

**B E T W E E N:**

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- and -

**Anthony De Marco**, for Mr. Sutherland

**HEARD:** March 4, 2024

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## I OVERVIEW

[2] The two murders were investigated as separate incidents and remained unsolved for decades. With advances in the science of DNA evidence, it was determined in 2000 that the same person killed both women. There were, however, no matches for the DNA on the National DNA Databank. It was not until 2021, through genetic genealogy research, that Joseph George Sutherland was identified as a person of interest. A DNA warrant was granted to obtain DNA from Mr. Sutherland. That warrant was executed on November 23, 2022. Shortly after

providing the samples pursuant to the warrant, Mr. Sutherland contacted a friend who was a retired police officer and confessed to the two murders. He surrendered to the police on November 24, 2022, and was charged with two counts of first degree murder.

[3] After Mr. Sutherland's pleas to the lesser charges of second degree murder in October of 2023, the sentencing was adjourned for several months for the preparation of a Gladue report. Sentencing submissions were heard on March 4, 2024, and I reserved my decision until today.

## **II ISSUES**

[4] The mandatory sentence for each conviction for second degree murder is one of life imprisonment. Sentences of life imprisonment must be concurrent to each other. The sole issue before me is the period of parole ineligibility.

[5] The Crown submits that a 22-year period of parole ineligibility should be imposed. Counsel for Mr. Sutherland submits that an 18-year period of parole ineligibility should be imposed.

[6] In determining the period of time for which Mr. Sutherland will be ineligible for parole, I am required to consider the factors set out in section 745.4 of the *Criminal Code*, R.S.C., 1985, c. C-46: the nature of the offence of second-degree murder, the circumstances surrounding the commission of these offences and the character of the offender. I must also consider the general principles of sentencing.

[7] In these reasons I will begin by reviewing the circumstances of the offences. I will next review the circumstances and character of Mr. Sutherland, including his Indigenous background. I will then apply the principles and objectives of sentencing to the circumstances of this case.

## **III CIRCUMSTANCES OF THE OFFENCES**

[8] On August 16, 1983, Joseph George Sutherland broke into the home of Susan Tice. He sexually assaulted her. He killed her by stabbing her 13 times with a knife. Susan Tice struggled and fought throughout the attack as evidenced by the defensive wounds she sustained.

[9] On the night that she was killed, Susan Tice was supposed to see her sister. Her sister was unable to reach her. Ms. Tice's brother-in-law found her body the next day.

[10] Susan Tice was a 45-year-old mother of four children. She was a social worker and counsellor. She had just bought her home and was preparing it for her children to move in. As her son, Benjamin Tice, described in his Victim Impact Statement, Susan Tice was mother to her children and to many of their friends: "She was wife, friend, counsellor, advocate of all things good, a true life force to everyone she came into contact with."

[11] On December 20, 1983, four months after he killed Ms. Tice, Mr. Sutherland broke into the apartment of Erin Gilmour. He bound Ms. Gilmour's hands and mouth and sexually

assaulted her. Mr. Sutherland then killed Erin Gilmour by stabbing her twice in the chest. Ms. Gilmour had left work and returned to her apartment at 8:45 p.m. A friend discovered her lifeless body at approximately 9:20 p.m.

[12] Erin Gilmour was 22 years old when she was killed. She had just moved into her own apartment. As described by her friend, Erin Gilmour was a beloved daughter, an adored sister and a cherished friend. Her stepfather, described her as a “beautiful girl in every way. Generous and kind. Thoughtful. Artistic.”

#### **IV VICTIM IMPACT**

[13] The surviving friends and families have kept alive the memory of their loved ones over the past 40 years. Their pain and grief have also endured over these last four decades.

[14] The three Tice children who provided Victim Impact Statements described their mother. It is clear from the Victim Impact Statements that Susan Tice was a vibrant, generous person who was full of life. She loved her children fiercely and she was loved.

[15] Susan Tice’s children were devastated by the loss of their mother. She had been, for each of them, a supporter, an advocate, a teacher and a confidante. She was the person that held the family together. After her death each was isolated by grief.

[16] Christian Tice described her ongoing anxiety and insecurity in her own home and her mistrust of men because of her mother’s murder. Benjamin described his youth ending upon learning of his mother’s death and having to inform his brother and sister. Jason, the youngest, was just 13 when his mother died. He described the family “drifting in a sea of uncertainty” after the death of their mother.

