CITATION: R. v. McArthur, 2019 ONSC 963
COURT FILE NO.: CR-18-70000599
DATE: 20190208

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
HER MAJESTY THE QUEEN	)	*Michael Cantlon and Craig Harper*, for the Crown
– and –	)	
	)	
BRUCE McARTHUR	)	*James Miglin*, for the Mr. McArthur
	)	
	)	
	)	
	)	**HEARD:** January 29, February 4 and 5, 2019

REASONS FOR SENTENCE

McMAHON, J.

Overview

[1] Mr. McArthur's case was scheduled to proceed to trial in January, 2020.

[2] Over the last two months since the accused's arrival in the Superior Court, counsel have been working towards a potential resolution of this matter. I have conducted several judicial pre-trials.

[3] On our last appearance on January 29, a little over a year from the accused's arrest, I was advised by Mr. Miglin, an experienced criminal defence counsel who represents Mr. McArthur, that his client wished to plead guilty to eight counts of first degree murder. Further, I was advised by Mr. Miglin that he had conducted a plea inquiry with his client and had gone over both the brief statement of facts filed on January 29 and the evidence that would be conceded. These materials have since been filed as exhibits.

[4] Before accepting Mr. McArthur's pleas of guilty, I also conducted a comprehensive plea inquiry with Mr. McArthur in open court. I am satisfied that the accused recognizes he is giving up his right to a trial. He is doing so voluntarily and recognizes he can only plead guilty to things he actually did and to admit to facts that are true.

[5] Further, he fully appreciates the consequences of pleading guilty. He recognizes that I am required by law to sentence him to life imprisonment for each of the eight counts, and that the period of parole ineligibility on each count would be 25 years. The only issue to determine, as he appreciates, is whether the periods of parole ineligibility will run consecutively or concurrently. Mr. McArthur recognizes that by pleading guilty, he may very well spend the rest of his life in a federal penitentiary with no prospect of parole.

Facts

[6] The facts in support of the pleas of guilty are as follows.

[7] Between September of 2010 and June of 2017, the accused lured eight innocent men to their deaths. The accused acknowledges that the essential elements for first degree murder in relation to each of the eight killings was present. That is, he unlawfully caused the death of each of these eight men. He killed each of them intentionally. Further, the accused admits that each of the eight killings had one or more of the following elements of first degree murder:

1. They were planned and deliberate;

2. They were committed during the course of a sexual assault; and/or

3. They were committed while the victim was unlawfully confined.

[8] After killing his victims, he took digital photos of most of them. In many cases, he staged the deceased for photos with a fur coat and a cigar, which was placed in the victim's mouth. Further, the accused took close up photos of their genitalia. In several cases, he shaved the beards and heads of some of his deceased victims and took further photos. The accused created a digital file for each of the eight victims where he stored the photos, no doubt for his own perverted sexual gratification. He also kept some personal effects of some of his victims as keepsakes or trophies.

[9] The accused then systematically dismembered each of his eight victims. The remains were then hidden on the property of one of the unsuspecting customers of his landscape business. Seven of the victims were placed in planters as well as other places on the property near the adjacent ravine.

[10] In 2016, in all likelihood, there would have been another victim if he was unable to flee the accused's van where the accused was trying to strangle him.

[11] The killings only ended because of the accused's eventual apprehension. The police had a breakthrough in the investigation in relation to the killing of his last victim, Andrew Kinsman. Mr. Kinsman was reported to the police as missing within a day of his disappearance. The investigative team recovered an entry in his calendar for June 26, 2017 with the name "Bruce". Ironically, Mr. Kinsman making that notation gave the police the key clue that helped bring the accused to justice. Because of the early report, the police were able to seize relevant security video footage before it was overwritten.

[12] The police seized various security video surveillance tapes from the neighbourhood and observed the victim getting into a 2004 red Dodge Caravan. The police, working with the local Chrysler dealership, were able to identify the particular model of the 2004 Caravan. Record searches eventually narrowed down to Mr. Bruce McArthur being the owner of a red Dodge 2004 Caravan.

[13] By September 2017, the police had Mr. McArthur under surveillance. They were able to obtain a discarded coffee cup. A DNA profile for Mr. McArthur was obtained. They also surveilled him on many occasions at a Leaside address where he was observed doing landscaping work.

[14] By November 2017, after a great deal of surveillance of Mr. McArthur, they discovered that the accused "junked" the Caravan and the police recovered it from an auto wrecker in Courtice, Ontario.

[15] In late November 2017, forensic analysis of the junked van revealed blood and semen. Some of those samples contained the DNA of Mr. Kinsman. The forensic analysis also connected the DNA of Mr. Selim Esen to the van. Mr. Esen had been reported missing since April 16, 2017.

