

Court of Queen's Bench of Alberta

Citation: R v Freeman, 2021 ABQB 854

Date: 20211029
Docket: 190794487Q1
Registry: Wetaskiwin

Between:

Her Majesty the Queen

Crown

- and -

Patrick William Freeman

Accused

**Reasons for Judgment
of the
Honourable Mr. Justice B.R. Burrows**

[1] Patrick William Freeman has been convicted, after pleading guilty, to the second degree murder of his father, Patrick Alexander Freeman. The murder occurred on June 24, 2019.

[2] The Indictment charged first degree murder. However, Mr. Freeman pleaded guilty to the offence of second degree murder. Pursuant to *CC* s. 606(4), and with the Crown's consent, I accepted that plea and being satisfied that the elements of second degree murder were admitted by Mr. Freeman, I found him guilty of that offence and directed that a conviction for second degree murder be entered.

[3] The issue now to be determined is as to a fit sentence to impose on Patrick William Freeman.

[4] The *Criminal Code* provides that the sentence for second degree murder is imprisonment for life with no eligibility to apply for parole for a minimum of 10 years and a maximum of 25 years. Life imprisonment is mandatory. The Court's function is to determine the term of parole ineligibility that is appropriate in the circumstances.

[5] That function is described in *CC* s. 745.4:

. . . at the time of sentencing under s. 645 of an offender who is convicted of second degree murder, the judge . . . 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 of parole, as the judge deems fit in the circumstances.

Circumstances of the Offence

The Agreed Statement of Facts

[6] The circumstances of the offence are set out in an Agreed Statement of Facts signed by Mr. Freeman, his counsel and Crown Counsel. I will summarize the statement and the other materials referenced in it. My summary includes some inferences I have drawn from what has been agreed.

[7] I will refer to the Accused, the son, as Patrick William, and to the deceased, the father, as Patrick Alexander.

[8] Patrick Alexander was 61 years old at the time of his death. Patrick William was 28.

[9] Patrick Alexander lived on a rural property in Lacombe County in central Alberta. Alexandra Freeman, Patrick William's sister, who was one year younger than him, lived with her father.

[10] Patrick William lived in Sylvan Lake which is in the same general area.

[11] Patrick Alexander and Patrick William had a difficult relationship but visited with each other on a frequent basis and worked on vehicles together, though, often not amicably. In 2018, Patrick Alexander sold a portion of his land to a third party. This caused a rift between son and father. After the land sale, Patrick Alexander purchased a vehicle from Patrick William for less than what Patrick William owed on the loan secured against the vehicle. The rift between father and son deepened.

[12] Patrick Alexander had two gun safes in his bedroom. Patrick William knew the codes required to unlock the safes. In 2018, Patrick Alexander had transferred nearly all of his firearms to a friend. A .22 caliber handgun remained in one of the safes. It was registered to Patrick Alexander.

[13] Patrick Alexander's residence was equipped with security video cameras. One of them was in the kitchen. Video from the cameras was obtained in the police investigation. The murder was clearly displayed on the video recorded on the kitchen camera. That video was shown in Court by agreement of counsel.

[14] Patrick Alexander had been on a trip to Australia in the weeks preceding the murder. He had messaged his daughter on June 23 advising that he would be returning to his residence the next day.

[15] On June 24, 2019, Patrick William was in the process of moving out of his residence in Sylvan Lake and had gone to his mother, Karla Hanson's, residence to borrow her truck. Ms. Hanson and Patrick Alexander has been divorced for many years. Patrick William was at his

mother's home for a couple of hours. Karla Hanson observed him to be quiet, sober and in a good mood.

[16] While at his mother's residence, Patrick William spoke with Patrick Chambers, his mother's spouse. Mr. Chambers observed him to be in a good mood, rational and speaking clearly. As he was leaving his mother's residence, Patrick William advised Mr. Chambers, that he was going to Patrick Alexander's residence to settle financial issues, in particular issues about money Patrick Alexander owed to him in relation to an engine Patrick Alexander and Patrick William were rebuilding. Patrick William also "vented" to Mr. Chambers about how unsupportive Patrick Alexander was toward him.

[17] Shortly before 3:00 pm, Patrick William arrived at the Hawk Tail Brewery in Rimbey where he had one beer with his friend, Randall Vandenhoven.

