

“Difficult and mercifully uncommon”: Sentencing the one-punch manslaughter

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In *R v Burgess*, 2016 NSPC 1, Derrick J of the Nova Scotia Provincial Court sentenced a first offender for the following:

[. . .] in a momentary surge of anger and frustration Ms. Burgess committed the objectively dangerous act of shoving her father hard enough that he fell down steep basement stairs at his home. The propelled fall left Mr. Burgess with catastrophic head injuries. He died in hospital on July 26, 2011.

Manslaughter has the widest sentencing range in Canadian law, varying as it does from “near accidents” to “near murders.” Somewhere between these two extremes lies the “one-punch” or “one-push” manslaughter: a morally blameworthy act that leads to legal culpability for the unforeseen and unintended consequence of the victim’s death.

In *R v Burgess* the Crown and defence took vastly different positions on the moral culpability of the accused. The defence, relying on the “one-punch manslaughter” cases, argued that in a fight caused by a toxic family situation the accused “snapped” and the victim’s death was so unforeseeable that a three-year sentence

was appropriate. The Crown, relying on sentencing judgments involving stabbings, argued that pushing the deceased from the top of steep stairs was objectively dangerous and merited eight years in custody.

Derrick J placed the accused’s moral culpability somewhere between these two extremes, first by powerfully rejecting the term “accident” (at para. 21):

Mr. Burgess did not die because there was an accident. Mr. Burgess died because Vanessa Burgess pushed him in anger. That unlawful assault which propelled him down a steep set of stairs led to his death. Ms. Burgess did not intend for her father to be hurt or die. That is why Ms. Burgess was not charged with and prosecuted for murder. What Ms. Burgess is guilty of is a culpable homicide that was not murder. It will not assist her to come to terms with what her anger caused if those who love and support her insist on treating what happened to Mr. Burgess as an accident.

However, Derrick J also rejected the Crown’s position of eight years as “grossly disproportionate”: although pushing the victim at the top of a steep set of stairs was objectively dangerous, the shove was not the equivalent of using a weapon, and there was an element of chance in the resulting death. The facts had “strong parallels” with the “one-punch” manslaughter cases proffered by the defence. Although eight years’ custody would be grossly disproportionate, the three years suggested by the defence would not adequately reflect the accused’s culpability. A proportionate sentence was four years.

The court noted that this was a “difficult and mercifully uncommon case.” The “one-punch” and “one-push” manslaughter remain among the most demanding sentencing cases due to the difficulty of reconciling the accused’s moral culpability for a killing with an unlawful act far less serious than murder. *R v Burgess* is a thoughtful effort to grapple with these issues and place the sentence carefully within the proper range.