

SUPREME COURT OF YUKON

Citation: *R. v. Dennis*, 2018 YKSC 42

Date: 20180829
S.C. No. 18-01501
Registry: Whitehorse

BETWEEN

HER MAJESTY THE QUEEN

AND

TRAVIS BYRON DENNIS

Before Mr. Justice R.S. Veale

Appearances:

Eric Marcoux

Counsel for the Crown

David McWhinnie and

Norah E. Mooney

Counsel for the Accused

REASONS FOR SENTENCING

INTRODUCTION

[1] VEALE J. (Oral): Travis Dennis was charged with second degree murder of Andy Giraudel at Watson Lake, Yukon, on the 16th day of July 2016.

[2] He pled guilty to second degree murder on May 30, 2018, based on an Agreed Statement of Facts.

[3] The sentence is imprisonment for life.

[4] The purpose of this hearing was to hear the Victim Impact Statements from Mr. Giraudel's mother, stepfather and sister. They appeared by video conference from Watson Lake, as they do today.

[5] The hearing was also to determine whether Travis Dennis' eligibility for applying for parole shall be after serving 10 years or such greater period not exceeding 25 years.

In this case, it is the discretion of the judge to be exercised having regard to the character of the accused, the nature of the offence and the circumstances surrounding its commission to determine if there should be a greater number than 10 years.

[6] The Crown and defence have made a joint submission that the period of parole ineligibility be 10 years. Trial judges should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest. See *R. v. Anthony-Cook*, 2016 SCC 43.

[7] The most significant concern is the aggravating fact that Travis Dennis dismembered Mr. Giraudel's body, adding additional indignity and depriving Mr. Giraudel's family of a proper burial of their loved one.

AGREED FACTS

[8] The Agreed Facts are as follows:

1. On Saturday, July 16, 2016, around noon a local man called the Watson Lake RCMP to report that one of his dogs had "dug something up" and he needed police at his residence.
2. RCMP officers attended the residence on Robert Campbell Highway, Watson Lake, Yukon. There they were shown a human right leg, severed below the knee with minimal decomposition apparent.
3. The man was cooperative and there was no evidence to suggest that he was involved in how the leg came to be on his property.
4. An extensive search of the area did not locate any further human remains. A review of missing person reports did not identify any potential victim. On

Sunday, July 17, 2016, RCMP issued a media release in hopes of identifying a victim.

5. On Monday, July 18, 2016, at approximately 2:15 p.m. a family member contacted the Watson Lake RCMP to report Andy Giraudel missing.
6. On Monday, July 18, 2016, at approximately 3 p.m. Travis Dennis attended the Watson Lake RCMP detachment and advised he wished to provide some information.
7. Travis Dennis told the police that he had found a bag at his residence containing some bloody clothes and a knife, that as a result he thought he might have killed somebody, and that he believed he might also know where the body was located.
8. Travis Dennis was arrested for murder and provided with his *Charter* rights. The RCMP secured his residence in Watson Lake.
9. Shortly after Travis Dennis attended the Watson Lake RCMP, his brother, Troy Dennis, also came to the detachment and told members that Travis had disclosed to him earlier that day that he [Travis] had heard about a leg being found, and although uncertain, he [Travis] believed he may have killed "Andy". Travis Dennis had also told his brother that he had found a bag containing bloody clothes and a knife.
10. On Tuesday morning, July 19, 2016, Travis Dennis provided a warned statement to the RCMP describing the events surrounding the death of Andy Giraudel.

11. The night before Andy Giraudel died, he and Travis Dennis were drinking and socializing with a mutual friend at the home of Travis Dennis and his brother Troy in Watson Lake. Early the next morning, after a few hours' sleep, Andy Giraudel and Travis Dennis went for a walk on a trail in a nearby wooded area.
12. During the walk, an argument began between the two men. Initially the argument centered on several instances over the preceding couple of year(s) wherein Travis Dennis asserted Andy Giraudel had sexually assaulted him.
13. During the argument, Andy Giraudel told Travis Dennis that he [Travis] had enjoyed what had been done to him, which angered Travis Dennis, and the two yelled at one another.
14. When Andy Giraudel went on to state that he [Travis] should have 'overdosed like your bitch of a mother', Travis Dennis 'snapped' and stabbed Andy Giraudel, initially once in the chest, followed by a number of other stabs to the chest and back.
15. Andy Giraudel died on the trail where the stabbing occurred.
16. Travis Dennis immediately drank part of a mickey of vodka the men had with them, and walked home. Later the same morning he returned to the scene where he proceeded to dismember the body of Andy Giraudel. He placed the severed parts in four garbage bags and hid them in a nearby wooded area.

