

SAINT LUCIA

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO. SLUCRD2023/0465

BETWEEN:

THE KING

and

NYHIM JOHN

Defendant

Appearances:

Mr. Bernick Faisal holding papers for Mr. Linton Robinson Counsel for the Crown

Mr. David Francis Counsel for the Defendant

The Defendant present via Zoom from the Bordelais Correctional Facility

2024: 24th June;

- [1] **BROWNE, J:** At about 1:19 p.m. shots rang out loudly at Riverside Road in the city of Castries. Moments later, Gandolph Adonis, the Deceased lay wounded, bleeding and dying.
- [2] Earlier that afternoon at about 1:10 p.m., the mother of the Child and the Deceased, - also the stepfather of the Child, were involved in a heated argument which became physical, resulting in the Child's mother receiving a wound to her forehead.
- [3] The Child, Nyhim John had casually walked up to the Deceased from the direction of Marchand in the company of another young male and fired multiple shots at the Deceased.

- [4] As quickly as the Child arrived at the scene, he departed, going in the same direction he came. CCTV footage from the Saint Lucia Teachers' Co-operative captured the Child's movements to and from the scene with a black side pouch around his body from which he pulled a firearm and later returned.
- [5] Nyhim John is a Child in Conflict with the Law; hereinafter referred to as the Child.¹ A Notice of Intention to Prosecute the Child was filed on the 5th day of February 2024 and by an indictment filed on the same date, the Child was indicted for the offence on Murder. He was charged that on Saturday the 27th day of May 2023 about 1:19 p.m. at Riverside Road, situate in the city of Castries, within the First Judicial District of this State, intending to cause harm did cause the death of Gandolph Adonis, contrary to Sections 85 (a) and 87 (2) of the Criminal Code of Saint Lucia Cap. 3.01 of the Revised Laws of Saint Lucia 2013. He pled guilty on arraignment on the 28th day of February 2024 and now stands to be sentenced.

Pre-Sentence Report

- [6] The Pre-Sentence Report prepared by Probation Officer Mr. Donavan Eugene was comprehensive and instructive with regard to the life of the Child.
- [7] The Child, Nyhim John was born on 14th September 2005 to Marcia John and Derrick Williams, deceased. He has five (5) brothers and six (6) sisters and it was gleaned from the report that daily life was a struggle.
- [8] The report outlined that the Child was raised in the community of Marchand and his parents often moved from one apartment to the next in search of better living arrangements. His parents separated when he was young but lived close to each other and were always cordial despite his father's excessive alcohol consumption.

¹ The Child Justice Act Cap 3.09, Revised Edition 2020 defines child as a person under 18 years.

- [9] Between the ages of five (5) and fourteen (14), the Child lived with his uncle in the community of Maynard Hill, Castries and his life improved financially and otherwise. However, his mother took him from his uncle at fourteen (14) years and his life spiralled downward immediately. Obtaining basic necessities of food and clothes and school supplies were difficult and his only positive outlet was playing football which he enjoyed and was a member of the Big Players Football Club.
- [10] The Child attended the Methodist Primary School and later the Bocage Secondary School. Not inclined to academics, coupled with financial challenges from a surgery which required him to remain at home to heal and then Covid-19 surfaced in his second term in Form 2, the Child never returned to school thereafter.
- [11] Residents of the Marchand Boulevard community stated that the Child is troublesome, associates with questionable characters and gets involved in illegal activities such as stealing. They opined further that poor parental supervision during his childhood and teenage years and poor school attendance may have contributed to the Child being this way.
- [12] Mr. Michael Williams, the Child's uncle stated that the Child appears to be quiet but is easily influenced by his peers and he needs to learn a skill and get out of the Marchand Boulevard community. He is willing to facilitate this. This view was reinforced by Creola John, the Child's sister.
- [13] The Child occasionally obtained part-time employment with the Saint Lucia Solid Waste Management and other short-term employment programs with the Government of Saint Lucia.
- [14] The Child stated that his community of Marchand is poverty ridden with a high crime rate, violence and drugs. He stated these made him feel unsafe and he found it necessary to arm himself with a gun for protection. He stated he does not feel good about his actions and feels terrible for the pain and hurt caused to the family and friends of the Deceased. At the time when he committed to act however, he felt a need to

protect his mother from the Deceased. He stated even though he tries to steer clear of conflicts, friends and other community residents make it difficult for him.

Victim Impact Statement

- [15] The Probation Officer, Mr. Donovan Eugene was unable to establish contact with the family of the Deceased.

