SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Hollohan*, 2022 NSSC 364

Date: 20221209
Docket: CRH No. 483288
Registry: Halifax

Between:

His Majesty the King

v.

Brandon Jake Hollohan

DECISION ON PAROLE INELIGIBILITY

Judge:	The Honourable Justice Kevin Coady
Heard:	September 16, 2022, in Halifax, Nova Scotia
Oral and Written Decision:	December 9, 2022
Counsel:	Robert Kennedy, for the Crown Sarah White and Trevor McGuigan, for the Defendant

By the Court:

[1] On March 21, 2022, Mr. Hollohan was convicted by a jury of the following offence:

> That he between the 20th day of January 2018 and the 22nd day of January 2018 at, or near Dartmouth, in the County of Halifax, Province of Nova Scotia, did unlawfully cause the death of Deborah Irene Yorke, and did thereby commit second degree murder contrary to section 235(1) of the *Criminal Code*.

He was handed a life sentence and was immediately taken into custody. The issue of parole ineligibility was adjourned. The Crown seeks a 14-year period while the Defence argues for 10 years.

Circumstances of the Offence:

[2] The circumstances surrounding this offence are somewhat unusual, and as such must be considered in arriving at a proper period of parole ineligibility. Mr. Hollohan has been addicted to narcotics since his mid-teens. His primary substances were crack cocaine and opioids although he would consume anything he could get his hands on. Apparently, his older brother was an intravenous addict who introduced him to hard drugs.

[3] The victim, Irene Yorke, was in her 60's at the time of her death. She was also addicted to opioids. Mr. Hollohan was essentially living on the streets when he

became acquainted with Ms. Yorke. They became close friends notwithstanding the age difference. Ms. Yorke allowed Mr. Hollohan to live with her for several months. He assisted her in many ways and I am satisfied that they had a genuine, caring relationship. Unfortunately, their common denominator was their addictions. Mr. Hollohan often purchased drugs from Ms. Yorke and at the time of her death owed her several thousand dollars.

[4] In the days before Ms. Yorke's death Mr. Hollohan was on a downward spiral. He was using crack cocaine and opioids on a daily basis and his life was out of control. All of his actions were focused on finding a fix. In the early morning hours of January 21, 2018, he made the decision to obtain pills or cash from Ms. Yorke. The events in the wake of that decision display a level of violence that was disturbing and grisly.

[5] The following facts are consistent with the jury verdict. Ms. Yorke was asleep in her bed in the early morning hours of January 21, 2018. Mr. Hollohan, while masked and carrying a hammer, entered her apartment using a key that he had cut previously. He assumed that she would be sound asleep after taking sleeping medication. It was his intention to steal pills from her bedside table, or in the alternative, to steal cash. It appears as if Ms. Yorke awoke when Mr. Hollohan entered her bedroom. She recognized him as the intruder and resisted him. Mr.

Hollohan repeatedly bludgeoned her with the hammer and stabbed her with a knife. She was initially attacked in her bed and then the struggle moved throughout the bedroom and into an adjacent hallway. Ms. Yorke suffered over 60 blunt and sharp injuries to her head, face and neck. She collapsed in the hallway. She displayed defensive injuries to her arms and hands. The scene was akin to a horror movie.

[6] Mr. Hollohan then left the apartment and the building while carrying Ms. Yorke's purse and phone as well as the hammer and the knife. He put the knife, the hammer and the purse in a garbage bag that was ultimately found in his vehicle. Later he threw the phone off the MacDonald Bridge. He drove to his apartment where he changed clothing and washed up with water and bleach.

[7] Later that night Mr. Hollohan returned to Ms. Yorke's apartment. He called her phone to support a cover story. He cut the patio screen to make it look like a home invasion by a third party. He later told the 911 operator, the police and others that he went to the apartment to buy pills and found her dead on the floor in a pool of blood. In the days that followed he told police various versions of what happened in an effort to minimize his involvement in Ms. Yorke's death.

[8] Prior to his arrest, Mr. Hollohan attempted suicide on two occasions. He tried to hang himself in a motel, but the rope broke. He then attempted a methadone

overdose which was foiled by his arrest. Ultimately, he was charged with the second-degree murder of Ms. Yorke.