[16] Armed with this evidentiary foundation, the police obtained a judicial authorization to covertly enter the accused's residence, search it, and copy the contents of his computer. Due to the circumstances and timing, the police were only able to download 45% of the content of the computer. The contents on the computer included many photos of Mr. Kinsman in life.

[17] Further forensic analysis of the download continued and on January 17, 2018, the police were able to recover deleted photos of Mr. Kinsman and Mr. Esen who clearly appear to be deceased. This finally gave the police grounds for arrest.

[18] The next day the accused, who was under constant surveillance, was observed outside his residence in the company of another man. When the accused and the man entered the building, the police decided for the safety of the person to arrest the accused immediately. On entering the accused's apartment, they found the man, referred to as John, naked and handcuffed to the accused's bed against his will. It is an admitted fact that John went there for the purpose of consensual sex but was handcuffed against his will. A black bag placed over his head, which he was able to shake off as the police entered.

[19] With a search warrant for the accused's residence, the police were able to recover more DNA evidence linking many of the victims to the apartment. Keepsakes from the victims were found. Importantly, a USB drive accessed from Mr. McArthur's computer was recovered, which contained nine sub folders. Eight of these folders were named for each of his eight victims, and contained graphic photos that the accused had taken of each victim. The ninth folder was entitled "John", and contained pictures of the man rescued by the police. I have no hesitation in concluding that if it were not for the police intervention on January 18, 2018, John would have been the ninth victim of Mr. McArthur.

[20] In an effort to determine the location of the bodies, the police searched various properties, relying on their previous surveillance and on the fact the accused was a landscaper. They obtained a search warrant and the next day, January 19, it was executed. As a result, the police recovered the various body parts of the eight victims from the grounds of a particular address in Leaside. It is clear that the unsuspecting home owners of this address had nothing to do with this brutal behavior of Mr. McArthur and are wholly innocent victims of any wrongdoing.

Determining the Appropriate Sentence

[21] It is based upon these facts, I must sentence the accused.

[22] As I indicated to the accused at the time he entered his pleas of guilty, I am required by law to sentence the accused on each count to life imprisonment, and direct he must serve 25 years before being eligible to apply for parole. The only issue to be determined on this sentencing is whether the periods of parole ineligibility, which must be 25 years on each count pursuant to the provisions of the *Code,* should run concurrently or consecutively.

[23] Parliament of Canada enacted Section 745.51 of the *Criminal Code* to deal with parole ineligibility in cases involving multiple murders. It came into force on December 2, 2011.

[24] Section 745.51(1) reads as follows:

> At the time of the sentencing under section 745 of an offender who is convicted of murder and who has already been convicted of one or more other murders, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and the recommendation, if any, made pursuant to section 745.21, by order, decide that the periods without eligibility for parole for each murder conviction are to be served consecutively.

[25] This legislation applies to six of the murders. The first two counts, which relate to the killing of Mr. Navaratnam and Mr. Faizi, took place in 2010 and predate the enactment of s. 745.51. As a result, they are not eligible for consecutive periods of parole ineligibility.

[26] It is the position of the Crown attorney, Mr. Harper that in light of the violent and brutal nature of the killings, the degradation of the victims, and the number of victims, the principles of denunciation, retribution, and general deterrence require at least some of the periods of parole ineligibility to run consecutively. It is the position of the Crown that the accused should be subject to 50 years of parole ineligibility. In other words, the accused would be 116 before he may apply for parole.

[27] It is the position of Mr. Miglin on behalf of his client that in light of the accused's age, the fact the accused waived the preliminary hearing, and the fact that he pleaded guilty at an early stage of proceedings at the Superior Court of Justice, that the periods of parole ineligibility should run concurrently. If I acted on this submission, the accused would be 91 years of age when he could first apply for parole.

[28] The accused will serve a sentence of life imprisonment for his crimes. The issue to be determined distills down to whether the accused should be eligible to apply for parole at 91 years of age or 116 years of age. This may be a distinction without a difference. Even if the accused is still alive at 91, due to the savage nature of the killings, it is highly unlikely that the accused will ever be granted parole, irrespective of the period of parole ineligibility imposed.

[29] I recognize pursuant to the provisions of s. 745.51, the issue of whether to make the periods of parole ineligibility run concurrently or consecutively is discretionary. In exercising my discretion, I must consider four potential factors as set out in the section:

1. The character of the accused.

2. The nature of the offences.

3. The circumstances surrounding the commission of the offences.

4. Any recommendation of the jury.

[30] Obviously, in this case, the fourth factor is not relevant since the accused pleaded guilty to the offences.