[17] All of the family members who provided statements continue to suffer from grief and loss. As Christian Tice said in her Victim Impact Statement, “Grief is a complicated emotion, it leaves a permanent mark, it does not go away...especially when the source of that grief is from a violent action, it’s always a dark shadow lurking in the background...”.

[18] Like the Tice family, the family of Erin Gilmour was devastated by the murder. Erin Gilmour’s mother did not live to see the arrest of Mr. Sutherland. Other Victim Impact Statements tell me that she was never the same after the death of her daughter.

[19] Kaelin McCowan, Erin Gilmour’s youngest brother, described his horror and disbelief upon learning of his sister’s death. He said that the loss of Erin remained bound in every thread of his being and that of his family. At age 11 he had to try to process this violent loss and had to watch its impact on his family.

[20] Sean McCowan was 13 when his sister was killed. He described living with trauma for most of his life. There was a legacy of grief and loss created by her violent death. The children of Sean McCowan also provided a Victim Impact Statement that described the continuing impact of this crime on the next generation of the family.

[21] The pain of the losses was magnified for both families by the almost 40 years of uncertainty that the perpetrator of the murder would ever be found.

## **V CIRCUMSTANCES OF THE OFFENDER**

[22] Mr. Sutherland was 21 years old when he murdered Susan Tice. He had just turned 22 when he murdered Erin Gilmour. He is now 62 years old. Mr. Sutherland has no criminal record.

[23] Mr. Sutherland is Cree. He is a member of Fort Albany First Nation. I have the benefit of a Gladue Report that provides information regarding the unique systemic or background factors that may have played a role in bringing Mr. Sutherland before the Court. The report contains considerable biographical detail for Mr. Sutherland.

[24] Mr. Sutherland lived in Fort Albany until he was 6 or 7 years old. His family lived off the land in the traditional way when he was young. His father died when he was 6 or 7 years old. After the death of Mr. Sutherland's father, his mother was persuaded to send Mr. Sutherland to St. Anne's Residential School. Two of Mr. Sutherland's older brothers were also sent to St. Anne's. Mr. Sutherland's mother was also a survivor of St. Anne's.

[25] Children at St. Anne's suffered physical, psychological, and sexual abuse. Mr. Sutherland was physically abused at St. Anne's by a teacher who would regularly suffocate him to unconsciousness.

[26] During the summer after his first year at St. Anne's, Mr. Sutherland was sexually abused by a family member.

[27] Mr. Sutherland left St. Anne's at age 10 or 11 to live in Moosonee with his mother and sister. He did not have a close bond with his mother after his years at residential school and he remained distant from his brothers as well. His mother and sister moved to Toronto when Mr. Sutherland was 17 years old. He remained in Moosonee for one or two years and then moved to Toronto to live with his sister and mother. Mr. Sutherland had only completed grade eight. When he moved to Toronto he tried to go back to school. He was unable to manage the schoolwork and dropped out.

[28] Mr. Sutherland returned to Fort Albany after about six months in Toronto. He worked the trapline with his brother. While living up north his drinking increased. He ultimately returned to Toronto around 1983, planning again to pursue an education.

[29] When he returned to Toronto in 1983, Mr. Sutherland lived alone in a bachelor apartment. He did not see his family often. He described himself to the author of the Gladue report as 'incredibly alone' during this time. He reported to the author of the report that he could remember little about this time in his life.

[30] Members of Mr. Sutherland's family struggled with alcoholism. Mr. Sutherland began drinking at age 14 or 15. In his 20's Mr. Sutherland went through a period of binge drinking.

[31] In 1986, Mr. Sutherland cut back on his drinking and in 1988 he stopped drinking completely. He said that this was “part of a commitment [he] made: Walking the path of a good human being.”

[32] Mr. Sutherland completed academic upgrading in 1988 or 1989 and eventually graduated from a computer programming programme in 1992. He began working for a bank in 1995 and worked for them for the next 13 years. He was laid off by the bank in 2007 and moved to Sault Ste Marie and then Moosonee, working in IT for the Children’s Aid Society until 2022 when he was laid off.

