

# SUPREME COURT OF YUKON

Citation: *R. v. Dennis*, 2014 YKSC 14

Date: 20140314  
S.C. No. 13-01512  
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

ALEXANDER WAYNE BOWE DENNIS

Before: Mr. Justice R.S. Veale

Appearances:  
David McWhinnie and Jennifer Grandy  
Don Campbell

Counsel for the Crown  
Counsel for the accused

## REASONS FOR SENTENCING

### INTRODUCTION

[1] Mr. Dennis pleaded not guilty to murder in the first degree but guilty of murder in the second degree of Gordon Craig Tubman on August 15, 2010.

[2] The sentence for second degree murder is life imprisonment, and Mr. Dennis is required to serve between 10 and 25 years of his life sentence before eligibility for parole may be considered by the Parole Board. Even if he receives parole in the future, he has been sentenced to life imprisonment and will be subject to mandatory supervision for the rest of his life.

[3] Section 745.4 of the *Criminal Code* provides that the judge may set a period of parole ineligibility that is more than 10 years but not more than 25 years. In deciding the period of parole ineligibility, the judge must have regard to the following circumstances:

1. the character of the offender;
2. the nature of the offence; and
3. the circumstances surrounding the offence.

[4] In this case, the Crown and defence have made a joint submission that the period of parole ineligibility should be 12 years. I am mindful of the principle that a judge should not depart from a joint submission unless it would be contrary to the public interest or bring the administration of justice into disrepute.

[5] Several Victim Impact Statements were read aloud in court and I am going to begin with them as they speak to the tragic loss of the life of Gordon Tubman in a cold-blooded and senseless murder.

### **Victim Impact Statements**

[6] Gordon Tubman was born on May 20, 1969, and died on August 15, 2010. He was employed as a mechanic. The newspaper notice described him simply as “A Good Man” as demonstrated by how he treated his family, his friends and those closest to him.

[7] Victor Tubman, the father of the deceased, acknowledged that the decision in this matter is already determined as a matter of law rather than a consideration of impact on the family. But he provided a statement to help his frustration with the system and to tell the Parole Board how it feels to have his son shot dead at age 41 and his body burned beyond recognition. The family suffered considerably because of the

gruesome death of their loved one and the three years delay in learning the cause of his death. His death has had an enormous impact on his parents, his siblings, nieces, stepfather and many friends. His murder has taken away the innocence of day-to-day living.

[8] But in the midst of their incalculable grief, they remember Gordon as a smart, funny, loving, caring man with a laugh that came from his toes, and a gentle, kind man who was always there for anyone who needed his help.

[9] Despite this great loss, the family, as evidenced by their presence in court, remains strong and as Gordon's father said:

Tomorrow is a new day which I am confident will be brighter than today.

[10] I thank the family for telling us who Gordon was and the terrible loss and grief they have suffered.

## **BACKGROUND**

[11] This investigation began as the inventory of a trailer fire on August 15, 2010. The trailer was located at the corner of a gravel pit where Gordon Tubman resided as a caretaker.

[12] The remains of Gordon Tubman were discovered and dental records were required to identify him.

[13] A forensic anthropologist was able to identify a single gunshot wound to his head, causing instant death. For investigative reasons, this was not revealed to his family until recently. The RCMP had to reconstruct Gordon Tubman's activities that day, including his meeting with Franklin Charlie, a very troubled and cognitively-challenged man, and their search for some cocaine to purchase.

[14] It was this search that fatefully led Gordon Tubman and Franklin Charlie to Alex Dennis. Mr. Dennis had cocaine to sell, and the three men went back to Gordon Tubman's trailer where they drank beer and consumed cocaine.

[15] Gordon Tubman had a gun that they used for target practice outside the trailer, following which Gordon Tubman went back into his trailer. Alex Dennis said to Franklin Charlie that he was going to kill this guy. Franklin Charlie did not take the threat seriously.

[16] Alex Dennis and Franklin Charlie went inside the trailer where they consumed more cocaine. Alex Dennis shot Gordon Tubman in the head while he sat at the table.

[17] Alex Dennis and Franklin Charlie then began the process of destroying the evidence and covering-up the crime. They spread gas found in a shed which ignited the trailer. Because of the fire pressure, they could not get the door open and had to escape through the window. They had no keys for the vehicle and fled on foot with the rifle, some ammunition and a pellet pistol. They went through a swamp and pushed the rifle into the mud.

[18] In the fall of 2010, a video was discovered at the Kopper King which recorded the presence of Alex Dennis and Franklin Charlie in a meeting at 9:30 a.m. where they agreed not to talk about the murder. Alex Dennis left town and Franklin Charlie went to jail on other charges.

[19] In the spring of 2011, Franklin Charlie told a guard at the Whitehorse Correctional Centre about the murder and eventually gave a detailed statement to the police. Although Franklin Charlie is an eye-witness, he has a long criminal record and has been diagnosed with Fetal Alcohol Spectrum Disorder (FASD). This diagnosis

creates issues around his reliability, but he did disclose that Alex Dennis was the person who committed the murder. RCMP officers subsequently identified a cigarette butt of Alex Dennis at the scene and were able to establish his presence at the trailer. They also found the handprint of Alex Dennis on the back of the deceased's truck.

