CITATION: R. v. Murray #8, 2021 ONSC 597
COURT FILE NO.: CR-16-50000631-0000
DATE: 20210129

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
HER MAJESTY THE QUEEN	*Michael Wilson and Michael Coristine*, for the Crown
– and –	
CURTIS MURRAY and COREY MURRAY	*D. Sid Freeman*, for Curtis Murray
	Adam Boni, for Corey Murray
Defendants	
	HEARD: November 2, 2020

MOLLOY J.

REASONS FOR DECISION #8 (Sentencing)

A. INTRODUCTION

[1] Curtis Murray and Corey Murray are brothers. They were convicted by a jury of second degree murder in connection with the death of 17-year-old Trevor Seraphine in the early morning hours of March 21, 2015. At the time of the murder, Curtis was 25 years old and his brother Corey was 29.

[2] The mandatory sentence for second degree murder is life imprisonment, with a minimum period of parole ineligibility of 10 years, up to a maximum of 25 years. It is now my task to fix the period of parole ineligibility for each offender.

[3] In coming to this decision, I am required to take into account the character of the offenders, the nature of their offence, the circumstances surrounding the commission of the offence, and all of the usual principles of sentencing that apply. I am also required to take into account the recommendations made by the jury, although I am not bound by them.

[4] In this case, counsel for Curtis Murray obtained an enhanced pre-sentence report which discusses anti-Black systemic racism in our society and how this may have had an impact on Curtis Murray in committing this offence. Given that the two accused are brothers and grew up together, to the extent this report has any effect on sentence, it would likely have some application to both

of them. However, in all of the circumstances of this offence, I have found the impact to be negligible.

[5] The Crown submits that I should impose a period of 22 years parole ineligibility for both accused. Counsel for Curtis Murray submits that the appropriate period for him would be 13 to 16 years. Counsel for Corey Murray submits that the appropriate period for him would be 15-17 years.

[6] For the reasons that follow, I have determined the appropriate period of parole eligibility to be 20 years. In addition, for each accused there will be a s. 109 Order for life, a DNA Order, and an Order prohibiting any contact, while in custody, with any person known to be a member of the family of Trevor Seraphine.

B. GENERAL PRINCIPLES

[7] The mandatory sentence for murder, whether first degree or second degree, is imprisonment for life. The only difference in sentence between first degree and second degree murder is with respect to the period of parole ineligibility. For first degree murder, the offender is not eligible to apply for parole until he has served 25 years; for second degree murder, parole ineligibility is between 10 years and 25 years.[1]

[8] Under s. 745.4 of the *Criminal Code*, where an accused is convicted of second degree murder, the trial judge is given a discretion to substitute a period of parole ineligibility that is greater than the 10-year minimum, up to a maximum of 25 years. That section requires the sentencing judge to take into account the character of the offender, the nature of the offence, the circumstances surrounding its commission, and any recommendation made by the jury. In order to exercise that discretion, the trial judge is not required to find "unusual circumstances," but merely that in assessing the listed factors, a fit sentence for the offender makes it appropriate that he wait longer than 10 years before being eligible to apply for parole.[2]

[9] It is also clear from the case authority that this exercise falls within the usual sentencing process and that, in addition to the specific factors listed in s. 745.4, the sentencing judge is required to take into account all of the usual principles of sentencing.[3] Many, but not all, of these principles will overlap with the factors listed in s. 745.4. One of the over-arching principles of sentencing is that a sentence "must be proportionate to the gravity of the offence and the degree of responsibility of the offender."[4] This requires a sentence to reflect proportionality without veering into vengeance, which has no place in the process. The Supreme Court of Canada drew this distinction in *R. v. C.A.M.*, as follows:

---

[1] *Criminal Code*, R.S.C. 1985, c. C-46, s. 745.
[2] *R. v. Shropshire*, [1945] 4 S.C.R. 227, at paras. 26-27 and 31.
[3] *Ibid.*, at para. 23.
[4] *Criminal Code*, s. 718.1.

> Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more. As R. Cross has noted in The English Sentencing System (2nd ed. 1975), at p. 121: "The retributivist insists that the punishment must not be disproportionate to the offender's deserts."[5]
>
> [Emphasis in original.]

[10] In addition, I must take into account the objectives of: denunciation of the conduct involved; specific deterrence of the individual offender from reoffending; general deterrence of others in the community who might be tempted to commit similar offences; separating the offender from society, where necessary; and, the prospects of rehabilitation for the offender.[6] In reaching a conclusion, both aggravating and mitigating factors need to be considered.[7] Finally, I must strive for parity in sentencing, such that similar offenders receive similar sentences for similar offences committed in similar circumstances. While this is an easy principle to articulate, it is one of the most difficult to apply in practice. In truth, all offenders are different, as are all offences and the circumstances in which they are committed. However, the principle is an important one. There is fundamental unfairness if individuals in similar circumstances are not treated in a similar manner. Further, without concerted efforts to achieve consistency in sentencing, there is a real risk of arbitrary penalties being imposed.[8]

C. NATURE AND CIRCUMSTANCES OF THE OFFENCE

[11] Trevor Seraphine was murdered at approximately 2:00 a.m. in the vestibule of the apartment building at 44 Willowridge Road on March 21, 2015. He did not live there, although he had in the past. He was on his way to visit a friend. As he approached the front entrance to the building, Curtis and Corey Murray were coming down the side of the building and rounding the corner, with Curtis in the lead. Curtis immediately chased after Trevor, firing several shots at him from a handgun. Corey was right behind his brother Curtis. Trevor ran into the vestibule area of 44 Willowridge Road, but was trapped there, unable to get past the doors into the lobby. The Murray brothers entered the vestibule. Trevor was 17 years old and small in stature. The Murray brothers towered over him. While Trevor cowered in that small space, Curtis shot at him again, this time at close range, wounding him once. That was the only bullet that hit Trevor, but it did not kill him. Immediately after the gunshot, Corey reached in with his knife and completed the deed, stabbing Trevor twice, including the fatal wound piercing his heart. The Murray brothers

---

[5] *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 80.
[6] *Criminal Code*, ss. 718(a)-(d).
[7] *Ibid.,* s. 718.2(a).
[8] *Ibid.,* s. 718.2(b).

fled, leaving their victim bleeding on the ground. However, their attack on Trevor Seraphine was captured on video, and this led to their eventual arrest.

[12] Both Curtis and Corey Murray were charged with first degree murder, but the jury acquitted them on that charge and convicted them of second degree murder. Subsequent to the jury's verdict, I conducted a *Gardiner* hearing based on the evidence at trial and the submissions of counsel. This was necessary for sentencing because the jury could have reached its verdict by more than one route, and one of those routes had a higher degree of moral blameworthiness. Also, the degree of moral culpability as between each of the accused could be different. For reasons dated March 30, 2020,[9] I concluded that:

> (1) The murder was planned and deliberate, rather than an impulsive act, stopping just short of the level of intent required for first degree murder.
>
> (2) Curtis Murray was the leader of the two, with his brother Corey being a willing and active participant, but more of a follower than an instigator;

[13] The root of this murder can be traced to an escalating feud between Curtis Murray (backed up by his brother Corey) and a group of men associated with the apartment buildings around Willowridge and the adjacent Richgrove complex. I will refer to this somewhat amorphous group as "the Champagnie group," because their apparent leader was a man named Raushan Champagnie. To illustrate the pettiness of this dispute in comparison to the taking of an innocent human life, it is important to describe the incidents leading up to the murder. This is based in part on eye-witness testimony, but mostly from security camera footage.

[14] There was obviously some history between Curtis Murray and the Champagnie group prior to March 18, 2015, but the first incident about which there was any evidence at trial occurred on that day, so for present purposes I start the story there.

- March 18, early evening: Curtis Murray and his girlfriend, Samelia Wiltshire, were at a shopping plaza near the apartment building where he lived (7 Richgrove). He went into a store to get a cigar, while she waited in the car. Champagnie and a few of his associates arrived. Champagnie took a swing at Curtis but missed. Curtis ran into a grocery store. Ms. Wiltshire ran into a different store. Champagnie followed her in, asked whether Curtis was her boyfriend, and said something about this being "his town" or "his city." Meanwhile, his associates rummaged through Curtis' car and stole some personal belongings including shoes, sunglasses, and a watch. The Champagnie group left in a red Mazda, driven by a Somalian man who lived in the same apartment building as Curtis (7 Richgrove).

---

[9] *R. v. Murray #7*, 2020 ONSC 1930.

- March 18, 10:00 pm: Curtis and Corey Murray were seen banging on the roof of a red Mazda and shouting as the Mazda drove back and forth in the 7 Richgrove parking lot, and eventually drove away.

- March 19, 1:24 am: Curtis and Corey Murray came down the back stairs of 7 Richgrove leading into the parking lot. As Corey stood watch at the door, Curtis went into the parking lot and vandalized the tires of the red Mazda.

- March 19, daylight morning: A flatbed truck arrived and transported the damaged Mazda out of the parking lot.

- March 19, 10:37 am: Curtis and Corey were seen in the parking lot engaged in an angry confrontation with the man who owned the red Mazda.

- March 19, 7:00 pm: Ms. Wiltshire parked her car in the parking lot at 7 Richgrove and was immediately blocked in by the red Mazda parking behind her. One of the occupants of the car was Champagnie. The Somalian man who owned the car was driving. Another man got out of the car, tapped on her window, and asked her where her boyfriend was. She was able to manoeuvre her way out of the parking spot and drive away, but was frightened and called Curtis to warn him.

- March 19, 10:00 pm: Champagnie and two of his associates entered Curtis Murray's apartment at 7 Richgrove. They stole numerous personal items belonging to Curtis Murray, such as clothing and dozens of pairs of limited edition running shoes worth hundreds of dollars each, as well as a television set. In addition to the theft, the robbers trashed the apartment, gratuitously slashing the furniture and walls. Curtis Murray knew about this by at least midnight.

- March 20: Champagnie and his associates transported the clothing and shoes they had stolen from Curtis Murray to 44 Willowridge Road, where they set up a yard sale in the lobby, which they referred to as a "Block Friday Sale." They put up notices indicating that the sale would run from Friday, March 20 to Monday, March 23. One of those notices was on the glass door between the vestibule area of 44 Willowridge and the elevator lobby where the sale was held. Throughout the afternoon and evening of March 20, the Champagnie group sold items of clothing and shoes belonging to Curtis Murray to multiple people passing through the lobby of the building.

- March 21, 1:00 am: Curtis and Corey were passengers in a car being driven by someone unknown. They drove around and around a circuit between Richgrove and Willowridge for about 20 minutes. They stopped at 44 Willowridge, got out of the car, and entered the lobby. Curtis ripped the Block Friday Sale flyer off the door leading from the vestibule to the lobby. The brothers returned to 7 Richgrove at 1:23 am and went inside the building while the car and driver waited for them.

- March 21, 1:45 am: Having gathered together different clothing and materials to disguise themselves, the Murray brothers returned to the waiting car, which took them to a road running along the side of 44 Willowridge. They donned their disguises, covering their

faces and their distinctive running shoes, and headed in a surreptitious manner along the side of the building towards the front walkway of 44 Willowridge. By then they were armed. Curtis had a gun. Corey had a knife. There is no way of knowing whether they were carrying those weapons all night, or had just picked them up from 7 Richgrove before heading over to 44 Willowridge.

- March 21, 2:00 am: As the Murray brothers rounded the corner from the side of the building, the first person they saw was Trevor Seraphine. He was heading towards the front door. Without hesitation they chased, attacked, and murdered him.

[15] Trevor Seraphine was an innocent victim in all of this. The Murray brothers did not even know him. He was not a member of the Champagnie group and he did not live in the Richgrove/Willowridge complex. He was just there that night visiting friends.

[16] The Crown theory at trial was that Curtis and Corey Murray planned and deliberated to kill someone associated with 44 Willowridge, disguised and armed themselves with that purpose in mind, and then killed the first person they saw heading into the building. The Crown took the position that this was the only route to first degree murder. Clearly, this theory was rejected by the jury.

