COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *R. v. H.J.J.B.,*

2026 BCCA 138

Date: 20260327

Dockets: CA48699; CA48727

Docket: CA48699

Between:

Rex

Respondent

And

H.J.J.B.

Appellant

– and –

Docket: CA48727

Between:

Rex

Respondent

And

T.D.T.

Appellant

Restriction on publication: A publication ban has been automatically imposed under s. 110(1) of the *Youth Criminal Justice Act* restricting the publication of information that would identify young persons referred to in this judgment by the initials H.J.J.B. and T.D.T. This publication ban applies indefinitely, unless the information is published by that young person under s. 110(3) or the court has ordered publication.

A publication ban has been automatically imposed under s. 111(1) of the *Youth Criminal Justice Act* restricting the publication of information that

would identify young persons as having been witnesses. This publication ban applies indefinitely, unless the information is published by that young person under s. 111(2) or the court has ordered publication.

Before: The Honourable Chief Justice Marchand

The Honourable Mr. Justice Groberman

The Honourable Justice Warren

On appeal from: An order of the Provincial Court of British Columbia (Youth Division) dated November 4, 2022 (sentence) (*R. v. H.J.J.B.*, Surrey Docket 20640-2C)

Oral Reasons for Judgment

Counsel for the Appellant H.J.J.B.:	V.M. Williams
Counsel for the Appellant T.D.T.:	K. Westell P.T. Gardiner
Counsel for the Respondent:	M.A. Street
Place and Date of Hearing:	Vancouver, British Columbia March 27, 2026
Place and Date of Judgment:	Vancouver, British Columbia March 27, 2026

Summary:

The appellants were convicted of second degree murder under the provisions of the Youth Criminal Justice Act. They were fifteen and sixteen years old at the time of the murder. The Crown applied to the trial judge for an order that the appellants were liable to adult sentences. The judge was, ultimately, persuaded to impose such sentences. He sentenced each of the appellants to imprisonment for life, with a period of parole ineligibility of seven years, the maximum sentence available in these circumstances under the Criminal Code.

After the appellants were sentenced, the Supreme Court of Canada delivered judgment in R. v. I.M., 2025 SCC 23. The appellants contend that, under the law as interpreted in that case, the judge should not have found them liable to an adult sentence. The Crown concedes that I.M. changes the way the law must be interpreted in British Columbia and agrees that the requirements for the imposition of an adult sentence were not made out. Held: Appeal allowed, sentences under the Youth Criminal Justice Act imposed instead of the Criminal Code sentences imposed by the trial judge. The law, as interpreted by the Supreme Court of Canada, is such that the appellants ought to have been sentenced to seven years under s. 42(2)(q)(ii) of the Youth Criminal Justice Act, the maximum permitted under that legislation.

[1] **GROBERMAN J.A.**: The appellants were convicted of second degree murder for the killing of Paul Delphin Prestbakmo in Surrey, British Columbia, in the early hours of August 16, 2019. At the time of the murder, H.B. was sixteen years old, and T.T. was fifteen.

[2] The judge imposed "adult sentences" of life imprisonment without possibility of parole for seven years on both appellants. They appeal, arguing that the judge erred in finding that the conditions for imposing adult sentences were established. They ask this Court to set aside the sentences, and to impose, in their place, youth sentences under s. 42(2)(q)(ii) of the *Youth Criminal Justice Act*, S.C. 2002, c. 1. The maximum youth sentence under that provision is seven years commencing at the date of committal, with up to four years in custody before conditional supervision in the community.

[3] At the centre of this appeal is the decision of the Supreme Court of Canada in *R. v. I.M.*, 2025 SCC 23, pronounced in July 2025. The decision represents an important reinterpretation of the law (at least as far as British Columbia is concerned) and substantially elevates the threshold for sentencing young persons as adults.

[4] On this appeal, the Crown concedes that the judge's reasons do not satisfy the threshold that was later established in *I.M.* The Crown accepts that this Court should set aside the adult sentences and instead impose the maximum youth sentence authorized under the *Youth Criminal Justice Act*.

[5] I am satisfied that the remedy sought by the appellants, with the support of the respondent Crown, is the appropriate one. We are, for reasons that follow, obliged to set aside the sentences, and instead impose penalties authorized by the *Youth Criminal Justice Act*.

The Crime

[6] In the early hours of August 16, 2019, the appellants left a party to go for a walk. While walking, they came across Mr. Prestbakmo. The evidence does not suggest that they

had any connection with him beforehand. Nonetheless, the appellants committed a brutal murder, using knives to stab Mr. Prestbakmo forty-two times in the space of only 26 seconds. The wounds were scattered over Mr. Presbakmo's upper body. The appellants stabbed him in the chest, abdomen, back, neck, left forearm, and elbow. The wounds were deep and unsurvivable. They included serious damage to Mr. Prestbakmo's pericardium, heart, both lungs, diaphragm and liver. There was no apparent motive for the attack, nor any indication of a precipitating event. The judge was left with the possibility that it was simply a random act of extreme violence.