17. During his statement, Travis Dennis told the police where to find the body. He also described a bag located behind his residence which he said contained bloody clothes and a knife.
18. Travis Dennis told the police that he initially had no recall of the events of Andy Giraudel's death in the days immediately afterward, and described how his memory was coming back over time after finding the bag with bloody clothing and hearing about a human leg being found.
19. Before Travis Dennis' statement to the police, investigators had little or no information as to whom the leg found on July 16 belonged, whether that person was in fact deceased, where the body was or might be, or how the person may have died.
20. During his statement, Travis Dennis further explained that he had a complicated relationship with the deceased Andy Giraudel. He described two instances where he was sexually assaulted by Andy Giraudel and hated him for that reason. Although the two had subsequently encountered each other from time to time around Watson Lake, this matter was unresolved between them.
21. Later in the morning of July 19, 2016, police found the body in the location and condition described by Travis Dennis. The body had been dismembered into seven segments (head, left arm, right arm, torso, pelvis with bilateral thighs up to the knees, left lower leg and right lower leg) and was contained in four orange garbage bags.

22. Fingerprints and dental comparisons at autopsy confirmed that the body was that of Andy Giraudel.
23. The same day RCMP obtained a search warrant for Travis Dennis' residence. The search began on July 20, 2016, and continued over several days.
24. Numerous items were seized from inside the residence, including an empty box of orange garbage bags, clothing, a cell phone, liquor containers, numerous knives and scissors, and forensic evidence of bloodstains. None of the exhibits seized inside the home could be shown to be linked to the death of Andy Giraudel.
25. Outside the house, beneath an elevated deck, the police located an orange garbage bag containing bloody clothes and a knife. Also inside the orange bag was a blue shoulder bag that contained Andy Giraudel's wallet, and a white plastic grocery bag which also had clothing inside, including a pair of black track pants.
26. RCMP Identification Services examined the white plastic grocery bag found inside the orange garbage bag, and identified five fingerprints belonging to Travis Dennis, three from his right thumb, and one each from his right middle and right index fingers.
27. A number of seized items and samples were submitted to the RCMP National Forensic Assessment Centre for analysis. Andy Giraudel's DNA was found on a knife, pants, belt, sock, and a shirt seized from the orange garbage bag seized outside the residence. No DNA from Travis Dennis

was found on any of these examined items apart from the black track pants, which had blood DNA from both Andy Giraudel and Travis Dennis.

28. The post-mortem examination of the dismembered body of Andy Giraudel revealed that he died from multiple stab wounds to his torso. The forensic pathologist identified approximately 25 stabs and incised [cutting] wounds to his chest and back that caused injuries to his ribcage, bilateral lungs, liver and intestines.
29. The pathologist could not determine if all the stab and incised wounds occurred before death, or the order in which they were inflicted.
30. Wounds to the chest wall did cause acute hemorrhages in the musculature chest wall and ranged in surface dimensions from 2 cm to 4.5 cm with a maximum estimated depth of 9 cm to 11 cm. These wounds were inflicted prior to dismemberment which occurred after death.
31. Subsequent police investigation confirmed that Andy Giraudel was last seen alive at the Travis Dennis' residence during the evening hours of July 13, into the early morning hours of July 14, 2016.
32. At the time of Andy Giraudel's death, Travis Dennis was 23 years old, an aboriginal man with no criminal record.

[9] A preliminary hearing lasting 8 days raised *Charter* issues about the admissibility of the statement taken from Travis Dennis. Before the preliminary hearing judge rendered a decision, Travis Dennis pled guilty to the Agreed Facts on May 30, 2018.

VICTIM IMPACT STATEMENTS

[10] Andy Giraudeau's mother and step-father had their victim impact statements read out by the Victim Services worker. His mother's life has changed since Andy's death. He used to take care of her, cook for her and make sure that she took her medicine when he lived with her.

[11] As a result of his death, she has lost her trust in people and became isolated from her friends. She was emotionally distraught during the hearing.