[17] In my earlier decision on the *Gardiner* hearing, I found that the murder of Trevor Seraphine was both planned and deliberate, stating (at para. 54):

> From the fluidity of the movements of both brothers, their lack of hesitation at any point, and the fact that they did not consult each other at the scene about what was happening or what either of them should do, I conclude that their actions in killing Trevor Seraphine were part of a plan, previously conceived, to kill somebody. Given the preparations involved and the length of time between when those plans were hatched and when they were put into effect, it is clear to me that this killing was the consequence of a thought-out plan rather than an impulsive act. I am satisfied beyond a reasonable doubt that this killing was both planned and deliberate.[10]

[18] I also held that the Murray brothers headed over to Willowridge that night intent on exacting revenge by killing a member of the Champagnie group. Trevor Seraphine was not a member of the Champagnie group, but the Murray brothers mistakenly believed he was. Several members of that group were described at trial as being youths of Somalian origin. Trevor Seraphine was 17 years old. He was Somalian. He was headed for the entrance of 44 Willowridge at 2:00 a.m., the location where the Champagnie group were conducting the Block Friday sale. It was dark and he was wearing a hooded winter jacket. He was attacked within seconds of Curtis Murray seeing him.[11]

---

[10] *Ibid.*
[11] *Ibid.*, at para. 64.

[19] If Trevor Seraphine had been a member of the Champagnie group, this would clearly be first degree murder. However, I instructed the jury that if the plan had been to kill somebody in the Champagnie group and the accused mistakenly believed Trevor Seraphine was a member of that group, they would only be guilty of second degree murder. I am by no means satisfied that this is a correct proposition of law. However, I raised this concern at trial and the Crown was adamant that if the intent was to kill a member of the Champagnie group, the only available verdict was second degree murder. Both defence counsel concurred and I was not prepared to leave first degree murder with the jury as a possible verdict on this scenario over the objections of all counsel.[12]

[20] For present purposes, I accept that this is a second degree murder and that the level of intent required for first degree murder has not been established. However, it is difficult to imagine a second degree murder that could possibly be closer to first degree murder than this one. This is an aggravating factor. Indeed, it is all the more tragic that the victim of this killing had nothing to do with the petty property crimes that drove the Murray brothers to seek a homicidal revenge.

[21] The video footage of Trevor Seraphine's murder is haunting. He was just a kid. He was only 17 years old, weighed 118 pounds, and was 5 feet 7 inches tall. He was cornered in the vestibule, unarmed, confused and cowering, over-powered by two much larger and older men. And then they just took his life. They shot him at close range, and when that didn't kill him, they stabbed him in the heart. All because somebody else – not this child, somebody else – stole Curtis Murray's clothing and collection of shoes. It is a crime that is breathtaking in its callousness and cruelty.

[22] Those are the aggravating factors. I am not aware of any factors that could be said to be mitigating. I agree with the Crown's submission that the moral culpability of both Corey and Curtis Murray is "largely indistinguishable from that of an offender found guilty of first degree murder."[13] Indeed, if the Murray brothers were correct in their assumption that Trevor Seraphine was part of the Champagnie group, they would have been convicted of first degree murder. The fact that they targeted and killed an innocent youth certainly does not change their moral blameworthiness for the better.

D. CHARACTER OF THE OFFENDERS

Corey Murray

[23] Corey Murray was born in Canada in 1995. He was 29 years old at the time of the murder and is now 35.

[24] Corey is the second oldest of his mother's four children (three boys and one girl). All four children have different fathers. Corey was raised by his mother as a single parent. He is four years

[12] *Ibid.*, at para. 65.
[13] Crown's Position on Sentencing, at para. 23.

older than his brother Curtis. Corey had no real contact with his father until he was 16 or 17 years old, well beyond his formative years. His father has acted as his surety on one occasion.

[25] Corey's mother has had steady employment throughout the lives of her children. She worked hard to support her kids and provided them with all the necessaries, in addition to extracurricular activities and vacation trips to Jamaica. For a period of time, she was married to the father of her daughter. Both Curtis and Craig (the oldest of the four children) reported to the author of the pre-sentence report ("PSR") that this man was abusive to their mother. On one occasion, Craig and Corey reportedly beat up the husband because of his abuse. Both also reported other partners of their mother as being a source of discord in their home.

[26] Craig left home at 21 and went to live with his father. He subsequently completed university and is a successful entrepreneur. He has a family of his own and has an excellent reputation in the community, including for his volunteer work.

[27] Despite having a B academic average, Corey dropped out of school at Grade 10. His long-time girlfriend, who has known him for 18 years, is quoted by Corey's counsel as saying that "Corey is very bright and had hopes and aspirations but succumbed to the lure of the crowd, the brotherhood of the street."

[28] Corey has two children, aged 12 and 14. Their mother is not the same person as the "long-time girlfriend" who has known him for 18 years.

[29] Corey Murray's criminal record started at the age of 20, with a flurry of convictions between the ages of 20 and 23. It seems that he got though his teenage years fairly well, but took a serious nose-dive thereafter. It is apparent from the criminal record and his offences while incarcerated that he has anger issues and a propensity for violence.

[30] Corey Murray's criminal record is as follows:

2005-11-25: drug possession (sentence--1 day plus 60 days pre-sentence custody ("PSC"))

2006-04-25: fail to comply recognizance (sentence--$5.00 plus 23 days PSC)

2006-10-05: (1) fail to comply recognizance; and (2) obstruct police office (sentence--15 days on each charge concurrent (plus 8 days PSC)

2006-10-31: fail to appear (sentence--$200)

2007-06-12: (1) assault; and (2) fail to comply recognizance (sentence--suspended sentence and 1 year probation on both, plus weapons prohibition order)

2008-05-27: (1) robbery with a firearm; (2) disguise with intent; (3) careless use of firearm; (4) possession of firearm with ammunition (sentence--5 years and 6 months, after credit of 3 months, 46 days of PSC, and prohibition order

2009-05-25: assault causing bodily harm (sentence--90 days consecutive to sentence serving plus prohibition order)

2009-08-28: (1) possession of firearm with ammunition; (2) assault with intent to resist arrest; (3) breach prohibition order; (4) assault with a weapon; (5) fail to comply recognizance (sentence--1 year and 170 days consecutive to sentence serving, plus 194 days PSC)

[31] Corey Murray was released from the federal penitentiary at Millhaven on parole on March 14, 2013. On March 25, 2014, a warrant was issued for his arrest for violating the curfew provision of his community residential placement. He was still at large and in violation of his parole at the time he murdered Trevor Seraphine. On April 3, 2015, he was arrested in a Mississauga motel room after police received a tip that he was there. He has been in custody since his arrest.

[32] While in custody pending trial, Corey Murray has been found guilty of 17 misconducts. Some of these might be characterized as minor, such as several citations for refusing to obey a lawful order from an officer. However, many were violent incidents including multiple assaults on other inmates, inciting a disturbance that endangered security in the institution, and threatening to harm a security officer.

[33] On a positive note, Corey has completed high school while in custody, and is reportedly a "voracious reader." I agree with Corey Murray's counsel that these efforts show that there is some prospect of rehabilitation here, particularly if Corey learns how to control his rage.

[34] That said, even apart from the murder conviction that now brings Corey Murray before the court, he is fairly characterized as a violent repeat offender.

Curtis Murray

[35] Curtis Murray was 25 years old at the time of the offence and is now 31. He is a Black man of Jamaican descent, and was born in Canada. Curtis is the third of his mother's four children. He has two older brothers (Craig and Corey) and a sister.

[36] Curtis had virtually no contact with his father growing up. He reported to the author of the pre-sentence report that his father owned a barbershop and that his mother would take him there for grooming as a child. However, he had no other relationship with him. His father died two years ago, while Curtis was in custody. He received permission to attend a viewing. The first time he learned his father's surname was by seeing it in the funeral program. He also learned for the first time from the funeral program that his father had other children. The funeral program did not list Curtis as one of the children.

[37] Curtis was in constant trouble at school, from an early age. He never learned to read, and compensated for his lack of literacy skills by acting out in class. He never told anyone during those years that he was unable to read. He received many suspensions and was transferred from school to school, including bouncing around more than one alternative school. Curtis, and to a large extent the author of the pre-sentence report, attribute his lack of academic success to racism.

[38] The only sister of Curtis and Corey Murray was not interviewed for the PSR. Apart from passing references to her existence, there is no information about her in the PSR. She did, however, file a letter of support for her brother Curtis in which she recounted how Curtis (who is five years older than her) looked after her when she was a child. She described Curtis as the "backbone and glue to this very broken up family." She did not mention her brother Corey and signed the letter with her name, identifying herself as "Curtis Murray's sister."

[39] Curtis left home at 16. He has had two jobs. He was fired from both, having lasted three weeks in one and a "few weeks" in the other. He obtained social assistance but, as reported in the PSR, "supplemented his monthly stipend by selling drugs." After leaving home, he was in and out of jail, living a transient lifestyle. Curtis told the author of the PSR that his lack of education and work experience presented barriers to legal employment and that his social assistance cheque was not sufficient to pay the rent and "meet his material wants." Curtis also admitted that selling drugs gave him access to a lifestyle to which he aspired, with brand-name clothing and shoes, and frequent social outings for himself and his friends, which he financed. Curtis also reported that he was developing a career in rap music and modelling. It is apparent from the evidence at trial that while Curtis may have had aspirations in that regard, he was nowhere close to "developing a career."

[40] The PSR describes Curtis Murray as being in a "domestic relationship" with Stacey Brown. Ms. Brown reported that she has known Mr. Murray since they were teenagers and that they have "dated intermittently throughout the years." According to the PSR, Ms. Brown said that "after a period of disconnection" she and Curtis reunited in 2015 several months prior to his arrest. Curtis told the author of the PSR that he has loved Ms. Brown since they were teenagers and wants to marry her. Ms. Brown is paying for his canteen, and is "facilitating phone calls and other needs as per his requests" (whatever that means). Ms. Brown has an 11-year-old son; Curtis is not the father. Curtis also has an 11-year-old son, not with Ms. Brown. The mother of his son has left the province and Curtis has no idea where his son is.

[41] The PSR quotes a caseworker from Amadeusz[14] as saying that Curtis "has demonstrated a strong commitment to his partner Stacey." It is difficult to place much weight on that. This particular caseworker stated that at the time of the PSR she had been working with Curtis for two years, but had not seen him since the COVID-19 restrictions. Her contact is therefore not extensive. Ms. Brown, in a letter of support filed at sentencing, describes herself as Curtis' fiancée and says she and Curtis "reunited" several months before he was arrested. His arrest was on April 3, 2015, approximately two weeks after the murder. Samelia Wiltshire testified at trial that she and Curtis Murray moved into together at 7 Richgrove in October 2014. The lease was in her name. She said she moved out in January 2015 for various reasons (one of which was that Curtis kept seeing other women). However, she and Curtis continued to see each other on a regular basis, were in constant contact by phone, and she stayed over at the apartment with him frequently. Throughout the days leading up to the murder, she was living at 7 Richgrove with Curtis Murray

---

[14] Amadeusz is a not-for-profit organization in Ontario that has been operating since 2009. Amadeusz supports young people who are incarcerated to create positive change in their lives.

and was described by everyone as his girlfriend through this period. On March 23, 2015 (two days after the murder), she was the one who accompanied Curtis to a court appearance. At his request, following the murder, she went back to the apartment and cleared out anything that could be connected to him. Also at his request, on March 26, 2015 she lied to the police about the identity of a suspect in a photograph, stating that it was not Curtis Murray, when she knew it was, resulting in her being charged and convicted of attempting to obstruct justice.

[42] Ms. Wiltshire testified as a Crown witness at trial, identifying Curtis Murray and his physical belongings in numerous photographs and videos. Obviously, she is no longer his "domestic partner," but it is difficult to see how Ms. Brown acquired that status given that Curtis Murray has been in jail since April 3, 2015 and Samelia Wiltshire was clearly the primary woman in his life in the months before that, albeit not the only one.

[43] Curtis Murray's criminal record started in 2004, when he would have been 14 years old. Between then and when he turned 18, he had seven separate sets of convictions in the Youth Court of Justice ("YCJ"), many of them for violent offences. Upon reaching adulthood, he amassed another eight convictions, not including this one. At the time he murdered Trevor Seraphine, he was on bail for assault with intent to resist arrest. He was sentenced to a three-month conditional sentence and 12 months' probation, both of which, needless to say, were not served in the community as he was arrested for murder within a couple of weeks.