[33] Mr. Sutherland was married from 1995 until 2000. He has one son who is now 27 years old. Mr. Sutherland’s son was living with him at the time of his arrest. Mr. Sutherland’s ex-wife did not wish to participate in the Gladue report but told the author that Mr. Sutherland was never violent during their relationship.

[34] Since his incarceration, Mr. Sutherland has been detained at the Toronto South Detention Center. There have been frequent lockdowns and little access to culturally appropriate programming.

[35] Mr. Sutherland was asked about the offences by the author of the Gladue report. He told her that he did not remember the first homicide and only vaguely remembered the second. He said, “My mind erased it because my mind broke. A way to protect myself was to erase it or block it at least.” The report notes that “Joseph did not say what, if anything, led him to commit the murders.” Mr. Sutherland said that while he did not remember committing the murders, he remembered feeling anguish and remorse afterwards.

[36] Mr. Sutherland told the author of the report that following the commission of the murders he embarked on a Spirit Quest to find the spirits of his victims and ask for their forgiveness. In his allocution to the court, Mr. Sutherland also spoke of the Spirit Quest where he encountered both of his victims and asked for forgiveness. This Spirit Quest was a turning point for him, when he resolved to follow the path of a good human being.

[37] Mr. Sutherland told the author of the report that he wanted the families of the victims to know that he was sorry for taking their loved ones away. He said that he wished that he could go back and undo what he had done. He asked for forgiveness.

[38] While I accept that Mr. Sutherland, as he said to the author of the report, “tried to forget” what he had done and tried to “keep [his] distance” from it as a means of protecting himself, I do not accept his assertion to the author of the report that he lacks any memory of committing the first murder and has only a vague memory of the second. He admitted that he committed these murders. He had sufficient memory of the murders to embark on his Spirit Quest in 1988. He had sufficient memory of the murders in 2022 to know what the police would find when his DNA was analyzed.

## VI ANALYSIS

[39] Parole ineligibility is part of sentencing. All sentencing principles and objectives are relevant to the period of parole ineligibility. Sentencing objectives include the maintenance of public safety, the separation of the offender from society, denunciation, general deterrence, specific deterrence, rehabilitation and the promotion of a sense of responsibility in the offender and an acknowledgement of the harm done to victims or the community.

[40] The overriding principle of sentencing is that the sentence should be proportionate to the gravity or seriousness of the offence and the degree of responsibility of the offender. As Justice Lebel wrote in *R. v. Ipeelee*<sup>1</sup>, at paragraph 37:

...Proportionality is the *sine qua non* of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system.... Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. ...

[41] The two murders that Mr. Sutherland committed were profoundly serious. There are numerous aggravating factors. The deaths of Susan Tice and Erin Gilmour were not quick, and they were not painless. Ms. Tice suffered numerous defensive injuries as she fought for her life. Ms. Gilmour was bound and gagged. They were killed in their homes which should have been places of sanctuary. The victims were sexually assaulted. The impact of the violence has continued to be felt by the other victims in this case, the families and friends of Susan Tice and Erin Gilmour over the past 40 years.

[42] In determining a just sentence, I must also weigh factors that mitigate the sentence or reduce the level of moral blameworthiness of the offender.

[43] Section 718.2(e) of the *Criminal Code* requires a sentencing court to consider all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims and the community, with particular attention to the circumstances of Aboriginal offenders. In *R. v. Gladue*<sup>2</sup> and *R. v. Ipeelee*,<sup>3</sup> the Supreme Court of Canada held that our courts must consider the unique systemic and background factors which have played a part in bringing an Indigenous offender before the court. Courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to impact Indigenous communities. The impacts include

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<sup>1</sup> 2012 SCC 13

<sup>2</sup> [1999] 1 S.C.R. 688

<sup>3</sup> *Ipeelee* supra

lower educational achievement, higher rates of substance abuse and suicide and higher levels of incarceration.

[44] The degree of responsibility or moral blameworthiness of Mr. Sutherland is impacted by the factors set out in the Gladue report. Mr. Sutherland was both directly and indirectly negatively impacted by colonialism and by the residential school system. Residential school impacted his family bonds, caused a loss of connection to his language and culture and a loss of access to educational opportunities. Mr. Sutherland also was impacted by sexual abuse and alcoholism which are associated with the loss of traditional Aboriginal values as a result of colonization.