[20] Mr. Dennis was in a British Columbia penitentiary until July 2013. The police attempted undercover operations to get an admission of guilt but were unsuccessful. It was not until the police played recordings of Dennis' family and Gordon Tubman's family to him that he admitted that he shot Gordon Tubman. He confessed to the murder a second time in his cell and has been confined ever since.

[21] The Crown has acknowledged that it owes much to the confession of Alex Dennis, which, in the face of a weak Crown case and along with this guilty plea, shows a willingness to take responsibility for a truly deplorable crime that he otherwise may not have been convicted of.

### **The Offender**

[22] Alex Dennis committed this cold-blooded murder when he was just two months past his 18<sup>th</sup> birthday. He has made it clear that drug deals had nothing to do with the murder and that Gordon Tubman was an innocent victim.

[23] Mr. Dennis has waived his right to a *Gladue* Report but relevant background information was given by his lawyer based on a report prepared by Thom Swann entitled "History and Aboriginal Background".

[24] Mr. Dennis claims to have been raised in a nurturing family. Both his parents are members of the Adams Lake Indian Band and had experience with residential school

and alcohol abuse. Alex's upbringing, however, was free of violence and substance abuse issues.

[25] Unfortunately, Alex struggled with his education and did not pass Grade 8. He began to drink heavily and eventually worked for the Red Alert Gang. He sold crack cocaine which provided the money for more drugs and alcohol. He was both protected and victimized by the gang.

[26] The death of Mr. Dennis' father in January 2010 led to an increase in Alex's drinking and destructive behaviour. Although he was raised with a traditional education and culture, he was never able to obtain stable employment and supported himself by drug dealing and other crimes. However, I have also heard that Mr. Dennis is active in his Aboriginal culture and is considered to be a spiritual member of the community. It is hoped that he will return to that spirituality while in jail.

[27] Mr. Dennis came to Whitehorse in July 2010, just before the murder, and was selling and using crack cocaine extensively. During a five-day crack cocaine binge leading up to the murder, he was in a state of paranoia. It was in this state that he made the irrational fatal decision to murder a completely innocent victim.

[28] After leaving Whitehorse, Mr. Dennis was convicted of sexual assault and given a two-year sentence in February 2012. He has an extensive record for a young man of 21.

[29] In May 2009, while a young person, Mr. Dennis was convicted of assault and failing to comply with the conditions of an undertaking. He was given one year probation. In October of that year, he was convicted of failing to comply with that probation order. At the same time, he was convicted on three counts of failing to

comply with the terms of various undertakings and recognizances. Again he received probation. In September 2010, now an adult, Mr. Dennis was convicted of possession of a Schedule I substance and given his first custodial sentence of 14 days in jail. In June 2011, he was again convicted of possession of a Schedule I substance as well as assault; he received 45 days jail plus 1 year probation on each charge. Two more process offences for failing to comply with conditions followed in September 2011 and January 2012, before his conviction in March 2012 for what was presumably a relatively serious sexual assault, as he was sentenced to two years in jail, less pre-sentence custody.

## **DISPOSITION**

[30] The general rule stated in *R. v. Shropshire*, [1995] 4 S.C.R. 227, at para. 27, is that the period of parole ineligibility for second degree murder is presumptively 10 years. *R. v. Cerra*, 2004 BCCA 594, at para. 26, sets out two broad groupings, one from 12 to 15 years, the other 15 to 20 years, the latter being for the highest order of moral culpability and dangerousness. At para. 17, the British Columbia Court of Appeal stated that parole ineligibility greater than 10 years is justified when there is a particularly aggravating feature.

[31] In this case, the circumstances of this cold-blooded murder easily move the period into the range of 12 to 15 years. The shooting of Gordon Tubman and the burning of his body are clearly outrageous conduct.

[32] On the other side of the equation, the offender is a very young person and his guilty plea has eliminated the need for a long and technical trial that would serve no one's interest. Considerable weight must be given to the guilty plea when a conviction

all but depended on the evidence of a man diagnosed with FASD and well-known to the criminal justice system.

[33] While the cold-blooded murder is inexplicable and aggravating, the offender has mitigated his guilt by listening to family tape-recordings and doing the right thing in bringing the matter to sentencing and avoiding further anguish for a devastated family who has been kept in the dark for so long about the circumstances of Gordon Tubman's death. He apologized to the family in court and was clear that he cannot make it right. The only thing Alex Dennis can do now is make himself right and bring his criminal lifestyle to an end.

[34] I accept the joint sentence submission of the Crown and defence and order that the period of parole ineligibility shall be 12 years.

[35] I therefore sentence you to life imprisonment with no eligibility for parole until you have served 12 years. I also order that the Victim Impact Statements and a transcript of this sentence hearing be provided to the Parole Board.

[36] Pursuant to s. 109(3) of the *Criminal Code*, you are prohibited from possessing any firearms, cross-bows, restricted weapons, ammunitions or explosives for life.

[37] I also order you to provide samples of bodily substances for the purpose of DNA analysis under s. 487.051 of the *Criminal Code*.

[38] There will be a victim surcharge of \$100.

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VEALE J.