The Trial Process:

[9] At trial Mr. Hollohan did not dispute that his actions caused Ms. Yorke's death. The focus of his defence was that he was so intoxicated at the time that he lacked the intent for second degree murder, and as such, should be convicted of the included offence of manslaughter. He admitted all the other elements of second-degree murder. He retained an expert (Dr. Hy Bloom) who prepared a report that supported his position. After hearing Mr. Hollohan's trial testimony, Dr. Bloom withdrew his support for a manslaughter conviction. The jury deliberated for 90 minutes before convicting Mr. Hollohan. Pursuant to Section 745.2 of the *Criminal Code*, six jurors voted for a 10-year period of parole ineligibility. Six jurors made no recommendation.

[10] After conviction Mr. Hollohan made an application for a referral to a post-conviction restorative justice program. The Court made the referral given Mr. Hollohan's potential for rehabilitation long term. This was the first time such a referral had been made in a murder case in Nova Scotia (2022 NSSC 183).

Victim Impact:

[11] I had the benefit of hearing impact statements from Ms. Yorke's three sisters: Ms. Campbell, Ms. Fraser, and Ms. Cameron. I have considered their comments when crafting a fit and proper parole ineligibility period for Mr. Hollohan. It is obvious that the violence perpetrated by Mr. Hollohan against their helpless sister has changed their lives forever. It was obvious to the Court that they miss her every day. The Court thanks them for participating in this difficult process.

Section 745.4 – *Criminal Code*:

[12] Parole ineligibility is governed by Section 745.4 which states:

> **745.4** Subject to section **745.5**, at the time of the sentencing under section **745** of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section **745.2**, by order, substitute for ten years a number of years of imprisonment (being more than ten but not more than twenty-five) without eligibility for parole, as the judge deems fit in the circumstances.

As a general rule, the period of parole ineligibility shall be for 10 years, but this can be ousted by a determination by the trial judge that, according to the criteria set out in this section, the accused should wait a longer period before having his suitability to be released into the general public assessed. It should not be forgotten that Mr. Hollohan will serve a life sentence notwithstanding this Court's ruling on parole ineligibility.

Jury Recommendation:

[13] Mr. Hollohan was convicted by a jury. Upon conviction, and pursuant to section 745.2, six jurors recommended 10 years while the remaining six made no recommendation. I accept the Crown's submission that no inference should be drawn from a juror's decision not to make a recommendation. This issue was canvassed in *R. v. Cerra*, 2004 BCCA 294, at paragraphs 13-14:

> 13. With respect, I do not agree. The language in s. 745.4 directing the judge to consider "the recommendation, if any" does not support the argument that an absence of recommendation may be taken as equivalent to a recommendation of the minimum.
>
> 14. In my view, when a jury declines to make a recommendation they have simply decided to leave the question for the judge. They may have disagreed among themselves on the point or they may have been exhausted by the trial or for some other reason they prefer not to express an opinion about something on which the trial judge has the last word anyway. In the circumstances of the present case the only significance of the jury's response is that they were not moved to propose more than 10 years of parole eligibility. While not an entirely neutral factor, the jury response could not have added much weight to the defence position on penalty.

It is of note that the murder in *Cerra* was very violent and involved the pursuit of narcotics.

[14] Section 745.2 of the *Criminal Code* allows the Court to consider jurors' recommendations. Obviously, parliament was recognizing that this factor can be mitigating as well as aggravating within the appropriate range. Six (6) jurors recommended ten (10) years. This was somewhat surprising given the violence

involved and the motivation behind the murder of Ms. Yorke. While this is but one factor to be considered, I conclude that those six (6) were impacted by Mr. Hollohan's potential rehabilitation. While I have considered this factor, it does not have the impact of "the character of the offender, the nature of the offence and the circumstances surrounding its commission".

The Range:

[15] In *R. v. Nash*, 2009 NBCA 7, the Court concluded that sentencing for second-degree murder falls within three timeframes for parole ineligibility: 10-15 years, 15-20 years and 20-25 years. Robertson, J.A. stated at para. 59:

> 59 Viewed collectively, the above cases support the following general observations. Those offenders who have no previous criminal record involving violent criminal acts are less likely to see the period of parole ineligibility extended beyond the 10 to 15 year range. Those offenders with a criminal record that involve violence or other serious criminal conduct are more likely to have the period of ineligibility extended to somewhere in the vicinity of 15 to 20 years. In cases involving multiple murders or extreme brutality committed by offenders with a violent past the period of parole ineligibility may exceed 20 years. But still, you have to factor in other circumstances such as age and whether the murder was committed during the commission of another crime. Again, I emphasize that these are general observations and meant only to provide general guidance and a focal point for future analysis.