[12] Andy's step-father questioned why Travis Dennis remained friends with Andy given the allegation made and suggested it was really about alcohol and drugs they consumed.

[13] Andy's sister read her statement. She is very angry at Travis Dennis for robbing them of Andy's companionship. She is especially upset about the dismemberment and not knowing where Andy actually passed away or the time.

[14] She stated that Travis Dennis robbed them of the ability to say goodbye and continues to do more damage by his allegations of abuse. She feels that the taking of her brother's life has severely impacted her mother as Andy's death is all she talks about as if it is still July 2016.

THE OFFENDER

[15] Travis Dennis was 23 years old at the time he murdered Andy Giraudeau after a night of drinking.

[16] He is Kaska and a member of the Dease River First Nation although he has resided in Watson Lake since his father and mother separated when he was still a

young child. Separation from his mother was traumatic for Travis and has remained unresolved for him.

[17] His mother went to Lower Post Residential School where many children suffered significant sexual and physical abuse, in addition to being deprived of the support of their families. She struggled with alcohol and died a tragic death while Travis was very young. Despite her alcohol abuse, Travis has very fond memories of his mother's love. Her death and separation from the family still troubles him as there has been no closure. His father's parents went to residential school and the family has suffered the inability to express and discuss emotional issues.

[18] Travis has been exposed to alcohol and drinking at the family home over the years and this has clearly had a negative impact on him. He remembers specific events that were abusive. He has been drinking and smoking marijuana on a regular basis for the last several years.

[19] He has had memory issues all his life and did not enjoy school or complete high school. However, he enjoys writing and taking notes.

[20] In the last few years since leaving school, despite some short term mining employment, he has been drinking, smoking marijuana and fighting more frequently. He has a pent up anger that clearly explodes as it did on the morning he murdered Andy Giraudel. There is no doubt that his drinking is a major problem that he has to resolve.

[21] He has been in jail for approximately 2 years and has had some bullying from other inmates. He has not objected to being placed in the Secure Living Unit. As a result of his expression of "dark thoughts" about others and suicide, he has been assessed by

a psychologist and placed on a suicide watch. He disclosed five specific plans for how he would kill himself.

[22] Travis Dennis describes his relationship with Andy Giraudel as “complicated”. He asserted that he was sexually assaulted by Andy Giraudel in the preceding couple of years. However, he states that it was a slur about Travis’ mother that caused him to “snap” and kill his friend, despite the fact that they had been drinking and socializing with a mutual friend the evening before. These statements by Travis Dennis are assertions and nothing further.

[23] Since he has been in jail, Travis Dennis had taken every course that is available to a remand inmate. He has taken counselling from the psychologist, particularly addressing some suicidal concerns and living in the general population unit.

[24] He has done a lot of personal memoir writing and made a large number of dream catchers. He has consistently attended Alcoholics Anonymous meetings at the Whitehorse Correctional Centre.

[25] Although he has had some difficulty expressing remorse for Andy Giraudel, he was very clear in court when he stated how sorry he is to Andy Giraudel’s family, expressing the wish that he could take back that day. He knows that Andy’s family will never forgive him and the only thing he can do is apologize and make himself a better person.

[26] Given the bizarre nature of his murder of Andy Giraudel and his suicide risk, Travis Dennis requires some very intensive psychological treatment.

The Gladue and Pre-Sentence Reports

[27] The Gladue report chronicles the history of residential school and the status of Liard First Nation as not a self-governing First Nation. It remains an *Indian Act* First Nation that has just come off third party financial management.

[28] The Gladue report describes the positive experience that Travis Dennis remembers about his mother and life at Good Hope Lake despite the drinking and abuse that occurred. Travis has missed his mother greatly and despite support from his aunt, he has never had closure around his mother's separation from the family and her death.

[29] The Gladue report points out that the most needed program for Travis, Substance Abuse Management, was never available to him because it was always fully booked. He took advantage of the Alcoholics Anonymous program that was available.

[30] In addition to the many courses he took, Travis worked as both a food server and ultimately as a cleaner. He remained busy either working, writing or taking courses while in custody. The Gladue report recommends that Travis Dennis will benefit from programs that will address the neglect, trauma and addiction issues that he has endured in his young life.

[31] The Pre-Sentence report is comprehensive and raises many of the family dysfunction issues addressed in the Gladue report.