[18] At 3:06 pm, Patrick William arrived at Patrick Alexander's residence. He went in and spoke with his sister. Not long before, his sister had received a text from Patrick Alexander stating that he had landed in Vancouver on his way back from Australia. Patrick William told his sister that he had come to the residence looking for a "clip" or magazine for a firearm that was at their mother's residence.

[19] Patrick William went into his father's bedroom where he opened the gun safes.

[20] At 3:23 pm, Patrick William left the residence. The Agreed Statement of Facts includes a text message exchange that occurred between Patrick William and Patrick Alexander between 3:29 pm and 3:36 pm after Patrick William had left the residence. There are six messages quoted in the Agreed Statement of Facts, though, the content of the first quoted message suggests that it was not the first message in the exchange. In one message Patrick William asked, "When are you back from Australia?" Patrick Alexander answered, "Just got back." Patrick William then asked "When will you be home?" At 3:36 pm. Patrick Alexander answered, "1/2 hour".

[21] At 3:51 pm, Patrick William returned to the residence and asked his sister whether there was somewhere else she could be. She replied that she had been waiting to hang out with their dad and that Patrick William would have to wait his turn.

[22] At 3:58 pm, Patrick William went to a Quonset at the rear of the property to get the VIN from a vehicle stored there. He wrote it on a bill of sale. He returned to the residence and told his sister that he wanted to speak to Patrick Alexander alone when he arrived. He put the bill of sale on the kitchen table. There was a bill of sale for a second vehicle on the same table. I infer that Patrick William placed it there as well.

[23] Alexandra sent Patrick Alexander a message advising him that Patrick William had been at the residence and advising him not to come home. Alexandra was fearful something would happen given the previous disputes between Patrick William and Patrick Alexander.

[24] Patrick Alexander arrived at the residence at 4:06 pm. Patrick William was in the kitchen. After saying hello to his daughter, who was in her room, Patrick Alexander sat at the kitchen table.

[25] Patrick William confronted Patrick Alexander about the ownership of the vehicles identified in the bills of sale. Patrick Alexander was dismissive and cavalier about Patrick William's position.

[26] During this interaction, Patrick William approached Patrick Alexander, extended his right arm while holding a .22 caliber handgun, and pointed the gun at Patrick Alexander's head. Patrick Alexander shook his head from side to side. Patrick William pulled the trigger and shot Patrick Alexander in his right eye. Patrick Alexander fell to the floor. Blood flowed from his right eye.

[27] Alexandra heard the shot from her room. As she came out of her room, Patrick William stopped her and said, "No, it's over now." She pushed past him and found her injured father. He was gasping for air. Alexandra found that he had a pulse. She called 911.

[28] Patrick William unloaded the handgun and placed it and the magazine in the living room.

[29] The handgun was registered to Patrick Alexander. It is a restricted weapon. Patrick William did not have a license to possess a restricted firearm at the time.

[30] At 4:09, Patrick William called 911 to report that he had "just murdered my father." The recording of the 911 call is in evidence. When asked by the 911 operator what happened, Patrick William said, "He punched me around my whole life. And there was no sign of the end. I needed to get away from him and that was the only way I felt like I could."

[31] At the 911 operator's request Patrick William remained on the line for about 20 minutes until the police arrived.

[32] Patrick William peacefully surrendered himself to the police when they arrived and was taken into custody.

[33] EMS attended and took Patrick Alexander to Rimbey hospital from which he was transported by air ambulance to hospital in Calgary.

[34] At 9:30 am June 25, 2019, Patrick Alexander succumbed to his injuries and died. An autopsy was later conducted. It determined that Patrick Alexander died from a gunshot wound to the head.

Patrick William's Circumstances

[35] As noted, in June 2019 Patrick William was 28 years old. He was living with others in a residence in Sylvan Lake but was in the process of moving out of that residence. He had just finished his term at Red Deer College where, as I understand it, he was taking training to qualify as an electrician. He had no criminal record. He was in a very serious romantic relationship with a woman, whose name I am deliberately not mentioning. He had, and still has, a close relationship with her and her children who are now about 7 and 9.