The Court stated that the first category is reserved for those offenders for whom the prospects of rehabilitation appear good, and little would be served by extending the parole ineligibility period other than to further the sentencing objectives of

denunciation and deterrence. In Mr. Hollohan's case, the Crown acknowledges he falls in the 10-15 year category.

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

[16] This was the first case decided by the Supreme Court of Canada on the issue of parole ineligibility. The Court explored the standard to be met before an increase is merited beyond ten (10) years. Justice Iacobucci wrote at paras. 27-29:

> [27] In my opinion, a more appropriate standard, which would better reflect the intentions of Parliament, can be stated in this manner, as a general rule, the period of parole ineligibility shall be for 10 years, but this can be ousted by a determination of the trial judge that, according to the criteria enumerated in s. 744, the offender should wait a longer period before having his suitability to be released into the general public assessed. To this end, an extension of the period of parole ineligibility would not be "unusual", although it may well be that, in the median number of cases, a period of 10 years might still be awarded.
>
> [28] I am supported in this conclusion by a review of the legislative history, academic commentary, and judicial interpretation of s. 744, and the sentencing scheme for second degree murder.
>
> [29] Section *742(b)* of the *Code* provides that a person sentenced to life imprisonment for second degree murder shall not be eligible for parole "until he has served at least ten years of his sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefor pursuant to section 744". In permitting a sliding scale of parole ineligibility, Parliament intended to recognize that, within the category of second degree murder, there will be a broad range of seriousness reflecting varying degrees of moral culpability. As a result, the period of parole ineligibility for second degree murder will run anywhere between a minimum of 10 years and a maximum of 25, the latter being equal to that prescribed for first degree murder. The mere fact that the median period gravitates towards the 10-year minimum does not, *ipso facto*, mean that any other period of time is "unusual".

The starting point is ten (10) years. I will then apply the other section 745.4 factors to determine if the ten (10) years should be increased.

[17] Mr. Shropshire plead guilty to the second-degree murder of a drug associate. He was sentenced to a life sentence without parole eligibility for twelve (12) years. He challenged the parole ineligibility component of his sentence. The British Columbia Court of Appeal reduced it to ten (10) years. The Supreme Court of Canada restored the trial level decision of twelve (12) years. Justice Iacobucci provided the following guidance to sentencing judges on the issue of parole ineligibility for second degree murder:

- Denunciation and deterrence are relevant considerations in parole ineligibility hearings.
- A case does not have to be unusual for the period to be extended past the statutory minimum.
- The 10-year minimum period can be ousted where a trial judge determines, pursuant to the criteria in section 745, that the offender should wait to have his suitability for parole assessed after a longer period of incarceration.
- The sliding scale recognizes that for second degree murder there will be a broad range of seriousness reflecting various degrees of moral culpability.
- A trial judge's power to extend the period of parole ineligibility need not be sparingly used.

Sentencing Principles – The Statutory Framework:

[18] Parole ineligibility is an integral part of sentencing for second-degree murder. Sections 718, 718.1 and 718.2 have application. Section 718 states that the fundamental purpose of sentencing is to ensure respect for the law and the maintenance of a just, peaceful, and safe society. It advances the following objectives to achieve those purposes:

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

I take the view that all of these objectives are relevant to Mr. Hollohan's sentencing.

[19] Section 718.1 directs a sentencing Court to ensure that a sentence is proportionate to the gravity of the offence and the degree of responsibility of the

offender. This is a fundamental principle of sentencing and attracts the protection of section 7 of the *Charter of Rights and Freedoms*.

[20] Section 718.2 sets out aggravating and mitigating factors under the heading "Other Sentencing Principles". In *R. v. Arcand*, 2010 ABCA 363, the Court described the relationship between the proportionality principle and these secondary sentencing principles at para. 63:

> [63] Interpreting the secondary principles as complementary to, and consistent with, the proportionality principle gives weight and meaning to the secondary principles while maintaining, as Parliament clearly intended, the integrity and primacy of the proportionality principle. Thus, sentencing judges are not free to pick and choose one principle out of s. 718.2 to the exclusion of the others, much less ignore the proportionality principle. The object of the sentencing exercise is to draw on all sentencing principles in determining a just and appropriate sentence which reflects the gravity of the offence and the degree of moral blameworthiness of the offender.

