither this Court nor Ms. Lovett's family with any cogent explanation for his horrific deed increases his moral culpability. This Court will discuss the

"surrounding circumstances" as they relate to Aliyah's death later in these reasons when it considers the aggravating circumstances.

[66] The gravity Ms. Lovett's murder and Aliyah's murder is very high. The harm to both is obvious. He caused both of their deaths. The harm or likely harm to Canadian society and its values is also very high. Canadian society does not tolerate Mr. Leeming's taking of two lives, especially the life of an innocent toddler.

[67] In *Arcand*, Chief Justice Fraser said that for this Court properly to assess the gravity of the offence and Mr. Leeming's moral blameworthiness, it must turn to *Criminal Code* s 718.2, to which this Court now turns.

[68] It might be worthwhile to start with a discussion of *Criminal Code* s 718.2(b), as the attempted comparison of cases and circumstances point to mitigating and aggravating circumstances that apply to the case at bar, that this Court will discuss in a moment.

[69] In *Koopmans*, the court found the multiple, execution-style killings that were committed in the victim's home to be aggravating.

[70] In *Sharpe*, *Salehi*, *Kianipour*, *Rushton*, and *Johnson*, the offender murdered a domestic partner, which the court found to be an aggravating factor. In *Sharpe*, the offender turned himself in and confessed, and in *Kianipour* and *Salehi*, the offenders pleaded guilty and expressed remorse for their actions. Mr. Leeming pleaded guilty to Ms. Lovett's murder but did not plead guilty to Aliyah's. He has expressed no remorse.

[71] In *Sharpe*, the court found that there was some evidence of forethought, and in *Kianipour*, although the court found that there was no planning and deliberation, there was a significant opportunity to reflect before acting. In the case at bar, there was no evidence that Mr. Leeming planned Ms. Lovett's murder, but there was opportunity to consider Aliyah's murder before he committed it.

[72] The periods of ineligibility in *Sharpe* was held to be 22 years, in *Kianipour* it was 20 years, and in *Salhi* it was 20 years.

[73] In *Rushton* and *Johnson*, the offender murdered his domestic partner and her child. In *Johnson*, the court found that the killing of the 2-year-old child was an aggravating factor. As well, the offender provided no explanation for his actions. The same factors apply to the case at bar. In *Johnson*, the court held that the offender could not seek parole until the expiry of 21 years. In *Rushton*, the court found that the killing of the offender's common law spouse was the ultimate form of domestic abuse, and the killing of her child was a breach of trust. The offender pleaded guilty. The Crown was asking for a 15-to-20-year period of parole ineligibility and the offender was asking for 15 years. The court directed that the offender would not be eligible for parole until the expiry of 18 years.

[74] *Berry* and *Turcotte* were cases in which both offenders murdered his respective two young children. In *Turcotte* he claimed that he had a mental disorder, and in *Berry*, he tried to blame another person for his daughters' murders. All the murdered children were of tender years, and the offender was in a position of trust. In *Berry*, the court found that there was some forethought or deliberation. In *Turcotte*, the offender expressed remorse and a forensic analysis showed that he posed a minimal risk of reoffending. In *Berry*, the Crown was seeking a period of parole ineligibility of 21 to 24 years and the offender was seeking a period of between 15 and 20 years. The court held that the offender must serve 22 years before he would be eligible to apply

for parole. In *Turcotte*, the Crown was seeking 20 years of parole ineligibility and the offender was seeking between ten and 15 years. The Court held that the offender must serve 17 years before he could seek parole.

[75] A summary of the aggravating factors and mitigating factors in the case at bar are as follows. Mr. Leeming murdered Ms. Lovett, who was his domestic partner. Ms. Lovett was murdered in the residence in which she lived with Mr. Leeming. This Court does not know where Mr. Leeming murdered Aliyah, but Aliyah was of tender years, and Mr. Leeming was in a position of trust towards Aliyah. Aliyah was a helpless toddler. Although Mr. Leeming testified that his murder of Ms. Lovett was reactionary, his going to the garage to fetch a rifle required some forethought before he shot Ms. Lovett in the head in an execution fashion. As for Aliyah, whether he killed her immediately after he murdered Ms. Lovett, or sometime thereafter, required forethought and deliberation. He had time to consider his actions against Aliyah.

[76] Mr. Leeming pleaded guilty to Ms. Lovett's murder, which shows some remorse, and is mitigating. He expressed no remorse for her murder when this Court invited him to address it. As well, he expressed no remorse for Aliyah's murder. When he was interviewed by the media, he denied any knowledge of the whereabouts of Ms. Lovett and Aliyah, and even laughed during the interviews. He also continued his relationship with KJ almost immediately after disposing of the bodies of Ms. Lovett and Aliyah, which indicates to this Court that he had "moved on." He showed no remorse: *R v Downey*, 2019 ABQB 365 at paras 40-43.

[77] This Court does not know whether Mr. Leeming poses minimal risk, some risk, or a high risk, as it does not have any medical evidence of his mental condition.