[31] In examining these factors, I must also consider the principles of sentencing set out in s. 718 of the *Code*. Section 718 reads as follows:

[32] The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

> (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;
>
> (c) to separate offenders from society, where necessary;
>
> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[33] I am also mindful of the fundamental principle of sentencing set out in s. 718.1, which states a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. There is no argument these eight counts of first degree murder are at the highest end of gravity of the offence. Further, the accused has a very high degree of moral culpability in relation to the killings. The accused committed murders that were planned and

deliberate, and included dimensions of sexual assault and confinement. To add to this, the accused brutally dismembered the bodies of the eight deceased victims.

[34] I am also required pursuant to section 718.2 to look at any further aggravating or mitigating factors as well as the other considerations articulated in this section.

[35] Upon reviewing the various factors I am required to consider pursuant to s. 745.51, I must also look at the case law interpreting this provision. To date, there is no appellate authority in Canada providing insight into how trial judges should exercise their discretion under this section.

[36] Counsel have quite helpfully provided me with all of the reported cases (as well as one unreported case) at the trial level courts across Canada dealing with multiple murders since the 2011 amendments. Of the approximate 26 cases where courts have had to consider consecutive periods of parole ineligibility, courts have imposed consecutive parole ineligibility periods in 15 of those cases and a concurrent period in 11. Understandably, since each case involves the exercise of discretion in sentencing, the judge must take guidance from the general principles that govern sentencing. These include considering the gravity of the offence, the accused's degree of moral culpability, and any aggravating or mitigating circumstances.

[37] It is nevertheless helpful to briefly examine some of the case law. Of the 15 cases where the Court has imposed consecutive parole ineligibility, 10 of those cases involved the accused exercising his right to proceed trial, and being found guilty by either the jury or a judge. That is different than the case at bar.

[38] There are, however, five cases where the accused elected to plead guilty to multiple murders and received consecutive periods of parole ineligibility.

[39] In *R. v. Vuozzo*, 2015 PESC 14, 1138 A.P.R. 181, the Justice of the Prince Edward Island Supreme Court dealt with an individual who was 46 years of age .He pleaded guilty to one count of first degree murder and one count of second degree murder. In 2014, the accused drove to the apartment of relatives of a deceased impaired driver who had killed the accused's sister back in 1970. The accused went to the apartment for the specific purpose of killing one of those relatives. When he encountered a second male in the apartment, he also intentionally shot and killed the second man. The accused pleaded guilty to one count of first degree murder and one count of second degree murder. The Crown suggested that the court should impose 25 year periods of parole ineligibility, to be served consecutively for a global period of 50 years. This would make the accused 96 years of age when he could apply for parole. The defence submitted the periods should run concurrently.

[40] The sentencing judge stated the following at para. 114:

> I have considered whether a 50 year period of parole ineligibility, until the offender is age 96, would be unduly long or harsh. Apart from the unlikelihood the offender will live to that age, in my opinion, the prohibition on even applying for parole until then virtually

eliminates any hope. Such a sentence would go beyond retribution and become vengeful, and that would not be just. In my view, it would be unduly long or harsh.

[41] The judge imposed a total period of parole ineligibility of 35 years, which would allow the accused to apply for parole at age 81.

[42] In *R. v. Ostamas*, 2016 MBQB 136, 329 Man. R. (2d) 203, the Manitoba Court of Queen's Bench sentenced an accused who, over a two week period, killed three homeless people for no apparent reason. The first two victims died of blunt force trauma, and the last victim died of blunt force trauma and ligature strangulation. There was evidence that the accused had mental health problems. He was charged with three counts of second degree murder. There was a joint submission that the accused should not only receive the maximum period of parole ineligibility of 25 years on each count, but also that the three counts should run consecutive, hence equaling 75 years. The accused was 40 years of age when he committed these offences.

[43] In *R. v. W.G.C.,* 2015 ABQB 252, the Alberta Court of Queen's Bench was dealing with a 26 year old accused who was initially facing two counts of first degree murder and a count of unlawful sexual touching. When he was 22 years of age, he started having repeated sexual intercourse and oral sex with a young child right through until she became pregnant with his child at age 15. The accused then decided that he would kill the 15 year olds mother. He planned in a deliberate fashion to go over to the residence one morning after obtaining a key from the child he sexually abused. He hunted down the mother and repeatedly stabbed her in the presence of one of her other children, who was only five years of age. He then hunted down the five year old and killed him as well. The accused then staged the entire scene to make it look like there had been a struggle with others. He then took the victim's car. He came up with an elaborate plan to set up a third person as the potential killer.