[45] There are also other mitigating factors. Mr. Sutherland entered guilty pleas to the offences. Guilty pleas are mitigating because they are considered a demonstration of remorse. Even where the remorse is not genuine, a guilty plea is mitigating because it obviates the need for a trial and eliminates uncertainty.

[46] Other evidence of remorse beyond the guilty plea may be mitigating. In this case, Mr. Sutherland has said that he felt remorse after he committed the murders. He has said that he is sorry. In assessing the extent to which Mr. Sutherland's expression of remorse should further mitigate the sentence, I have considered Mr. Sutherland's assertion to the author of the Gladue report that he did not remember the murder of Ms. Tice and only vaguely remembered killing Ms. Gilmour. I have considered his statement that he blocked the memory of his actions in order to protect himself. Mr. Sutherland has demonstrated no willingness to examine his actions but rather a desire to avoid thinking or speaking about what he did and why he did it. I give little weight to the expression of remorse. However, this finding that Mr. Sutherland has not shown real remorse is not an aggravating factor but merely the absence of a mitigating factor beyond the mitigation of the guilty plea.

[47] It is submitted by counsel for Mr. Sutherland that the fact that Mr. Sutherland has led a prosocial life in the 39 years between the offences and his arrest is also mitigating. Mr. Sutherland was able to find employment and to control his substance use. He has not committed any further offences. Crown counsel points to the impact on the friends and family of the victims of the long delay and uncertainty, as effectively neutralizing any mitigating effect.

[48] Hill J., in *R. v. Critton*,<sup>4</sup> considered the effect on sentencing of a long delay and apparent rehabilitation between the commission of an offence and arrest. He noted that the effect is case-specific. He also observed that certain very serious crimes require sentences with measures of general deterrence and denunciation regardless of the offender's lengthy crime-free existence subsequent to the crimes and that "objectively speaking, taking into account delay, the court's disposition should not be seen as a reward or benefit eliminating or depreciating the concept of proportionate punishment."<sup>5</sup>

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<sup>4</sup> 2002 CanLII 3240 (ON SC)

<sup>5</sup> *Critton*, at para. 76

[49] Because of the extreme gravity of these offences, I find that Mr. Sutherland's rehabilitation after the offences, while somewhat mitigating, has little impact on the sentence. Mr. Sutherland cannot be rewarded for the delay.

[50] In considering what period of parole ineligibility to impose I have been asked to take into account Mr. Sutherland's age. The period of parole ineligibility will run from the time of his arrest and detention in 2022 at age 60. While age in itself does not lead to a discount in sentence,<sup>6</sup> I have considered that a penitentiary sentence can be more onerous for older inmates.<sup>7</sup> In this case, Mr. Sutherland does not suffer from any serious health conditions that would make a prison sentence more difficult. I find that Mr. Sutherland's age is not a mitigating factor or a collateral consequence that should reduce the sentence.

[51] Although sentencing is fact-specific and individualized,<sup>8</sup> the principle of parity also requires that the sentence I impose take into account how similar offences and offenders have been sentenced. I have been referred to many cases by counsel. No case is identical to the case before me. I will only refer to some of the cases in these reasons.

[52] In *R. v. Kianiapour*,<sup>9</sup> the British Columbia Court of Appeal, in upholding a sentence of 20 years' parole ineligibility for three second degree murders, found that the trial judge was correct in situating the offence on a scale between manslaughter and first degree murder. In that case, the judge found that the offence fell closer to first degree murder. The offender in that case stabbed his estranged wife and then drove to her house and killed her parents.

[53] I find that in this case, as in *Kianiapour*, the murders both fall close to first degree murder.

[54] In *R. v. Elliott*,<sup>10</sup> the offender pleaded guilty to two separate murders. Both were held to be brutal, senseless, and callous. Mr. Elliot was an Indigenous offender and Gladue factors were considered. The court set his parole ineligibility at 20 years.