[21] Section 718.2(a) sets forth the factors deemed to be aggravating. They are as follows:

i. Evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identify or expression, or on any other similar factor. This does not apply to Mr. Hollohan.

ii. Evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or offender's family. This does not apply to Mr. Hollohan.

ii.1 Evidence that the offender, in committing the offence, abused a person under the age of eighteen years. This does not apply to Mr. Hollohan.

iii. Evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim. This does apply to Mr. Hollohan but to a limited degree.

iii.1 Evidence that the offender had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation. Ms. Yorke's murder can be termed a significant impact.

iii.2 Evidence that this offence was committed against a person who, in the performance of their duties and functions, was providing health services, including personal care services. This does not apply to Mr. Hollohan.

iv. Evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization. This does not apply to Mr. Hollohan.

v. Evidence that the offence was a terrorism offence. This does not apply to Mr. Hollohan.

vi. Evidence that this offence was committed while the offender was subject to a conditional sentence order … (or other court order). This does not apply to Mr. Hollohan.

vii. Evidence that the commission of the offence had the effect of impeding another person from obtaining health services, including personal care services. This does not apply to Mr. Hollohan.

[22] Section 718.2 (b-e) requires the Court to apply the following principles when sentencing Mr. Hollohan.

> b. a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
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> c. where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> d. an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
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> e. all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

Subsection (b) is the only principle that applies to Mr. Hollohan.

Nature of the Offence and Circumstances Surrounding its Commission:

[23] It would be difficult to imagine more brutal and violent acts than the ones inflicted on Ms. Yorke by Mr. Hollohan. Yet I must consider that egregious brutality is not a condition precedent to extending the period of parole ineligibility. It is, however, an aggravating factor. In *Nash*, the Court commented as follows at paras. 49 and 50:

> 49 Turning to the circumstances surrounding the commission of the offence, case law reveals that the degree of planning involved in the murder is generally regarded as a relevant factor. There is said to be a continuum between first degree murder and manslaughter when it comes to the extent to which the murder was the product of an informed decision to take the life of another. The more planning surrounding the killing, the more likely this circumstance will be treated as an aggravating factor, but one that can be overridden by other factors. A contract killing is at one end of the spectrum and is expressly dealt with in the Criminal Code (s.231(3)). At the other end is the one-punch bar room brawl. The more "spontaneous" or "impulsive" the killing, the more likely it is that this factor will militate in favour of the offender. Frankly, I find the application of this factor truly problematic. We know from *R. v. Shropshire* that the period of ineligibility cannot be extended simply because the facts might have supported a first degree murder conviction. Of course, it would be improper for Crown counsel to seek an extension with respect to parole ineligibility in order to overcome the refusal of the jury to find the offender guilty of first degree murder. The fact of the matter is that if a jury is unwilling to find the offender guilty of first degree murder or of manslaughter, by default the killing lies somewhere between the two when it comes to the notion of premeditation. Therefore, it makes no sense to revisit this issue. Perhaps a case can be made for an exception. In which case, the onus would remain on the Crown to argue persuasively that the case is one of exceptional circumstances. Ours is not one of those cases.
>
> 50 Invariably, if the murder were committed during the course of another crime and particularly a crime of violence, the sentencing judge will employ this reality as an aggravating factor. On the other hand, if the murder were fuelled by drugs or alcohol, this circumstance may be regarded as a mitigating factor. The reasons that propelled the offender to commit the murder will be examined. If no explanation is available as to what prompted the offender to commit the murder, the trial judge may draw the conclusion that this omission is an aggravating factor as was true in *R. v. Shropshire*. A random and "senseless" murder without provocation is

> always a concern for sentencing judges (see *R. v. Mafi, supra*). A murder that is the product of years of abuse at the hands of the victim is unlikely to be treated in the same manner as the random killing of a stranger.

I agree with the Crown that the murder of Ms. Yorke did not involve a crime of passion or one that was spontaneous. There was planning in advance. He entered Ms. Yorke's bedroom while masked, overly dressed and carrying a hammer. He had access to a knife.

[24] I am not satisfied that Mr. Hollohan planned for murder when he entered Ms. Yorke's apartment disguised and armed. He knew she had taken sleep medication and that she would likely be asleep. He could have slipped into the room without such preparation and acquired either pills or money, or both. It is a reasonable inference that he acted as he did on the chance that Ms. Yorke might wake up. It is my view that his conviction is based on section 229(a) of the *Criminal Code*; that he was prepared to cause bodily harm that he knew was likely to cause death and was reckless whether death ensued or not.