[44] The accused pleaded guilty to the first degree murder of the mother, the included offence of second degree murder of the five year old child and the third count of sexual touching in relation to the child victim. There was a joint submission put before the court of making the parole ineligibility on the count of second degree murder ten years, and having the periods run consecutively. Hence, the joint submission, which was accepted, resulted in a period of 35 years of parole ineligibility, which would allow the accused to apply for parole at 61 years of age.

[45] In *R. v. Bourque,* 2014 NBQB 237, 15 C.R. (7th) 52, of the New Brunswick Queen's Bench, the accused pleaded guilty to three counts of first degree murder and two counts of attempted murder using a firearm. In June of 2014, the 24 year old accused planned on killing RCMP police officers. He armed himself with two firearms and a supply of ammunition. The court found that there was strong pre-meditation. The three killings and two attempted killings took place in a little over 20 minutes. The Crown sought three consecutive 25 year periods of parole ineligibility. The defence also submitted that there should be two consecutive periods of parole ineligibility totaling 50 years. The Court found that general deterrence and denunciation must be paramount to deter others from seeking to kill law officers in the execution of their duty. The accused received 75 year parole ineligibility. He could apply at 99 years of age.

[46] In *R. v. Baumgartner,* 2013 ABQB 761, 578 A.R. 87, of the Alberta Court of Queen's Bench, the accused had been employed with an armoured car company. He planned a robbery to steal over $400,000, and part of his plan would be the deliberate execution of some of his fellow armed security guards. The accused was initially charged with three counts of first degree murder and one count of attempted murder. With the consent of the Crown, the accused pleaded guilty to the one count of first degree murder and two counts of second degree murder and lastly, a count of attempted murder. The accused, taking advantage of the trust of his fellow security guards, took his pistol and shot two of them in the back of the head. A third was also shot. He then proceeded to approach the driver and shoot him dead as well. There was a joint submission by experienced counsel that a total period of parole ineligibility of 40 years would be appropriate. The court accepted the joint submission.

[47] As such, on a count of first degree murder parole ineligibility was set at 25 years, on one count of second it was 15 years consecutive on the second count of first degree the 15 year parole ineligibility was concurrent. On the attempted murder, the accused received a determinate sentence that ran concurrently. The accused was eligible for parole on the life sentences after 40 years.

[48] In examining the Ontario case law, all of the reported cases wherein consecutive parole ineligibility periods were imposed for multiple murders saw the accused electing to exercise his rights and proceed to trial. There is only one Ontario case involving a guilty plea to multiple counts of first degree murder: *R. v. Wettlaufer* (2017, unreported).

[49] In *R. v. Wettlaufer,* the accused pleaded guilty to eight counts of first degree murder, four counts of attempted murder, and two counts of aggravated assault.

[50] In essence, the facts are as follows. The accused worked as a registered nurse and over a nine year period from 2007 to 2016, she elected to kill or attempt to kill her elderly patients by injecting them with excessive amounts of insulin, thereby causing their deaths. It is clear from the agreed statement of facts that was read in and filed, these were not mercy killings. It would appear from the material before me that the judge of that case observed: "she was far from an angel of mercy. Instead she was the shadow of death that passed over [her victims]".

[51] Ms. Wettlaufer was detected because of her own admissions to individuals and she was truly remorseful for her actions, unlike Mr. McArthur.

[52] There was a joint submission put before the court that in light of Ms. Wettlaufer's true remorse, and the fact that she was saving the necessity of a trial for the families to re-live the nightmare of what happened, she was sentenced on the eight counts of first degree murder to a period of parole ineligibility of 25 years, concurrent on each count. On each count of attempted murder she received a sentence of 10 years concurrent and on the counts of aggravated assault, she received a sentence of seven years concurrent.

[53] The accused, Ms. Wettlaufer, was 50 years of age at the time of sentencing and will be able to apply for parole when she turns 75. The justice did note that in light of the nature of her offences, he indicated as follows: "it must also be remembered that while she is eligible to apply for parole in late 2041, she may, in fact never be paroled considering the number and nature of her crimes and that, in fact seems likely".

[54] In examining the existing case law, it becomes apparent that each case is different and each result must be tailored to the particular circumstances of the individual accused, their degree of moral culpability and any mitigating or aggravating factors. No two cases are the same.

[55] In examining the jurisprudence, the case that is closest on its facts is Wettlaufer. The offences disclose a high degree of planning, and the killings go on for nine years. There are eight deceased and six other potential victims who survived. The accused pleaded guilty and avoided the families the hardship of a drawn-out trial.