[44] Curtis Murray's counsel argued that Curtis had demonstrated an ability to live successfully in the community without committing crimes or breaching court orders, stating that there were "numerous gaps of substantial duration." I disagree. Curtis lived a life of crime from the time he left home at 16 until he was arrested for murder. His actual criminal record is as follows:

> 2004-03-03: assault with a weapon (YJC sentence--12 months' probation)
>
> 2004-05-26: sexual assault (YCJ sentence--18 months' probation)
>
> 2004-08-16: (1) extortion; (2) possession stolen property (YCJ sentence--12 months' probation)
>
> 2006-03-03: (1) theft under $5000; (2) assault; (3) fail to comply recognizance (YCJ sentence--time served of 27 days plus 12 months' probation)
>
> 2006-04-28: robbery (YCJ sentence--24 days and 12 days under supervision in community, in addition to 74 days PSC, plus 12 months' probation, weapons prohibition order, and determination of serious violent offence)
>
> 2007-07-20: fail to comply recognizance (YCJ sentence--time served of 4 days plus 12 months' probation)
>
> 2008-04-25: fail to comply recognizance (YCJ sentence--12 months' probation)
>
> 2008-07-18: robbery (sentence--one day plus 10 months PSC)

2009-03-03: (1) obstruct police (2) fail to comply recognizance (3) assault (sentence--7 days intermittent on (1) and (2); 7 days intermittent concurrent on top of 26 days PSC plus 2 years' probation on (3))

2010-10-26: break, enter and commit (sentence--90 days on top of 56 days PSC plus 12 months' probation plus prohibition order)

2013-05-10: drug possession, Schedule 1 (sentence--$1500)

2015-03-23: assault with intent to resist arrest (sentence-3 months conditional and 12 months' probation)

2015-06-05: theft under $5000 (sentence--$200)

[45] This is a lengthy criminal record and includes crimes of violence. Curtis Murray (apart from a matter of a few weeks) has never held gainful employment. Describing this criminal record as demonstrating how he can succeed in the community, following court orders and staying out of trouble, and as having "numerous gaps of substantial duration" (as his counsel argued), is simply inaccurate. There are 15 separate sets of charges over a period of 11 years. Curtis has been on probation or in custody for almost his entire life since he was 14 years old, and he has breached court orders on a regular basis. Indeed, he was on bail at the time he committed this murder. I do recognize, however, that this charge is substantially worse than anything Curtis Murray did previously and the longest period of time he was in custody before his arrest for this murder was 10 months pre-sentence custody for robbery.

[46] Since his arrest on this charge, Curtis has had four misconduct convictions while in custody. All are relatively minor in nature, involving failure to follow rules or failure to obey a direct order from an officer.

[47] While in custody, Curtis has taken advantage of numerous programs of improvement, having completed 23 programs. He has also improved his literacy and is now reading. He reports a spiritual awakening that has led to him being baptized in the Foundation for Life Family Church and regularly attending for Bible studies. Numerous letters of support were filed from friends, members of the community and family, as well as a minister and two social workers. Many of those letters refer to Curtis being kind-hearted and caring and many say that he has changed and matured since in prison and is now on the "right path."

Anti-Black Systemic Racism

[48] Counsel for Curtis Murray obtained and filed an "Enhanced Pre-Sentence Report" dated October 17, 2020. The purpose of the report is to support an argument that anti-Black systemic racism (in our society in general, and in the justice system in particular) is a factor I should take into account in sentencing Curtis Murray. The Crown did not object to the report being filed, and did not seek to cross-examine its author, but argued it had very limited relevance given the nature of the offence here. I will deal with the impact of this issue in the Analysis section of these reasons. For present purposes, I will review the content of the Enhanced PSR in some detail in order to explain its limited usefulness for the purpose for which it was filed.

[49] The Enhanced PSR was written by Michelle Richards, MSW, RSW, who is a clinical and forensic social worker with the Sentencing & Parole Project. In preparation for the report, Ms. Richards interviewed Curtis Murray four times (twice in person and twice by phone) and did telephone interviews with his mother, his brother Craig, and his "fiancée" Ms. Brown. She also had "telephone correspondence" with a social worker at Amadeusz who worked with Curtis for a two-year period. Noticeably missing is anyone who might provide a different or broader perspective, such as: former probation supervisors; former teachers and guidance counsellors; other school authorities; members of the community; or police.

[50] The first 12 pages of the report provide details of Curtis Murray's social history including: his family setting and relationships; his mother's background growing up in Jamaica; the background and successes of his older brother Craig; the neighbourhoods in which he has lived; the economic status of his family growing up and his own financial situation after leaving home at the age of 16; education; peer relationships; employment (or lack thereof); and, police interactions.

[51] This general background information is followed by two pages of information from Curtis Murray as to what his experience in prison has been like since his arrest, including his perception that his needs are ignored by white correctional officers because of his race, and that he feels dehumanized by their treatment of him. Since these experiences post-date the offence, this information is of limited value in determining how systemic racism may have played a role in why he committed the offence. It is also based entirely on untested hearsay information from Curtis Murray.

[52] At page 14 of the report, the author deals with the "domestic relationship with Ms. Brown" (which I have referred to above). There is then an analysis of Mr. Murray's character (based primarily on information from his mother, his brother Craig, and Ms. Brown, as well as some limited information from the Amadeusz case worker who worked with him for about two years). Finally, pages 15-17 are devoted to statements by Mr. Murray about his past and his current situation.

[53] There are many aspects of the report, particularly the general background information, that are highly useful in understanding Curtis Murray and what has brought him before the courts. However, this kind of information is contained in every well-prepared PSR. What is largely missing, however, is evidence of how systemic racism had an impact on Curtis Murray so as to provide any understanding of why he murdered Trevor Seraphine. For example, I recognize that it would have been difficult for Curtis Murray to grow up without a father figure in his life. This is a factor to be considered in understanding his development from childhood to adulthood, but I do not see it as an example of systemic racism. Nor do I accept that being raised by a single mother is necessarily worse than being raised in a two-parent home. Curtis had a strong and loving family around him. His mother is a fine person and worked hard her whole life to support her children. They also had considerable other family around them. They never lacked for the necessaries of life, and had much that went beyond necessaries. They were not abused or neglected. They were by no means rich, but neither were they destitute. As childhoods go, this one was relatively stable.

[54] One of the biggest problems Curtis encountered in his development was his failure to learn to read by the time he had reached age 16. It is unclear to me how that happened, but I am not prepared to accept, on the information I have, that it was related to racism.

[55] One of the troubling aspects of this PSR is the extent to which it relies entirely on Curtis Murray's perceptions, without any attempt to be even-handed. For example, in the section about neighbourhoods, the author referred to the Martingrove and Eglinton area where Curtis Murray lived at the time of the murder and wrote:

> By this stage of his life, Mr. Murray had a greater understanding of the connection between poverty, social neglect and police surveillance and the Black community. He explained that Black people living in low-income neighbourhoods are subjected to increased police surveillance due to presumptions of crime. He asserts that he would have sought different housing options had he been more aware of the neighbourhood dynamics.

[56] It must be noted, however, that by the time Curtis Murray moved to this neighbourhood, he was a drug dealer. He used the money from this illegal activity to purchase expensive jewellery for himself, designer label clothing, and dozens of pairs of limited-edition running shoes. I doubt very much that the "neighbourhood dynamics" he was seeking to avoid had anything to do with poverty, but more to do with the conflict he ran into with other criminals who were living there before him. He also likely regrets the degree of video surveillance in the neighbourhood. Unfortunately for Trevor Seraphine, those video cameras did not keep him safe, but they did result in the arrest and conviction of his murderers.

[57] The section of the PSR dealing with education also provides an example of a decidedly one-sided approach. The focus of this entire section is that Curtis received uneven treatment because he was Black, including being disciplined for things that white students did without consequences. An example of the report taking a decidedly one-sided view is a reference to the first time Curtis was suspended from school. The PSR states:

> He reported that his first suspension occurred in Grade 8. He explained that he had sexual intercourse with a female peer, and bragged about it with his peers at school. Mr. Murray explained that out of embarrassment for its' (*sic*) impact on her reputation, he was accused of rape. Ms. Murray [his mother] reported that she was devastated by this accusation.

What is omitted from this narrative is that, in connection with this event, Curtis was arrested, charged with sexual assault, and <u>convicted</u> of that offence. Sexually assaulting another student and bragging about it, is surely grounds for suspension from school, and has nothing to do with systemic racism.

[58] I also take issue with the fact that two pages of the report are devoted to "Police Interactions" without once mentioning that Curtis Murray has 15 separate sets of offences on his criminal record over a period of approximately 10 years. One of the incidents about which Curtis Murray complained as indicating anti-Black racism by the police, occurred in 2011, when he was shot in the arm and taken to the hospital by a friend. He said the police treated him as a perpetrator rather than a victim. What is omitted from that narrative is that by this stage Curtis was 22 years old, was by his own admission trafficking in drugs, and already had a long criminal record that included two convictions for robbery, one for break and enter, and several assaults. The police could tell from the entry hole in his jacket sleeve that he had been shot at close range. However,

he refused to speak to the police, refused to permit any photographs of his injury, and would not cooperate in any way. In these circumstances, I do not find it surprising, or racist, that the police treated the incident as "suspicious," as is noted in the Police Occurrence Report

[59] That said, what is apparent from the discussion under this heading is Curtis Murray's deep distrust of the police. He cites two incidents from his childhood as having fueled that distrust. First, at the age of 9 or 10 years old, he was with a group of Black peers at a local mall when they were wrongly accused of theft and investigated by police. He said they were questioned and searched without parental consent, an interaction that he asserted to the author of the PSR "instilled a negative perception and fear of police in him, that has remained constant throughout his life." He also reported that when his bike was stolen, the police did nothing. However, when he stole a white boy's bike to replace the one he had lost, he was arrested within an hour.

[60] These were and are common perceptions held by persons in the Black community, as has been noted by many studies and reports over the years. Like many Black youth, Curtis also reports numerous incidents when he was a youth and young adult in which police searched, questioned, and photographed him without explanation. These experiences also would not have engendered trust or respect for the police. There was also evidence at trial that Curtis did not expect the police to do anything to assist or protect him, which was the reason given for not reporting the break-in at his apartment. Of course, he was a drug dealer, with no explanation for the expensive wardrobe and shoe collection he had amassed and which had been stolen. He was also harbouring his brother Corey at the time, knowing that he was in breach of his parole and that there was a warrant for his arrest. These also might have been factors in his decision not to involve the police.

[61] The essence of the PSR, in terms of the purpose for which it was filed, is contained in the last two pages, under the headings "Assessment" and "Summary." In the Assessment section, the author concludes that Curtis Murray presented as "accountable" and has having "deep regret for the loss of life." She attributed his poor literacy skills and the fact that he was "forced out of school at an early age" to the failures of the school system, including racism within the system. The PSR states (at p.17):

> The cumulative effects of hostile school environments, his lack of literacy, education and financial instability rendered Mr. Murray vulnerable to ongoing involvement in illicit activities, and negative peer influences. His subsequent foray into the drug trade was necessitated by his need to survive. He had no hope for lawful employment without support to overcome his illiteracy. Selling drugs did not require literacy skills, and eventually afforded Mr. Murray access to material possessions, and a sense of belonging, albeit a false one.

[62] I agree that his poor literacy skills presented a huge obstacle for Curtis Murray, and that, at least to some degree, the education system failed him in that regard. However, I also note that he covered up his illiteracy and that he was not "forced" out of the school system, any more than he was "forced" out of his mother's home. He left home at 16 to be independent, at which time, while collecting social benefits, he engaged in a life of crime to finance his acquisition of expensive clothing and shoes. I disagree with the premise of the PSR that he turned to crime out of necessity, driven by the need to survive. He was driven more by greed for material possessions. However, I do accept that these literacy factors, disenchantment with school, and resentment of the police

were contributing factors to Curtis Murray being a drug dealer. What they absolutely fail to address is his willingness to kill another human being as an act of revenge for the loss of his precious shoes and jerseys.