Letters Supporting Patrick William

[36] That Patrick Alexander and Patrick William had a complicated and difficult relationship is confirmed in several letters provided by Patrick William's counsel. These include a lengthy letter from Patrick William's mother, Patrick Alexander's ex-wife, which describes Patrick Alexander's character and behaviour toward Patrick William in extremely negative terms. Letters with similar content have been provided by Patrick William's lifetime friends, Randall Vandenhoven and Brett Lueers, his Godparents, Colin and Ruth Hansen, and his romantic partner. The letters also describe very positive features of Patrick William's character which the authors of the letters have observed in Patrick William despite the extremely negative and

abusive treatment from his father, some of which they witnessed and some of which Patrick William told them about.

Psychological Report

[37] A very detailed psychological report, dated October 20, 2021, was prepared by Dr. Patrick Baillie and included in the materials provided by Patrick William's counsel. Dr. Baillie interviewed Patrick William on October 15, 2021 for a total of four hours. Dr. Baillie also had the same letters as were provided to me as discussed in para [36] above.

[38] The report discusses Patrick William's use of illegal drugs which began when he was about 15 years old. Patrick William appears to have used several illegal drugs on a more or less experimental basis. He also took prescribed drugs with relevant effects. Some of the drugs had very significant negative effects, such as causing him to experience chronic suicidal ideation. The report states that Patrick William went to live with his father for a short time when he was recovering from the very negative effects he experienced when using the drug MDMA.

[39] Dr. Baillie records that Patrick William advised him that in the months immediately preceding June 2019, when he was a student at Red Deer College, he sought assistance from mental health professionals because he was experiencing suicidal thoughts. He told Dr. Baillie that he sought that help because he was depressed, would get suicidal, would get anxious and "I recognized and could tell that I was being manipulated by my father, but I couldn't figure out how to do anything about it."

[40] Patrick William told Dr. Baillie that he had been prescribed Cipralex, an antidepressant, but did not take it because he had read that it causes sleepiness. About two weeks prior to the murder, he had been prescribed a medication for ADHD, lisdexamphetamine, which caused insomnia, which he had experienced for the month leading up to June 24, 2019. He told Dr. Baillie about a stressful situation he had experienced not long before June 24, relating to his relationship with a friend he met at college.

[41] Patrick William reported to Dr. Baillie that he had attempted suicide when he was 14 years old and again when he was living with his father after his negative experience with MDMA which was when he was 25.

[42] Patrick William also reported to Dr. Baillie that he had seriously contemplated suicide on the day of and before he murdered his father. He told Dr. Baillie that he was stopped from doing so by, ". . . my sister's presence in the house and I thought that maybe, if I could get my father to admit it . . . some small way to release his grasp of control on me, . . . that I wouldn't have to take my life."

[43] Dr. Baillie's report discusses Patrick William's relationship with his father in detail. As mentioned, in addition to his October 15, 2021 interview with Patrick William, Dr. Baillie had copies of the same five letters as have been provided to the Court as identified in para [36] above. He also had the transcripts of two interviews, I expect police interviews, with Patrick William's sister, Alexandra Freeman, conducted on the June 24 and June 25, 2019. Those have not been provided to the Court.

[44] Patrick William described his father as a "psychological terrorist" to Dr. Baillie. He cited occasions when Patrick Alexander would "guilt trip" him for not making sufficient contribution to Patrick Alexander's finances, and then refused to hear Patrick William's response. Patrick Alexander would "berate me for my life decisions, for being such a failure, for not contributing

to his life course. He would call me greedy and irresponsible.” This kind of treatment had been going on for Patrick William’s entire life. It was interspersed with times when Patrick Alexander would be a friend who Patrick William could trust but “as soon as I let my guard down, he would jump all over me.”

[45] Patrick William also told Dr. Baille that Patrick Alexander had physically abused him as a child frequently – several times a week.

[46] Patrick William also told Dr. Baille about having been sexually abused by a male relative who was not his father when he was four or five years old. He never told his father about that abuse.

[47] Patrick William told Dr. Baille about how his father used him as a sounding board or confidant after Patrick Alexander and Patrick William’s mother separated when Patrick William was 19 and had himself stopped living at his father’s farm. Dr. Baille reports what Patrick William told him about the financial dealings between Patrick Alexander and Patrick William concerning, in particular, what Patrick William believes was an attempt by Patrick Alexander to have Patrick William buy a portion of the farm for an unreasonably high price, the financing of the purchase and rebuilding of a race car, and efforts by Patrick Alexander to have Patrick William sell him his vehicle for an unreasonably low price.