[56] There are also important differences. There was a joint submission. Ms. Wettlaufer came forward and was remorseful. Although Mr. McArthur has taken responsibility for his actions by pleading guilty, there has been no evidence of remorse. Mr. McArthur no doubt would have continued killing innocent victims if not apprehended. The other important difference is age. By imposing 25 years of total parole ineligibility, Ms. Wettlaufer will be age 75 when she will be eligible to apply for parole. By contrast, upon 25 years of parole ineligibility, Mr. McArthur will be 91. When examining the protection of the public and the need to separate the accused form society, there is a significant difference between a woman of 75 years of age and a man of 91 years. As Mr. Miglin pointed out, actuarially, most males are dead before their 91st year. By contrast, it is more likely that Ms. Wettlaufer will become eligible for parole during her lifetime.

[57] Understandably, although some similarities exist, none of the cases are on all fours with this case.

[58] Based upon this review of the case law and the principles of sentencing, I will now examine the specific criteria set out in s. 745.51 of the *Code,* namely, the nature of the killing, the circumstances surrounding its commission, and the character of the accused.

The Nature of the Offences and the Circumstances Surrounding the Commission of the Offences

[59] On examining the totality of the admitted facts, and the admitted evidence before me, the only reasonable inference that I can draw is that the accused is a sexual predator and killer who lured his victims on the pretext of consensual sex and he ended up killing them for his own warped and sick gratification. In the photographic evidence, six of the victims are shown in states of undress on beds, many in Mr. McArthur's apartment. Many are staged after death, with cigars placed in their mouth and fur coats or fur hats placed on or near their bodies. Several had ligatures around their necks. Many of the victims had their beards shaved and also later their heads. The accused kept much of the hair. The fact that I find the killings are at least in part sexually motivated is an aggravating factor.

[60] The evidence discloses a significant amount of pre-planning, as well as plans for the subsequent dismemberment and the concealment of the bodies. The degree of forethought and planning is also extremely aggravating.

The Nature of the Killings

[61] The eight men did not die a quick and painless death. Since the bodies had been dismembered and were susceptible to the passage of time and decomposition, the pathologists were unable to reach the definitive conclusion on the cause of death but for the last two victims. Both Mr. Esen and Mr. Kinsman were victims of ligature strangulation. The photographs depict the manner in which they were brutally strangled to death. The use of a ligature and then a pipe, no doubt to tighten the ligature, thereby cutting off the airway, resulted in these people dying a slow and horrific death.

[62] Based on the described evidence, many of the victims had ligatures around their necks in the staged photographs. Dr. Pollanen found there were also fractures to many of the victims' thyroid bones, which is usually consistent with ligature or manual strangulation. The only reason that the pathologists could not definitively call it strangulation by ligature was because of the heads' decapitation and decomposition post mortem. I am satisfied, beyond a reasonable doubt, that these men died a slow and painful death by ligature strangulation for the sexual gratification of Mr. McArthur. This is a significant aggravating factor.

The number of killings and the seven year time line

[63] The accused took eight innocent persons' lives over a seven year period. I am also satisfied beyond a reasonable doubt that on January 18, 2018 John was about to become the ninth victim. The male in 2016 may also have become a victim. The accused obviously has and continues to be a highly dangerous serial killer. He is clearly morally bankrupt and the paramount concern of sentencing in these circumstances must be the protection of the community and the separation of the accused from society.

The Nature of the Victims

[64] All or most of the victims were vulnerable individuals who were lured to their deaths, no doubt on the promise of consensual sexual activity. The accused exploited his victims' vulnerabilities, whether they involved immigration concerns, mental health challenges, or people living a secretive double life. He also exploited others through a belief he was their friend. He had a prior relationship with some of his victims. They were persons with whom he shared a meal or a beer. They placed their trust in him, which he manipulated and used to his advantage. He exploited his victims' vulnerability and need for companionship. I find this fact to be extremely aggravating.

The degradation and indignity to the deceased

[65] The victims were not only used for the accused's gratification in life but also in death. He staged six of his victims in perverse and degrading fashions, and then photographed them. The victims' bodies were manipulated, positioned with ligatures around their necks, and dressed

with fur clothing and cigars in some of their mouths. Some victims' beards were shaved post mortem, and they were subjected to more photographs.

[66] His digital file folder for each victim allowed the accused to keep, revisit, and enjoy the brutality of the killings. Some of his victims never even got a name for the file, and are simply referred to as # 4 or #5.

[67] Even after their brutal deaths the accused continued to victimize these men through the use of his digital photo array of many of the victims.

