

Court of Queen's Bench of Alberta

Citation: R v Baker, 2021 ABQB 516

Date: 20210707
Docket: 051383404Q1
Registry: Edmonton

Between:

Her Majesty the Queen

Respondent

- and -

Jared Eugene Baker

Applicant

**Reasons for Judgment
of the
Honourable Mr. Justice R. Paul Belzil**

[1] The Applicant was convicted of First-Degree Murder on October 19th, 2007 and sentenced to life in prison without eligibility for parole for 25 years. He has filed an application pursuant to section 745.6 of the Criminal Code seeking a reduction in the number of years he must serve before becoming eligible for parole, commonly referred to as a Faint Hope Application.

[2] The Criminal Code creates a 3-stage procedure for anyone seeking a parole eligibility reduction. Firstly, the Applicant must bring an application for Judicial Screening. Secondly, a Jury must unanimously agree that a reduction in parole eligibility is warranted. Finally, any reduction in parole eligibility must be approved by the National Parole Board. Parliament

enacted significant changes to the Faint Hope procedures in the Criminal Code in 1997 and 2011.

[3] Section 745.61(1) of the Criminal Code reads as follows:

On receipt of an application under subsection 745.6(1), the appropriate Chief Justice shall determine, or shall designate a judge of the superior court of criminal jurisdiction to determine, on the basis of the following written material, whether the applicant has shown, on a balance of probabilities, that there is a substantial likelihood that the application will succeed:

- (a) the application;
- (b) any report provided by the Correctional Service of Canada or other correctional authorities; and
- (c) any other written evidence presented to the Chief Justice or judge by the applicant or the Attorney General.

[4] Section 745.63 sets out the criteria the Jury must consider in deciding whether the Applicant's number of years of imprisonment should be reduced:

(1) The jury empanelled under subsection 745.61(5) to hear the application shall consider the following criteria and determine whether the applicant's number of years of imprisonment without eligibility for parole ought to be reduced:

- (a) the character of the Applicant;
- (b) the applicant's conduct while serving the sentence;
- (c) the nature of the offence for which the applicant was convicted;
- (d) any information provided by a victim at the time of the imposition of the sentence or at the time of the hearing under this section; and
- (e) any other matters that the judge considers relevant in the circumstances.

[5] Pursuant to section 745.61(2) the screening Judge must consider the same criteria in deciding whether the Applicant has shown on a balance of probabilities that there is a substantial likelihood that the application will succeed.

[6] Canadian jurisprudence on this issue is not uniform. In *R v Morrison*, 2012 ABQB 619 Martin J (as she then was) reviewed these provisions in light of recent amendments to the Criminal Code.

[7] At paragraph 41, she defines substantial likelihood as follows:

Likelihood may also mean a probability or prospect of success, which may not necessarily involve being more probable than not. Given the various factors at play I believe that substantial likelihood means a real probability or prospect that all members of the jury will reduce the parole ineligibility period. A probability that tips the balance of probabilities will certainly meet this test. However, one that falls below, but is close may also be sufficient if the applicant presents a case

of some real merit. Such an approach respects the separate roles Parliament gave to the screening judge and jury, increases the test requiring more than both the weeding out of hopeless cases and the cases which called for a reasoned prospect of success; takes seriously the words used; and transposes into this particular context the conclusion of the Alberta Court of Appeal in *R. v. Fink* that "substantial likelihood" does not necessarily involve showing something is more probable than not.

[8] At paragraph 42 she observed that the substantial likelihood test requires the screening judge to engage in some weighing of the evidence:

The new test has another aspect and impact. While both the old and new threshold tests have the same end point; being the trial judge's assessment of what the jury may do if the application reaches them, now a screening judge is no longer being asked only to assess the reasonable prospect of what a jury might decide, but rather to assess the substantial likelihood of the applicant's ultimate success before a jury. To the extent that the role of the judge under the previous test was to screen out hopeless cases, the judge reviewed the evidence to determine if there existed some evidence that would remove the case from the hopeless category, and it was left to the jury to weigh all the evidence on its merits. In Alberta under the reasoned possibility standard the Court of Appeal said that the screening judge would necessarily engage in a limited weighing of the evidence. In my view the substantial likelihood test calls for an increased consideration of evidence, including the most difficult and contentious issues, as it is precisely these issues that will likely steer a jury to their ultimate conclusion. As the new choice of words indicates, the substantial likelihood standard involves an augmented, more stringent threshold. The screening judge is now called upon to determine not just the possibility that a jury may decide in a certain way, but what that jury's ultimate decision is likely to be. Given that the screening judge is now tasked with a more thorough analysis, it follows that a screening judge requires the latitude to consider the evidence in greater depth and to weigh the factors when assessing whether there is a substantial likelihood that a jury will decide the case in a certain manner. In my view this is not usurping the role of the jury but is simply performing the function of the screening judge under a substantial likelihood standard.