[63] The closest the PSR comes to asserting an explanation for the offence committed in this case is in the following excerpt (at p. 17):

> Mr. Murray fell prey to the mentality of the streets, which dictate that when a boundary is violated, whether perceived or real, a response is required to preserve one's reputation, and to deter others from making the same mistake. He is experiencing the outcome of actions that were carried out, without regard for the consequences.

[64] Finally, in the Summary portion of the report, the author refers briefly to some studies and reports confirming the existence of anti-Black racism in the Peel District School Board and in police interactions with Black youth.[15] These are valuable resources, many of which have already been recognized in the case law dealing with this issue.

[65] I recognize that it is not necessary, and often impossible, to draw a straight line between systemic racism as a concept and its impact on the criminality of any individual offender. That said, where, as here, the crime is particularly egregious and the conduct of the offender reprehensible, the concept of systemic racism will have more impact if it can be linked to the actual experience of the offender before the court.

Remorse and Acceptance of Responsibility as a Mitigating Factor

[66] At the end of counsels' submissions on sentence, I gave both offenders an opportunity to address the Court personally if there was anything they wanted to say to me before I made my decision.

[67] Corey Murray started by stating that he was not guilty of any crime, which eliminates any acceptance of responsibility by him. He then "apologized" in a vague way and launched into a political speech about George Floyd and other well-known incidents of Black men being victimized by police. He then "apologized" to all of those people who died because of the system, as well to all of their families, including his own. Whatever the logic of that may be, it is clearly

---

[15] Chadha, E., Herbert, S., & Richard, S. (2020) *Review of the Peel District School Board*; James, C.E. & Turner, T. (2017), *Towards Race Equity in Education: The Schooling of Black Students in the Greater Toronto Area*: Toronto, Ontario, York University; Tulloch M. (2018), *Report of the Independent Street Checks Review: Ontario*, Queen's Printer; *Ontario Human Rights Commission* (2018) *A Collective Impact: Interim Report on the Inquiry Into Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service*; *Ontario Human Rights Commission* (2020) *A Disparate Impact: Second Interim Report on the Inquiry Into Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service*; Office of the Correctional Investigator (2013), *A Case Study of Diversity in Corrections: the Black Inmate in Federal Penitentiaries Final Report 2012-2013*; Department of Justice (2019), *State of the Criminal Justice System – 2019 Report*: Government of Canada.

not an expression of remorse for his role in murdering Trevor Seraphine. Obviously, Corey Murray is free to maintain his innocence and his failure to express remorse is not an aggravating factor. It simply means that he does not get the advantage of remorse as a mitigating factor.

[68] The situation for Curtis Murray is less clear. At the time of sentencing, he acknowledged the pain being suffered by the family of Trevor Seraphine and said that he prays for them every night. He then said he would devote the rest of his life to ending the plague of gun violence. This is not a full acknowledgment of his role in the murder, nor is it an expression of remorse for what he did.

[69] However, the author of the PSR apparently concluded that Curtis is genuinely remorseful. In the Assessment section of the PSR, she stated that Curtis "demonstrated accountability and a deep regret for the loss of life."[16] In the final sentence of the Summary section, she stated, "With the passage of time and loss of his freedom, Mr. Murray has reflected upon his decisions, and has shown that he has the capacity to accept accountability."[17] These conclusions are apparently drawn from what Curtis Murray said to her, presumably in the section entitled "Mr. Murray's Statement" at pages 15-17 of the PSR. The difficulty I have in grappling with this issue is that it is by no means clear what Curtis Murray actually said. For example, the author states (at p. 15) that Curtis "expressed remorse over the loss of life." That is not the same thing as accepting responsibility for the crime; it may simply be regret that a person died without accepting responsibility for that death. At page 16, the author wrote:

> Mr. Murray reported that with his involvement in the drug trade, the reality of incarceration was a possibility that he accepted. He admitted that he never imagined that he would be incarcerated for an act of violence, which he asserts should never have happened.[18] Mr. Murray expressed regret, reflecting that he should have sought a different course of action in response to issues with others in the neighbourhood.

[70] If these were Mr. Murray's actual words, it comes very close to a complete admission of responsibility and expression of remorse. The author of the PSR then goes on to say that Curtis admitted that he had "demonstrated unhealthy expressions of anger" and acknowledged the consequences his actions had on others around him, such as his mother, his son, and Ms. Brown. Again, if this is an actual admission of killing Trevor Seraphine, and remorse for his actions and the suffering they have caused, this could be true remorse. However, the language is not direct; it requires drawing an inference. Further, it does not appear to encompass the Seraphine family.

[71] The author of the report met in person with Curtis Murray on July 19 and September 17, 2020 and spoke to him by phone on August 23 and October 1, 2020. I do not know how long these interviews were, when within those interviews Mr. Murray made these "statements," and whether

---

[16] Michelle Richards, "Enhanced Pre-Sentence Report" at p. 17.

[17] *Ibid.,* at p. 19.

[18] Although it is unclear whether it is the violence that Curtis said "never should have happened" or his incarceration for violence that "never should have happened," I am prepared to assume the former.

he now accepts that this is what he said or what he meant. His appearance before me was on November 2, 2020, subsequent to his meetings with the author of the PSR report. At that time, although given the opportunity, he was not nearly as forthcoming as he seems to have been with the author of the PSR. It is for me to determine whether there has been a true expression of remorse. Unfortunately, I have found the PSR to be more of a piece of advocacy than a neutral assessment and I believe the author may have simply accepted Curtis Murray's statements at face value without any critical analysis. In these circumstances, I cannot rely upon her conclusions as to the presence of remorse, particularly since even the words attributed to Curtis are equivocal. I am therefore unable to determine whether Curtis Murray has indeed confessed to his crime and expressed genuine remorse, and I do not take this to be a mitigating factor on sentencing. I do acknowledge, however, that Curtis Murray is closer to such a level of insight than is his brother Corey. Again, I emphasize that the absence of remorse is not an aggravating factor on sentencing.

E. RECOMMENDATIONS OF THE JURY

[72] There were 11 jurors. Their recommendations for parole ineligibility were as follows:

> Curtis Murray: 3 jurors made no recommendation; 1 said 10 years; 2 said 20 years; 1 said 24 years; 4 said 25 years;
>
> Corey Murray: 3 jurors made no recommendation; 1 said 10 years; 2 said 15 years; 4 said 20 years; 1 said 25 years;

[73] Although I am required to take the jury recommendations into account, I am not bound to apply them. Those recommendations can only be based on the information revealed at trial, which is extensive with respect to the nature and circumstances of the offence, but very limited as to the character of the offenders. The jury also would not have known the other applicable principles of sentencing, nor would they have been aware of what others have been sentenced to in similar situations. The recommendation of the jury is therefore not the most important factor to be considered in this analysis.[19]

[74] However, I agree with the observation of MacDonnell J. in *R. v. Pondurevic*, as follows:

> Recommendations of the jury are simply that: recommendations. However, seeking the input of the jury is not a mere exercise in public relations. As the 12 members of the community selected to sit in judgment in this case, their opinions are a valuable insight into the degree of Mr. Pandurevic's moral culpability and I am statutorily bound to take those opinions into account.[20]

[75] Sometimes when the jury recommendations run the gamut from 10 to 25 years, not much can be taken from them. However, other times there can be important guidance to be found in

---

[19] *R. v. Salah*, 2015 ONCA 23, at paras. 271-274.
[20] *R. v. Pondurevic*, 2013 ONSC 3323, at para. 24.

those recommendations, particularly with respect to what the jury saw as the serious nature of the offence and the moral culpability each individual accused. This is such a case.

[76] I take no inference from the fact that three jurors in this case decided not to make a recommendation. I do not know why they chose that option, but there is no basis for concluding that if forced to pick a number, it would be at the low end of the scale. It may be the case that they simply felt ill-equipped to make a recommendation based on the limited information they had.

[77] I note that one juror voted for parole eligibility after 10 years, the lowest possible sentence. Again, it is difficult to read much into that given how far apart it is from the rest of the recommendations.

[78] However, looking at the rest of the jurors, I see two themes: (1) the recommendations for Curtis are for a greater period of ineligibility than for his brother; and, (2) the recommendations are at the high end of the scale, especially so for Curtis. Five jurors would have put Curtis at the extreme top of the range: four recommending 25 years and 1 recommending 24. The other two recommend 20, still an exceptionally high number. With respect to Curtis, one juror recommended 25 and four recommended 20. Although those are at the very high end of the range, I do note that they are less than was recommended for Curtis. Finally, two jurors recommended only 15 years for Corey, which, along with the one juror recommending 10 years, puts three of the jurors in the low to medium end of the range and five at the high end.

[79] What I take from this is that the jurors saw this second degree murder as being at the extreme end of the seriousness scale. Further, the jurors saw Curtis as being more morally culpable than his brother Corey.

F. IMPACT ON THE VICTIMS

[80] It is also relevant for me to take into account the impact this crime has had on its victims. Trevor Seraphine was 17 years old when he was murdered. He was still in high school. He was born in Somalia, the youngest of six siblings. His eldest sister, Theresa, was the first member of the family to get out of war-torn Somalia, and made her way to Canada. After she had established herself here, she sponsored the rest of her family to emigrate. Her belief, which should have been true, was that her family would be safer in Canada. Instead, Trevor died in a senseless, brutal killing before he even graduated from school. His family and friends have been devastated by his death, in part because he (who brought much joy to their lives) is now lost to them all, and also in part because of the manner in which he died. As eloquently stated in the Crown's written submissions:

> When Curtis Murray and Corey Murray decided to take Trevor Seraphine's life, they took a son from a mother, a brother from his siblings, an uncle from his niece and a friend from many others. They damaged a countless number of lives. They robbed those who loved Trevor Seraphine of the opportunity to be with him to

witness as he reached the common milestones in life, such as graduating high school, becoming a man and becoming a father.[21]

[81] Victim Impact Statements were filed by two of Trevor's sisters and one of his close high school friends. Their words are profound; their sorrow unremitting. I set out below excerpts from their own words, which speak more powerfully than I can:

Theresa Xabie Seraphine (eldest sister)

- My brother was gunned down and stabbed like an animal and was left to die on a cold, wet concrete sidewalk. That day shattered my family and we are still trying to put back the pieces. A son, a brother, an uncle was taken from us in the most senseless cruel way!

- My mother now suffers from paranoid schizophrenia. She thinks that people are out to get us and herself. She cries all the time and talks about how she does not want to live anymore.

- I have spent years blaming myself for my brother's death. What could I have done different? Why did I bring him to Canada? Losing my brother has cause me to suffer from insomnia and panic attacks. I often find myself waking from sleep, thinking I am in a small box and fighting to come out.

- The rest of our lives we will be mourning Trevor.

From a poem: by his close friend A.S.

- At first I couldn't cry, I didn't understand
  I was just numb.
  I found myself saying, he's still there. He just went back home for a bit.
  It became hard for me to live my day to day life
  at fifteen
  because my days were no longer regular without him.

- But what was life? I had just lost one of my best friends
  Who had confided in me, and I in him;
  After that I lost my path and myself.
  Which opened up doors to lessons I never knew I needed.

Feydera Seraphine, sister:

- After Trevor death everything seem just fell apart. The good life that we came up here to Canada for seems only like a dream.

[21] Crown's Position on Sentence, at para. 48.

- Almost 5 years since Trevor's death and we can't even pull ourself together.

- All my life I know my brother to walk away from trouble, even when we were small he would be the one running to call my mom when something had happened. Even in that video I see him not even trying to fight back, don't you see the fear in his face as he try to run. After y'all shot him, y'all really had it in y'all to stab him in his heart like the hosts wasn't enough. I know I am a godly person and the lord said to forgive, but the hate in my heart won't let me. Too many life have been destroyed in that process.

[82] I have disregarded the video on the healing power of forgiveness, which was filed by Curtis Murray's counsel as an exhibit on sentencing (over the objections of the Crown). It is not for me to forgive these offenders; I am not the victim here. The video is irrelevant to any issue I have to decide. Curtis Murray sought an exception from the ancillary order sought by the Crown prohibiting the offenders from contacting any member of Trevor Seraphine's family, supposedly so that he could apologize to them directly and seek their forgiveness. That request is denied. Again, this is not a matter for me to decide. If the family is interested in hearing from either offender, they can let the Crown know, a variation can be sought, and word can be sent to the offender. Failing that, these offenders must leave these poor victims in peace.