[68] These eight innocent victims then faced the greatest post mortem indignity. Each was systematically cut up in pieces and buried in planters or in the ground in an unsuspecting person's property in Leaside. The ability to decapitate and dismember his victims and do it repeatedly is pure evil. The accused was motivated simply by self-preservation and avoiding detection. This degradation and indignity of the victims shows a complete lack of humanity and is exceptionally aggravating.

[69] The owners of the home in Leaside where the bodies were buried were are also victims of the accused's depravity. Obviously not on the scale of the victims family or friends, but nevertheless they must live with the nightmare of the murdered victims being concealed on their property for up to eight years. I have read the victim impact statement as to how that family has struggled with the nightmare. The accused exploited their trust, much like he exploited the trust of his victims.

The impact on the victims' families, friends and loved ones

[70] One of the most aggravating factors is the impact on the victims' families. Each of these innocent men died a horrible death and the victims' families, friends and the community have been victimized twice. First, when their loved one went missing. No doubt over the weeks, months or years, the victims' families, the friends and the entire community went through excruciating pain worrying about their loved one. In many of the victim impact statements, friends and families recount searching for months on end fruitlessly, holding on to the hope their loved one was alive and well. Being worried anytime there was a press report of an unidentified male person being found dead. All of the victims' families and friends suffered this for years or months. And through all that time, the time the killer was socializing within the community.

[71] They were victimized again when they learned the horrific truth. Their loved one not only was brutally murdered within a day or two of their disappearance, but was then dismembered and hidden in planters.

[72] The number of victim impact statements filed does not reflect the fact that each of the eight families and friends all share a collective nightmare. They may each grieve and deal with the loss differently, but everyone will deal with this for the rest of their lives. Mothers, fathers, spouses, partners and innocent children some of whom were unaware of their dad's other life.

[73] Today hopefully brings a final end to the criminal justice process without a lengthy and graphic public trial. I recognize for the families, friends and the community the end of the criminal case process does not bring closure to their loss. This is just the closure of one chapter, the criminal process of justice. Unfortunately, they will live with this nightmare the rest of their lives. This court cannot give them what they want most, to have their loved one back.

[74] Yesterday, I carefully re-read each victim and community impact statement. There were many poignant victim impact statements. Each family and each friend and the community have and will continue to deal with the grief and loss for the rest of their lives.

[75] I don't think I can capture the impact that Mr. McArthur's actions have had better than one of the friends of Mr. Kinsman. In his statement, he wrote:

> I will never forget that day [that I learned of my friend's death] because it was the day my heart fractured. Doctors always say it is better to break something over fracturing it. Fractures never really heal as well as a break and tend to bother you for the rest of your life. My life has been truly fractured. My heart, soul and spirit have been fractured. They may heal in time but it will never be the same and it will never go away, and it will be with me for the rest of my life. I think of Andrew every day when I wake up, through my day, and he is usually my last thought at night. People say that time will heal it or you just have to push through. But it won't heal. You have to learn to accept, adapt, and find a new path. I will have those thoughts with me for the rest of my life. Did I fail you my friend? Could I have done more? The only things that keep these thoughts from eating away at me are the support of a great family, partner and friends, and all of the amazing memories that Andrew and I made and shared together. The disappearance and discovery of Andrew's body has put a great deal of stress on me and has changed my life forever, from my relationship with my family, my partner, my friends and even my job.

[76] Each family member, each loved one, and the members of the community will live with this nightmare forever. The devastating impact Mr. McArthur's brutal crimes have caused, and will continue to cause to so many people, is a significant aggravating factor.

The Impact on the Community

[77] I have carefully read the impact statements of members of the community. Many different communities have been affected by the accused's crimes. I must first recognize the acute pain that Mr. McArthur's actions have inflicted on the LGBTQ community. In this respect, the pernicious effects of Mr. McArthur's predation are difficult to capture. In a community that works to foster feelings of openness and belonging, Mr. McArthur's crimes have instilled fear and distrust. Worries about entering relationships, and fear of becoming a victim. Emotional trauma and grief.