[9] I respectfully agree with her conclusions.

[10] I now turn to consider the criteria set out in section 745.63:

a) the character of the applicant

[11] In support of his application, Jared Baker swore an Affidavit filed on November 25th, 2020.

[12] In his Affidavit, he deposes that prior to the murder of Olivia Talbot he had no prior criminal record. He further deposes to taking full responsibility for her death.

[13] He deposes to being genuinely remorseful for his actions and that he experienced remorse from the time of his arrest in 2005.

[14] The Affidavit outlines in detail his efforts at rehabilitation which include numerous courses and programs while incarcerated. He deposes that his employment prospects have considerably increased as a result of the programs he has undertaken.

[15] He further deposes to full support from his family and that he wants to become a productive and contributing member of society.

[16] Appended to his Affidavit are a number of character reference letters as well as certificates relating to the courses and programs he has participated in.

b) the applicant's conduct while serving the sentence

1. Correctional Service of Canada (CSC) Parole Eligibility Report dated April 26th, 2021

[17] This lengthy report outlines in detail a complete history of the Applicant from the time of his initial incarceration up to the current date. He is currently incarcerated in the minimum security wing of the Bowden medium security institution. While noting the applicant's progress while in custody, the report also notes that the Applicant has had a number of substance abuse issues at various institutions including acquiring drugs from other inmates and failing urinalysis tests. The report also references a psychological risk assessment and a psychiatric risk assessment both of which are summarized below.

2. Psychological Risk Assessment

[18] A psychological risk assessment dated February 12th, 2021 was prepared by Dr. Nahan Lau, psychologist.

[19] The first part of his assessment reviews the Applicant's record while incarcerated and repeats the observations in the CSC Parole Eligibility Report.

[20] The following paragraphs are found on page 11 on Dr. Lau's report:

During his current federal sentence, Mr. Baker has demonstrated inconsistent progress. In the first few years of his sentence, he was involved in physical altercations with other offenders, and there were concerns regarding his mental health as he reported thoughts of suicide and depression. However, his institutional behaviour subsequently improved and he appeared very motivated and committed to his rehabilitation. His participation in treatment programming was described as excellent although further work was recommended regarding his ability to effectively manage his emotions. Over the last few years, he has lapsed into substance use on a few occasions. He acknowledged he used drugs as a coping mechanism in times of stress and transition and also because he continued to experience drug cravings after his lapse into T3 use. He had not been forthcoming with his drug lapses nor did he reach out to his supports in times of

stress or drug lapse until after the fact or when he felt he would be caught. To his credit, Mr. Baker continues to make progress in other areas of his life including education, employment and maintaining a positive and strong support network. Furthermore, his institutional behaviour has remained positive and there has been no information to suggest any further-relapse into drug use. Mr. Baker recognized that his hesitancy to ask for help was his belief that he would lose trust and/or lose the progress he had made (e.g. minimum status). He verbalized his willingness to be more forthcoming regarding problems and accepting of the consequences. Although his current positive progress is encouraging, he has yet to demonstrate long term stability with respect to his stress management, emotional control and abstinence from substance use.

Current assessment of Mr. Baker's risk for violent recidivism places him within the Low-Moderate to Moderate category according to the HCR-20 (version 3) and within the Low category for general criminal recidivism according to the LS/Oil. His ability to abstain from substance use, effectively manage his emotions, and maintain open and honest communication with his Case Management Team and community supports are considered significant factors in mitigating his risk.

It is highly recommended Mr. Baker continue addressing his substance use problems whether it be through participation in substance use treatment programming (e.g. maintenance) in the institution or in the community, continue to address his emotions management and decision making skills, and to improve his communication with his case management team and mental health care providers. He would also benefit from individual therapy to address issues related to self-esteem, anxiety and issues of transition (closer to the date of potential release).

3. A Psychiatric Risk Assessment was prepared by Dr. Denis Morrison dated March 18th, 2021

His diagnosis is outlined on page 16 of his report and reads as follows:

DIAGNOSIS

I opine with reasonable medical certainty that the diagnoses in Mr. Baker's case consist of:

- Substance use disorder, presently in remission to substances namely stimulants such as methamphetamine, opiates Suboxone and Tylenol Nr 3s, and cannabis
- Substance induced psychotic disorder subsequent to stimulant specific intoxicant, presently in remission
- Antisocial personality features.