[7] The attack took place across the street from a police station, and the police, after attending to the victim and summoning paramedics, quickly commenced an investigation. Mr. B. was apprehended in short order, and Mr. T. within a few days, having fled to Nanaimo.

[8] At sentencing, the Attorney General applied, under s. 64(1) of the *Youth Criminal Justice Act*, for an order that the appellants were liable to an adult sentence. The judge was required to apply ss. 72(1) and (1.1) of that *Act* to decide whether a youth sentence or an adult sentence was to be imposed:

72(1) The youth justice court shall order that an adult sentence be imposed if it is satisfied that

(a) the presumption of diminished moral blameworthiness or culpability of the young person is rebutted; and

(b) a youth sentence imposed in accordance with the purpose and principles set out in [specified sections of the statute] would not be of sufficient length to hold the young person accountable for his or her offending behaviour.

(1.1) If the youth justice court is not satisfied that an order should be made under subsection (1), it shall order that the young person is not liable to an adult sentence and that a youth sentence must be imposed.

[9] The judge considered voluminous evidence and submissions before making the decision. Ultimately, he concluded that the presumption of diminished moral blameworthiness had been rebutted. In doing so, he followed the approach suggested in this Court's decision in *R. v. Chol*, 2018 BCCA 179.

[10] After satisfying himself that the presumption of diminished moral blameworthiness had been rebutted, the judge went on to consider s. 72(1)(b). There is a substantial difference in the length of youth sentences available under the *Youth Criminal Justice Act* and adult sentences imposed under the *Criminal Code*, R.S.C. 1985, c. C-46.

[11] A youth sentence under s. 42(2)(q)(ii) of the *Youth Criminal Justice Act* for second degree murder is for a maximum of seven years. The first period (a maximum of four years) is served in custody, and the remaining time is spent under conditional supervision in the community.

[12] An adult sentence for second degree murder, on the other hand, is a life sentence. While the normal sentence for second degree murder carries a period of parole ineligibility of between 10 and 25 years under s. 745 of the *Criminal Code*, that period of parole ineligibility does not apply to young persons serving adult sentences. Under s. 745.1 of the *Code*, the period of parole ineligibility for an offender who was under sixteen years of age at the time of the offence may be set at five to seven years, and the period of parole ineligibility for a person who was sixteen or seventeen years old at the time of the offence is seven years.

[13] In comprehensive reasons discussing the appellants' resistance to rehabilitation, and their apparent failure to genuinely accept responsibility for the senseless killing of the victim, the judge explained why he believed that a sentence under the *Youth Criminal Justice Act* would not be of sufficient length to hold the appellants accountable for their behaviour.

[14] Having found that adult sentences should be imposed on the appellants, the judge was required to sentence both to life imprisonment. He was also required to impose a period of parole ineligibility of seven years on Mr. B. He considered that seven years of parole ineligibility was also appropriate for Mr. T., although it was open to him to impose a shorter period.

The Appeals

[15] The appellants initially appealed from their convictions as well as from the judge's decision to sentence them to adult sentences. They eventually abandoned their conviction appeals but continued their sentence appeals.

[16] In July 2025, the Supreme Court of Canada issued its decision in *I.M.*. It is an important decision interpreting s. 72(1)(a) of the *Youth Criminal Justice Act*. The decision establishes a high standard of proof under the provision, and cautions against undue reliance on equivocal factors as evidence of maturity and responsibility.

[17] The application of s. 72(1)(a) in British Columbia was much less rigid prior to *I.M.* In *Chol*, this Court listed several factors that could be taken into account in deciding whether the presumption of diminished moral blameworthiness had been rebutted. The first category of factors encompass the circumstances of the offender: for example, the

person's age, background, antecedents, and living situation. The degree of independence enjoyed by the young person was an important consideration, as was their mental health.

[18] The second category of factors highlighted the circumstances of the offence. Some circumstances will tend to show a degree of maturity — for example, planning and a motive indicative of mature reasoning. Others, such as impulsiveness and bravado, will tend to show that immaturity is a strong factor in the criminal activity, and support the presumption of diminished moral culpability. The Court set out several examples of circumstances of the offence and of post-offence conduct that ought to be considered in deciding whether the presumption of diminished responsibility is rebutted.

[19] *Chol* established, in British Columbia, that after engaging in this multi-faceted inquiry, the judge simply had to declare themselves either "satisfied" or "not satisfied" that the presumption was rebutted.