[78] The terrible impact the accused's actions have had on the community is reflected in Reverend Deana Dudley's victim impact statement. She stated the following:

> It is impossible to over-state the impact these murders have had on Toronto's LGBTQ community. Much of the community has been mourning these senseless and horrific deaths since word began to leak out about the murders, and even before then, when the men were "merely" missing. Obviously, to people who were friends, co-workers and acquaintances of the victims, that grief is immediate and deeply painful.
>
> But grief is also a reality for many in the community who may have been only peripherally involved in this case. … The men who were killed were our brothers. And for many people within the LGBTQ community, their murders have changed the way we look at the community forever. Even with the Defendant in custody, it feels less safe. It feels less trustworthy. It feels less like home and family. Home is the place where you can exhale and let your guard down, and for many of his victims, this place was missing in their lives. Many in our community have lost the ability to feel that sense of safety even in the places we used to think of as home. … We are angry, and that will persist for a long time, and I just pray that we will not let the anger eat us alive and cause any of us to lash out in unproductive ways, as so often happens with anger born of grief. I cannot count the number of people within our community who have come to me to express their anger, and even more who have expressed their fear and loss of trust in humanity. I have spoken to people who knew the Defendant through work, or who lived near him. To various degrees, they are all still scared. Some are terrified. Some have had to take time off from work because they have been haunted by nightmares. Some have been utterly disabled by their fear and depression.
>
> There will ALWAYS be the dreadful memories, the horrendous grief, the fears, the anger…. Toronto's LGBTQ community is also strong and resilient, and we too will survive, but has been changed forever.

[79] The accused's brutal killings have devastated the LGBTQ community. The community will never be the same. However, there are harbingers that the LGBTQ community is both strong and resilient and will overcome this terrible chapter. Various support groups have come together to help members of the community deal with grief and trauma. Hopefully, with the support of various groups, many of whom we have heard from during the victim impact process, the community can begin to heal; however, I recognize that the healing will never completely end the damage Mr. McArthur has caused.

[80] In addition to the LGBTQ community, I want to recognize the effects that these crimes have had on our immigrant and refugee communities, in particular the South Asian Middle Eastern LGBTQ community. The accused disproportionately targeted victims from these communities. Vulnerable members have been exploited and murdered. The fear, anger and distrust has and continues to be felt in these communities.

[81] The accused's actions not only impacted these communities. They impacted our community, our city as a whole. The outrage and upset and the fear caused by the accused, is felt by all. Distrust, fear is something that Mr. McArthur's actions have caused and continue to cause today. I find that the impact the accused's actions have had on our city, and to a greater extent within the LGBTQ community, is a significant aggravating factor.

Character of the accused

[82] The accused is presently 67 years of age. He committed these offences when he was between 58 and 66 years of age. The accused will be 91 years of age when he would first be able to apply for parole if I make the parole ineligibilities concurrent.

[83] It would appear the accused has been gainfully employed for most of his life. He had no prior criminal record until a conviction when he was in his 50's.

[84] The accused's prior criminal record is from 2002. He received a suspension, or what used to be referred to as a pardon, in 2013. By the operation of the law based on his convictions for first degree murder, I am entitled to consider his record, as the suspension is lifted based on the conviction. The accused assaulted another male by striking him in the head with a bar, causing a gash needing five stitches. The accused received a conditional sentence of two years less a day followed by three years' probation. It is an admitted fact that he complied with the court supervision which ended in 2008. Two years later, the accused committed his first two murders.

[85] The accused also has health challenges and suffers from type 2 diabetes.

The Mitigation of Sentence and the Pleas of Guilty

[86] There is, however, one significant mitigating factor and that is his actions after the time of his arrest. After retaining Mr. Miglin and reviewing the disclosure, he made the important decision to waive his preliminary hearing. By doing so, the families, friends and the community did not have to sit through a preliminary hearing to determine if there is sufficient evidence to commit him for trial. Upon his arrival in Superior Court in November, efforts were commenced almost immediately to work towards a possible resolution without the necessity of a trial. Now, less than 13 months from the time of his arrest, he has taken full responsibility for his actions and pleaded guilty to eight counts of first degree murder, the most serious offence in the *Criminal Code.*

[87] By pleading guilty and taking responsibility for his actions, he has provided certainty of result to both the court and to the Crown. He has also avoided the necessity of a three to four month trial. More importantly, the accused has saved the victims' families, friends and the community at large from enduring a graphic public trial which would have been a nightmare for everyone.

[88] While the accused has taken responsibility for his actions. He has not exhibited remorse and as is his right declined he declined an opportunity to provide an elocution to the court.

[89] Mr. Cantlon read out for three hours a summary of much of the evidence. Prior to reviewing the evidence, he quite rightly warned the people sitting in the public gallery that because of the graphic content, people should consider whether they wanted to remain in the court room. The trial with a jury would have had to hear months of very graphic and disturbing evidence. The trial would have traumatized many.