The Law

- [16] Murder contrary to Sections 85 (a) (b) and 87 (2) of the Criminal Code Cap 3.01 of the Revised Laws of Saint Lucia 2013 states:

“85 - Murder

A person commits Murder if he or she causes the death of another person –

- 1. Intending to cause death; or*
- 2. Intending to cause grievous bodily injury*

87 – Non-Capital Murder

(1)

(2) Subject to subsection (3) a person convicted on indictment of Non-Capital murder is liable to imprisonment for life”

- [17] Section 50 (1) of the Child Justice Act² states that a sentence of death or a whole life sentence is not applicable to a child.

“Prohibition on Sentence

50 (1) – A sentence of life imprisonment, capital punishment or any form of corporal punishment shall not be imposed on a Child.”

- [18] Consequently, the Court has to determine an appropriate starting point in the instant case.

² Ibid

Applicable Principles

- [19] Counsel for the Child stated that the Sentencing Guidelines of the Eastern Caribbean Supreme Court in relation to Homicide Offences do not apply to the Child in the instant matter and the guidelines speak to sentencing of adult offenders. He further stated that the Child Justice Act is the sole governing authority on sentencing the Child at Bar.
- [20] Counsel for the Crown refutes this stance and opined that the guidelines ought to be followed for not only adult offenders but for young offenders; children in conflict with the law, and Practice Direction 8D on Sentencing Guidelines, No. 4 of 2019 gives guidance on the calculation of starting points and ranges when sentencing persons below the age of eighteen (18) years.
- [21] This issue therefore is whether or not the Eastern Caribbean Supreme Court Sentencing Guidelines for Homicide Offences are applicable in the present case.

Applicability of Guideline

- [22] The Compendium Sentencing Guidelines of the Eastern Caribbean Supreme Court, Homicide Offences³, deals with offences of Homicide being: -
1. Murder
 2. Manslaughter by reason of provocation
 3. Manslaughter by reason of an unlawful act
 4. Causing death by dangerous driving
- [23] It outlines clearly that in sentencing for these offences⁴
- “the Court **must** apply the relevant guidance and sentence accordingly, unless to do so would not be in the interests of justice.”*

³ Re-Issue, 26th November 2021

⁴ Eastern Caribbean Supreme Court Homicide Offences Compendium at page 2

[24] The guidelines further state,⁵

“it is expected that every Court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to adult offenders, but for a person below the age of eighteen (18), Practice Direction 8D on Sentencing Guidelines No. 4 of 2019 is to be seen.”

[25] The Child Justice Act gives clear guidance on how young offenders must be sentenced and establishes the maximum sentence for Children in Conflict with the Law. Section 51 of the Child Justice Act is noteworthy for the purposes of sentencing a Child. Section 51 of the Child Justice Act states;

1. *The Court shall, after a finding of guilt in relation to a child, impose a sentence on the child in accordance with this Part to —*
 - a. *encourage the child to understand the implications of and be accountable for the harm caused;*
 - b. *promote an individualised response that is appropriate to the circumstances of the child and proportionate to the circumstances surrounding the offence;*
 - c. *promote the reintegration of the child into the family and community;*
and
 - d. *ensure that necessary supervision, guidance, treatment or service which form part of the sentence, to assist the child in the process of reintegration and rehabilitation.*
2. *Without prejudice to subsection (1), the Court may impose a sentence —*
 - a. *involving a compulsory residential requirement;*
 - b. *referring a child to a secure residential facility or correctional facility for an initial period and thereafter a community based sentence;*
 - c. *referring a child to a family group conference;*
 - d. *involving correctional supervision.”*

⁵ Bid, page 2

[26] The Child Justice Act is the primary legislation which deals with the sentencing of Children in Conflict and must therefore take precedence over the Sentencing Guidelines. The principles of sentencing as outlined in the Guidelines, provide a guide to the Court at arriving at the appropriate sentence pursuant to section 54 of the said Act⁶. Section 54 subsection (1) of the said Act states;

1. A Court shall not impose a sentence to a correctional facility on a child-
 - a. unless the child is over the age of fourteen years at the time of commission of the offence; and
 - b. unless substantial and compelling reasons exist for imposing a sentence to a correctional facility, which may include -
 - i. conviction of an offence under Schedule 3, or
 - ii. a previous failure to respond to an alternative sentence, including a sentence with a residential element; or
 - c. in respect of an offence under Schedule 1; or
 - d. as an alternative to another sentence specified in this Act.

[27] Section 54 subsection (2) of the said Act states;

If a sentence to a correctional facility is imposed on a child under subsection (1) that sentence shall be for a period not exceeding three (3) years.