G. PARITY IN SENTENCING

[83] It is always difficult, if not impossible, to find other cases that are the same as the case before the court. Every individual offender will be different, even when there are many common features. Likewise, the range of circumstances in which an offence can be committed is infinite, particularly for an offence like second degree murder, which can encompass vastly different kinds of acts. Nevertheless, the principle of parity in sentencing is an important one and requires me to consider what was done in other cases so that my decision here is not widely divergent in either direction. I have considered all of the cases filed by the defence and Crown, even though I do not specifically list each and every one of them in these Reasons. There is not one case on all fours with the case before me.

[84] Given the degree of deliberation and planning, the execution style murder, the pettiness of the motive, and the criminal records of both accused, it is clear that the minimum 10-year parole ineligibility period is not appropriate in this case. Counsel for Curtis Murray submitted that the appropriate period of parole ineligibility for Curtis is 13-16 years. Counsel for Corey Murray argued that the range for his client is between 15 and 17 years. The Crown's position is that the appropriate period of ineligibility should be 22 years for each offender.

[85] Before turning to the case law, I make one general observation. Many of the cases cited are appellate level decisions. I recognize that when the Court of Appeal does not interfere with a sentence, there is some comfort that the trial judge's determination has been upheld. However, trial judges have considerable discretion in sentencing and, absent an error in principle, the appellate court will not interfere with the trial judge's discretion unless the sentence is

"demonstrably unfit."[22] Therefore, if the appellate court upholds a sentence, that merely means that the sentence is within a range that the appellate court considers to be fit. Further, given the nature of the appellate court's role, those decisions often do not contain the same level of factual detail as might be found in reasons of the sentencing judge. It is appellate decisions that reverse the trial judge that are more useful for purposes of precedent, particularly where the Court of Appeal imposes the sentence it considers appropriate.

Relevant Defence Cases

[86] In *R. v. Doucette*,[23] a 20-year-old accused was convicted of second degree murder and sentenced to a parole ineligibility period of 15 years. The offender shot and killed one person and injured another in an altercation outside a bar, following an earlier altercation inside the bar. Doucette had been charged with first degree murder and had testified that he acted in self-defence. The Court of Appeal ruled that the jury's finding of guilt on second degree murder meant that the jury rejected the self-defence claim, but also rejected the Crown's theory that the accused had gone home after the initial confrontation, picked up a gun, and then returned to the bar with the intention of shooting the deceased. The offender had a prior record that included an assault and a threatening charge. He was on bail at the time of the offence and was in violation of both the curfew and weapons prohibition clauses of the bail order. The accused's appeal from sentence was dismissed, with the Court of Appeal stating that there was no error in principle and the sentence was not "manifestly excessive."[24] The circumstances of the offence before me are far worse. In addition, both Curtis and Corey Murray were older than Doucette, and both had worse criminal records.

[87] In *R. v. Badiru*,[25] the accused appealed his conviction for second degree murder, and the Crown appealed the 13-year parole ineligibility period imposed by the trial judge, and submitted that the Court of Appeal should substitute 15 years. Both appeals were dismissed. With respect to sentence, the Court of Appeal noted that "the trial judge engaged in a comprehensive and fair assessment of the relevant factors" and stated:

> Moreover, we note that in *R. v. Dooley*, 2009 ONCA 910, 249 C.C.C. (3d) 449 at para. 179, Doherty J.A. observed: "It is hard, absent some error in principle or misapprehension of material evidence, to justify appellate intervention to adjust a mandatory period of parole ineligibility downward by two or three years." By parity of reasoning, this observation should apply with equal force to a Crown request to increase a period of parole ineligibility by two or three years, which is the Crown position in this case.[26]

It is difficult to discern the circumstances surrounding the offence except that the shooting was in an after-hours bar and the brother of the offender's girlfriend had been in a fight with the deceased

---

[22] *R. v. Lacasse*, 2015 SCC 64, 3 S.C.R. 1089; *R. v. Grant*, 2012 ONCA 124, at para. 162.
[23] *R. v. Doucette*, 2015 ONCA 583.
[24] *Ibid.*, at paras. 64 and 68.
[25] *R. v. Badiru*, 2012 ONCA 124.
[26] *Ibid.,* at paras. 30-31.

moments before the shooting. There is no information about the offender's age, character, or criminal antecedents. It is therefore difficult to draw much from this case.

[88] *R. v. Granados-Arana*[27] is a 2015 decision of Forestell J. imposing a 16-year period of parole ineligibility on a 22-year-old offender convicted of second degree murder. The offender brought a loaded gun to a New Years' Eve house party. He learned of a dispute between Mr. Franklin and another person. The offender and a friend followed Mr. Franklin out of the party and confronted him. Mr. Franklin was not armed and did not threaten the offender. However, during their confrontation outside the party, the offender drew his gun and shot Mr. Franklin in the foot. When Mr. Franklin turned and ran, the offender fired across the street, hitting Mr. Franklin in the back and killing him. The offender had not finished high school and had a learning disability. His mother was abused by his father and at one point lived in a shelter. The offender had a history of drug abuse – marijuana as a teen and cocaine as an adult. He had a criminal record that included three sets of offences: January 5, 2010 (assault with a weapon, failing to comply with recognizance); January 10, 2010 (assault with intent to resist arrest and breach recognizance); and May 2014 (trafficking in a controlled substance). It appears that the longest sentence he had received before this was 18 months of pre-sentence custody in 2014. Forestell J. found that the only mitigating factors were the relatively young age of the offender and the fact that he had made efforts to rehabilitate himself by completing courses while in pre-trial custody. Curtis Murray is older, although only by 3 years. He also has taken steps towards rehabilitation while in jail. There are some similarities in the offences in that Granados-Arana shot an innocent unarmed victim. However, the circumstances of the offence in this case are considerably worse. Also, both offenders before me have worse criminal records.

[89] I have also taken into account the decision of Dunnet J. in *R. v. Palmer.*[28] The offender in that case was carrying around a gun in a public park when he came upon four teenagers at picnic table about to partake in some marijuana, which was sitting on the table. Palmer took the marijuana from the table, intending to steal it. One of the boys jumped up and confronted him and after a short bit of pushing and shoving, Palmer pulled out his gun and shot the other young man in the head, killing him. Palmer had a juvenile record going back three years, which included robberies, an assault causing bodily harm, and multiple breaches of court orders. There was some evidence that the offender might have a personality disorder and the psychiatrist who assessed him believed he felt remorse. The trial judge did not accept that there was any genuine remorse and found little by way of mitigating factors other than his young age. He was 18 at the time of the shooting. Dunnet J. imposed a parole ineligibility period of 15 years. The most significant distinguishing factors are Palmer's young age and the fact that his offence was impulsive.

[90] In *R. v. Stewart*,[29] the offender was convicted of second degree murder, following which McCombs J. fixed the period of parole ineligibility at 16 years. Stewart and his victim (Taylor) were both gang members and drug dealers with criminal records for weapons and violence. They had a falling-out over a drug deal and had some kind of confrontation in a crowded public square

---

[27] *R. v. Granados-Arana*, 2015 ONSC 4527.
[28] *R. v. Palmer*, [2007] O.J. No. 2770 (S.C.).
[29] *R. v. Stewart*, [2008] O.J. No. 5449 (S.C.).

during Caribana celebrations in downtown Toronto. Taylor was not armed. Stewart fired two shots at Taylor, one of which missed, but the other killed him. Stewart was arrested at the scene. He was 23 years old. The jury recommendations ran the gamut: five made no recommendation; one said 10 years; one said 15 years; two said 18 years; one said 20 years; and two said 25 years. There was evidence from family members that Stewart had turned to religion since he was in jail and had expressed regret about his criminal past. There are some parallels between Stewart and the offenders before me. However, his offence was impulsive, whereas the Murray brothers planned and deliberated on their murder, and then killed a wholly innocent child.

[91] The defence also relies on *R. v. Grant*,[30] a decision in which the Ontario Court of Appeal reduced the periods of parole ineligibility for two offenders from 18 years (for Grant) and 13 years (for the co-accused Vivian) to 14 years and 11 years respectively. Grant and Vivian had been at a flea market where they were attacked and robbed of chains they had been wearing around their necks. Grant and Vivian left in Grant's car, with Vivian driving and Grant in the front passenger seat. As they drove along Kipling Avenue in Toronto, a car pulled up beside them in the curb lane and in it were the four robbers. One of the robbers taunted Grant and Vivian by holding Vivian's stolen pendant out the front car window while another robber flashed a gun out of the rear window. Vivian gave chase. When they caught up to the robbers' vehicle, Grant pulled out a handgun and fired 13 shots into their car, killing one man and wounding three others. The Court of Appeal upheld the convictions, including agreeing with the trial judge's ruling that there was no air of reality to the defence claim of provocation. However, the Court of Appeal overturned the sentences imposed by the trial judge and substituted different sentences.

[92] One of the reasons the Court of Appeal reversed the trial judge's decision on parole ineligibility was that, in respect of Grant, the trial judge exceeded both what the jury recommended and what the Crown sought. For Grant: one juror had no recommendation and 11 jurors recommended 15 years; the Crown sought 17 years; and the trial judge imposed 18 years. The trial judge did not advise the parties he was intending to go over the Crown's submission, did not provide the parties with an opportunity to make submissions, and did not provide any reasons for going beyond what the Crown had sought. The Court of Appeal found this to be a reversible error in principle.

[93] In addition, the Court of Appeal held that the trial judge erred in principle by failing to give real weight to the offenders' "relative youth" (Grant was 21 and Vivian was 20) and by failing to give any weight to several other mitigating circumstances.[31]

[94] In determining that the appropriate periods for parole ineligibility were 14 years for Grant and 11 years for Vivian, the Court of Appeal considered the following:

- Grant was the shooter and Vivian assisted by positioning the car to enable the shooting;

---

[30] *R. v. Grant*, 2016 ONCA 639.
[31] *Ibid.*, at para. 166.

- Thirteen shots were fired on a residential Toronto street in the middle of a Saturday afternoon, nine of which hit the occupants in the car. Miraculously no bystanders were injured.

- The murder of Saez (one of the robbers) and the circumstances of its commission ranges in the upper scale of 85 to 95% of seriousness.

- Although both offenders were drug traffickers, there was a "near absence" of a criminal record: Grant had a single simple assault for which he received a suspended sentence and probation; Vivian had one conviction as a youth for trafficking in marijuana.

- Grant was 21 years old and Vivian was 20.

- While in custody for the years between his arrest and the appeal decision,[32] Grant continued to have extensive support from his immediate and extended family, continued to play an active role in the life of his young child, and had taken every available opportunity to improve himself by taking courses and returning to school. Prison authorities stated he had excellent prospects for rehabilitation.

- Vivian had a difficult upbringing, often having to care for his younger siblings when his drug-addicted mother went absent from the home. Prior to prison he had done well in school, participated in extracurricular activities and worked weekends for his step-father's company washing tractor trailers. While in prison, he continued to have strong support from his mother and aunt and her partner.

- The jury recommendations for Grant were: one juror had no recommendation and 11 jurors recommended 15 years. The jury recommendations for Vivian were: one juror made no recommendation and 11 jurors recommended 10 years.

[95] Taking all of these factors into account, the Court of Appeal imposed a 14-year parole ineligibility period for Grant, and 11 years for Vivian. Laskin J.A. characterized the offence in *Grant* as being between 85 to 95% on the scale of seriousness; I would place the case before me even higher. The most aggravating factor in *Grant* was the dangerousness of shooting at a moving car on a residential street, because of the risk of hitting bystanders. Curtis Murray did fire multiple shots in a public area, at first towards Trevor Seraphine on the pathway leading to an apartment building, then into the vestibule of the building, and finally at close range directly into his victim. This was dangerous behaviour, but it was 2:00 am and there were no other people around. However, the most egregious characteristic of this second degree murder was the planning and deliberation involved, and the trivial nature of the "affront" that led to this brutality. The victims in *Grant* were the actual robbers, and they were taunting the offenders and waving a gun at them

---

[32] The shooting was in 2007. Both accused fled to Jamaica, but eventually were arrested there and returned to Toronto. There had been a previous trial in 2013 that resulted in both accused being convicted of first degree murder, but which was sent back by the Court of Appeal for retrial for entirely unrelated reasons. This was the second trial. The Court of Appeal decision reversing the sentences was 9 years after the shooting.

within moments of when Grant opened fire. Not so the Murray brothers. They did not act in the heat of the moment. They had hours to calm down and deliberate. They made a plan. They gathered together their disguises. They armed themselves. They headed out to seek their revenge against the hoodlums who had stolen Curtis' shoes and clothing. And then they shot and stabbed Trevor Seraphine, who was alone and utterly defenceless, and who had nothing to do with the theft or the men who perpetrated it. In my view, what the Murray brothers did was worse than the actions of the offenders in Grant.