[25] There is nothing in Mr. Hollohan's history that would suggest he was prone to commit such gratuitous violence on a helpless friend. I have to conclude, on all of the evidence, that his drug use that night, and the search for more, impacted his

judgment. This is not to suggest that he lacked the *mens rea* necessary to support his conviction.

[26] The Crown characterizes Mr. Hollohan's entry into Ms. Yorke's apartment as a home invasion and argues such is an aggravating factor. While technically that is true, this case has its own unique facts. It is different than the facts disclosed in most home invasion cases. The entire attack is an aggravating factor which subsumes the home invasion aspect of the offence.

[27] There is a great deal of after the fact conduct in this case. It is well stated in the Crown's brief at para. 44:

> [44] Mr. Hollohan cleaned his body with bleach, changed his clothing, gathered incriminating evidence, and disposed of Ms. Yorke's phone after the murder. He further implemented a cover story about finding Ms. Yorke dead in her apartment during a visit to buy pills from her. He spread this lie to numerous police officers and many others for multiple days. He further slit the patio screen to make it look like a home invasion by a third party in an effort to deflect police attention. Attempts to cover up a homicide has long been considered a relevant aggravating factor in fixing a period of parole ineligibility.

Once Mr. Hollohan became a suspect, he provided the police with many versions of his involvement in Ms. Yorke's death. All were efforts to deflect suspicion. These after the fact actions do not expose an explanation as to why he veered into such behavior. They do indicate that he recognized he had committed a ghastly act and did what he could to cover it up. Mr. Hollohan's efforts were shallow and poorly

delivered. The evidence suggests that Mr. Hollohan was strung out during this period of time. His non-deflective actions were equally as compulsive. I do consider these actions to be aggravating but they must be put in perspective.

Circumstances of Mr. Hollohan:

[28] Mr. Hollohan was 23 years old at the time of the offence. He was a severe addict and did not have a criminal record. I have been provided with a favorable pre-sentence report. It discloses the following:

- Mr. Hollohan has a loving and supportive family. They have stuck with him through years of addiction and the trial of this matter.
- He was raised in a pro-social family without abuse or neglect.
- In high school he became involved in drugs due to the influence of an older brother. It did not take long before he became involved in intravenous drug use.
- Mr. Hollohan has been able to pursue a formal education notwithstanding his addictions. I estimate he is halfway through a university degree.
- Since the age of 18 years, he has earnestly attempted to stay clean. He has enlisted and led support groups and taken part in a methadone program. There have been relapses, but he continues his involvement in these programs.

These factors bode well for Mr. Hollohan's rehabilitation.

[29] Mr. Hollohan's mother has been a pillar of support before, during and after his trial. I accept her submissions to the author as genuine:

> This writer spoke to Sharon Hollohan, mother of the subject, who indicated "Brandon was always a good kid when he was growing up. He was polite, sociable and personable and never gave us any trouble at home. This changed when he was about sixteen or seventeen when the drugs really became a problem. Before this his

> passion was paddling and he went to Florida a couple of times for winter training. This was when he was twelve to fourteen and he had good potential to do well. When he was in his teenage years, his brother was on house arrest, and he watched him injecting drugs and this is how he got started. We have always had an honest relationship. He tells me everything and I have enjoyed our time together when he was on house arrest. This whole process and result has been devastating for the family, but we continue to love and support Brandon".

This, as well, bodes well for Mr. Hollohan's rehabilitation.

[30] Given the importance of addiction recovery to overall rehabilitation, the following comments from his physician must be considered:

> Dr. David Saunders, Family Physician, offered the following comments: "I have known Brandon for eight years. When I first met him, he needed treatment for opioid use disorder, and he became a regular patient at Direction 180 in Halifax. He engaged in treatment for a period, then would stop, as happens to many patients. He eventually transferred his care to the open-door clinic in Dartmouth where I also provided primary medical care for Brandon. During this time, I came to know Brandon better. He attended and engaged in recovery meetings throughout this time. He became more engaged as time progressed. I was called by the authorities the night of his arrest. I was very surprised to hear about the charges. At no time prior to his arrest did Brandon ever display or discuss wishes to harm others. Brandon always displayed a calm and gentle demeanour, even when he was in a bad place with his addiction illness. During the three years of house arrest I continued to see or speak with Brandon monthly regarding his addiction treatment. I also observed Brandon on a regular basis at recovery group meetings. Brandon always carried out his responsibilities. He took on many extra responsibilities and mentored numerous struggling addicted people. I feel I have a very good grasp of Brandon's personality and character. He is grounded and self-confident. His mindfulness practice has groomed humility and a true desire to be of service to others. I can say with confidence that I trust Brandon at his word."