Starting Point and Range

[28] This is case of Murder using a firearm, which the Child committed when he was seventeen (17) years of age. The cold and calculated manner within which this offence was executed in broad daylight makes this offence so serious that the court is of the view that a custodial sentence is merited.⁷ In R v ZA⁸, the seriousness of the offence was considered to be the starting point and highlighted that the approach to sentencing children should be individualistic and focused on the child or young person.

⁶ Child Justice Act Cap 3.09, Revised Edition 2020

⁷ Paragraph 4 of the Practice Direction 8D states; “A custodial sentence should always be a measure of last resort for children and young persons and a custodial sentence may only be imposed when the sentence is so serious that no other sanction is appropriate.”

⁸ 2023 EWCA Crim 596 at paragraph 56

[29] Paragraph 7 of the Practice Direction 8D states;

“Any restriction on liberty must be commensurate with the seriousness of the offence. In considering the seriousness of any offence, the Court must consider the child or young person’s culpability in committing the offence and any harm which the offence caused, was intended to cause or ought foreseeably to have caused”

[30] The maximum penalty the Child may face for this offence is three (3) years imprisonment. The maximum penalty is the heaviest sentence that can be imposed for that offence, and reflects Parliament’s view on the seriousness of an offence. It is reserved for the most serious examples of an offence committed by the worst type of offender. It would therefore be inappropriate to use the said three years as the starting point in the instant case.

[31] The court is of the view that the appropriate starting point in the instant case is Two Years Seven Months imprisonment.⁹

Application of the Aggravating and Mitigating Factors of the Offence

Aggravating Factors

- [32] 1) The offence was committed in public, at Riverside Road, Castries, just after noon.
2) The firearm was not recovered.

Mitigating Factors

- [33] 1) The action of the Child in the instant case was a result of having been provoked by the head injury which was inflicted on his mother by the Deceased. There had been a history of domestic violence between the parties.

Aggravating and Mitigating Factors of the Offender

⁹ This being 90% of the maximum sentence for this offence under the Child Justice Act.

Aggravating Factors

- [34] 1) There were none noted.

Mitigating Factors

- [35] 1) The Child is of good character as there are no convictions before the Court.
- 2) The Child expressed genuine remorse – this was expressed clearly in the Pre-Sentence Report when he stated, he does not feel good about his actions and reflects daily on the pain and hurt that he caused for the family and friends of the Deceased.
- 3) Youth and lack of maturity – the Child at the time of the offence was seventeen (17) years of age.
- 4) Poor parental supervision and discontinuity of care during his childhood as intimated in the Pre-Sentence Report.

[35] When the aggravating and mitigating factors of both the offence and the offender were weighed against each other, the mitigating factors far outweighed the aggravating factors. This merited a downward adjustment in the sentence by one (1) year.

Guilty Plea

- [36] The Child pleaded guilty at the first available opportunity and would benefit from a $\frac{1}{3}$ (one-third) discount on his sentence; that being $\frac{1}{3}$ (one-third) of one (1) year seven (7) months, which brings the sentence to one (1) year one (1) month imprisonment.

Totality Principle

- [37] This principle is not applicable in the instant case.

Time on remand

- [37] The Child has been remanded since 4th October 2023. This period will be credited to his sentence. To date the Child has spent two hundred and sixty-four (264) days on remand. (as at 24 June 2024)

Sentence:

1. The Child is sentenced to one (1) year one (1) month imprisonment at the Bordelais Correctional Facility.
2. Time spent on remand of two hundred and sixty-four (264) days to be credited to the sentence.
3. The Child is placed under a Supervision and Guidance Order for a period of one (1) year with Probation Services.
4. The Child is to be referred to Counselling for a period of twelve (12) months.
5. The Child will enrol at the National Enrichment and Learning Unit and his attendance will be compulsory for obtaining vocational and educational certification. In default the Child is to spend six (6) months imprisonment at the Bordelais Correctional Facility.
6. The Child will perform two hundred and fifty (250) hours community service under the supervision or control of Probation Services within twelve (12) months. Failure to attend will result in six (6) months imprisonment.
7. The Child is to attend Anger Replacement Therapy and Conflict Resolution. In default the Child is to spend six (6) months imprisonment.
8. The Child is to attend a Drug Rehabilitation Program. In default the Child is to spend six (6) months imprisonment.
9. The Child is to return to this Court within six (6) months to report on compliance with this Order.
10. Probation Services is to provide a report on the Child within six (6) months.

Justice Réchanne T. L. V. Browne
High Court Judge

BY THE COURT



REGISTRAR