[32] In addition to his frequent and uncontrolled alcohol and drug usage, the Pre-Sentence report concludes

Mr. Dennis described significant emotional and behavioural problems including unresolved grief, trauma and self-reported symptoms of depression and anxiety. He reported that his has a history of suicidal and homicidal ideation as

well as a history of self-harm. Mr. Dennis has not received assessment, diagnosis, or treatment for any of these presenting issues.

Aggravating and Mitigating Factors

[33] The most serious aggravating factor is the dismemberment of Andy Giraudel's body and the related indignity and additional grief that it has caused and is still being suffered by Andy Giraudel's family.

[34] In addition to the dismemberment, there were 25 stab and cutting wounds to the deceased's body.

[35] There are also mitigating factors for Travis Dennis:

1. he is young, having committed the murder at age 23 and is now 24;
2. he has no criminal record;
3. he gave himself up to the RCMP shortly after the murder at which time the RCMP had not been able to identify the murder victim, where the body might be or how the victim died;
4. he has suffered from the impacts of residential school on his mother and on his family without having personally attended;
5. his mother's death had a profound impact on him and he has not had closure;
6. despite his anger and drug issues, this violent murder is an uncharacteristic and isolated event.
7. While it is not an early guilty plea coming after an 8-day preliminary hearing, it is a guilty plea that avoids a prolonged trial.

Joint Submission

[36] Crown and defence counsel made a joint submission that the period of ineligibility from making a parole application be the usual 10 years.

[37] The sentence for second degree murder is imprisonment for life pursuant to s. 235 of the *Criminal Code*.

[38] Section 745(c) of the *Criminal Code* states that the person convicted of second degree murder shall not be eligible for parole until the person has served “at least” ten years of the sentence or such greater number, being not more than twenty-five years. Section 745.4 states that the trial judge may substitute a greater number than ten years but not more than twenty-five years “as the judge deems fit in the circumstances” having regard to:

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

[39] In *R. v. Shropshire*, [1995] 4 S.C.R. 227, the Supreme Court of Canada determined that a s. 745.4 analysis is fact sensitive based on the particular offender.

[40] In that case, the accused pled guilty to second degree murder, which he had committed during a drug transaction. Without warning, the accused shot the deceased three times in the chest. Two days later, the accused gave himself up to the police, professed remorse, but was unwilling or unable to explain his actions. He had a significant prior criminal record. The Supreme Court of Canada accepted the trial judge’s decision to increase the period of parole ineligibility to 12 years.

[41] At para. 27, Justice Iacobucci, speaking for the court, stated:

In my opinion, a more appropriate standard, which would better reflect the intentions of Parliament, can be stated in this manner: as a general rule, the period of parole ineligibility shall be for 10 years, but this can be ousted by a determination of the trial judge that, according to the criteria enumerated in s. 744, the offender should wait a longer period before having his suitability to be released into the general public assessed. To this end, an extension of the period of parole ineligibility would not be "unusual", although it may well be that, in the median number of cases, a period of 10 years might still be awarded.

[42] I must also take into consideration the fact that the Crown and defence counsel have agreed that the period of parole ineligibility should be 10 years, in exchange for Travis Dennis entering a guilty plea.

[43] In *R. v. Anthony-Cook*, 2016 SCC 43, the Court stated that guilty pleas in exchange for joint submissions on sentence are a "proper and necessary part of the administration of criminal justice." The high degree of certainty encourages accused persons to enter guilty pleas saving time, resources and, in this case, further suffering of the deceased's family.

[44] The Court rejected the "fitness test" and the "demonstrably unfit" test and preferred the more stringent public interest test that a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[45] In stating that joint submissions should not be rejected lightly, Moldaver J. established a "high threshold" at para. 34:

... Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions,

to believe that the proper functioning of the justice system had broken down. ...

[46] In such a case, the trial judge must follow the procedure set out in paras. 51 to 60 as follows:

1. Assume that counsel have considered all sentencing matters and if some aspect is not mentioned, assume it was considered and excluded. If counsel failed to consider a mandatory order, the trial judge should inform counsel;
2. Apply the stringent public interest test;
3. When faced with a contentious joint submission, consider the benefits obtained by the Crown or concessions made by the accused; and obtain a full account of the circumstances of the offender, and the offence;
4. If the trial judge is not satisfied with the sentence proposed, give counsel the opportunity to address the concerns raised; and
5. If the trial judge remains unsatisfied, give clear and cogent reasons for departing from the joint submission.