[20] *I.M.* considered the various factors set out in *Chol* and accepted that the broad-ranging inquiries described in *Chol* are appropriate. The majority in *I.M.*, however, considered the standard to be applied by the judge to be higher than mere "satisfaction". Rather, the judge had to be satisfied beyond a reasonable doubt that the presumption was rebutted.

[21] The Court also emphasized that equivocal indicators of maturity should not be exaggerated or emphasized. The standard set in s. 72(1)(a) is an exacting one. It must be definitively established that the level of maturity of a young person is so advanced that they should no longer benefit from the presumption that they are less blameworthy or culpable than adults who commit similar crimes.

[22] The judge in the court below undertook a comprehensive consideration of the appellants' backgrounds, lifestyles, and attitudes. He considered certain severe difficulties that they experienced growing up (in the case of Mr. T., an abusive childhood, and, in the case of Mr. B., frequent incidents of racism directed against him).

Analysis

[23] The trial judge followed the suggested approach in *Chol*, and declared himself satisfied that the presumption had been rebutted. In my view, he cannot be faulted for his approach, but it is not the approach that was later established by the Supreme Court of Canada in *I.M.* In *I.M.*, the Court emphasized the heavy burden that the Crown faces in an application under s. 64 of the *Youth Criminal Justice Act*. The presumption of diminished blameworthiness in the statute is a powerful one. It can only be rebutted where evidence unequivocally demonstrates a level of mature thought and independence in the offender

that establishes beyond a reasonable doubt that they have an adult level of blameworthiness and responsibility for their crimes.

[24] It is manifest that the judge did not apply such a standard in this case. It is also apparent that the evidence in this case did not meet the requisite standard to rebut the presumption.

[25] I would commend counsel, and particularly Crown counsel, for a thoughtful approach and analysis of the evidence in this case and its relationship to *I.M.*

[26] There is, in the end, nothing in the facts of this case from which one can attribute unusual maturity to the appellants. While some of the things they did indicate a degree of planning and a degree of independence, others point in the other direction. The evidence is incapable of showing beyond a reasonable doubt that the appellants had passed the stage where their actions were influenced, to a large degree, by immaturity.

[27] I have no doubt that the brutality and senselessness of the crime in this case will cause some members of the public to view the overturning of the sentences as an injustice.

[28] This is, however, a court of law, bound to adhere to the dictates of statutes and the interpretations of them by a higher court. Section 72(1)(b) does not stand alone. In order to proceed with sentencing a young offender as an adult, the requirements set out in s. 72(1)(a) must also be satisfied. In light of the language of the *Youth Criminal Justice Act* and the decision in *I.M.*, it is clear that it was not open to the trial judge to impose an adult sentence on the appellants.

[29] The trial judge's analysis under s. 72(1)(b) reflects a considered approach to the evidence, however, and is of assistance to this Court in determining what sentence should be imposed. While I have some concerns with a few comments and some findings in the judgment, those are incidental to the fundamental conclusions and do not affect their validity. The judge thoroughly considered the appellants' backgrounds and dispositions, as well as the crime and its aftermath.

[30] I am not convinced that the judge erred in concluding that the objectives set out in the *Youth Criminal Justice Act* are unlikely to be fully achieved within the relatively short rehabilitative period available under that statute's sentencing provisions. That cannot, of course, justify imposing a sentence longer or more severe than authorized by law. However, the judge's findings are entitled to deference and demonstrate why the maximum sentence under the *Youth Criminal Justice Act* ought to be imposed on both appellants. To their credit, the appellants' counsel do not suggest a lesser penalty.

[31] In the result, I would allow the appeal and set aside the life sentences imposed on the appellants. In their stead, I would substitute sentences of seven years, the maximum authorized under s. 42(2)(q)(ii) of the *Youth Criminal Justice Act*, with the first four years in incarceration. The appellants will, of course, receive credit for the time spent in custody since the sentencing, but not for the time they spent in custody prior to sentencing.

[32] With respect to the ancillary orders made by the judge, the DNA order remains in place as pronounced. The weapons prohibition order that was made is not available in respect of a youth sentence and must fall. In its place I would make a ten-year weapons prohibition under the discretionary provisions in s. 110(2) of the *Criminal Code*; that is the maximum prohibition available, and will come into effect after the custodial portion of the sentences has been served. The non-communications orders made by the trial judge will remain in place, though the statutory authority for making those orders is now s. 42(2)(s) of the *Youth Criminal Justice Act*.

[33] In closing I would like to thank counsel for their cooperation and efforts in bringing this difficult case to a conclusion.

[34] **MARCHAND C.J.B.C.**: I agree.

[35] **WARREN J.A.**: I agree.