[96] I would further distinguish *Grant* on the basis that the mitigating factors in that case are stronger. Grant was younger and had a far less serious criminal record. Some of his attempts at self-improvement while in custody, as well as a supportive family, are similar to those of the offenders here. I note as well that the jury recommendations for Grant supported a more lenient sentence than is the case for either of the Murray brothers.

[97] I therefore find *Grant* to be a useful point of comparison. However, in the case before me, both the circumstances of the offence and the character of the offender are factors that would warrant a longer sentence. I do not find the sentence for Vivian to have much precedential weight as he was merely the driver, whereas both offenders before me played an active role in the killing. In the case before me, the driver of the car that transported the Murray brothers to and from their deadly mission has never been identified.

[98] Another useful case provided by the defence is the Court of Appeal decision in *R. v. Berry*,[33] in which the accused was charged with first degree murder for shooting the victim (Christie) six times at close range. The Court of Appeal agreed with the assessment of the trial judge (McMahon J.) that this case was "a near first degree murder" and upheld the 17-year period of parole ineligibility he imposed as being "entirely fit." Both the offender and the victim were drug dealers and lived in the same apartment building. Earlier on the day of the shooting they had an argument at a store where Berry was Christmas shopping with his sisters. Later, when Berry and his sisters returned from shopping and were walking along the hallway of their apartment building, they had another confrontation with Christie. Again, words were exchanged, but this time as Berry was walking away, Christie pulled out a Glock handgun and pressed it to the back of Berry's neck. That incident passed without further violence. However, within an hour of that encounter, Berry was in the stairwell and met another drug dealer who offered him a handgun if he needed it for protection. Berry accepted it. Berry then ran into another man (Jovanovski) and asked him to knock on Christie's apartment door and ask Christie to come out to speak to him. Jovanoski knocked and told Christie's fiancée (who opened the door) that he wanted to speak to Christie. When Christie approached the door, Berry stepped forward and shot him six times.

[99] Unfortunately, because this is an appellate level decision upholding the determination of the sentencing judge, the reasons do not provide as much detail as one would likely find in the sentencing decision itself. However, from the information available, it appears that Berry had a difficult youth and upbringing. He was only 20 years old at the time of the murder, but had a

---

[33] *R. v. Berry*, 2017 ONCA 17, at paras. 86-92.

criminal record both as a youth and an adult that included convictions for robbery, a conviction for assault with a weapon, and the imposition of a firearms prohibition. McMahon J. found that there were elements of planning involved (acquiring the firearm, enlisting Jovanovski's assistance, and hiding up against the wall until Christie presented himself at the door) and that the shooting could be characterized as a "brutal execution." The Court of Appeal agreed that these were "compelling aggravating factors as were others, including the use of an illegal firearm when the accused was subject to a firearms prohibition order." These elements of planning and the execution-style murder also exist in this case, as does the use of an illegal handgun while subject to a prohibition order. Thus, the nature and circumstances of the offence have similarities, although the murder victim in the case before me had nothing to do with any kind of dispute with the Murray brothers. This is a strong contrast to the victim in *Berry,* who had put a gun to the back of the offender's head less than an hour before he was himself shot. In my view, the case before me is even closer to first degree murder than was the situation in *Berry.*

[100] It is more difficult to compare the character of the offenders between the two cases. It would appear that the criminal records of the Murray brothers are worse than Berry, but it is difficult to be sure about that on the information available. Berry was only 20 at the time of the offence, younger than either of the offenders before me. Further, there was psychiatric evidence presented that Berry had very low intelligence, in the bottom 5% of the population and that his psychological profile was such that he would be particularly sensitive to perceived threats or provocation and would experience challenges trying to solve difficult problems in times of stress. These are mitigating factors not present for either of the Murray brothers. There is no information as to Berry's family circumstances or any steps he took toward rehabilitation.

<u>Relevant Crown Cases</u>

[101] One of the landmark decisions cited in almost every case involving shooting deaths is the Court of Appeal decision in *R. v. Danvers.*[34] In that case, Danvers had fired several shots in a crowded nightclub, hitting a security employee and killing him. There was no evidence as to motive. At trial, Ewaschuk J. described the murder as "motiveless, impulsive and senseless, involving gratuitous violence" and described the 19-year-old offender as a "career criminal" and "an armed, dangerous drug dealer." The jury recommendations on parole ineligibility were: one for 10 years; three for 20 years; and eight with no recommendation. The trial judge imposed a period of 18 years. On appeal, the Court of Appeal agreed with the trial judge's description of the nature of the offence, but that the characterization of the offender was not fair. There was no evidence that the shooting was drug related. The offender had a substantial youth record that included convictions for selling marijuana and six weapons convictions involving a replica gun. The Court of Appeal reduced the parole ineligibility period to 15 years, stating that "given the youth of this offender, the increase in parole eligibility to 18 years is excessive."[35] I do not agree with Ms. Freeman that the circumstances of Danvers' offence are more aggravating, nor do I necessarily agree that Curtis Murray has better prospects for rehabilitation. The criminal records

---

[34] *R. v. Danvers,* 2005 CanLII 30044 (Ont.C.A.)
[35] *Ibid.*, at para. 76.

are similar. There was no known motive for the Danvers shooting. It was not a planned and premeditated murder, nor was it a deliberate taking of another life. Recognizing that firing shots in a crowded public place is an extremely dangerous and reckless act, I nevertheless consider the impulsivity of Danvers' crime to be less blameworthy than was the killing of Trevor Seraphine. Danvers was also considerably younger than Curtis Murray, which was the determinative factor in the Court of Appeal decision.

[102] The Crown in this case submits that 22 years is an appropriate period of parole ineligibility for both accused. In support of that submission, the Crown has placed before me a number of cases in which ineligibility periods of over 20 years have been ordered. In addition, the Crown relies on the Court of Appeal ruling in *R. v. Brunet*[36] that:

> Where a particularly egregious offence is coupled with the most aggravating of offender characteristics such as a history of violence and a high risk of recidivism, the uppermost range of 20 to 25 years will be appropriate.[37]

[103] I agree with the Crown submission that the murder of Trevor Seraphine falls within the expression "particularly egregious offence." The more debatable issue is whether these offenders present with the "most aggravating of offender characteristics such as a history of violence and a high risk of recidivism." With that in mind I will turn to an analysis of the cases the Crown relies upon for the suitability of an ineligibility period in excess of 20 years.

[104] I note, first of all, that in *Brunet*, the Court of Appeal did not uphold the 20-year parole ineligibility date imposed by the trial judge. There was no question that the crime qualified as a "particularly egregious offence." The offender had entered a basement apartment through a window and brutally raped, beat and strangled an 81-year-old woman. Brunet was apprehended five years later when he voluntarily provided a DNA sample in response to a police request of residents in the neighbourhood. There was conclusive evidence he had committed the crime, but he said he had no recollection of it whatsoever, which the trial judge accepted. Brunet was 63 years old, married with three children, had worked most of his life, and had no criminal record. He expressed genuine remorse and had health issues. There was medical evidence that he posed no future risk of violence. In those circumstances, the Court of Appeal reduced the parole ineligibility period to 16 years. This is an example of an offender with far more mitigating factors than either of the Murray brothers.

[105] The Crown also relies on *R. v. Fouquet*[38], a decision of Slatter J. of the Alberta Court of Queen's Bench imposing a life sentence with no eligibility for parole for 22 years. This is the reverse situation. Fouquet's character is worse than that of the offenders before me, but his offence, although egregious, is not quite as bad. Fouquet and two others hatched a plan to steal drugs from a drug dealer because they lacked the funds to purchase them. They lured the drug dealer, a 17-year-old, to a condominium building. As one of the group was having a discussion

---

[36] *R. v. Brunet*, 2010 ONCA 781.
[37] *Ibid.*, at para.20.
[38] *R. v. Fouquet,* 2005 ABQB 673.

with the dealer through his car window about the price, the dealer became suspicious and began to drive away. Mr. Fouquet, who was waiting in the wings with a sawed-off shotgun, shot the dealer as he drove off. The car crashed, whereupon Fouquet and his two friends searched the vehicle for drugs and money and robbed the victim's wallet from his dead body. There was some planning and premeditation involved, but this was a botched robbery followed by an impulsive shooting, rather than a planned murder for revenge, as is the case before me. I find the circumstances of the *Fouquet* killing to be somewhat less egregious. On the other hand, Fouquet was 42 years old with a long history of substance abuse and a criminal record that included 42 convictions over 20 years. His convictions included six violent offences and two previous weapons offences. He had served two penitentiary terms already and was on probation at the time of the murder for having assaulted his spouse. Psychological risk assessments found him to be at a high risk for future violent acts. The trial judge placed heavy emphasis on the character of the offender in setting the parole ineligibility period at 22 years.

[106] *R. v. Lane*[39] is another example of a second degree murder committed in circumstances less egregious than the one before me, but where the character of the offender was decidedly worse. In the course of a drug-related event, the victim in that case was shot twice in what was described by the Court of Appeal as a "cold-blooded execution." The issue at trial was the identity of the shooter. Lane was convicted by a jury of second degree murder and sentenced to life imprisonment without eligibility for parole for 20 years. The Court of Appeal upheld the sentence, finding the offender to have an established pattern of violence in his life and that he presented a high risk to re-offend in a violent manner. He had an extensive record for violent offences including: shooting a man in the leg and chest for which he was sentenced to 7 years for aggravated assault; two robberies; assault; and discharging a firearm with intent to wound. He had been on parole, which he breached. He was then put back in custody and not released until he had served his whole sentence. He committed the murder in question within three months of that release. The circumstances of the offence in *Lane* involved no premeditation or planning and, in that sense, the offence is not as egregious as the one before me. However, the criminal record of the offender is worse, which was the factor relied upon to support the 20-year parole ineligibility period.

[107] Similarly, in *R. v. Moore*,[40] in which the Ontario Court of Appeal upheld a 22-year parole ineligibility period, the offender had a criminal record worse than either of the Murray brothers. Moore, along with an accomplice, committed the murder in the course of a home invasion of a drug dealer. He slashed the drug dealer in the face and stabbed him in the neck, severing an artery, which caused him to bleed to death. Moore was 35 years old at the time of sentencing. The jury recommendations were: four made no recommendation; one recommended 15 years; and seven recommended 25 years. Moore's criminal record included: attempted murder (as a youth) by stabbing the victim nine times; assault causing bodily harm in a home invasion in which he beat the victim with a baseball bat; and manslaughter by shooting an unarmed victim, for which he was sentenced to 10 years. He was held until warrant expiry and committed the subject murder within 81 days of his release. Since the age of 15, he had spent most of his life in jail and had "dozens

---

[39] *R. v. Lane,* 2008 ONCA 841, 94 O.R. (3d) 177.
[40] *R. v. Moore*, 2017 ONCA 947, at paras. 56-62.

upon dozens" of infractions while in custody. There was psychiatric evidence that he was an extremely dangerous individual at high risk to re-offend in a violent manner. There were no mitigating factors. While there are some similarities between the criminal record of Moore and that of Corey Murray, neither of the Murray brothers could fairly be described as being as violent or dangerous as Moore.