[90] As part of my responsibilities, I have had to review much of the proposed evidence. I am absolutely convinced that should this matter have proceeded to trial, because of the graphic nature of much of the evidence, it would have a terrible impact on the family and friends, and the community. Graphic digital photos staged of victim's post mortem and disturbing forensic pathology evidence. Four months of gruesome evidence. I have no doubt some, if not all of the jury and court staff, would be in need of counselling at the end of the day to deal with it. The community impact statements talk about ongoing counselling costs and challenges caused by this case. Members of the community coming in when the case is in the media seeking help.

[91] The fact that the accused has taken responsibility for his actions and avoided any court hearing on the merits, is an extremely mitigating factor. It is an important factor that he certainly is entitled to credit for.

[92] Though the Crown's case was overwhelming, Mr. McArthur had the right to put the Crown to the proof. He had the right to have the victims' families' friends and community sit through four months of graphic brutal physical evidence. At the end of the day, I would still have to sentence him to the same sentence of life imprisonment on each of the eight counts. The accused's actions of taking responsibility for his brutal killing and saving the families and the community the nightmare of a trial is extremely mitigating. This mitigation must be reflected if feasible in the sentence.

[93] In balancing all of the factors, the most important sentencing consideration when dealing with a person who has perpetrated multiple murders must be the protection of the public, and the need to separate the accused from society for that purpose. Whatever sentence is imposed and whatever parole ineligibility that is set must protect the public from a serial killer. I also recognize that general deterrence, retribution and denunciation must also play a paramount role. The sentence must reflect society's revulsion for such depravity and violence. I also realize when dealing with a multiple murder who is neither youthful or a first offender, rehabilitation need not play as an important role.

[94] In examining the paramount sentencing consideration, protection of the community, I note the accused's age of 67. If Mr. McArthur is still alive, the first time by operation of law he can apply for parole he will be 91 years of age. So it is clear that even at 91 he does not see freedom. The parole board can consider the nature of the offences, his physical and mental health and his risk to the community. The Parole Board is required to also examine the brutal nature of the multiple killings and the accused's failure to exhibit remorse. Much like Justice Thomas' observation in in *R. v. Wettlaufer*, I note that the chances of the accused being paroled are very remote at best.

[95] Due to the accused's age, I am satisfied that when dealing with the protection of the public, concurrent periods of parole ineligibility can adequately address the protection of the public. It would not be until Mr. McArthur is 91 years of age that he could apply for consideration for parole.

[96] The next question is whether concurrent parole ineligibility can adequately reflect the principles of general deterrence, retribution and denunciation. In considering the importance of symbolism in this regard, the remarks of Macklin J. of the Court of Queen's Bench of Alberta in *R. v. Klaus supra* provide some guidance. At para. 110, he notes,

> A denunciatory sentence is necessarily symbolic: CAM at para 81. However, it must also be recognized that symbolism in and of itself is not a sentencing objective or principle in the Criminal Code. Sentences that exceed a person's foreseeable life serve no functional purpose; they are purely symbolic. When a sentence exceeds a reasonable estimate of an offender's remaining natural life span, "the utilitarian and normative goals of sentencing will eventually begin to exhaust themselves": CAM at para 74.

[97] Sentencing the accused to parole ineligibility until he is 116 years of age is symbolic. There is a fine line between retribution which is an appropriate sentencing principle and vengeance.

[98] Mr. Harper makes the submission that these killings are so brutal and so horrific a 25 year period of parole ineligibility cannot adequately reflect denunciation, retribution and deterrence. I have already reviewed the case law, but in most cases, the consecutive period was imposed after trial, not a guilty plea. When consecutive term was imposed, it was a combination of first and second degree murder. The position taken by Mr. Harper in this case on behalf of the Crown is not an unreasonable position.

[99] On most fact scenarios, I would agree with the position of Mr. Harper but there are two factors unique to this case which combined lead me to a different conclusion. Neither on its own would be sufficient.

[100] The law is clear, a guilty plea is a mitigating factor. In this case, the plea must be considered as an early guilty plea since he waived the preliminary hearing and pleaded guilty shortly after his arrival in the Superior Court. An early guilty plea must be considered a mitigating factor when addressing a fair and fit sentence. Second, the age when the accused would be eligible to apply will be 91. 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 and address general deterrence, retribution and denunciation.

[101] I am satisfied that these important principles can be addressed by setting the earliest date for an application when the accused is 91. It is for these reasons in exercising my discretion I am satisfied that the interests of justice can be best served by having the accused receive concurrent periods of parole ineligibility.

[102] The accused is sentenced to life imprisonment with no chance for parole on each of the eight counts for 25 years. The sentences on each count and the parole ineligibility will run concurrently. There will be a Section 109 order for life, a DNA order a non-contact order for the families of all eight victims and a SOIRA order for life.

McMahon J.

Released: February 8, 2019