[48] Dr. Baille also records what Patrick William told him about his father’s extremely negative attitude toward mental illness and Patrick Alexander’s cruel response when, in his childhood, Patrick William reported that he had been bullied at school.

[49] Dr. Baille also reports what Patrick William told him about his understanding that Patrick Alexander wanted him to kill his mother and his implied threat that he would kill Patrick William if he did not do so. The report does not indicate when Patrick William said this occurred.

[50] Patrick William also told Dr. Baillie his version of what happened on June 24, 2019. Several details of that account are not contained in the Agreed Statement of Facts. Several other details are inconsistent with the Agreed Statement of Facts. These details include:

- Patrick William went to the farm on the afternoon of June 24, 2019 because he was too intoxicated to drive and needed somewhere to go to sober up.
- Patrick William had consumed “kratom” earlier in the day to relieve pain he anticipated he would feel in his shoulder as a result of moving furniture. He told Dr. Baille, “I took a heavy dose of that [kratom] and I feel it made me feel more intoxicated with the alcohol.”
- One of the cars for which he had prepared a bill of sale had been Patrick William’s mother’s car. In his view, Patrick Alexander had cheated Patrick William out of the car.
- Patrick William accessed the gun safes in Patrick Alexander’s bedroom looking for a traffic ticket relating to his vehicle with an approaching court date and parts for a guitar. He was surprised to find the .22 handgun in one of the safes because he understood Patrick Alexander had got rid of all the firearms he once owned. He had moved out of his father’s house because of a temptation or risk that ready access to guns might lead him to suicide. Finding the gun that day caused him to contemplate suicide. He took the gun from the safe.

- He suggested to his sister that she leave. She declined to do so. He went from the house to the shop to retrieve bullets for the gun. He drove away from the farm. He intended to shoot himself. But when he stopped to do so he discovered that the ammunition he had taken from the shop did not fit the .22 handgun.
- His sister had told him that his father would soon be home. He wanted to find out if he had enough time before his father's return to the farm and get the correct bullets without meeting his father. He texted Patrick Alexander who told him he would be home in about 20 minutes.
- Dr. Baille records that Patrick William told him:

While slowing to turn off to the farm, Mr. Freeman recalls, he saw himself from outside his body, "shouting, 'don't go back there; you'll kill us.'" He added, "I looked so sad and lost and defeated from that third person perspective."
- After returning to the farm, he found the correct bullets, went into the bathroom, loaded the handgun and "put it in my mouth . . . I pulled the trigger, but not all the way . . . Took up some of the slack, but I stopped because I didn't want to do that to my sister." He decided to give one more try with his father, "to let me go, that he won't control me, that he won't mess with my mind, anything."
- He filled out the bills of sale. He planned to ask his father to transfer what he considered his, Patrick William's, vehicles to him. If Patrick Alexander refused, his plan was to "free myself" by suicide.
- When he spoke to his father as so planned, Patrick Alexander "denied and continued to play that game. And he was rude and dismissive . . . I got up to leave, but instead, I drew the gun. . . . It was before the thought was complete. It was like a reaction, like a knee-jerk reaction." I understand this last reference to be to his pointing the handgun at his father's head and firing it.

[51] Dr. Baille had Patrick William complete a standard psychological evaluation questionnaire test. Dr. Baille reports that Patrick William's answers to some validity questions included in the test may indicate that the overall profile resulting from the test may not be accurate. He advises caution in interpretation and use of the profile.

[52] Nevertheless, the test results indicate statistically significant elevations of "demoralization" and "of having had aberrant experiences/psychosis." The results do not show "marked indications" of "health concerns, depression, cynicism, antisocial attitudes and behaviours, feelings of being unfairly treated/persecuted, anxiety, and mania."

[53] Other result scales derived from the test showed elevations of "gastrointestinal complaints, head pain complaints, marked suicidal ideation, and self-doubt."

[54] Dr. Baille reports, "Absent [from the test results] were any significant indications of phobias, adolescent misconduct, substance abuse, aggression, family problems, social avoidance, impulsiveness, or problems with anger management."

[55] Dr. Baille reports, that, using an actuarial risk assessment measure, Patrick William presents a low to moderate risk for future violent offending. Dr. Baille reports:

Bluntly, [Patrick William's] risk for extreme re-offence is most likely to escalate if he returns to substance abuse, while under the influence of drugs encounters an emotionally evocative confrontation, and has access to firearms. Conversely, a supportive romantic relationship and other positive peer relationships, meaningful employment opportunities, abstinence conditions and his compliance, and appropriate mental health supports in the community would likely serve to lower his risk for violent re-offence.