There was a great deal of evidence respecting Mr. Hollohan's commitment to recovery. Dr. Saunders' views are consistent with those others who came forward in support.

[31] I have been provided with 24 letters of reference in support of Mr. Hollohan. The central theme is his ongoing efforts at recovery. This support is noteworthy, given the brutality of his actions. Many make it very clear that presently they hold him in the highest esteem. Many credited him with their own recovery. Many are professionals who confirm that Mr. Hollohan is a leader in the addiction recovery community and that his recovery is a model for others. As a whole they feel that he has completely changed his life.

[32] I will not reference every letter but I want to address one from retired Provincial Court Judge Robert T. Smith. He is a volunteer with the Seven Step Program, and the Citizens Advisory Committee for Corrections Canada. He prefaced his remarks with the following:

> I have never before offered to write a letter of support for any person facing serious criminal charges. Indeed I have not written any letter of support of anyone facing a charge of criminal behavior prior to this letter. I offered to provide this letter outlining my impressions of Mr. Hollohan. I did so because I was very impressed with Mr. Hollohan in the Seventh Step meetings and in my other contacts with him.

It was his opinion that Mr. Hollohan has "honestly faced the truth about his life and is determined to change. Indeed, he has implemented some changes and is working to effect more changes".

[33] These letters of support bode well for Mr. Hollohan's recovery, and consequently his total rehabilitation. Sentencing judges need to be on the alert to

having the wool pulled over their eyes. I have no such concerns about Mr. Hollohan notwithstanding his post offence conduct. I am reminded of the words of Abraham Lincoln that "you can fool all of the people some of the time; you can fool some of the people all the time, but you can't fool all the people all the time".

[34] I also accept that Mr. Hollohan is truly remorseful. I found his words at sentencing very compelling. In the *Nash* case the Court made it clear that "the failure to express remorse following a conviction is not an aggravating factor. The expression of sincere remorse is a mitigating one."

[35] Mr. Hollohan was on bail for a number of years without any unexpected or serious breaches. I recognize there were occasional relapses, but they were immediately addressed. The bail regime involved strict house arrest.

Aggravating/Mitigating Factors:

[36] I consider the following to be aggravating factors:

- Mr. Hollohan murdered Ms. Yorke in a most violent way. He did so while she slept in her own home.

- Mr. Hollohan's post offence conduct which has been referenced in this decision.

- The level of planning involved in the commission of this offence. While I cannot conclude that he went into the room with the specific plan of killing Ms. Yorke, he obviously knew that was a predictable outcome should Ms. Yorke wake up.

- Impact on Ms. Yorke's family.

[37] I consider the following to be mitigating factors:

- I accept that Mr. Hollohan is truly remorseful.

- While Mr. Hollohan did not plead guilty, he did accept that his actions caused Ms. Yorke's death. The only issue was whether it was murder or manslaughter. Given his addictions at the time, I cannot consider that approach unwarranted.

- Mr. Hollohan's long standing efforts at recovery are very promising. Additionally, his efforts at helping other addicts is impressive.

- Mr. Hollohan enjoys the full support of his family and his community.

- Six (6) jurors recommended his parole ineligibility remain at 10 years.

- Mr. Hollohan spent years on house arrest without a breach.

- No related criminal record. Mr. Hollohan presents on this charge as a first time offender.

Conclusion:

[38] There are questions that will remain unanswered. It is difficult to understand how someone with Mr. Hollohan's history could lose it for several hours on January 21, 2018. Afterall, he and Ms. Yorke were friends and she had been kind to him when he needed it the most. The level of violence was extreme given Mr. Hollohan's non-violent past. I am satisfied that drugs played a role as there are no other plausible explanations. I am not satisfied that fear of Ms. Yorke's son over the drug debt can fully explain his actions.

[39] I have reviewed the many cases provided by counsel and they have informed my decision. This is one of those cases where society can be protected best by a focus on rehabilitation. A healthy concern for denunciation and deterrence is warranted given the brutality of this murder. However, I am satisfied that those objectives can be addressed by the life sentence. It is the decision of this court that Mr. Hollohan's parole ineligibility period remain at ten (10) years.

Coady, J.