[108] In *R. v. Fattah*,[41] the Alberta Court of Appeal upheld a 21-year ineligibility period in a case with many similarities to this one. The offender had been involved in an escalating feud with the deceased and others associated with him. After one incident in which the deceased smashed the window of the offender's vehicle, the offender walked into the deceased's workplace with a handgun and fired nine shots into his head and body, killing him, as well as wounding one of the associates who had also been involved in the feud. This was an execution-style shooting which occurred about half an hour after the incident involving damage to the offender's car. The offender was 21 years old with a lengthy record from the time he was 13, including youth convictions for assault, assault with a weapon, uttering threats, robbery and possession of a weapon. As an adult, he had convictions for drug-related offences, assaulting a peace officer, assault, and uttering threats. He was younger than the offenders before me, but his criminal record was somewhat worse.

[109] Finally, I adopt the reasoning of Code J. in *R. v. Hayles-Wilson*,[42] another case that has many similarities to this one. The offender in that case brought a loaded handgun to a basketball tournament at a community centre. While there, he encountered Neeko Mitchell, with whom he had an ongoing grievance. Hayles-Wilson fired multiple shots at Mitchell from close range, causing his death. He was convicted of second degree murder. In his sentencing decision, Code J. found that the murder had been planned and that the grievance between these two men was the motive. However, the murder lacked the element of deliberation that would have made it first degree murder because events at the community centre unfolded too quickly to allow time for weighing the advantages and disadvantages. The use of a firearm in a public place was found to be aggravating, particularly in light of the number of people nearby who could easily have been injured or killed. Code J. characterized the crimes as a "near first degree murder" in the sense referred to by the Court of Appeal in *Berry.*[43]

[110] In his analysis, Code J. reviewed various cases involving "brazen public shootings" and concluded they fell within three categories: (1) the bottom end of the range (where the circumstances of the offence were less aggravating or there were unusual mitigating circumstances); (2) the top of the range (where 18-22 years were imposed in the most serious of cases with the worst offenders); and (3) the middle range of 14-16 years (where he found Hayles-Wilson belonged). In examining the cases at the top of the range, Code J. held (at para. 22):

> It can be seen that all four of these cases in the 18 to 22 year parole ineligibility range involved recidivists with prior criminal records, some quite serious, and they

---

[41] *R. v. Fattah*, 2009 ABCA 229.
[42] *R. v. Hayles-Wilson*, 2018 ONSC 4337.
[43] *Ibid,*. at para. 15.

> involved dangerous public offences with multiple victims, or significant risk to multiple victims, or with gang-related motives. The present case bears some similarities to these cases, in terms of the circumstances of the offence, but Mr. Hayles-Wilson is a better situated offender than the four accused in these cases.

[111] Code J. imposed a mid-range period of 15 years for Hayles-Wilson largely because of the mitigating factors. Hayles-Wilson was 23 years old at the time and an admitted drug dealer. However, he had no criminal record. He had considerable support from his family, who appeared to be pro-social individuals. Importantly, he apologized to the family of his victim at his sentencing hearing and asked for their forgiveness.

[112] These mitigating factors are not present for Curtis Murray, and Corey Murray is even further off the mark. Although their crime was not committed in circumstances that posed an obvious danger to others in the community, it was nevertheless in a public place, with multiple shots fired, and Trevor Seraphine was very much an innocent victim. Further, it was a brutal crime, cornering a child in a lobby, unarmed and outnumbered, and then both shooting and stabbing him to death. Unlike the killing committed by Hayles-Wilson, the Murray brothers had ample time to both plan and deliberate and they did both. This crime is even closer to first-degree murder than the one in *Hayles-Wilson* and the offenders are more morally blameworthy.

<u>H. ANALYSIS</u>

[113] I turn then to the sentence that is appropriate for each offender in this case.

<u>*Nature and Circumstances of the Offence*</u>

[114] This second degree murder is as close to first degree murder as it is possible to be, involving both planning and deliberation. It was a cowardly two-on-one killing involving a firearm and a knife. The victim was wholly innocent and was executed because of a petty property offence that had nothing to do with him. The only factors I see as reducing the seriousness as compared to other second degree murders are that, although this was a shooting in a public place, there were no other people in the immediate vicinity at the time of the crime, and there was only one victim. I find that the nature and circumstances of the offence put this case at the upper end of the spectrum.

<u>*Recommendations of the Jury*</u>

[115] Even though the jury had no knowledge of the criminal records of the two offenders, the jury also put this case at the upper end of the spectrum. For Curtis Murray, of the eight jurors who made recommendations, one recommended 10 years and the other seven recommended between 20 and 25. Indeed, four of them recommended 25 years. For Corey Murray, one juror said 10 years, and one would have put him in the middle range at 15 years. However, the remaining five recommended 20-25 years. I am not bound by these numbers, but I nevertheless find it illuminating that so many jurors believed that these offenders deserved to be sentenced at the top end of the range.

<u>*Character and Moral Blameworthiness of the Offenders*</u>

[116] As I held in my previous ruling following the *Gardiner* hearing, I find that Curtis Murray was more of the organizer and leader in this endeavour and that Corey Murray took a more secondary role. I conclude from the jury recommendations that the jury took a similar view.

[117] That said, Corey's role was by no means minor. He was a ready and willing participant, even though he personally had not been wronged by the Champagnie group. He did not merely stand by and provide moral support or protection for his brother, he participated actively, and indeed he was the one who delivered the mortal blow.

[118] Curtis has a history of violence and a lengthy criminal record, both as a youth and an adult. His counsel urges me to conclude that these offences must have been minor by virtue of the relatively lenient sentences imposed. I do not have any information about the offences themselves. I accept that the sentences were not lengthy, but many were from Youth Court. What is concerning is that of these offences, there are four assaults (one with a weapon) and two robberies, as well as an extortion. These are crimes of violence. Further, Curtis Murray has repeatedly demonstrated his utter disregard for court orders. His record includes one conviction for obstructing a peace officer and four separate convictions for breaching a recognizance. A prohibition order was made against him in Youth Court in 2006 and he has had two further weapons prohibition orders as an adult (in 2008 and 2010). At the time of the murder, he was on bail and was in possession of an illegal firearm, in breach of two weapons prohibition orders. While I recognize that the length of time he has been in jail since his arrest on this charge is by far longer than any sentence he has received for prior crimes, the pattern of repeated violent offences, his lifestyle as a drug dealer, and his repeated breach of court orders are aggravating factors that are deeply troubling.

[119] Corey Murray's criminal record is even worse in terms of its seriousness, although not as extensive as that of his brother Curtis. Of particular concern are the two sets of offences which involved firearms and four assaults. He also has two convictions for failing to comply with a recognizance. At the time of this murder, he was subject to three separate weapons prohibition orders (from 2007, 2008 and 2009). Within one year of being released on parole from the penitentiary, Corey Murray breached that parole and was subject to an arrest warrant for that breach when he committed this murder. He was also in violation of the three weapons prohibition orders. During his incarceration since April 2015, he has been found guilty of 17 misconducts, many of them for violent behaviour, demonstrating that his anti-social attitude has continued to prevail even while this trial was ongoing.

[120] The degree of planning and deliberation by these two offenders, their violent criminal histories, and their prior repeated breaches of court orders all point towards the upper range of sentencing. The fact that both were in breach of weapon prohibition orders, one was on bail, and the other in breach of his parole also supports a sentence at the top end of the range. Curtis was 25 years old and Corey was 29 years old. While still relatively youthful, they do not get the same mitigating effect as other quite young offenders.

[121] That said, they are by no means at the very worst of the offenders shown in the case law to have been deserving of parole ineligibility at the upper end of the range. Given their track records, there is a real likelihood that they will re-offend in a violent manner. However, on the information available at this time, I am not able to evaluate the degree of that risk. This is to be contrasted to cases in which the offenders were long-term hardened criminals assessed as dangerous recidivists

with a high risk of reoffending violently. However, I see this as a question of degree, rather than of kind.

Deterrence and Denunciation

[122] In light of the circumstances of the offence, the character and criminal antecedents of the offenders, denunciation and deterrence must be important factors in sentencing.

Rehabilitation

[123] Neither offender is without any hope of rehabilitation. Corey Murray has completed high school while in custody and is reading a great deal. This provides some basis for optimism. That said, the repeated misconducts are a concern, as is the fact that his previous penitentiary sentence did nothing to deter his criminal behaviour.

[124] I am somewhat more optimistic for Curtis Murray, who has become religious, taken advantage of self-improvement courses available to him, and made great strides to become literate. He has had four misconducts since being in custody, but they were not for violent breaches.

Systemic Racism

[125] There is no question that anti-Black systemic racism exists in our society and our public institutions, including the education system and the judicial system. In addition to the well-known and helpful studies listed at the end of the PSR and those filed as exhibits at sentencing, this issue is established in the case law. As early as 1993, the Ontario Court of Appeal, after referring to a multitude of studies, acknowledged in *R. v. Parks* that anti-Black racism and negative stereotypes are embedded in our society, including in the criminal justice system. Doherty J.A. held in that case:

> I do not pretend to essay a detailed critical analysis of the studies underlying the various reports to which I have referred. Bearing that limitation in mind, however, I must accept the broad conclusions repeatedly expressed in these materials. Racism, and in particular anti-black racism, is a part of our community's psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes. Furthermore, our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes. These elements combine to infect our society as a whole with the evil of racism. Blacks are among the primary victims of that evil.[44]

---

[44] *R. v. Parks*, (1993) 15 O.R. (3d) 324, at para. 54, leave to appeal to S.C.C. refused, 23860 (April 28, 1994).

[126] In *R. v. Ipeelee*,[45] the Supreme Court of Canada reviewed and affirmed its earlier decision in *R. v. Gladue*[46] as to the principles to be applied in sentencing Aboriginal offenders. In both decisions, the Supreme Court emphasized the central principle of proportionality in sentencing, which requires a consideration of the moral blameworthiness of the offender. This must be a contextual analysis, and systemic and background factors are always relevant to the extent they shed light on that issue.[47] There is, of course, nothing new about taking into account the personal and cultural background of an accused in sentencing. This is part of the standard analysis in every case. Indeed, the Supreme Court in *Ipeelee* specifically noted (at para. 77):

> Furthermore, there is nothing in the *Gladue* decision which would indicate that background and systemic factors should not also be taken into account for other, non-Aboriginal offenders. Quite the opposite. Cory and Iacobucci JJ. specifically state, at para. 69, in *Gladue*, that "background and systemic factors will also be of importance for a judge in sentencing a non-aboriginal offender".

[127] I accept that the patterns of discrimination referred to in the studies filed may well have had an impact on the Murray brothers and played a role in their choices to engage in criminal conduct. I reach that conclusion based more on the literature than on the PSR in this case, but I accept it in any event. In this case, the PSR has provided considerable personal background with respect to Curtis Murray, which has been helpful. I agree that it is relevant to take into account that personal information along with the literature about systemic racism in assessing the context in which this offence occurred and the moral blameworthiness of the offenders. Numerous cases of our court, to varying degrees, have also taken such factors into account.[48]

[128] The more difficult question is the extent to which anti-Black systemic racism should have a mitigating impact on the sentences in this case.