[78] The Crown seeks a sentence of life imprisonment without eligibility to apply for parole for 15 to 20 years for the murder of Ms. Lovett and life imprisonment without eligibility to apply for parole for 25 years in the case of Mr. Leeming's murder of Aliyah, to be served concurrently. Mr. Leeming seeks a concurrent parole ineligibility period of 20 years.

[79] Ms. Lovett's mother and sister provided this Court with victim impact statements. As well, Aliyah's paternal grandmother provided this Court with a victim impact statement. *Criminal Code* s 722 says that this Court must consider those statements when it considers the sentence it will impose on Mr. Leeming. Not surprisingly, their losses have affected each of the writers on an emotional and physical level. No doubt these losses will continue for a very long time. Aliyah's grandmother read to this Court a very poignant poem entitled "I Want You Here." That poem expressed the continuous loss that Aliyah's grandmother feels every single day. Mr. Leeming, I hope you will someday understand how your selfish actions have affected so many people.

[80] Mr. Leeming, please stand up.

[81] This Court concludes that the sentence that this Court imposes must communicate society's condemnation for your murders of Jasmine Lovett and Aliyah Sanderson. The callous and cowardly crimes that you have committed have had a profound effect on the families of Ms. Lovett and Aliyah.

[82] This Court has taken into account of the aggravating and mitigating circumstances, as well as the sentences imposed in the many cases that it has reviewed. Mr. Leeming, I hereby sentence you to life imprisonment for having committed the second degree murder of Jasmine Lovett. The Crown has asked that I direct that you serve 15 to 20 years of your life sentence

before you are eligible to apply for parole. You have asked that I direct that you serve 20 years of your life sentence before you are eligible.

[83] As well, I sentence you to life imprisonment for having committed the second degree murder of Aliyah Sanderson. The Crown has asked that I direct that you serve 25 years of your life sentence before you are eligible to apply for parole. You have asked that I direct that you serve 20 years of your life sentence before you are eligible.

[84] In determining the number of years that you must serve before you are eligible for parole, I have considered your character, the nature of the offences you committed, and the cowardly ways in which you murdered Jasmine Lovett and Aliyah Sanderson and disposed of their bodies. You provided neither this Court nor the families of Ms. Lovett and Ms. Sanderson any reason why you committed these horrendous crimes. Given that, it is my view that it is necessary not only to protect the public from you and prevent you from harming anyone else, but also to deter you and all others from committing such horrible, violent crimes in our community. I am satisfied that there must be a significant increase in parole ineligibility from the 10-year minimum prescribed by statute.

[85] Even though the Crown has asked that I direct that you serve 25 years of your life sentence before you are eligible to apply for parole, that period is reserved only for the worst types of crime in the worst type of circumstances. Your counsel, quite correctly, said that there is no such thing as a good murder. This Court agrees. However, when one reviews the very few cases in which the courts have made such a finding, this case is not one of those. However, this case is close, as you took the life of an innocent child who trusted you.

[86] You murdered Jasmine Lovett, a woman who loved you. You breached her trust and committed the worst type of domestic violence imaginable: *Criminal Code* ss 718.2(a)(ii) and 718.201. You killed her, and you admitted to it. This falls within the cases that this Court has reviewed, being *Rushton*, *Johnson*, *Sharpe* and *Salehi*, which range from a low of 18 years to 22 years. I direct that you serve 20 years of your life sentence for killing Jasmine Lovett before you become eligible for parole. This Court has considered the mitigating factor of your guilty plea, but in your case, it is far outweighed by the aggravating factors that apply to you and the crime you have committed against Jasmine.

[87] You murdered Aliyah Sanderson, a toddler for whom you cared. She trusted you and felt safe in your arms. There was some forethought in your killing of this little girl, as you killed her after you killed her mother. You breached her trust: *Criminal Code* s 718.2(a)(iii). Because you murdered 22-month old Aliyah, this Court is required to give primary consideration to the objectives of denunciation and deterrence: *Criminal Code* ss 718.01 and 718.2(a)(ii.1). This case falls within the cases that this Court has reviewed, being *Berry*, *Turcotte*, *Rushton*, and *Johnson*, which range from a low of 17 years to 22 years. I direct that you serve 22 years of your life sentence for killing Aliyah Sanderson before you become eligible for parole. There are no mitigating factors in the case of your murder of Aliyah.

[88] You will serve your life sentences concurrently. Your eligibility for parole will also run concurrently, so you must serve 22 years of your life sentences before you may apply for parole.

[89] Having found you guilty of two counts of second degree murder, primary designated offences, I order that you submit to the authorities for the taking, for the purpose of forensic DNA analysis, samples of one or more of your bodily substances required for that purpose.

[90] Pursuant to *Criminal Code* s 109, I order that you not possess a firearm, crossbow, ammunition, restricted weapon or explosive substance or anything that can be converted into an explosive substance, as well as any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life. If you have any firearms or those other items in your possession or at your place of residence you must immediately cause those items to be surrendered to the Calgary Police Service.

Heard on the 12th day of October, 2021

Dated at the City of Calgary, Alberta this 10th day of November, 2022.

K.D. Yamauchi
J.C.K.B.A.

Appearances:

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