



Case in Brief: **R. v. Hills**

Judgment of January 27, 2023 | On appeal from the Court of Appeal of Alberta
Neutral citation: 2023 SCC 2

The Supreme Court rules the four-year mandatory minimum sentence for discharging an air-powered pistol or rifle at a house is unconstitutional.

On May 6, 2014, Mr. Jesse Dallas Hills consumed a large amount of prescription medication and alcohol. The intoxicated man later left his Lethbridge, Alberta home with a baseball bat and a loaded rifle designed for hunting big game. Mr. Hills proceeded to swing his bat at a passing car and then fire a shot at it. The driver called 9-1-1. Before police arrived, Mr. Hills turned his attention to an unoccupied parked car. He smashed its windows and then approached a house. He fired a round that went through the home's living room window and through a wall into a computer room before it stopped in a drywall stud and bookcase.

At the time Mr. Hills fired his shots, the home was occupied by a couple and their two children. The father called 9-1-1, then went to the basement with the rest of the family where they waited for police to arrive. The officers discovered that several rounds had penetrated the walls and windows, into parts of the home where someone could have been hit.

After a preliminary inquiry, Mr. Hills pled guilty to four offences, including discharging a firearm into or at a house contrary to section 244.2(1)(a) of the *Criminal Code*. At the time, this offence carried a four-year mandatory minimum sentence set out in section 244.2(3)(b). Mr. Hills challenged the sentence under section 12 of the *Charter*, which guarantees the right not to be subjected to cruel and unusual punishment. He argued the mandatory minimum sentence was grossly disproportionate and therefore constituted cruel and unusual punishment. His challenge relied on a hypothetical scenario, where a young person intentionally discharges an air-powered pistol or rifle at a residence that is incapable of perforating the walls of a home.

The sentencing judge found that the sentence in the hypothetical scenario was grossly disproportionate. He sentenced Mr. Hills to three and a half years in prison. The Crown appealed the judge's finding and the sentence. The Court of Appeal allowed the appeal on both grounds. It restored the mandatory minimum sentence and sentenced Mr. Hills to four years in prison. Mr. Hills then appealed to the Supreme Court of Canada.

The Supreme Court allowed the appeal.

The four-year mandatory minimum sentence set out in section 244.2(3)(b) of the *Criminal Code* is cruel and unusual punishment.

Writing for a majority of the judges, Justice Sheilah L. Martin ruled that the four-year mandatory minimum sentence set out in section 244.2(3)(b) is grossly disproportionate in the hypothetical scenario raised by Mr. Hills. It infringes section 12 of the *Charter* and cannot be saved by section 1. It is immediately declared of no force or effect and this declaration applies retroactively. The three-and-a-half-year sentence imposed on Mr. Hill by the sentencing judge is reinstated.

The evidence showed that many air-powered rifles, such as paintball guns, are considered "firearms", even though they could not perforate the wall of a typical residence. The majority found that the provision applies to a wide spectrum of conduct, ranging from acts that present little danger to the public, to those that pose a grave risk. It is also reasonably foreseeable that a young person could intentionally discharge such a "firearm" into a home. As Justice Martin said, "it would shock the conscience of Canadians to learn that an offender can receive four years of imprisonment for firing a paintball gun at a home".

In arriving at this conclusion, Justice Martin further developed the framework applicable to challenges to the constitutionality of a mandatory minimum sentence under section 12 of the *Charter*. To determine if a mandatory minimum sentence is grossly disproportionate, the court must take two steps. First, a court must determine a fit and proportionate sentence for the offence, in line with the objectives and principles of sentencing in the *Criminal Code*. The court must then decide if the mandatory sentence is grossly disproportionate to the fit and proportionate sentence. The outcome will depend on the scope and reach of the offence, the effects of the punishment on the offender, as well as the penalty and its objectives.

Breakdown of the decision: *Majority:* Justice Sheilah L. [Martin](#) allowed the appeal, ruling the four-year mandatory minimum sentence formerly set out in section 244.2(3)(b) of the *Criminal Code* unconstitutional (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Brown](#), [Rowe](#), [Kasirer](#) and [Jamal](#) agreed) | *Dissenting:* Justice [Côté](#) would have dismissed the appeal, finding the mandatory minimum sentence constitutional

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