

Case Name:

R. v. J [REDACTED]

Between

Her Majesty the Queen, and

Michael J [REDACTED]

[2001] O.J. No. 5827

No. 1065/00

Ontario Superior Court of Justice

St. Catharines, Ontario

Taliano J.

Oral judgment: June 28, 2001.

(16 paras.)

Criminal law -- Punishments (sentence) -- Imprisonment and parole -- Parole, period of ineligibility -- Sentencing -- Sentence, particular offences -- Murder (includes attempts).

Sentencing hearing of 39-year-old J [REDACTED] who had been found guilty of second degree murder by a jury. J [REDACTED] had broken into his former girlfriend's home and slashed her throat twice. The evidence had not supported a finding of intoxication, although he had been drinking. Juanetty had been determined to take her life. He had ignored the fact that she was on the phone with the police and her terror and apologies. J [REDACTED] was a first time offender. He was a religious man who sent 10 per cent of his earnings to his church in Trinidad. He stated he did not understand his actions and that he was under an evil influence when he killed her. Four jurors recommended a period of between 15 and 18 years for his period of parole ineligibility.

HELD: J [REDACTED] sentenced to life imprisonment. The appropriate period of parole ineligibility was 13 years. J [REDACTED]'s personal factors suggested that he was a good candidate for rehabilitation. However, the crime was brutal and calculated. J [REDACTED] was someone from whom the public deserved protection.

Statutes, Regulations and Rules Cited:

Criminal Code, ss. 235(1), 745, 745.4.

Court Note:

Charge: S. 235(1) Criminal Code - Second Degree Murder

Counsel:

V. Essert, for the Crown.

C. Adams and A. Page, for the accused.

1 TALIANO J. (orally):-- In these proceedings, Michael J. [REDACTED] has been found guilty of second degree murder by a jury of his peers.

2 On October 29th, 1999, at approximately 10:15 p.m., Mr. J. [REDACTED] broke into the home of his former girlfriend, Robin Pope, and killed her by slashing her throat. It was a horrific crime and it was motivated by Robin's termination of their relationship.

3 Although Mr. J. [REDACTED] had been drinking that day and evening, the evidence did not support a finding of intoxication, although it should probably be assumed that alcohol did have some influence on his actions that evening. Having said that, however, it must also be noted that Mr. J. [REDACTED] was determined in his resolve to take Robin's life that evening. He banged on her patio door with such force that he knocked it into the room by several inches and when that did not work, and even though he had attracted witnesses to his activity, he nevertheless pounded on her front door. When she did not answer, he took a patio stone, broke her front window and then entered her home. Her being on the telephone to the police at the time did not deter him either. He went to the kitchen drawer and took out a steak knife. He ignored the terror she expressed and the apologies she repeatedly made to him in an effort to dissuade him from what he was about to do. He then slit her throat - not once, but twice. His actions were fatal and, within minutes, Mrs. Pope was lying dead on her sidewalk.

4 Robin Pope is described as a loving and giving person, whose life was taken from her, and whose absence has left her friends and family in shock and profound grief. Victim impact statements are eloquent in describing the vacuum that this senseless killing has left in its wake.

5 Mr. J. [REDACTED] is a first time offender. He is described as a soft spoken person, who has been coming to Canada to work as a migrant farm worker for the last 11 or 12 years. He not only has no

criminal record, but has never been in trouble with the police at all. He is also described as a religious man who sends ten percent of his Canadian earnings back home to his church in Trinidad. When he describes what occurred that evening, as he did just moments before I recessed, he is at a loss to understand his actions, except that he was under an evil influence and was not acting himself when he killed Robin that evening.

6 I believe Mr. J [REDACTED] is remorseful but I am not positive of that. He certainly expressed shame to his friends following the killing and, throughout this whole trial, he has sat in the prisoner's box with his head bowed and he has cried on and off throughout the entire trial. He presently harbours suicidal thoughts; whether they are prompted by remorse or the prospect of spending so much of his future behind bars, I cannot be certain.

7 The issue I must decide is the period of his parole ineligibility.

8 Members of the jury were asked if they wished to make a recommendation, pursuant to provisions in the Criminal Code, and six of the ten jurors elected not to make a recommendation. Four jurors recommended a period of between 15 and 18 years; the same period urged by the Crown in this case.

9 In deciding this issue, Section 745.4 of the Criminal Code requires the court to consider not only the jury's recommendation but, as well, the character of the offender; the nature of the offence; and, the circumstances surrounding the commission of the offence.

10 The offender, who is now 39 years of age, was previously a good and decent man. He is one of a very large family and has worked hard both here in Canada and in Trinidad to support himself and his church. These are all factors which suggest that he is a good candidate for rehabilitation.

11 On the other hand, the crime was brutal and calculated. It was motivated by jealousy and possessiveness. It was the culmination of an unwavering determination to take Robin's life, regardless of the presence of witnesses who would surely be able to assist in his apprehension. This was, and is, a classic case of domestic violence in the extreme.

12 In similar cases, and by that I mean the cases of R. v. Shropshire, [1995] 4 S.C.R. 227, and R. v. Munroe, [1995] O.J. No. 819, a period of parole ineligibility was fixed at 12 years. In R. v. McKnight, a period of parole ineligibility was fixed by the Ontario Court of Appeal at 14 years, in circumstances which are slightly more aggravating than those which exist in the case before me.

13 In my opinion, an appropriate period of parole ineligibility, in this case, is a period of 13 years. I say that because it is clear that prison authorities will be in a superior position to judge the propriety of Mr. J [REDACTED]'s release in the future. At the present time, Mr. J [REDACTED] must be regarded as someone from whom the public deserves protection. However, given the humility of his antecedents; his age; and, his religious beliefs, I am hopeful that Mr. J [REDACTED] can be successfully rehabilitated. If he can be, correctional authorities should not then be unduly hampered in the future

by a period of court ordered parole ineligibility, that may not be as well informed as prison officials will then be, as to the suitability of Mr. J [REDACTED] for release.

14 In recalling that the sentence of this court is a sentence of life imprisonment, if Mr. J [REDACTED] is not a suitable candidate for parole in 13 years, he will not be released.

15 Accordingly, Mr. J [REDACTED], would you please stand. It is the sentence of this court, Mr. [REDACTED], regretfully, that you be imprisoned for life, without eligibility for parole until you have served at least 13 years of your sentence, pursuant to Section 745 of the Criminal Code of Canada.

16 I now turn you over, Mr. J [REDACTED] to the custody of the Niagara Regional Police.

qp/s/qlrme/qltl