[129] In *Gladue*, the Supreme Court held that "[g]enerally, the more violent and serious the offence the more likely it is as a practical reality that the terms of imprisonment for aboriginals and non-aboriginals will be close to each other or the same, even taking into account their different concepts of sentencing."[49] The Court revisited that statement in *Ipeelee* and cautioned that this did not mean that the *Gladue* principles have no application in serious cases. On the contrary, a failure to take those principles into account "would result in a sentence that was not fit and was not consistent with the fundamental principle of proportionality."[50]

[130] The impact of these principles post-*Ipeelee* in the sentencing of two Black men convicted of second degree murder was considered by Clark J. in *R. v. Monney.*[51] The deceased was

---

[45] *R. v. Ipeelee,* 2012 SCC 13, [2012] 1 S.C.R. 433.
[46] *R. v. Gladue,* [1999] 1 S.C.R. 688.
[47] *Ipeelee,* at paras. 60 and 73.
[48] See in particular: *R. v. Husbands*, 2019 ONSC 6824; *R. v. Monney,* 2016 ONSC 1007; *R. v. Elvira,* 2018 ONSC 7008*; R. v. Jackson*, 2018 ONSC 2527; *R. v. Morris,* 2018 ONSC 5186*; R. v. Reid,* 2016 ONSC 8210.
[49] *Gladue*, at para. 79
[50] *Ipeelee*, at paras. 84-87
[51] *R. v. Monney*, 2016 ONSC 1007.

murdered as a result of an animus between two rival street gangs. Initially three men were charged with the murder. The jury acquitted one accused and convicted Monney and Abdulle of second degree murder. Clark J. considered evidence of anti-Black racism but found that as a practical reality it had virtually no impact on sentence because of the seriousness of the crime and its circumstances. In coming to that conclusion, he considered the impact of *Ipeelee* as follows (at paras. 54-56):

> …While I accept that the court in *Ipeelee* observed that some lower courts had been misinterpreting *Gladue* in certain respects, I do not agree that *Ipeelee* has displaced the proposition that, in terms of determining a fit disposition, there will come a point at which any differential based on race and attendant socio-economic disadvantage will be overtaken by the seriousness of the offence. In saying that, I rely on *R. v. Pelletier*, 2012 ONCA 566, [2012] O.J. No. 4061 at para. 142, where, speaking for the court, Watt J.A. held:
>
>> Finally, for some offenders, both Aboriginal and non-Aboriginal, separation, denunciation and deterrence are fundamentally relevant. It does not follow that Aboriginal offenders must always be sentenced in a way that accords greatest weight to the principles of restorative justice and less weight to objectives like deterrence, denunciation and separation: *Gladue*, at para. 78. Although not a general principle, in practical terms, the more violent and serious an offender's crime, the more likely that the terms of imprisonment for Aboriginals and non-Aboriginals will be close to each other, if not the same: *Gladue*, at para. 79; *Wells*, at para. 42; *R. v. Ipeelee*, 2012 SCC 13, (2012), 280 C.C.C. (3d) 265, at para. 85.
>
> See also *R. v. Weese*, 2016 ONCA 449, where the parole ineligibility of 22 years imposed upon an aboriginal convicted of second degree murder was upheld. Watt J.A., having earlier made specific reference to *Ipeelee*, went on, at para. 28, to quote para. 79 of *Gladue*.
>
> From these two cases, both postdating *Ipeelee*, it is plain to me that it is still "a practical reality" that, in fashioning a fit sentence, the "different concepts of sentencing" applicable to aboriginal offenders (or, by extension, any offender who has suffered systemic discrimination) will eventually be eclipsed by the seriousness of the offence.

[131] *R. v. Weese*[52] involved an Aboriginal offender who fired a semi-automatic handgun outside a bar, hitting several people and killing one of them. He was convicted of second degree murder and four counts of aggravated assault. The trial judge imposed a 22-year period of parole ineligibility. On appeal, the appellant argued that the trial judge had failed to give appropriate

---

[52] *R. v. Weese*, 2016 ONCA 449.

consideration to the *Gladue* principles. The Ontario Court of Appeal upheld the sentence, stating (at paras 26-28):

> The *Gladue* principles do not apply in a mechanical fashion, nor do they require reductions in sentences for offences committed by aboriginal persons. On the contrary, as the Court noted in *Gladue* at para. 79, "Generally, the more violent and serious the offence the more likely it is as a practical reality that the terms of imprisonment for aboriginals and non-aboriginals will be close to each other or the same, even taking into account their different concepts of sentencing."
>
> This was a very violent and serious crime and the trial judge was required to consider a number of factors, including the appellant's circumstances as an aboriginal offender, in crafting the appropriate sentence.
>
> We are satisfied that she did so. The trial judge clearly understood the appellant's difficult personal circumstances, which included physical abuse, drug abuse, and led to a life of crime. She did not make any of the mistakes identified in *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, and in particular did not require the appellant to establish a causal link between his circumstances and the offences he committed. There is no basis to interfere with her conclusion.

[132] Similarly, in *R. v. Brown*[53] the Ontario Court of Appeal held that it was an error for the trial judge not to have applied the *Gladue* principles even though the subject offence (aggravated sexual assault) was a serious one (the offender had followed the complainant, bashed her head against some rocks, choked her unconscious, and raped her). Although the sentencing judge had reviewed some of the *Gladue* principles, he had also stated that the issue was "moot because of the seriousness of the offence that he committed." The Court of Appeal found that although this was an error justifying intervention, the sentence remained fit, stating (at paras. 45-47):

> The gravity of the offence did not, and could not, render the circumstances relating to the appellant's Indigenous heritage "moot". Rather, *Gladue* and its progeny prescribe a different method of analysis in determining a fit sentence for Indigenous offenders, which must be followed regardless of the severity of the offence at hand: *Ipeelee,* para. 59. <u>Put another way, the *impact* of *Gladue* factors may vary in any given case but the method of analysis does not.</u> The application of *Gladue* factors is always necessary to achieve a proportionate sentence for Indigenous offenders, and a failure to do so warrants appellate intervention: *R. v. Swampy,* 2017 ABCA 134, 347 C.C.C. (3d) 105, at paras. 26 and 36; *Ipeelee*, at para. 44. Considering the sentencing judge's words at face value, and in the context of his reasons as a whole, I am left to conclude that he failed to adhere to this aspect of the *Gladue* principles.

---

[53] *R. v. Brown*, 2020 ONCA 657, 152 O.R. (3d) 65.

> That said, this type of error is not necessarily fatal. Granted, the sentencing judge's reasons are not entitled to the customary appellate deference that they would normally attract; this court is required to consider the fitness of sentence afresh: see *R. v. F.H.L.*, 2018 ONCA 83, 360 C.C.C. (3d) 189, at para. 36; *R. v. Collins*, 2011 ONCA 182, 104 O.R. (3d) 241, at para. 38; *R. v. Fraser*, 2016 ONCA 745, 33 C.R. (7th) 205, at para. 20. However, a re-assessment on appeal need not lead to a different outcome: see *F.H.L.*, at paras. 36-37; *R. v. Kakekagamick* (2006), 81 O.R. (3d) 664, at para. 58, leave to appeal refused, [2007] S.C.C.A. No. 34; and *Swampy,* at paras. 37-38.
>
> Looking at this aspect of the case afresh, I am satisfied that 12 years' imprisonment is a fit sentence. The impact of the appellant's Inuit ancestry on his moral blameworthiness does not outweigh the egregious nature of the appellant's attack on a vulnerable, unsuspecting stranger.
>
> [Emphasis added]

[133] On the basis of these authorities, and on the evidence before me, I find that the systemic racism issue is relevant to a consideration of the offenders' background and the context in which this offence was committed. Clearly, in minor offences this kind of analysis might have a very substantial impact on the sentence to be given in a particular case. However, as the seriousness and violence of the subject offence increases, so too does the importance of deterrence, denunciation, and separation of the accused from society. In this regard, at the upper limits of egregious criminal conduct, individual circumstances of an accused's background take on less importance. In my view, the impact of systemic racism and how it may have affected moral blameworthiness falls into the same category. It is relevant and it should be considered, but where an innocent 17-year old is hunted down and brutally murdered as supposed revenge for somebody else stealing the offenders' shoes and clothing, the impact of systemic racism pales in comparison to the horrific circumstances of the crime. Accordingly, while I have considered this factor, I have given it little weight in reaching what I consider to be a fit sentence.

COVID-19 and Other Circumstances While Incarcerated

[134] Curtis and Corey Murray have been in prison since April 2015 awaiting their trial. Their sentences commence from the date of their arrest, and the period of parole ineligibility also commences at that point. This is a very different situation from other offences where the sentence runs from the date it is pronounced and the offender is then given credit for time already served. In order to take into account the fact that there is no earned remission in respect of pre-sentence custody, the normal rule is that the time served is credited at a rate of 1.5 to 1.[54] This can be

[54] *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575.

increased at the discretion of the trial judge to reflect particularly harsh conditions experienced by the offender while in custody.[55]

[135] Counsel for Curtis Murray submits that enhanced credit should be given to Curtis Murray to compensate for periods of time when the institution in which he was housed was subject to full or partial lockdowns. He was initially in custody at Toronto South Detention Centre (March 21, 2015 to Oct 13, 2016), then moved to Toronto East Detention Centre (from October 13, 2016 to January 22, 2018), then moved back to Toronto South on January 22, 2018 (where he remains). According to the records obtained from these institutions:

- Toronto East (449 days): 4 full lockdowns; 140 days partial lockdowns; 5 nights triple bunked;

- Toronto South (1,595 days): 258 full lockdowns; 378 partial lockdowns

[136] In addition, counsel for Curtis Murray filed materials relating to COVID-19 and its impact on prisons. She submits that some additional credit should be given for time spent in the institution during COVID.

[137] There is some (limited) authority for reducing the period of parole ineligibility based on harsh conditions in the institution prior to sentencing. However, I was not referred to any case in which a specific amount of credit is discussed. The consensus seems to be that there can be a credit but it has little effect.[56] In this case, the information is very non-specific. The length of the partial lock-downs is not known, nor is there any information at all on what specific impact there was on Curtis Murray. If I do have a discretion, I decline to exercise it in these circumstances.

[138] Similarly, I am not inclined to reduce the parole ineligibility period based on the impact of COVID-19. No doubt, there were some further restrictions because of it, but this was for the safety of all residents and staff. Although there was a recent breakout of COVID at Toronto South, it was quickly brought under control and is now resolved. There is no evidence that Curtis Murray has been affected any more than everybody else. This is not a situation where either of the Murray brothers can be released from custody due to the dangers of the pandemic. The pandemic will be long over before their release date arises. In these circumstances, I decline to exercise my discretion to reduce their sentences because of COVID-19.

I. CONCLUSIONS

[139] Based on the factors I have referred to above, I find both offenders should be sentenced at the top end of the range. Curtis Murray is the more blameworthy of the two in terms of his more leading role. However, Corey Murray has a worse criminal record and rehabilitation is less of a factor. I find that in balancing these factors, their sentences should be the same.

---

[55] *R. v. Duncan*, 2016 ONCA 754.

[56] *R. v. Hayles-Wilson*, *supra* note 39; *R. v. Hong; R. v. Corner.*

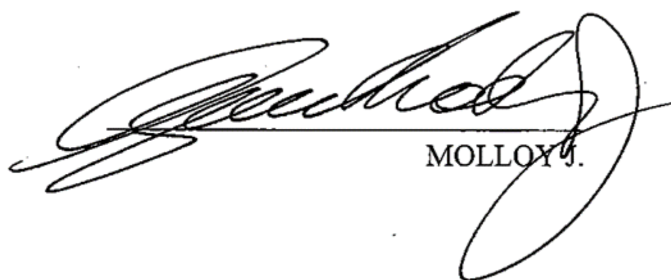
[140] They are entitled to some reduction from the upper range because their criminal records and past violence are not as egregious as the present offence, nor are they as serious as for other offenders who have been sentenced at the top of the range. I have also scaled the sentence downwards to reflect their efforts at rehabilitation and their cultural background.

[141] Taking all of these factors into account I sentence each offender to life imprisonment with a period of 20 years before they are eligible to apply for parole.

[142] The Crown also sought ancillary orders as follows: a DNA Order pursuant to s. 487.051 of the *Criminal Code*; a s. 109 weapons prohibition for life (which is mandatory); and a non-communication order under s. 743.21 of the *Criminal Code*, prohibiting direct or indirect communication with Theresa Seraphine, Feydera Seraphine, Garnett Seraphine; or any other immediate family member of Trevor Seraphine.

[143] There is no issue with respect to the s. 109 and DNA Orders. They shall issue.

[144] Counsel for Curtis Murray objects to the non-communication order because it could interfere with forgiveness, reconciliation, and healing. The family of Trevor Seraphine do not wish to hear from these offenders. That is their right – and it is a completely understandable position for them to take. If any member of the family wishes to reach out in the future, they can seek a variation of this order. However, unless and until that happens, during the custodial term of their sentences, Curtis Murray and Corey Murray shall not communicate in any way, directly or indirectly, with: Theresa Seraphine; Feydera Seraphine; Garnett Seraphine; or any other person known to them to be a family member of Trevor Seraphine. The only exception to this order is any communication that may be required in the course of a parole hearing for either of the offenders.



Released: January 29, 2021

CITATION: R. v. Murray #8, 2021 ONSC 597

ONTARIO

SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

– and –

CURTIS MURRAY and COREY MURRAY

REASONS FOR JUDGMENT

Molloy J.

Released: January 29, 2021