RISK ASSESSMENT AND MANAGEMENT RECOMMENDATIONS

As prior mentioned in the chapter on HCR 20 V3 and LS/RNR, risk for future violence is assessed as low to moderate, serious physical harm is assessed presently as low, imminent violence is assessed as low. A reassessment is recommended for 20220211.

Overall, in synthesis, risk in this dossier for further/future potential harm is related to 5 main crucial factors, both static and dynamic, and risk management:

- history of substance use disorder, mainly with stimulants such as methamphetamine
- history of substance induced psychotic disorder leading to homicide
- history of homicide
- relapse recently intra-mural into substance use THC, non-prescribed Suboxone and Tylenol 3
- present relationship with a female partner

Risk/weakness factors

Weakness factors consist of substance use relapse, potential difficulties in relationships with actual and further potential other female partners, work difficulties, absence of family and intimate support. Such negative situations and triggers would signify risk of relapse into intoxicant use, impulsive decision making, justification in use of aggressive and violent modes of coping and resolving situations and problems, risk of relapse into psychotic paranoid delusional. episodes and consequences following use of intoxicants

Strength factors

Strength factors consist of consistent educational, work and therapeutic compliant involvement, presence and access to personal and intimate support systems. His described purposes and goals are to go into a halfway house in Windsor, Ontario (where he is from), at Saint Leonard's Society, to be with his fiancée who comes like him from Ontario, to pursue training and work in welding, aluminum painting.

Recommendations

Recommendations are favourable as to continue minimum incarceration amenities, if to engage in a specific work environment, expansion of the security perimeter, and if to encounter family members and attending further training for work purposes to obtain ETAs specific to. Writer does not see counter indications moving back to Ontario.

Re-assessment should take place in one year time span 20220211. Rigorous monitoring of relapse prevention plan, regular testing for use of intoxicants, compliance with parole supervision requirements are mandatory.

c) the nature of the offense for which the Applicant was convicted

[21] On November 23rd, 2005 in Edmonton, the accused, while armed with a .22 caliber rifle, attended the residence of his close friend Olivia Talbot who was pregnant at that time. After Ms. Talbot opened the door of her residence, Baker shot her 4 times in the stomach and once in the head. The next day Baker confessed to the police that he killed her. He also confessed that he intended to kill her on a prior occasion and that he had previously contemplated stabbing or shooting her.

[22] During his confession, Baker told the police that he heard voices telling him to carry out the act and as well the unborn fetus was telling him what to do as Ms. Talbot was allegedly using drugs while pregnant. Baker told the police that at the time of the killing, he was extensively using methamphetamine drugs and that he was suffering from a drug induced psychosis as well as delusions, including that he was a supreme being.

- d) any information provided by a victim at the time of the imposition of the sentence or at the time of the hearing under this section

[23] In response to this application, the family of Olivia Talbot has submitted 6 victim impact statements. These statements outline that her death has caused enormous pain and suffering to her extended family.

[24] The authors of these statements are adamantly opposed to this application. It is readily apparent from reading them that although 15 years has elapsed since her death, the pain and suffering they have experienced has not diminished over time.

- e) any other matters the judge considers relevant in the circumstances

Discussion

[25] The murder of Olivia Talbot was brutal and callous. On this evidentiary record, she would have been completely unsuspecting that the Applicant, who was her friend, was about to kill her. As noted, her family is adamantly opposed to this application.

[26] Although it is apparent that the Applicant has made demonstrable progress since his incarceration, it is also apparent that there are troubling residual concerns about him which are outlined in the Parole Eligibility Report from CSC, the psychological assessment and the psychiatric assessment.

[27] It is highly significant that both the psychologist Dr. Lau and the psychiatrist Dr. Morrison, working independently of each other, expressed similar significant residual concerns about the Applicant, particularly relating to the issue of substance abuse.

[28] It is also noteworthy that Dr. Morrison recommended a reassessment in the Spring of 2022 given that he is not satisfied currently that the Applicant's condition has stabilized.

[29] Given the brutality of the murder, the strong opposition to the application by the family of Olivia Talbot, coupled with the concerns of Dr. Lau and Dr. Morrison, I am not persuaded that there is a substantial likelihood that the Applicant will be able to convince all 12 jurors that his period of parole eligibility should be reduced.

[30] In the result, the Applicant has not established on a balance of probabilities that there is a substantial likelihood that this application will succeed, therefore, the application is dismissed.

Heard on June 28th, and June 29th, 2021.

Dated at the City of Edmonton, Alberta this 7th day of July, 2021.

R. Paul Belzil
J.C.Q.B.A.

Appearances:

John Watson
for the Crown

Stacey Purser
for the Applicant