[47] It is not necessary in this case to depart from the joint submission.

[48] Counsel provided two cases where the offender was convicted and the 10-year parole ineligibility was applied where the Crown sought a greater period than the general rule of ten years. The cases did not involve joint submissions on a guilty plea.

[49] In *R. v. Yliruusi*, 2011 BCSC 268, the offender had a longstanding drug habit and the deceased provided him with cocaine primarily in exchange for sexual favours. The offender called the deceased for a drug purchase. When the offender showed up at the deceased's apartment, he demanded drugs and money. The deceased did not comply,

there was a struggle and the offender stabbed the deceased causing his death. He continued to carry out the robbery.

[50] The offender was 32 years old and led a criminal lifestyle since his teenage years involving property crimes and assault with a weapon. Since his arrest, he went on a methadone program, got off drugs and obtained his GED.

[51] The Crown sought a 12-year period of parole ineligibility and the defence advocated for the minimum of 10 years. The trial judge found that a 10-year parole ineligibility was appropriate given the offender's efforts at rehabilitation.

[52] In *R. v. Brewer*, 2016 BCSC 2172, Brewer stabbed the deceased forcefully and multiple times inflicting 23 major wounds. The motive for the murder was unexplained. Mr. Brewer, aged 24, met the deceased, aged 38, at a drug recovery house and they became friends. The deceased was gay and the offender was not. To the extent that there was an altercation, it was clearly one-sided for the offender.

[53] The offender had significant drug problems and had attempted suicide by driving a car into a telephone pole. He had a criminal record with violence, using knives on four occasions, and was assessed as having antisocial personality features. He had some remorse or guilt but blamed his drug use for all his negative behaviour. He had a moderate – high risk for violent recidivism. The offender lied to the police by alleging that the deceased sexually assaulted him.

[54] The Crown submitted that the offence was a prolonged and brutal attack while the defence characterized it as a sudden impulsive event. It was an aggravating factor that the offender was under terms of probation at the time of the second degree murder.

[55] The trial judge found that the offender's dangerousness was mitigated by his young age and remorse and imposed a 12-year period of parole ineligibility.

DISCUSSION

[56] The circumstances of Travis Dennis are significantly different than those in the above cases. He is a young person that disclosed his offence to the police who would have had difficulty in proving the offence of second degree murder without his co-operation. His guilty plea came after the preliminary hearing but before the preliminary hearing judge ruled on the admissibility of his statement. He has no previous convictions and the offence is out of character. Travis Dennis also demonstrated remorse and empathy in his final words to the Giraudel family in court.

[57] In addition, his mother attended residential school and struggled with alcohol to the extent that Travis Dennis was deprived of her parenting. He also clearly suffered from generational effects of residential school in his upbringing with his father.

[58] The aggravating factor is that the murder was committed in a horrific manner that poses a serious risk of dangerousness relating to his unresolved and untreated psychological issues arising from his dark thoughts and suicidal ideation that surfaced again while in custody. If I were to decide the period of parole ineligibility without the joint submission of Crown and defence, my decision may have been different.

[59] However, the joint submission has come after 8 days of preliminary hearing and considerable discussion between Crown and defence as well as the police and the family of Mr. Giraudel. It is not a joint submission that brings the administration of justice into disrepute. Travis Dennis will have a considerable period of time to be treated for his bizarre behaviour and unresolved grief from his deprived family background. His

sentence is life imprisonment and I find that the 10-year period of parole ineligibility in the joint submission should be imposed. This does not mean that he will be granted parole and he will be either in prison or under parole for the rest of his life. I strongly recommend that he be referred as soon as possible to an Aboriginal Intervention Centre for assessment and treatment.

[60] I also make four ancillary orders:

1. That he provide a suitable sample for DNA testing, pursuant to s. 487.051;
2. A 10-year firearms prohibition, pursuant to s. 109(2)(a);
3. A \$200 victim fine surcharge; and
4. A forfeiture order for the return of personal items, pursuant to ss. 490(5) and 490(9).

[61] I also wish to thank the family of Andy Giraudel for providing their Victim Impact Statements in such difficult circumstances.

VEALE J.