Pharmacology Report

[56] The materials presented by the defence also include an August 20, 2021 report by Dr. Mark Yarema, a medical toxicologist. In preparing his report, Dr. Yarema had access to a letter from Patrick William and spoke to him by telephone.

[57] Patrick William told Dr. Yarema about various drugs he had take prior to the murder that are the focus of his report. Dr. Yarema reports:

- The night before the murder, Patrick William took about 1 gram of ketamine with friends between 1:30 and 2:30 am.
- At 9:00 am on the morning of June 24, he took two teaspoons of Kratom with water. This was to treat chronic pain symptoms. He had used this drug on and off for two months before the murder. It made him feel intoxicated.
- Patrick William had a pint of beer prior to going to his father's residence.
- He had started taking lisdexamphetamine about two weeks before the murder. He took two pills a day, one in the morning and one in the evening and would occasionally miss a day or two before resuming. His purpose in taking this drug was to help him focus in studying for his exams at Red Deer College which finished on June 21. He attributes feeling "fuzzy and blurry" in his mind and paranoia to his use of this drug.
- He had taken psilocybin and LSD in 0.2 to 0.3 gram doses one or two times a day to cope with anxiety and depression beginning in 2017 until about 3 weeks before the murder.
- He had taken ketamine on several occasions, the last being sometime between 8:00 pm on June 23 and 2:30 am on June 24.
- He used alcohol from about age 14 and marihuana from about age 16. The report is not clear as to whether his use of either was habitual in the months preceding June 24.
- He used cocaine occasionally, never more than once or twice a month, from age 21. He last used it in early June 2019 when he mixed it with ketamine.

[58] Dr. Yarema records several details reported to him by Patrick William that are not contained in either the Agreed Statement of Facts or Dr. Baillie's report. These include:

- When Patrick William went to the farm on the afternoon of June 24, he had not been there in four months.
- He asked his sister to leave the property because he was planning to commit suicide and did not want his sister to see his dead body or be hurt. His uncle had committed suicide and this act had hurt his uncle's sister, Patrick William's mother.

- His sister followed him around the property with her phone in her hand making him feel paranoid. He felt his sister and father were plotting against him, that they were going to kill his mother. He became fearful of his sister.
- After leaving the farm to go to the place where he planned to commit suicide and after discovering that he had the wrong bullets, he returned to the farm and texted his father to ask where the correct bullets were located. [I pause to observe that such a text, which would seem to me to be important, is not included in the six message text conversation quoted at paragraph 16 of the Agreed Statement of Facts and referenced at paragraph [20] above, though, as mentioned, the content of the six messages which are quoted in the Agreement Statement of Facts suggests to me that the first of those messages was not the start of the text conversation.]
- When he decided to wait and talk to Patrick Alexander, he “wanted his father to acknowledge that he had manipulated him throughout his life, especially as it pertained to the recent sale of the truck (which he apparently sold to his father for less than he could have received for it if he had sold it privately).”
- Dr. Yarema reports that Patrick William told him, “. . . when he and his father started talking, his father denied any attempts at manipulating him, and told him he was crazy. Patrick [William] became upset regarding the denial, and demanded honesty and answers from this father. Apparently, his father told him to leave.”
- As to the actual shooting, Dr. Yarema reports that Patrick William told him:

He does not recall drawing the gun, yet does recall saying something like “how about now?” when he was pointing the gun at his father. When he pulled the trigger, he describes it as “feeling his body do something and watching it happen.”

[59] In Dr. Yarema’s opinion, Patrick William could have been affected by the several drugs he had taken while engaged in the various things he did on June 24 up to the time shortly before he shot Patrick Alexander. The drugs he had taken could have affected his insight into the consequences of his actions for the part of June 24 that he was under their influence.

[60] But Dr. Yarema stated that, in his opinion, based on his observation of surveillance video of Patrick William entering and leaving his father’s house, and the content of the 911 call, by 4:10 pm, the time of the shooting, “. . . the clinical and behavioral effects of the ethanol, katom, and ketamine had most likely worn off.” By that time the alcohol Patrick William drank an hour or so earlier would have metabolized. The paranoia caused by the lisdexamphetamine which would have still been in his blood if he was taking it twice a day at a regular therapeutic dose of 30 milligrams each time, could still have been affecting him.

