

COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 19 OF 1991

BETWEEN:

LUNDY HURTAULT

Appellant

and

THE STATE

Respondent

Before: The Honourable Chief Justice Floissac - President
The Honourable Mr. Justice D. Byron J.A.
The Honourable Mr. Justice Redhead J.A. (Ag.)

Appearances: Appellant in person

1992: March 9th and 10th.

JUDGMENT

FLOISSAC, C.J.

On the 2nd July 1991, before a jury presided over by Adams J. the appellant pleaded guilty of manslaughter of the late Bernard John Baptiste on the 26th or 27th February 1990 and was sentenced to imprisonment for a term of 10 years. He now appeals against that sentence.

On the 24th July 1991, the deceased provoked the appellant by repeatedly accusing the appellant of the murder of the appellant's uncle. Under that provocation and resulting loss of self-control, the appellant slapped the deceased and knocked him down. While the deceased was on the ground, the appellant stamped on the deceased's chest several times and caused the deceased to vomit blood. Two or three days later, the deceased died partly as a result of those injuries and partly as a result of late medical attention.

The appellant has urged this Court to take into account the facts that (1) he used his bare hand and foot to beat the deceased; (2) he is 33 years old; (3) he has three children aged 5, 8 and 10 years respectively; (4) at the time of his arrest, he was gainfully

employed and (5) up to the time of his arrest, he used to assist in the maintenance of his children.

Mr. Ronald Armour intervened as amicus curiae to advance two other mitigating factors namely the fact that the appellant pleaded guilty and the fact that until 1987, the maximum penalty for manslaughter was imprisonment for a term of 10 years and not life imprisonment.

Those potentially mitigating factors are neutralised by the fact that the appellant is a recidivist with 22 previous convictions, most of which are for crimes of violence. In those circumstances there could be no justification for appellate interference with the sentence imposed by the learned judge.

This appeal is therefore dismissed.

(Sgd.) V.F.FLOISSAC
CHIEF JUSTICE

(Sgd.) D. BYRON
JUSTICE OF APPEAL

(Sgd.) A. REDHEAD
JUSTICE OF APPEAL (AG).