

Lenience, Sentencing and Public Outcries - by A Smith

2019 has already delivered two significant verdicts for two high profile murder cases that have caused public outcry regarding sentencing that the public perceives to be too lenient. Both cases involve multiple murders in which both judges were faced with the choice of concurrent or consecutive sentences. In weighing the circumstances of their respective cases, did the judges make the correct decision?

On February 8, in a courtroom in Quebec, Alexandre Bissonnette, “driven by racism and hatred” was sentenced to 40 years in prison without possibility of parole for the mass premeditated shooting of six worshipers in a Quebec City Muslim mosque¹. He pleaded guilty to six counts of first-degree murder and six counts of attempted murder. Superior Court Justice Francois Hout rejected the Crown’s request for six consecutive life sentences which would have prevented Bissonnette from seeking parole for 150 years, ensuring he would spend the rest of his life in prison. However, in the end, Hout sentenced Bissonnette to concurrent life sentences for the five murders and added another 15 years for the sixth murder. The sentence was

¹ <https://globalnews.ca/news/4939042/bruce-mcarthur-alexandre-bissonnette-consecutive-concurrent-sentences/>

denounced by the highly emotional survivors and many members of the Muslim community.

On the same day in February but in Ontario, the next province over from Quebec, Bruce McArthur was sentenced to life in prison with no possibility of parole for 25 years for the serial killing of eight men from the LGBTTQ community in Toronto. In his sentencing announcement, Judge McMahon explained that he would not be sentencing McArthur to consecutive sentences of parole, rather he was satisfied that McArthur would not be a danger to society with the concurrent ruling. McArthur would not be eligible for parole until the age of 91. While the Crown asked for parole eligibility for 50 years, up from the standard 25 years, McMahon decided that sentencing the accused to parole ineligibility until he is 116 years of age is symbolic². There is a fine line between retribution, which is an appropriate sentencing principle, and vengeance. If the accused either had a trial or would have been younger, I would have had no hesitation in imposing consecutive parole ineligibility terms to protect the public.”³As expected, the Toronto community was dissatisfied with the final verdict, most notable the families of

² <http://www.thecourt.ca/canadas-longest-recent-sentences-questions-controversies-consecutive-life-sentences/>

³ *Supra* at note 1.

the victims who stated that “if you’re going to do a maximum crime, you deserve the maximum sentence, which is life times eight”⁴.

Both cases shine a light on the provision in the Criminal Code of Canada that was amended in 2011, allowing judges the discretion to sentence offenders to consecutive sentences where there are multiple murder victims. On March 9, the Honourable Rob Nicholson, P.C., Q.C., M.P. for Niagara Falls, Minister of Justice and Attorney General of Canada, announced the passing in Parliament of Bill C-48, the *Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act*. Minister Nicholson stated that "families of murder victims can now take comfort in the fact that the sentencing process will be able to acknowledge the value of each life taken."⁵ Under the old system, criminals convicted of multiple murders served their parole ineligibility periods concurrently, meaning that they were eligible to apply for parole after just one period ranging from 10 to 25 years, depending on their sentence. This was the Conservative governments way of addressing more truth in sentencing and reflecting the severity of the crime. Since the amendment passed in 2011, there have only been 8 cases where a judge has used the provision, with the most recent in December 2018 for notorious triple killer Dellen Millard.

⁴ <https://globalnews.ca/news/4937703/bruce-mcarthur-sentence-parole/>

⁵ <https://www.canada.ca/en/news/archive/2011/03/parliament-passes-legislation-ending-sentence-discounts-multiple-murderers.html>

While it is perfectly natural for the families of the victims in both the McArthur and Bissonnette cases to feel as if justice was not served, the purpose of the justice system is not to simply make the victims, families and the greater community breathe a sigh of relief and feel better that the bad guys were sent away. While providing reparation is one objective of sentencing, the Criminal Code also identifies denunciation, deterrence, separating offenders from society, and promoting a sense of responsibility in offenders as objectives of sentencing in the Canadian Criminal justice system. Arguably, severe sentences are a form of deterrence. However, research has shown that tough on crime does not always decrease crime rates. In an opinion poll conducted by Statistics Canada in 2014, Canadians were convinced that long prison sentences deter people from committing violent crimes such as murder⁶. However, research shows that a mandatory life sentence for murder is not a deterrent for criminals. In 2011, Steven Durlauf of the University of Wisconsin and Daniel Nagin at Carnegie Mellon University found that criminals were less concerned about the length of a potential sentence and did not respond to more severe sentencing. Durlauf and Nagin wrote that the severity of the sentence alone did not deter the person from committing a crime. Rather, the criminal was more concerned about the certainty of

getting convicted. Their study concluded that “the marginal deterrent effect of increasing already lengthy prison sentences is modest at best”⁷.

Some lawyers and judges believe that the 2011 amendment to the Criminal Code is unconstitutional and a violation of human rights. For some, including McArthur and Bissonnette, their age played a factor in sentencing. In McArthur’s case, as the judge pointed out, by the time he is eligible for parole he will be 92 years old, hardly a menace to society. Contrary to this, as Bissonnette is only 28, he will be eligible for parole at age 68, allowing him the opportunity for rehabilitation. So, did each judge make the correct decision? Was the sentence proportionate to the gravity of the offence and the degree of responsibility of the offender? Finally, did the sentence promote one of the sentencing principles of denunciation, deterrence, rehabilitation to provide reparations while promoting a sense of responsibility? That is for you, the reader to decide.

⁷ Durlauf, S., & Nagin, D. (2011). Imprisonment and crime: Can both be reduced? *Criminology & Public Policy*, 10(1), 13-54.

Sources

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