Victim Impact Statements

[61] Mr. Gillespie read four Victim Impact Statements written by close relatives of Patrick Alexander including:

- his daughter and Patrick William’s sister, Alexandra Freeman,
- his sister and Patrick William’s aunt, Bonny Olson,
- his brother-in-law, Ken Olson, and

- his niece and Patrick William's cousin, Kendra Olson.

That these people, and probably several others, are victims of Patrick William's crime is made patently clear by these statements. The extreme depth of the distress caused by the violent loss of their father, brother and uncle by the unthinkably violent and senseless act of his son, their brother, nephew and cousin, was compounded by the fact that Patrick Alexander and Bonny Olson's mother died within days of Patrick Alexander's death. It is clear that Patrick Alexander was dearly loved by these close relatives. I have taken the effects of Patrick William's crime on them into account in determining a fit sentence. I recognize that no sentence, indeed nothing that I can say and nothing about these proceedings, can begin to reduce the pain and loss they have described in their Victim Impact Statements.

Patrick William's Statement

[62] I invited Patrick William to address me himself at the conclusion of the submissions of counsel. He had prepared a statement which he read. It was eloquent. To say that he is genuinely remorseful for the crime he committed in murdering his father is a gross understatement. I have the impression that now, more than two years after the murder, he recognizes the unspeakable seriousness of his crime and the depth of the harm he has caused by committing it.

Positions of Counsel

[63] Mr. Gillespie, for the Crown, submitted that a proper sentence for Patrick William is life imprisonment without eligibility to apply for parole for 14 to 17 years.

[64] Mr. Gillespie acknowledged that Patrick William's guilty plea is a mitigating factor but submitted that its mitigating effect is diminished by the fact that it was offered in the face of overwhelming evidence of guilt.

[65] He also acknowledged that Patrick William's youth and lack of a criminal record has mitigating significance.

[66] He acknowledged that it could mitigate a just sentence if it were established that Patrick William was affected by a mental illness in committing the murder – it would reduce his moral blameworthiness. He submitted, however, that the evidence before the Court was insufficient to warrant significant mitigation of sentence by reason of mental health issues.

[67] Mr. Gillespie submitted that aggravating factors include:

- that Patrick William's crime is an instance of family violence.
- that Patrick William's crime involved some planning, and personal malice and animus.
- that Patrick William shot Patrick Alexander when he knew that his sister though not in the room was in the house.
- that Patrick William committed the murder using a firearm.
- that Patrick Alexander was unarmed and defenceless at the time Patrick William shot him.
- that the murder occurred in Patrick Alexander's home where he was entitled to feel safe and secure and not to be in danger by reason of the actions of a close family member who was present in the home with his permission.

[68] Mr. Gillespie cited several cases where the circumstances had features similar to those presented in this case and the period of parole ineligibility imposed was in the range which he submitted is appropriate here. These cases were: *R v White* 2020 ONCA 639; *R v Boukhalfa* 2017 ONCA 660; *R v Roy* 2016 NBQB 7; *R v Sollows* 2017 ONSC 2359; *R v Tucker* 2017 NBQB 17; *R v Osborne* 2019 ONSC 6447; *R v Roberts* 2006 ABCA 113 and *R v McClenaghan* 2011 ABCA 266.

[69] Mr. Gillespie submitted that when all of these factors are taken into consideration, this is a case where achievement of the sentencing goals set out in the *Criminal Code* including proportionality, denunciation, deterrence, separation from society, rehabilitation, and parity require that the period of parole ineligibility to be attached to the mandatory sentence of life imprisonment be more than the minimum 10 years, and that the fit disposition is as he submitted: life imprisonment with no eligibility to apply for parole for 14 to 17 years.

[70] Mr. Hepner, for Patrick William submitted that a fit sentence is life imprisonment with no eligibility to apply for parole for 10 years.

[71] He submitted that Patrick William's guilty plea, his youth, his lack of a criminal record, and his genuine remorse clearly have mitigating effect in this case. He submitted that Patrick Williams mental health situation at the time of the offence is relevant to the determination of the parole ineligibility period even though it would not afford Patrick William a legal defence.