[55] In *R. v. Owusu-Ansah*,<sup>11</sup> a 22-year parole ineligibility period was imposed on an offender for one count of second degree murder. The offender ambushed a former intimate partner, stabbed her to death and set her on fire. The trial judge observed that it was a planned murder of a helpless and vulnerable victim and that the primary purpose of sentencing was denunciation. The sentence was recently upheld by the Court of Appeal.<sup>12</sup>

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<sup>6</sup> *Bain c. R.*, 2019 QCCA 460

<sup>7</sup> *R. v. Nishikawara*, 2023 ONSC 5520

<sup>8</sup> *R. v. Lacasse*, 2015 SCC 64

<sup>9</sup> 2003 BCCA 703

<sup>10</sup> 2014 BCSC 1435

<sup>11</sup> [2015] O.J. No. 7260

<sup>12</sup> 2024 ONCA 192



[56] In *R. v. Sarao*,<sup>13</sup> the offender pleaded guilty to three counts of second degree murder where the victims were his wife and her parents. The Court of Appeal for Ontario reduced the 25-year parole ineligibility period to 22 years.

[57] There are cases in which an offender who committed more than one murder has been sentenced to a parole ineligibility period of less than 20 years. In *R. v. Perlett*,<sup>14</sup> an offender who was 19 years old at the time of the offences was sentenced to a parole ineligibility period of 18 years. The offender killed his parents. There was evidence of planning and deliberation. The accused suffered a self-inflicted wound after the murders. He denied involvement and showed no remorse. There was a psychological report indicating that the offender was a low risk to reoffend.

[58] In *R. v. Desautels*,<sup>15</sup> a 13-year parole ineligibility period was imposed for two counts of murder as part of a joint submission. The trial judge, in acceding to the joint submission, observed that generally, a range of 18 to 20 years would be appropriate. Similarly, in *R. v. Peters*,<sup>16</sup> 17 years was imposed as part of a joint submission.

[59] Having considered the circumstances of this case, the circumstances of Mr. Sutherland and the relevant sentencing principles, I have concluded that the gravity of these offences calls for a period of parole ineligibility in the highest range.

[60] I find that the aggravating features including the vulnerability of the victims, the violation of their homes and their bodies and the brutal nature of the killings call for a period of parole ineligibility that will clearly denounce the conduct and deter others. Both murders fall close to first degree murder. Even one of these murders would have, in my view, justified a period of parole ineligibility in the highest range. Two such murders demand an exemplary sentence. A parole ineligibility period of less than 20 years would not be sufficient.

[61] In reaching this conclusion, I have considered the impact of Gladue factors on the moral blameworthiness of Mr. Sutherland. Mr. Sutherland's conduct is contextualized by the Gladue factors. His guilty pleas and the fact that he is a first offender also mitigate the sentence. These factors, however, move the sentence downwards only minimally because of the overwhelming seriousness of the offences.

[62] Having considered all of the circumstances, I have concluded that the period of parole ineligibility should be 21 years.

[63] I want to emphasize that Mr. Sutherland will not necessarily be released at the end of the period of parole ineligibility that I impose today. At the end of that period, Mr. Sutherland can apply to the Parole Board for full parole. If the parole board is convinced that he should be released, he will be released but will be subject to supervision for the rest of his life.

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<sup>13</sup> [1995] O.J. No. 1027

<sup>14</sup> [1999] O.J. No. 2667 (ON SC)

<sup>15</sup> 2023 ONSC 103

<sup>16</sup> 1990 12 W.C.B. (2) 729

## VII CONCLUSIONS

[64] I therefore sentence Mr. Sutherland to life imprisonment with no eligibility for parole until he has served 21 years of that sentence. In addition, there will be a s. 109 weapons prohibition for life and a DNA order.

[65] I make an order under s. 743.21 that Mr. Sutherland be prohibited from communicating directly or indirectly with any member of the family of Susan Tice or the family of Erin Gilmour.

[66] The families of both victims have indicated their wish to be informed of the administration of this sentence and I direct that Corrections Canada be informed of this.

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**M. Forestell J.**

**Released:** March 22, 2024

**CITATION:** R. v. Sutherland 2024 ONSC 1679  
**COURT FILE NO.:** CR-23-10000528-0000  
**DATE:** 20240322

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**HIS MAJESTY THE KING**

- and -

**JOSEPH GEORGE SUTHERLAND**

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**REASONS FOR SENTENCE**

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**M. Forestell J.**

**Released:** March 22, 2024