[72] Mr. Hepner also cited several comparable cases in all of which the parole ineligibility period accompanying a sentence of life imprisonment was set at 10 years: *R v Diep* 2005 ABQB 81; *R v Aristor* 2020 ONSC 6070; *R v Descroches* 2015 BCSC 1287; *R v Liang* 2019 BCSC 1196 and *R v Penner* BCSC 411.

[73] Mr. Hepner also referred me to *R v Roberts* 2001 ABQB 520 where Justice Peter Martin, then a judge of this Court, listed several circumstances that might justify increasing the period of parole ineligibility in a second degree murder case. Only two of the seven circumstances listed by Martin J would apply here: 1) where the killing followed a history of assaultive or abusive conduct and 2) where the killing was particularly brutal or shocking. Martin J. did not suggest that the list he presented was exhaustive.

[74] Mr. Hepner particularly referenced this passage from Martin J.'s decisions: (para 68)

In my view, absent aggravating factors such as those listed above, the matter of parole ineligibility is best left to those who have the experience and training to make that decision, at the time the prisoner has served a substantial portion of the sentence and has become eligible for consideration. It is important to remember that the sentence upon conviction for second degree murder is life imprisonment and, if the parole authorities deem it warranted, the prisoner may actually be required to serve that full sentence.

[75] In my view, this statement by Martin J. is inconsistent with Supreme Court of Canada authority, which I shall now briefly discuss.

R v. Shropshire [1995] 4 S.C.R.227

[76] The Supreme Court of Canada addressed the determination of the period of parole ineligibility in *Shropshire*. That decision was an appeal from a decision of the British Columbia Court of Appeal which, with one member of the panel dissenting, held that deviation from 10-

year minimum parole ineligibility was justified only in unusual circumstances. The Supreme Court rejected that position. It ruled that the 10-year parole ineligibility period should not be considered a default. It should not require unusual circumstances to justify imposing a period of parole ineligibility exceeding 10 years. The determination is to be made by a consideration of the matters listed in *CC* s. 745.4: the character of the offender; the nature of the offence; and the circumstances surrounding its commission.

[77] The Supreme Court said: (para 23)

The only difference in terms of punishment between first and second degree murder is the duration of parole ineligibility. This clearly indicates that parole ineligibility is part of the “punishment” and thereby forms an important element of sentencing policy. As such, it must be concerned with deterrence, whether general or specific.

...

(at para 24)

The exercise of a trial judge’s discretion under s. 744 [now s 745.4] should not be more strictly circumscribed than the sentencing itself. The section does not embody any limiting statutory language; rather it is quite the contrary.

[78] My understanding of the law as established in *Shropshire* is that the sentencing judge’s duty in determining the period of parole ineligibility in a second degree murder case is the same as the judge’s duty in determining every fit sentence: to apply the principles of sentencing; to seek to achieve the goals of sentencing; and to carefully assess the mitigating and aggravating factors of the case.

[79] Parliament has determined that in a second degree murder case, the trial judge’s role is as to the determination of only part of the sentence – parole ineligibility. Parliament has withdrawn the other part, arguably the major part, of the determination from the judge by providing for a mandatory sentence of life imprisonment. But the part left to the judge, parole ineligibility, relates to an element of the sentence that has very great significance to the person to be sentenced, to those who are indirect victims of the crime and to the community. It is a feature of the sentence which must be carefully crafted to respect, as closely as possible, the principles of sentencing and to achieve the goals of sentencing as Parliament has defined them.

A Fit Sentence

[80] Here are the main considerations that I have taken into account in reaching my decision:

[81] In my assessment, the nature of the offence and the circumstances of the offence drive the conclusion that the level of Patrick William’s moral blameworthiness is extremely high.

[82] Shooting his father in the head was as senseless, as cruel, as callous and as inhumane an act as it is possible for one person to inflict on another.

[83] That the murder occurred in Patrick Alexander’s home, in which Patrick William, though he didn’t live there, was present because, as Patrick Alexander’s son, he had something akin to an unquestioned right to enter, and that Patrick Alexander was Patrick William’s father, all increase the moral blameworthiness of Patrick William’s act.

[84] Nothing about the abuse Patrick Alexander had inflicted on Patrick William for many years comes close to providing an understandable explanation for Patrick William's action, let alone an excuse for it. At 28, and not having lived for some time in his father's residence, not suffering from any lack of intelligence, and being fully aware of the exceedingly unhealthy nature of his relationship with his father, and wishing to extract himself from that relationship, the obvious course was to have no further contact with his father.

[85] Patrick William's statements to Dr. Baillie that he felt his father was controlling his life and that his purpose on June 24, 2019 was to end that situation either by having his father acknowledge it and presumably agree to end it, or by suicide, do not entirely ring true. Similarly, the suggestion that the murder was an entirely unanticipated outcome of the confrontation is not entirely credible. There is very little in the history of the relationship between Patrick William and Patrick Alexander that reduces the blameworthiness of Patrick William's actions.

[86] I agree with the Crown's submissions that the fact that Patrick William's crime is an instance of family violence, that it involved some planning, and personal malice and animus, that Patrick William shot Patrick Alexandra when he knew his sister was close by, though not in the same room, that he committed the murder using a firearm, and that Patrick Alexander was unarmed and defenceless, all increase Patrick William's moral blameworthiness.

[87] I agree with the Crown's submission that the information provided to me about Patrick William's drug use and psychological profile do not diminish his blameworthiness.

[88] CC s. 754.4 instructs me to consider Patrick William's character. I have the impression that this criminal conduct was very much inconsistent with that character. It was a deviation, albeit a very significant deviation, from an otherwise entirely pro-social life. He had no prior criminal record. He enjoyed the love and support of family members and despite his criminal act, in several cases, still does. His romantic partner considers him a positive connection for her children. His eloquent statement to the Court and the genuine remorse he expressed in it, cause me to believe that his character, but for this entirely unacceptable crime, is a positive attribute.

[89] I have considered the significance of the fact that Patrick William pleaded guilty. The Crown acknowledges that this was not a late guilty plea. Counsel had determined that these proceedings would be resolved by a guilty plea to second degree murder several weeks before trial, before any witnesses or a jury had been summoned. Because of the guilty plea, the proceedings have been brought to resolution with a minimum of public and private expense and inconvenience.

[90] The Crown submits that the mitigating significance of the guilty plea is none-the-less reduced because it was made in the face of the obvious strength of the Crown's case. I do not agree. The evidence that Patrick William was guilty of murder may have been strong – but, given that the Crown consented to his plea of not guilty to the offence charged, first degree murder, and his plea of guilty to the included offence, second degree murder, the Crown's case with respect to the offence charged cannot have been so strong. In my view, the mitigating effect of the guilty plea is not diminished.

[91] I have reviewed the comparable cases cited to me. I have also reflected on previous cases where I have determined the period of parole ineligibility, in particular, *R v Iyamuremye* 2015

ABQB 638 and *R v Newborn* 2018 ABQB 47, upheld 2020 ABCA 120, leave to appeal to the Supreme Court of Canada refused [2020] S.C.C.A. No. 282.

[92] In my view, but for his position on the mitigating effect of Patrick William's guilty plea, Mr. Gillespie's submission as to the appropriate range of parole ineligibility in this case, 14 to 17 years, is correct.

[93] In my view, taking into account all of the matters I am required to take into account, and giving Patrick William's guilty plea appropriate mitigating significance, I conclude that the period of parole ineligibility that is fit in this case is 13 years.

Sentence and Corollary Orders

[94] Patrick William Freeman I sentence you to life imprisonment without eligibility for parole for 13 years.

[95] At Mr. Hepner's request, I recommend to the corrections authorities that Mr. Freeman serve his sentence at the Bowden Institution which is located close to his family support.

[96] Pursuant to *CC* s. 743.21, I prohibit you from communicating directly or indirectly with the persons identified on the list provided by Mr. Gillespie to the Clerk during the custodial period of your sentence.

[97] Pursuant to *CC* s. 109(1), I order that you be prohibited from possessing any firearm or other weapon listed in that section for the periods listed in *CC* s. 109(2).

[98] Pursuant to *CC* s. 487.051, I order that you provide such samples of your DNA as may be required for the purposes of that section.

[99] And I order that all items seized in connection with the investigation in this case be forfeited to the Crown.

Heard on the 25th day of October, 2021.

Dated at the City of Wetaskiwin, Alberta this 29th day of October, 2021.

B.R. Burrows
J.C.Q.B.A.

Appearances:

D. Gillespie
for the Crown

A. Hepner, Q.C.
for the Accused